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**Written Findings: Major  
Revision for Rosebud  
Coal Mine Area D**  
Westmoreland Rosebud  
Mining, LLC  
Permit ID# C1986003D  
Rosebud County, Montana

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



Dated: November 30, 2021

D-000274

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ATTACHMENTS

ATTACHMENT 1: 2021 CUMMUALTIVE HYDROLOGIC IMPACT ASSESSMENT

ATTACHMENT 2: ENVIRONMENTAL ASSESSMENT AND PRIVATE PROPERTY TAKINGS ASSESSMENT

## **INTRODUCTION**

1. Westmoreland Rosebud Mining, LLC's (WRM) Rosebud Coal Mine Area D was originally permitted on March 21, 2986. Three amendments to the original permit area had been previously approved. Additionally, the permit area has been adjusted with a couple of incidental boundary changes (surface disturbance only – no additional mining).
2. WRM applied to the Montana Department of Environmental Quality (DEQ) for the first major revision to Area D of the Rosebud Mine (TR1) surface mining permit (the permit) on October 30, 2020. The application was resubmitted on December 29, 2020. After one round of acceptability deficiencies the application was ruled acceptable on October 18, 2021.
3. TR2 proposes the following changes to the permit: to change approximately 111 acres in Sections 15, 22, and 27 of T2N, R41E from grazing to industrial.
4. Mining and reclamation operation under Major Revision TR2 will not deviate substantially from what was previously approved. 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 WRM (Major Revision application TR2 and existing permit C1986003d), the Environmental Assessment completed by DEQ dated October 29, 2021, and the Cumulative Hydrologic Impact Assessment (CHIA) completed by DEQ dated November 30, 2021.

6. Table I - Introductory Table

Applicant .....	Westmoreland Rosebud Mining, LLC
Name of Mine.....	Rosebud Coal Mine Area D
MSHA Number .....	24-01747
Type of Mine .....	Strip
Type of Application .....	Major Revision

Total permit area (acres)..... 4,475

**FINDINGS**

7. Permit and Review Chronology

October 30, 2020	Application for Major Revision TR1 is received.
December 15, 2020	DEQ sends out First Round Completeness Deficiency.
December 29, 2020	DEQ receives response to First Round Completeness Deficiency as TR2 submittal under the myCoal ePermit system.
February 11, 2021	DEQ determines that Major Revision TR2 is complete and that an Environmental Impact Statement is not necessary.
February 17, 2021	DEQ sends out the notice of application.
March 11, 2021	The Public Notice for Completeness Determination was published February 18 and 25 and March 4 and 11, 2021 in the Forsyth Independent Press.
April 2, 2021	DEQ sends out First Round Acceptability Deficiency.
August 31, 2021	DEQ receives response to First Round Acceptability Deficiency.
August 12, 2021	DEQ determines that Major Revision TR2 is acceptable.
September 23, 2021	DEQ sent Notification of Administratively Complete Application to USFWS.
October 19, 2021	DEQ publishes Notice of Acceptability in the Billings Gazette on October 21 and 28, 2021.

- 8. DEQ found that the Major Revision TR2, originally submitted on October 30, 2020, resubmitted on December 29, 2020 and revised through August 31, 2021, is complete and accurate, and the applicant has complied with Montana's permanent regulatory program. *See* Administrative Rule of Montana (ARM) 17.24.406(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) 17.24.406(a).
- 10. The Major Revision TR2 application 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. WRM has provided all surface and mineral rights to conduct reclamation operations authorized under the Major Revision TR2 application area.
  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.
  13. WRM 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 11/29/21).
  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).
  15. WRM has obtained all required air quality and water quality permits (*see* 82-4-231(2), MCA).

16. There are no pending MSUMRA violations for WRM at the Rosebud Coal Mine Area A. 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 11/29/21).
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 11/29/21).
18. WRM 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 required bond for Rosebud Coal Mine Area D is \$7,950,000.00 and has been determined to be adequate.

### **PRIVATE PROPERTY TAKINGS**

23. 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 Major Revision TR2 application does not result in the taking of private property. The Private Property Takings Assessment is attached to these Written Findings as Attachment 2.

### **DECISION**

20. Based on the information found in WRM's Major Revision TR2 and these findings, DEQ hereby approves Major Revision TR2's application as revised through August 31, 2021, and DEQ grants the permit subject to the following conditions:

21. 17.24. 318, 1131<sup>1</sup>: Treatment of cultural resources within SMP C1986003A 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**

N/A

## **REFERENCES CITED**

Environmental Assessment of Application TR2 (MDEQ, October 2021)

Western Energy Company Rosebud Coal Mine Area D Surface Mining Permit (SMP C1986003D)

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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.