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By email and United States Mail

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GCC - King II Coal Mine Class II permit #2012- 0089

Dear Daniel and Victoria:

I am writing in the hope of starting a discussion between us on a question that is troubling me considerably.

Do understand that I know you have been working hard on this, and that you are sensitive to the concerns I am expressing. I hope you will also understand that my job as a lawyer includes trying to ensure my clients are not surprised by rabbits jumping out of the hat at the last minute, when we might not have adequate opportunity to study and prepare for them. So I am trying to ensure that my clients' rights to know what they may have to confront are respected.

It seems evident to me that all involved in this permitting process would acknowledge that the current situation on CR 120 is not tenable and that the impacts of this volume of truck traffic on local residents are considerable, as shown repeatedly.

For example:

- The first three recommendations of the July 8, 2015 report of the Citizens Advisory Group convened by GCC were as follows:

"Traffic

1. *Effective immediately, GCC shall reduce impacts to CR 120N by decreasing the number of coal haul trucks using 120N to 2010 levels until improvements to CR 120N have been completed.*
2. *Effective immediately coal haul trucks will cease operations on CR 120 from 10 pm – 6 am Mon. – Sat. and from 10pm Sat, until 6 am Mon. for the life of the coal mine.*
3. *If/when the number of coal haul trucks exceed 144 per day a separate coal haul road shall be installed and maintained at GCC Energy's expense. The haul road must address our desire to alleviate the negative impacts associated with the coal haul trucks." See attached report.*

- The air modeling report, prepared by McVehil – Monnet Associates (attached), states conclusively that air pollution associated with truck traffic can cause adverse health impacts to neighbors:

"For all modeled scenarios, the H6H concentrations at the five residents/structures located closest to the unpaved section of County Road 120 exceed the 24-hour PM₁₀ NAAQS.... Report at 8.

"The results indicate possible adverse health effects to these residents, as EPA's primary PM₁₀ NAAQS is designed to protect public health. An EPA publication explaining the health effects from particulate pollution and an EPA fact sheet containing information on the PM₁₀ NAAQS are attached to this document." Report at 2.

PROPOSED MITIGATION THROUGH ROAD IMPROVEMENTS

Given the severity of the current impacts, it seems unlikely that anyone is going to try to convince the Planning Commission or the County Commissioners that the current situation is

just fine, or somehow amounts to a compatible land use. Indeed, the July 31, 2015 and November 19, 2015 updated Road Runner reports submitted by GCC seems to concede this.

Rather, it seems evident, the argument will be that these unacceptable impacts are going to be addressed by some kind of proposed road improvements to CR 120, in the hope that these can somehow mitigate the well documented adverse impacts that local residents have suffered for years

This makes the nature and extent of the proposed mitigation perhaps the central issue in the upcoming proceeding. Residents have a vital interest in knowing how and when any mitigation will take place, and above all what it will consist of. There is no more important issue in this controversy.

WHERE WE STAND

Sadly, despite the critical importance of these questions, and five and a half years into this process, we are still unclear whether there is a definitive proposal on the table, and if so, what it is. There is nothing that indicates that the applicant has proposed more than a conceptual plan. For example:

1. **What improvements are proposed?** How wide should the road be? What width of shoulders should it have? Should the shoulders be paved? What will be done about areas with limited sight distance? Will all of it be paved? To what standard? What will be the radius of curves? There is no complete design. The conceptual plans indicate this will all be resolved once there is a geotech report. Where is the geotech report? Are the proposals in the Road Runner conceptual plan adequate? Do they meet La Plata County standards?
2. **When will the improvements be built?** We understand there is discussion of “phased construction” over several years. On what schedule will any improvements be built, and what will happen while this process goes on? What will keep the construction schedule on track? Won’t turning this road into a construction zone actually make things worse in the near term? It has been five and a half years. As best I can tell, the applicant has yet to provide a clear plan for review.
 - Does actually doing something depend on further agreement as to who pays what? Are we in for anything other than more years of company haggling and delay while this is sorted out?
 - Does actually doing something depend on having a more advanced design?

