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BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re:)
)
)

Lee Ranch Coal Company,)
El Segundo Mine)
)

NPDES Permit No. NM0030996)
_____)

NPDES APPEAL No. 14-_____

**LEE RANCH COAL COMPANY NOTICE OF ERRATA
REGARDING EXHIBITS C AND E TO PETITION FOR REVIEW**

PLEASE TAKE NOTICE that on November 3, 2014, Lee Ranch Coal Company electronically filed a Petition for Review concerning NPDES Permit No. NM0030996 for the El Segundo Coal Mine. The Petition for Review inadvertently contained two incorrect attachments, Exhibits C and E. Attached hereto are corrected Exhibits C and E.



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Date: November 3, 2014

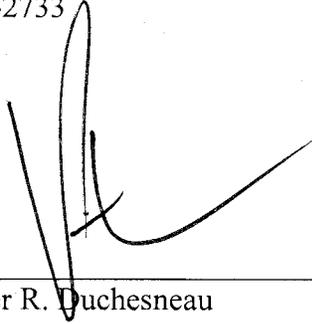
CERTIFICATE OF SERVICE

I, Peter R. Duchesneau, hereby certify that on this 3rd of November, 2014, I served a copy of the foregoing Notice of Errata Regarding Exhibits C and E to Petition For Review on the parties identified below by Federal Express.

Ron Curry
Regional Administrator
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

and

William K. Honker, P.E.
Director, Water Quality Protection Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733



Peter R. Duchesneau

EXHIBIT C

NPDES authorization to discharge to waters of the United States, Permit No. NM0030996

The applicant's mailing address is:

Lee Ranch Coal Company
El Segundo Mine
P.O. Box 757
Grants, NM 87020

The discharge from this facility is located at 35 miles north of Milan, off State Road 509, Grants, in McKinley County, NM. Under the SIC code 1221, the applicant operates a surface coal mine that produces approximately 8 million tons of sub-bituminous coal annually; the production began in 2008. Many discharges from multiple outfalls are to receiving water named Kim-me-ni-oli Valley Tributary, thence into Chaco River, a tributary of San Juan River (about 100 miles north-west of El Segundo Mine). Other discharges from multiple outfalls are to Inditos Draw, a tributary of Vought Draw, which flows into Arroyo Chico, then to Rio Puerco (about 60 miles southeast the mine area), a tributary of the Rio Grande River. Kim-me-ni-oli Valley and Inditos Draw are ephemeral receiving waters pursuant to 20.6.4.97 NMAC. Designated uses of the receiving water are livestock watering, wildlife habitat, limited aquatic life and secondary contact.

This is a renewal of a permit issued on December 29, 2008, with an effective date of February 1, 2009, and an expiration date of January 31, 2014.

Changes from the previous permit are:

- Alternative to Sediment Control Plan has been removed.
- Alternative to limitation requirements has been added for discharge caused by precipitation.
- Outfalls (sediment ponds) have been revised: addition and removal of outfalls.
- 24-hr oral reporting for total iron has been established.
- TRC limit has been changed from 19 ug/l to 11 ug/l.
- TDS limit has been established at Outfall 1 to 41.
- Monitoring of pollutants in Form 2C has been added.

A fact sheet is available.

State Certification

This Notice also serves as Public Notice of the intent of the New Mexico Environment Department, Surface Water Quality Bureau to consider issuing Clean Water Act (CWA) Section 401 Certification. The purpose of such certification is to reasonably ensure that the permitted activities will be conducted in a manner that will comply with applicable New Mexico water quality standards, including the antidegradation policy, and the statewide water quality management plan. The NPDES permit will not be issued until the certification requirements of Section 401 have been met.

If you want to comment on State Certification submit written comments within the 30 day period to:

Bruce Yurdin, Program Manager
Surface Water Quality Bureau
New Mexico Environment Department

EXHIBIT E

NPDES PERMIT NO. NM0030996

FACT SHEET

FOR THE DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
PERMIT TO DISCHARGE TO WATERS OF THE UNITED STATES

APPLICANT

Lee Ranch Coal Company
El Segundo Mine
P.O. Box 757
Grants, NM 87020

ISSUING OFFICE

U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

PREPARED BY

Tung Nguyen
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NPDES Permits & Technical Branch (6WQ-PP)
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DATE PREPARED

May 9, 2014

PERMIT ACTION

Renewal of a permit previously issued on December 29, 2008, with an effective date of February 1, 2009, and an expiration date of January 31, 2014.

