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John Henry EA
OSMRE WR
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October 31, 2017

Re: Public Comments on Final Environmental Assessment for the Proposed Permit No. WA-0007D for John Henry No. 1 Coal Mine

Dear Ms. Pinkham:

The undersigned submit these comments in response to the Final Environmental Assessment (EA) for the Proposed Permit No. WA-0007D for John Henry No. 1 Coal Mine.

These comments are submitted on behalf of the Sierra Club, Puget Soundkeeper Alliance, Association of Northwest Steelheaders, Oregon Physicians for Social Responsibility, Climate Solutions, Fuse Washington, Earthjustice, and Washington Environmental Council. Based on

the many errors and omissions in the EA, and the significant impacts that would accompany reopening what would be Washington's only active surface coal mine, we urge OSM to reject the proposal in favor of the "no action" alternative and deny the permit for this project. Alternatively, an EIS must be prepared.

A. INTRODUCTION

This permit should be denied. We first raised concerns regarding this project and the Draft EA in our comments letter dated May 14th, 2014. We refer back to our 2014 Comments letter throughout and identify issues that the Office of Surface Mining Reclamation and Enforcement (OSMRE) and this EA have again failed to address.

Our organizations still have serious concerns regarding this EA and the proposed mining project at the John Henry No. 1 Coal Mine. An Environmental Impact Statement (EIS) is required and yet has not been prepared; significant impacts have not been properly analyzed herein which necessitate the preparation of an EIS; the EA lacks necessary mitigation measures in violation of the National Environmental Policy Act (NEPA) and the Surface Mining Control and Recovery Act (SMCRA) and its implementing regulations; and OSMRE has again failed to disclose and account for PCCC's history of failing to perform reclamation as required and improper waste disposal at the site. At its heart, this project runs counter to Washington State and King County policies on climate change and coal. The applicant has failed to show a sufficient purpose and need – including changed market conditions for coal – to counterbalance the numerous significant impacts and arguments against this project. For these reasons Proposed Permit No. WA-0007D (the Permit) should be denied or, at the very least, an EIS must be prepared.

B. ARGUMENT

1. AN EIS IS REQUIRED PURSUANT TO NEPA

Pursuant to 40 CFR § 1501.4, Whether to prepare an environmental impact statement, "[i]n determining whether to prepare an environmental impact statement the Federal agency shall: (a) Determine under its procedures supplementing these regulations (described in § 1507.3) whether the proposal is one which: (1) Normally requires an environmental impact statement…". This proposal is one which normally requires an EIS. OSMRE previously prepared an EIS for PCCC's operations at this site in the 1980's. An EIS was also prepared pursuant to SEPA when King County rezone the mine site area to permit mining. An EIS is also merited for this new proposal to commence new pit-mining activities at the site.

As we noted in our 2014 Comments, one of NEPA's primary purposes is to ensure that an agency, "in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts." Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349 (1989). NEPA also "guarantees that the relevant information [concerning environmental impacts] will be made available to the larger audience," including the

public, "that may also play a role in the decision-making process and the implementation of the decision.'" *Id.*

OSMRE has violated NEPA by failing to take a hard look at likely environmental consequences of this project and by failing to prepare an EIS for this project.

2. SIGNIFICANT IMPACTS NECESSITATE DENIAL OF THE PERMIT OR, AT THE LEAST, PREPARATION OF AN EIS.

When a hard look is taken at this project, it is clear that the project will cause significant impacts. OSMRE should consider Washington State's laws and policies regarding environmental reviews when performing its analysis of this project. Per WAC 197-11-794, implementing Washington State's Environmental Policy Act, "(1) "Significant" as used in SEPA means a reasonable likelihood of more than a moderate adverse impact on environmental quality. (2) Significance involves context and intensity (WAC 197-11-330) and does not lend itself to a formula or quantifiable test. The context may vary with the physical setting. Intensity depends on the magnitude and duration of an impact. The severity of an impact should be weighed along with the likelihood of its occurrence. An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred. (3) WAC 197-11-330 specifies a process, including criteria and procedures, for determining whether a proposal is likely to have a significant adverse environmental impact."