- Does the more advanced design depend on a geotech study that has not even been started yet?
- Does actually doing something depend on right of way acquisition that is not yet defined?

Bluntly, the local citizens are not up for another five and a half years of high volume truck traffic, with their lives and well being at risk while this all gets sorted out.

3. **Who is going to be in charge of implementing the proposed improvements?** Is this a County project? A company project?

4. **How and when is right of way going to be acquired?** It seems to us that if there really are going to be adequate safety improvements, for example dramatically better turn radii on some of the curves, there will have to be some significant acquisition of private land. How long is this going to take? What happens if the private property owners do not agree to road improvements on their private property?
 - As part of the citizen review, GCC should provide an overlay map of existing County right of way and proposed road improvements so residents are aware of the proposed impact to their properties.
 - Does the County accept the right of way survey by Gibbons?
 - Will costs of right of way acquisition be included in the Road Improvement Agreement bond?

5. **Is it actually feasible to construct any proposed improvements?** Can GCC actually construct the improvements shown on the conceptual plans given the steep terrain, the need for drainage improvements, and a safe roadside design?

6. **Who is paying for any improvements?** Will GCC pay for this? We understand that the County has determined that it should not pay for any improvements. But has GCC agreed to pay for them? Or is this simply the occasion for more and longer delay, as GCC and the County bargain over the payment arrangements?

My fear is that, despite all the County's dedicated efforts, we are less than 60 days from hearing and there is (1) no clear alternative from the company for anything other than the CR 120N option, and (2) no concrete or agreed plan for improving CR 120N.

We have seen no preliminary design level detailed engineering, and no indication of the feasibility of obtaining additional needed ROW or feasibility of actual implementation/construction of the road upgrade shown on the conceptual plans.

Given the extreme importance of this issue to our clients, and the technical complexity of these design issues, minimum due process requires that the full proposal, in reasonable detail, be on the table now.

Residents deserve the chance to review, evaluate and comment on the details of any proposed road improvements. Any attempt to forward these at the last minute when there is no adequate time to review and understand what is being proposed would be deeply unfair.

This is not a pitch for a continuance of the February hearing. A continuance is the last thing we want. After five and a half years, it is time to act.

CONCLUSION

I am concerned that the County considers this application complete. Given that a central issue is what improvements might be made to CR 120N (or CR 120S), I am not sure how the application could be complete without a clear engineered plan for road improvements.

We are deeply concerned that our clients' rights not be jeopardized by some sort of complex road improvement plan that is pulled out of the hat on the eve of hearing. After five and a half years, there would simply be no excuse for that.

I am sure this concerns you as much as it concerns us.

And because it seems even if there is some general idea that the road needs to be improved, it is going to be years before the improvements are in place. We therefore need an interim traffic plan for the local county road system, and this needs to be submitted, reviewed and discussed

ahead of the February 25 hearing. The most obvious and critical part of this interim plan is a reasonable restriction on the maximum number of coal haul trucks using the road. See the CAG recommendations set out at the beginning of this letter. Putting trucks on a one way traffic system so we do not have to hold our breath every time trucks meet going and coming is another obvious element.

So I reach out to you to ask for some discussion of what we do to prevent the manifest injustice that would result if these issues simply do not surface before the hearing, or are not presented in enough detail for a fair evaluation. Would you let me know when you might be willing to have such a discussion? I would deeply appreciate it. I am available at your convenience.

As I said at the outset, I know you are sensitive to these concerns and are doing your best to address them. And hope you understand that we are simply concerned that after all the effort that our clients and we have put into this, we deserve a chance to take a good hard look at the details well in advance of February 25.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Danielson', with a stylized flourish at the end.

Luke J. Danielson

cc: Crosscreek Ranch
SW CO Advocates
Jeff Robbins, Esq.
Members of CAG
D. Adam Smith, Esq.