RECEIVING WATER – BASIN

Kim-me-ni-oli Valley Tributary – San Juan River Basin
Inditios Draw – Rio Grande River Basin

DOCUMENT ABBREVIATIONS

In the document that follows, various abbreviations are used. They are as follows:

4Q3	Lowest four-day average flow rate expected to occur once every three-years
BAT	Best available technology economically achievable
BCT	Best conventional pollutant control technology
BPT	Best practicable control technology currently available
BMP	Best management plan
BOD	Biochemical oxygen demand (five-day unless noted otherwise)
BPJ	Best professional judgment
CBOD	Carbonaceous biochemical oxygen demand (five-day unless noted otherwise)
CD	Critical dilution
CFR	Code of Federal Regulations
cfs	Cubic feet per second
cfu	Colony forming units
COD	Chemical oxygen demand
COE	United States Corp of Engineers
CWA	Clean Water Act
DMR	Discharge monitoring report
DO	Dissolved oxygen
ELG	Effluent limitation guidelines
EPA	United States Environmental Protection Agency
ESA	Endangered Species Act
FWS	United States Fish and Wildlife Service
mg/l	Milligrams per liter
ug/l	Micrograms per liter
lbs	Pounds
MG	Million gallons
MGD	Million gallons per day
NMAC	New Mexico Administrative Code
NMED	New Mexico Environment Department
NMIP	New Mexico NPDES Permit Implementation Procedures
NMWQS	New Mexico State Standards for Interstate and Intrastate Surface Waters
NPDES	National Pollutant Discharge Elimination System
MQL	Minimum quantification level
O&G	Oil and grease
POTW	Publically owned treatment works
RP	Reasonable potential
SS	Settleable solids
SIC	Standard industrial classification
s.u.	Standard units (for parameter pH)
SWQB	Surface Water Quality Bureau
TDS	Total dissolved solids
TMDL	Total maximum daily load
TRC	Total residual chlorine
TSS	Total suspended solids
UAA	Use attainability analysis
USGS	United States Geological Service
WLA	Waste Load allocation
WET	Whole effluent toxicity
WQCC	New Mexico Water Quality Control Commission
WQMP	Water Quality Management Plan
WWTP	Wastewater treatment plant

I. CHANGES FROM THE PREVIOUS PERMIT

Changes from the permit previously issued on December 29, 2008, with an effective date of February 1, 2009, and an expiration date of January 31, 2014, are as follow:

- Alternative to Sediment Control Plan has been removed.
- Alternative to limitation requirements has been added for discharge caused by precipitation.
- Outfalls (sediment ponds) have been revised: addition and removal of outfalls.
- 24-hr oral reporting for total iron has been established.
- TRC limit has been changed from 19 ug/l to 11 ug/l.
- TDS limit has been established at Outfall 1 to 41.
- Monitoring of pollutants in Form 2C has been added.

II. APPLICANT LOCATION and ACTIVITY

As described in the application, the facility is located at 35 miles north of Milan, off State Road 509, Grants, in McKinley County, NM.

Under the SIC code I221, the applicant operates a surface coal mine that produces approximately 8 million tons of sub-bituminous coal annually; the production began in 2008. Many discharges from multiple outfalls are to receiving water named Kim-me-ni-oli Valley Tributary, thence into Chaco River, a tributary of San Juan River (about 100 miles north-west of El Segundo Mine). Other discharges from multiple outfalls are to Inditos Draw, a tributary of Vought Draw, which flows into Arroyo Chico, then to Rio Puerco (about 60 miles southeast the mine area), a tributary of the Rio Grande River. The outfalls are sediment ponds (designed for at least a 25-year, 6-hour precipitation event) and one sewage evaporation pond. There are 52 outfalls, which many will be likely constructed in this permit term. The sewage evaporation pond (lagoon) is not intended to discharge to surface water; however, in case discharge occurs (probably by storm event), the receiving water is Kim-me-ni-oli Valley. Three outfalls have been removed from the existing permit and 26 outfalls have been added to this renewal permit. A map of the facility is attached.

