



**Written Findings:  
Major Revision TR3 for  
East Decker Coal Mine  
Decker Coal Company  
Permit ID# C1983007  
Big Horn County, Montana**

Prepared by:  
Montana Department of Environmental Quality  
Coal and Opencut Mining Bureau  
Coal Section



Dated: July 23, 2018

D-000204

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ATTACHMENTS

- ATTACHMENT 1: 2018 CUMMUALTIVE HYDROLOGIC IMPACT ASSESSMENT
- ATTACHMENT 2: PRIVATE PROPERTY TAKINGS ASSESSMENT
- ACCEPTABILITY DETERMINATION FOR DECKER TR3

## **INTRODUCTION**

1. Decker Coal Company's (Decker's) East Decker Mine was permitted as it is today on June 23, 1983 when Decker consolidated two surface mine permits and added Amendments 001 and 002. This action added 188 acres to the permit. Additional major revisions and amendments have been completed that included a change to the mining and reclamation plan (Application 00152), and a deletion of 171 acres from the associated level for Decker/Otter County Road relocation. The major revision area does not include any new federal surface or coal that was not in the existing federal mine plan (Permit Number MT-0005, 5/83).
2. Decker applied to the Montana Department of Environmental Quality (DEQ) for the major revision (TR3) to the East Decker surface mining permit on December 2, 2016. The application was ruled complete on March 31, 2017. After four rounds of acceptability deficiencies the application was ruled acceptable on June 7, 2018.
3. TR3 proposes to add Cuts 21 through 35 extending Pit 15 within Township 9 S, Range 41 E, Section 7, and adding Pit 20 to the existing Mine Plan and Reclamation Plan at the East Decker Mine. The application proposes to add approximately 368 acres of disturbance, of which 165 acres consist of mining, 60 acres of highwall reduction, 135 acres of stockpile footprint, and 8 acres of incidental disturbance, resulting in an additional 23 million tons of coal. The currently permitted disturbance area (approximately 2,900 acres) would be increased by 13%. The proposed Pit 20 lies in an area east of the existing Pit 15 and north of the existing Pit 14 within Township 9 S, Range 41 E, Sections 7 and 8. Pit 20 is proposed to be a box cut and four additional cuts running parallel to the Deer Creek drainage. An overburden storage area and topsoil storage area are proposed south of the new Pit 20 to provide for the material from the new pit. An extension of the Middle Creek diversion has been designed to protect Pit 20 and the East Pits from surface runoff, and will extend around the east end of Pit 20.
4. Mining and reclamation operation under TR3 will not deviate substantially from what was previously approved. As coal is removed, the operator will proceed with reclamation according to the requirements of the Reclamation Plan, as described in Section 17.24.313 of the currently approved permit. Topsoil will be removed prior to mining and either direct-hauled to areas graded to the approved PMT or stockpiled. Soil stockpiles will be marked with an identification sign and stockpiles will be protected from erosion. Currently approved permit maps depicting vegetation plans will need to be reviewed and updated as a general course of permit renewal, mid-permit review or an additional minor revision to the permit. Regardless of future permit revisions, the vegetation plan will be monitored over time and adjusted as necessary to achieve successful establishment of plant communities which will support the approved postmine land use.
5. These written findings and permit decision are based on information provided by

Decker Coal Company (Major Revision application TR3 and existing permit C1983007), the Environmental Assessment completed by DEQ dated June 2018 and updated July 2018, and the Cumulative Hydrologic Impact Assessment (CHIA) completed by DEQ dated July 2018.