The water in the facility that originates from private wells is transferred via pipeline for use at the preparation plant and shops, dust suppression along mine roads, and storage for drinking and sanitary uses. All of the water collected in the storage tank is used for drinking and sanitary uses. Sewage is transferred to the lagoon. Water originating from other sources, such as storm water runoff, is collected in sediment ponds where it either evaporates or infiltrates. Some of the water collected in sediment ponds may also be used for dust suppression purposes or discharge to receiving streams.

III. EFFLUENT CHARACTERISTICS

Since the operation began in 2008, there has been no discharge from the permitted outfalls. There is no discharge data for this permit renewal. The permittee has submitted analytical results of samples collected at two ponds in 2012. These samples were not representatives of the discharges. The submitted data is available for review upon request.

IV. REGULATORY AUTHORITY/PERMIT ACTION

In November 1972, Congress passed the Federal Water Pollution Control Act establishing the NPDES permit program to control water pollution. These amendments established technology-based or end-of-

pipe control mechanisms and an interim goal to achieve “water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water”; more commonly known as the “swimmable, fishable” goal. Further amendments in 1977 of the CWA gave EPA the authority to implement pollution control programs such as setting wastewater standards for industry and established the basic structure for regulating pollutants discharges into the waters of the United States. In addition, it made it unlawful for any person to discharge any pollutant from a point source into navigable waters, unless a permit was obtained under its provisions. Regulations governing the EPA administered the NPDES permit program are generally found at 40 CFR §122 (program requirements & permit conditions), §124 (procedures for decision making), §125 (technology-based standards) and §136 (analytical procedures). Other parts of 40 CFR provide guidance for specific activities and may be used in this document as required.

The application was dated July 25, 2013. It is proposed that the permit be reissued for a 5-year term following regulations promulgated at 40 CFR §122.46(a). The mining facility is still a new source pursuant to 40 CFR 434.11(j)(1); therefore, it's subject to the environmental review pursuant to 40 CFR 6.600 - 607 and new source performance standards pursuant to 40 CFR 434.

V. DRAFT PERMIT RATIONALE AND PROPOSED PERMIT CONDITIONS

A. OVERVIEW of TECHNOLOGY-BASED VERSUS WATER QUALITY STANDARDS-BASED EFFLUENT LIMITATIONS AND CONDITIONS

Regulations contained in 40 CFR §122.44 NPDES permit limits are developed that meet the more stringent of either technology-based effluent limitation guidelines, numerical and/or narrative water quality standard-based effluent limits, or the previous permit.

For sewage pond, technology-based effluent limitations are established in the proposed draft permit for TSS and BOD, pH and percent removal for each. Water quality-based effluent limitations are established in the proposed draft permit for TDS, *E. coli* bacteria and TRC.

For sediment ponds, technology-based effluent limitations are established in the proposed draft permit for total iron, pH and TSS. Water quality-based effluent limitations are established in the proposed draft permit for monitoring of applicable WQ-based pollutants and TDS.

B. TECHNOLOGY-BASED EFFLUENT LIMITATIONS/CONDITIONS

1. General Comments

Regulations promulgated at 40 CFR §122.44 (a) require technology-based effluent limitations to be placed in NPDES permits based on ELGs where applicable, on BPJ in the absence of guidelines, or on a combination of the two. In the absence of promulgated guidelines for the discharge, permit conditions may be established using BPJ procedures. EPA establishes limitations based on the following technology-based controls: BPT, BCT and BAT for sewage pond. These levels of treatment are:

BPT - The first level of technology-based standards generally based on the average of the best existing performance facilities within an industrial category or subcategory.

BCT - Technology-based standard for the discharge from existing industrial point sources of conventional pollutants, including BOD, TSS, *E. coli* bacteria, pH and O&G.

BAT - The most appropriate means available on a national basis for controlling the direct discharge of toxic and non-conventional pollutants to navigable waters. BAT effluent limits represent the best existing performance of treatment technologies that are economically achievable within an industrial point source category or subcategory.

2. Effluent Limitation Guidelines

The sewage lagoon is subject to technology-based ELG's established at 40 CFR Part 133, Secondary Treatment Regulation. Pollutants with ELG's established in this Chapter are BOD, TSS and pH. BOD limits of 30 mg/l for the 30-day average and 45 mg/l for the 7-day average and 85% percent (minimum) removal are found at 40 CFR §133.102(a). TSS limits; also 30 mg/l for the 30-day average and 45 mg/l for the 7-day average, average and 85% percent (minimum) removal are found at 40 CFR §133.102(b). ELG's for pH are between 6-9 s.u. and are found at 40 CFR §133.102(c). The facility has not been eligible for Equivalent to Secondary Standards, which are less stringent because discharge data is not available pursuant to 40 CFR 133.101(g). The draft permit establishes new limits for percent removal for both BOD and TSS. Since these are technology-based there is no compliance schedule provided to meet these limits. Compliance is required on the permit effective date.

A summary of the technology-based limits for the sewage pond is:

Effluent Characteristic	Discharge Limitation			
	lbs/day, unless noted		mg/l, unless noted	
Parameter	30-day Avg	7-day Max	30-day Avg	7-day Max
BOD	N/A	N/A	30	45
BOD, % removal ¹	≥ 85	---	---	---
TSS	N/A	N/A	30	45
TSS, % removal	≥ 85	---	---	---
pH	N/A	N/A	6.0 to 9.0 s.u.	

¹% removal is calculated using the following equation: [(average monthly influent concentration – average monthly effluent concentration) ÷ average monthly influent concentration] * 100.

Due to a new source, discharges from the sediment ponds are subject to 40 CFR 434 with New Source Performance Standards (NSPS), including:

- Coal Preparation Plants and Coal Preparation Plant Associated Areas, 40 CFR 434.25

Effluent Characteristic	Monthly Average (mg/l)	Daily Maximum (mg/l)
TSS	35	70
Total Iron	3.0	6.0
pH (s.u.)	6.0 – 9.0	

- Alkaline Mine Drainage, 40 CFR 434.45

Effluent Characteristic	Monthly Average (mg/l)	Daily Maximum (mg/l)
TSS	35	70
Total Iron	3.0	6.0
pH (s.u.)	6.0 – 9.0	

- Western Alkaline Coal Mining Operation, 40 CFR 434.85

The mining facility meets the definition of Western Coal Mining Operation pursuant to 40 CFR 434.80(f), west of the 100th meridian west longitude and average annual precipitation of 26 inches or

less. Precipitation data in the facility area, annual average of 10 inches, is obtained from nationalatlas.gov. Pursuant to 40 CFR 434.81 the NSPS applicable to alkaline mine drainage and/or drainage at western alkaline mining operations from possible brushing and grubbing areas, reclamation areas, topsoil stockpiling areas and regarded areas where the discharge, before any treatment, meets all the following requirements: pH is 6.0 or greater, dissolved iron concentration is less than 10 mg/l, and net alkalinity is greater than zero.

The permittee must submit a site-specific Sediment Control Plan (SCP) to EPA, including all requirements according to 40 CFR 434.82. EPA established an alternative (SS was limited to 0.5 ml/l and pH was between 6.0 and 9.0) to the SCP in the existing permit. This alternative is not applicable to Western Alkaline Coal Mining pursuant to 40 CFR 434.60 and 434.63(a). Therefore, the alternative is removed from the renewal permit.

- Effluent Limitations For Precipitation Events, 40 CFR 434.63

The alternative limitations apply to Alkaline Mine Drainage and Coal Preparation & Associated Areas outfalls. If a discharge is caused by precipitation within any 24 hour period less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume), alternative limitations will be 0.5 ml/l for SS and 6.0 – 9.0 for pH. If a discharge is caused by precipitation within any 24 hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume), alternative limitation will be 6.0 – 9.0 for pH. The permittee has the burden of proof that the discharge or increase in discharge was caused by the precipitation event.