6. Table I - Introductory Table

Applicant .....	Decker Coal Company
Name of Mine.....	East Decker Coal Mine
MSHA Number .....	2400839
Type of Mine.....	Strip
Type of Application .....	Major Revision
Area within existing permit boundary (acres) .....	4,361
Proposed Increase in Permit Area (Acres) .....	0
Total proposed permit area (acres).....	4,361
Anticipated Annual Production .....	12 million tons

**FINDINGS**

7. Permit and Review Chronology

June 23, 1983	Surface Mine Permit C1983007 was created from a consolidation of SMPs 77007 and Amendments 001 and 002.
December 1, 2016	Various permitting actions 1983 to December 2016.
December 2, 2016	Application TR 3, East Decker Major Revision was submitted to DEQ by Decker via the E-permit system.
January 10, 2017	DEQ sent a completeness deficiency.
January 13, 2017	Decker submitted a response to the completeness deficiency.
March 31, 2017	DEQ determined the TR3 application to be complete.
April 7, 2017	DEQ received the affidavit of publication from Decker. The public notice was published on April 6, 13, 20 and 27, 2017. The comment period ended on May 27, 2017 with no comments submitted.
July 25, 2017	DEQ sent first-round technical comments to Decker.



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| September 8, 2017    | DEQ received Decker's response to the first-round technical comments for TR3.   |
| November 7, 2017     | DEQ sent the second-round deficiency letter to Decker.  |
| November 28, 2017    | DEQ received Decker's response to second-round technical comments for TR3.  |
| December 19, 2018    | DEQ received a copy of the consultation and review of the project from the Montana Sage Grouse Habitat Conservation Program stating the project was in a General Habitat Management Area and not within two miles of an active sage grouse lek. |
| January 9, 2018      | DEQ sent the third-round technical deficiency letter to Decker.   |
| January 12, 2018     | DEQ received Decker's response to the third-round technical deficiency letter.  |
| January 30, 2018     | DEQ sent the fourth-round technical deficiency letter to Decker   |
| February 7, 2018     | DEQ received Decker's fourth-round technical deficiency response.   |
| June 7, 2018         | DEQ determined the TR3 application to be acceptable.  |
| June 8, 2018         | DEQ sent a letter to the Big Horn County News requesting the Notice of Acceptability and availability of the Draft Environmental Assessment be published on June 14 and 21, 2018.   |
| June 14 and 24, 2018 | Big Horn County News published the Notice of Acceptability and availability of the Draft Environmental Assessment.  |
| July 2, 2018         | DEQ's public comment period ended. DEQ received on public comment.  |
| July 6, 2018         | DEQ receives the affidavit of publication from the Big Horn County News.  |
| July 9, 2018         | DEQ completed the Applicant/ Violator System (AVS) check. No issues were noted.   |
8. DEQ found that the East Decker Coal Mine Major Revision original application, submitted on December 2, 2016, and revised through February 7, 2018, is complete and accurate, and the applicant has complied with Montana's permanent regulatory

program. *See* Administrative Rule of Montana (ARM) 17.24.405(a).

9. The applicant has demonstrated that reclamation, as required by the Montana Strip and Underground Mine Reclamation Act and regulations, can be accomplished under the proposed reclamation plan (*see* ARM) 17.24.405(a).
10. The TR3 Major Revision area is not located:
  - a) within an area under study or administrative proceedings under a petition to be designated as unsuitable for strip or underground coal mining operations. *See* (82-4-227(9), MCA);
  - b) within an area designated unsuitable for strip or underground coal mining operations pursuant to 82-4-227(9), MCA;
  - c) on any lands within the boundaries of units of the national park system, the national wildlife refuge system, the national wilderness preservation system, the national system of trails, the wild and scenic rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act or study rivers or study river corridors established in any guidelines issued under that act, or national recreation areas designated by an act of congress, or on any federal lands within national forests, subject to the exceptions and limitations of 30 CFR 761.11(b) and the procedures of 30 CFR 761.13 (*see*, 82-4-227(13));
  - d) on any lands upon which mining would adversely impact any publicly owned park or place included in the National Register of Historic Places (*see* ARM 17.24.1131);
  - e) where the operation will constitute a hazard to a dwelling, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property (*see* 82-4-227(7), MCA) except as conditioned below;
  - f) within 300 feet of any occupied dwelling (*see* 82-4-227(7)(a), MCA);
  - g) within 300 feet of any public building, church, school, community or institutional building, or public park ((*see* 82-4-227(7)(b), MCA);
  - h) within 100 feet of a cemetery (*see* 82-4-227(7)(c), MCA); or
  - i) within 100 feet of the outside right-of-way line of a public road (*see* 82-4-227(7)(d), MCA).
11. Decker has obtained all surface and mineral rights to conduct mining and reclamation operations authorized under TR3.
12. DEQ has made an assessment of the cumulative hydrologic impacts of all anticipated coal mining on the hydrologic balance within the cumulative impact area. *See* Attachment 1 which is incorporated into these findings by reference. In that assessment, DEQ has determined that this major revision will not result in material damage to the hydrologic balance outside the permit area. ARM 17.24.405(6)(c).
13. Decker has paid all reclamation fees from previous and existing operations as required by 30 CFR Chapter VII, Subchapter R, as verified through the Applicant Violator System (AVS check of 7/9/18). ARM 17.24.405(6)(d).