3. Monitoring Frequency for Limited Parameters

Regulations require permits to establish monitoring requirements to yield data representative of the monitored activity, 40 CFR §122.48(b), and to assure compliance with permit limitations, 40 CFR §122.44(i)(1). Monitoring frequencies established in the previous permit are retained in this renewal one.

C. WATER QUALITY BASED LIMITATIONS

1. General Comments

Water quality based requirements are necessary where effluent limits more stringent than technology-based limits are necessary to maintain or achieve federal or state water quality limits. Under Section 301(b)(1)(C) of the CWA, discharges are subject to effluent limitations based on federal or state WQS. Effluent limitations and/or conditions established in the draft permit are in compliance with applicable State WQS and applicable State water quality management plans to assure that surface WQS of the receiving waters are protected and maintained, or attained.

2. Implementation

The NPDES permits contain technology-based effluent limitations reflecting the best controls available. Where these technology-based permit limits do not protect water quality or the designated uses, additional water quality-based effluent limitations and/or conditions are included in the NPDES permits. State narrative and numerical water quality standards are used in conjunction with EPA criteria and other available toxicity information to determine the adequacy of technology-based permit limits and the need for additional water quality-based controls.

3. State Water Quality Standards

The general and specific stream standards are provided in NMWQS (20.6.4 NMAC approved on June 5, 2013). The discharges are to Kim-me-ni-oli Valley and Inditos Draw, ephemeral receiving waters pursuant to 20.6.4.97 NMAC approved by EPA on January 30, 2013. The designated uses of the receiving waters are livestock watering, wildlife habitat, limited aquatic life and secondary contact.

4. Permit Action - Water Quality-Based Limits

Regulations promulgated at 40 CFR §122.44(d) require limits in addition to, or more stringent than effluent limitation guidelines (technology based). State WQS that are more stringent than effluent limitation guidelines are as follows:

a. Bacteria

For secondary contact, criteria for *E. coli* bacteria is at 548 cfu/100 ml monthly geometric mean and 2507 cfu/100 ml daily maximum pursuant to 20.6.4.900.E NMAC.

b. Toxics

The CWA in Section 301 (b) requires that effluent limitations for point sources include any limitations necessary to meet water quality standards. Federal regulations found at 40 CFR §122.44 (d) state that if a discharge poses the reasonable potential to cause an in-stream excursion above a water quality criteria, the permit must contain an effluent limit for that pollutant.

The application states there is no discharge since the operation started in 2008. Samples from the ponds did not represent any actual discharges; due to no discharge data EPA determines there is inadequate information to determine reasonable potential to cause or contribute an exceedance of the state WQS. Should discharges occur, the permittee must monitor all applicable pollutants to protect the designated uses of livestock watering, wildlife habitat and limited (acute and persistent human health – organism only) aquatic life pursuant to 20.6.4.900 NMAC. The monitored pollutants, listed in Appendix I, are established in according to 20.6.4.900.J NMAC; these pollutants are not included in Form 2C. The permittee must monitor the pollutants at each outfall listed in Attachment A – “Coal Preparation & Associated Areas” and Attachment B – “Alkaline Mine Drainage” once per calendar year when discharge occurs.

The permittee must also monitor the pollutants in Section V of Form 2C at each outfall listed in Attachment A and B once per permit term when discharge occurs. All pollutant must be tested to insure compliance with the WQS. The test results may be used for the next permit renewal application.

c. TRC

For wildlife habitat, criteria for TRC is 11 ug/l pursuant to 20.6.4.900.G NMAC.

d. Total Dissolved Solids – Colorado River Salinity Control Program

The discharge to the San Juan River is part of the Colorado River Basin where a basinwide Colorado River Salinity Control Program (CRSP) was established by EPA in December 1974. NMED has incorporated the CRSP by reference into their WQS. “The objective of the policy, as provided in

Sections I.A. and I.B., is to achieve “no salt return” whenever practicable for industrial discharges and an incremental increase in salinity over the supply water for municipal dischargers.” A limitation for Total Dissolved Solids (TDS) is established in accordance with the Salinity policy and program outlined in the report “1999 Review, Water Quality Standards for Salinity, Colorado River System.” A total of 1 ton/day (2,000 lbs/day) of TDS will be established at outfalls leading to San Juan River with a monitoring frequency of once per quarter when a discharge occurs. When discharges occurs at multiple outfalls including sewage lagoon, which are subject to the TDS limitation, measured TDS concentrations and estimated flows must be carried out at all the discharging outfalls to calculate a total TDS amount as follow.

$$Total\ TDS\ (lbs\ per\ day) = \sum_{i=1}^{41} Qi * Ci * 8.345$$

Where:

i = Discharged Outfalls 1 to 41

Qi = Estimated individual flow (MGD)

Ci = Measured individual TDS concentration (mg/l)

8.345 = Conversion factor (lbs)(l)/(mg)(MG)

5. Monitoring Frequency for Limited Parameters

Regulations require permits to establish monitoring requirements to yield data representative of the monitored activity, 40 CFR §122.48(b), and to assure compliance with permit limitations, 40 CFR §122.44(i)(1). Monitoring frequencies established in the previous permit are retained in this renewal one.

D. WHOLE EFFLUENT TOXICITY

Procedures for implementing WET terms and conditions in NPDES permits are contained in the NMIP. Table 11 (page 42) of the NMIP outlines the type of WET testing for different types of discharges. The receiving waters are ephemeral streams with the critical dilution of 100%,. WET limits will not be established in the proposed permit because there was no discharge in the previous permit term. Based on the nature of the discharges, a minor industrial facility with a separate lagoon system treating domestic sewage, and the receiving waters the NMIP directs the WET testing to be 48-hr acute tests using *Daphnia pulex* once per year for sediment ponds and once per five years for the sewage lagoon (pond) when discharging. These limitations and monitoring frequencies are the same from the previous permit.

The proposed permit requires five (5) dilutions in addition to the control (0% effluent) to be used in the toxicity tests based on a 0.75 dilution series. These additional effluent concentrations must be 32%, 42%, 56%, 75% and 100%. The low-flow effluent concentration (critical low-flow dilution) is defined as 100% effluent. The permittee must limit and monitor discharge(s) as specified below:

Effluent Characteristic	Discharge Limitations		Monitoring Requirements	
	30-day Avg Min.	48-hr Min.	Frequency ²	Type
WET Testing (48-hr Static Renewal) ¹	Report	Report	Once/year	Grab
<i>Daphnia pulex</i>	Report	Report	Once/year	Grab

¹ Monitoring and reporting requirements begin on the effective date of this permit. See Part II of the permit, Whole Effluent Toxicity Testing Requirements for additional WET monitoring and reporting conditions.

² The test shall take place when first discharge occurs if possible. This permit does not establish requirements to automatically increase the WET testing frequency after a test failure, or to begin a toxicity reduction evaluation (TRE) in the event of multiple failures. However, upon failure of any WET test, the permittee must report the results to EPA and NMED, Surface Water Quality Bureau, in writing, within 5 business days of notification of the test failure. EPA and NMED will

review the test results and determine the appropriate action necessary, if any. Once/5 years for sewage pond; once/year for sediment ponds.

VI. TMDL REQUIREMENTS

The receiving water segments, 20.6.4.97 NMAC, are not listed in 303(d) list. Therefore, no additional requirement is established in the draft permit. The permit has a standard reopener clause that would allow the permit to be changed if at a later date additional requirements on new or revised TMDLs are completed.

VII. ANTIDegradation

The NMAC, Section 20.6.4.8 "Antidegradation Policy and Implementation Plan" sets forth the requirements to protect designated uses through implementation of the State water quality standards. The limitations and monitoring requirements set forth in the proposed permit are developed from the State water quality standards and are protective of those designated uses. Furthermore, the policy sets forth the intent to protect the existing quality of those waters, whose quality exceeds their designated use. The revised ponds/additional outfalls are located within the same state mine permit area and used for the same drainage control as the current permit (Lee Ranch Coal Company, Request for Permit Modification Letter dated February 13, 2012). There is no increased discharge proposed to be authorized by this permit. The permit requirements and the limits are protective of the designated uses of that water, NMAC Section 20.6.4.8.A.2.