14. The proposed major revision is not likely to jeopardize the continued existence of threatened or endangered species or result in the destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) (see ARM 17.24.751)(see letter of 11/13/01 from USFWS). ARM 17.24.405(6)(e).
15. Decker has obtained all required air quality and water quality permits (see 82-4-231(2), MCA). ARM 17.24.405(6)(g).
16. There are no pending MSUMRA violations for Decker Coal Company at the East Decker Mine. No other strip- or underground-coal-mining operation that is owned or controlled by the applicant or by any person who owns or controls the applicant is currently in violation of Public Law 95-87, as amended, any state law required by Public Law 95-87, as amended, or any law, rule, or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection, the department may not issue a strip- or underground-coal-mining permit or amendment, other than an incidental boundary revision, until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the administering agency (82-4-227(11), MCA) (AVS check of 7/9/18).
17. Records of DEQ and OSMRE show that the applicant does not own or control any strip- or underground-coal-mining operation that has demonstrated a pattern of willful violations of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, when the nature and duration of the violations and resulting irreparable damage to the environment indicate an intent not to comply with the provisions of the Montana Strip and Underground Mine Reclamation Act (82-4-227(12), MCA) (AVS check of 7/9/18).
18. Decker is in compliance with all applicable federal and state cultural resource requirements, including ARM 17.24.318, 1131 and 1137, and as explained in the conditions listed below.
19. The current bond for the East Decker permit is \$68,546,782. The bond was recalculated as part of the permit renewal application submitted on October 26, 2017 and approved on June 14, 2018. DEQ determined that a bond in the amount of \$68,546,782 would be required for both the renewal and TR3 to account for current practices and future conditions. DEQ received adequate bond on September 11, 2017.
20. Decker's Resource Recovery Protection Plan includes a coal conservation plan which affirmatively demonstrates that failure to conserve coal will not occur. 82-4-227(10), MCA.

## **PRIVATE PROPERTY TAKINGS**

20. The 1995 Montana state legislature passed House Bill (HB) 311, which requires a state agency to prepare an assessment of whether a proposed agency action will result in a taking of private property. DEQ prepared the assessment which concludes that the action approval of TR3 does not result in the taking of private property. The Private Property Takings Assessment is incorporated within the TR3 Environmental Assessment.

## **DECISION**

21. Based on the information found in Decker's Major Revision Application TR3 and these findings, DEQ hereby approves TR3 as revised through February 7, 2018, and DEQ grants the Major Revision subject to the following conditions:
22. 17.24.318, 1131<sup>1</sup>: Treatment of cultural resources within SMP C1983007 is covered by a MOA developed under the provisions of Section 106 of the National Historic Preservation Act and pursuant regulations (36 CFR 800). Treatment of all cultural resources, including incidental discoveries during the course of mining, must be handled according to the provisions of this MOA.

## **RESPONSES TO PUBLIC COMMENTS**

DEQ received one comment in favor of approving this application. As there were no substantial comments received DEQ has no responses to public comment.

## **REFERENCES CITED**

Environmental Assessment of Application TR3 (MDEQ, June 2018 updated July 2018)

East Decker Surface Mining Permit (SMP C1983007)

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<sup>1</sup> The number preceding each permit condition is a reference to the provisions of the permit that is the subject of the condition.