VIII. ENVIRONMENTAL REIEW

The facility is a new source pursuant to 40 CFR 434.11(j)(1). The permittee must comply with the environmental review requirements of 40 CFR 6.600 through 6.607. The permittee submitted an environmental assessment (EA) dated April 2014. After reviewing the EA, EPA believes there are not significant changes or adverse effects to the area compared to the EA dated April 2008 in terms of local ambient air quality, noise levels, floodplains, surface or groundwater quality or quantity, fish, wildlife and their natural habitats, habitat of threatened and endangered species, wetlands, farmland and cultural resources and historical preservations. A Finding of No Significant Impact (FNSI) was issue on June 27, 2008 to the facility. Because the most recent EA was prepared within six years from the previous one, EPA relies on the previous environmental review. Since there have been no significant changes, EPA will not issue another FNSI for no significant impacts anticipated at the project site.

IX. ENDANGERED SPECIES CONSIDERATIONS

According to the list updated on May 6, 2014 for McKinley County, NM obtained from <http://ecos.fws.gov>, there are three endangered (E) and threatened (T) species: Mexican spotted owl (T), Southwestern willow flycatcher (E) and Zuni fleabane (T). The owl and flycatcher were listed in the previous permit with determination of "no effect". The Zuni fleabane is found in the county but not in the project area according to Zuni Fleabane Recovery Plan dated 1988.

In accordance with requirements under section 7(a)(2) of the Endangered Species Act, EPA has reviewed this permit for its effect on listed threatened and endangered species and designated critical habitat. After review, EPA has determined that the reissuance of this permit will have "no effect" on listed threatened and endangered species nor will adversely modify designated critical habitat. EPA makes this determination based on the following:

1. No additions have been made to the USFWS list of threatened and endangered species and critical habitat designation in the area of the discharge since prior issuance of the permit.
2. EPA has received no additional information since the previous permit issuance which would lead to revision of its determinations.
3. The draft permit is consistent with the States WQS and does not increase pollutant loadings.
4. EPA determines that Items 1, thru 3 result in no change to the environmental baseline established by the previous permit, therefore, EPA concludes that reissuance of this permit will have "no effect" on listed species and designated critical habitat.

X. HISTORICAL and ARCHEOLOGICAL PRESERVATION CONSIDERATIONS

The reissuance of the permit should have no impact on historical and/or archeological sites since no construction activities outside the permitted area are planned in the reissuance.

XI. PERMIT REOPENER

The permit may be reopened and modified during the life of the permit if NMWQS are promulgated or revised. In addition, if the State develops a TMDL, this permit may be reopened to establish effluent limitations for the parameter(s) to be consistent with that TMDL. Modification of the permit is subject to the provisions of 40 CFR §124.5.

XII. VARIANCE REQUESTS

None

XIII. CERTIFICATION

The permit is in the process of certification by the State Agency following regulations promulgated at 40 CFR 124.53. A draft permit and draft public notice will be sent to the District Engineer of COE, to the Regional Director of FWS and to the National Marine Fisheries Service prior to the publication of that notice.

XIV. FINAL DETERMINATION

The public notice describes the procedures for the formulation of final determinations.

XV. ADMINISTRATIVE RECORD

The following information was used to develop the proposed permit:

A. APPLICATION(s)

EPA Application Forms 2C dated on July 25, 2013

B. 40 CFR CITATIONS

Sections 122, 124, 125, 133, 136, 434

C. STATE OF NEW MEXICO REFERENCES

New Mexico State Standards for Interstate and Intrastate Surface Water, 20.6.4 NMAC, June 5, 2013

Procedures for Implementing National Pollutant Discharge Elimination System Permits in New Mexico, March 15, 2012

State of New Mexico 303(d) List for Assessed Stream and River Reaches, 2012-2014

D. MISCELANEOUS

Environmental Assessment for New Source NPDES Permit, April 2014

Applicant emails dated February 21, 2014, January 27, 2014.