Pursuant to WAC 197-11-330 (3) "[i]n determining an impact's significance (WAC 197-11-794), the responsible official shall take into account the following, that: (a) The same proposal may have a significant adverse impact in one location but not in another location; (b) The absolute quantitative effects of a proposal are also important, and may result in a significant adverse impact ***regardless of the nature of the existing environment***; (c) ***Several marginal impacts when considered together may result in a significant adverse impact*** … (e) A proposal may to a significant degree: … (ii) Adversely affect endangered or threatened species ***or their habitat***; (iii) ***Conflict with local, state, or federal laws or requirements for the protection of the environment;*** and (iv) ***Establish a precedent for future actions with significant effects***, involves unique and unknown risks to the environment, or ***may affect public health or safety***." [Emphasis added].

When viewed through the lens of Washington State's Environmental Policy Act, including each of the considerations bolded above, this project clearly has significant impacts that merit rejection of the application and denial of the Permit. At a minimum, OSMRE must prepare an EIS. There are more than "several marginal impacts" that, when considered together, may result in a significant adverse impact. Resuming coal mining extraction and processing activities at the John Henry No. 1 Coal Mine, and subsequently burning it to power cement kilns, will cause numerous significant impacts to water resources and hydrology; air quality and climate change; fish and wildlife and their habitat; and human health and safety.

a. Significant Impacts to Water Resources and Hydrology

This project will result in significant direct and indirect impacts to ground and surface water quality and to the overall hydrological balance within and outside of the permit area, including pollution and degradation of state waters inside and outside of the permit area. The project as described in the revised permit application does not meet hydrologic and water resource protection objectives and requirements of SMCRA and its implementing regulations at Title 30 of the Code of Federal Regulations. The applicant has also failed to demonstrate compliance with the State Water Pollution Control act (RCW § 90.48).

i. Water Quality Impacts: Surface and Groundwater

a. Violations of State Water Quality Standards

Before approving this permit, PCCC must demonstrate that any discharge will not cause or contribute to a violation of applicable state or tribal water quality standards or effluent limitations, and effluent limitations established in any National Pollutant Discharge Elimination System permit issued for the operation under section 402 of the Clean Water Act, 33 U.S.C. § 1342, or its state or tribal counterpart. 30 CFR § 816.41 (a)(1). Washington State's Water Pollution Control Act, RCW § 90.48, prohibits the discharge of pollutants from a point source into waters of the state without a permit. PCCC cannot make this demonstration, therefore the permit should be denied and the no action alternative should be adopted

The Impact Assessment Summary, Table 28, indicates that waters might exceed state water quality standard limits as much as 33% of the time as a result of the Proposed Action Alternative – this is highly significant and illegal. The EA concludes summarily that resulting impacts to surface water quality would be minor and short term – without any consideration of the direct and indirect impacts, and cumulative impacts, to affected waterbodies within the watershed. This analysis is insufficient. Nearby waterbodies already suffer from pollution from the John Henry No. 1 Coal Mine and will be further impacted by this project. The EA cannot write off the significant water pollution that will result from this project – at the very least an EIS is required to more thoroughly analyze impacts and implement mandatory mitigation measures to address them.

PCCC's activities at the mine have resulted, and will continue to result in, violations of state water quality standards that also violate SMCRA and result in significant impacts on the environment.

b. Lake Sawyer is Subject to a TMDL with Restrictions on Phosphorus Pollution

The proposed project area is located in three sub-watersheds: Ginder Lake, Mud Lake, and Lake No. 12. EA p. 22. Per the EA, Lake No. 12 discharges to the east through a wetland and eventually flows into the Green River, while Ginder and Mud Lakes drain west into Ginder Creek, then to Rock Creek, then into Lake Sawyer. Lake Sawyer has had water quality problems since the 1970's related to eutrophication and incoming streams are subject to a TMDL to

achieve a targeted concentration of no greater than 16 ug/L of phosphorus at Lake Sawyer. EA at 28. Phosphorus pollution can cause significant impacts to wildlife and local water quality. Increase phosphorus can result in increased plant life which, when it dies, reduces the dissolved oxygen content in the water and can cause fish kills. From 1993 – 1999, when mining last took place at the John Henry No.1 Coal Mine, discharges from the mine brought phosphorus levels in Lake Sawyer from 4.3% to 14.8% in 1998.[1] Phosphorus returned to 1999 levels in 2009 and 2010 when there was no mining going on. *Id.* At present, "the watershed is under a general mandate by WDOE to reduce phosphorus levels by 50 percent," and ***the John Henry Mine is the only permitted polluter in this watershed***. Id. At 2-10. [Emphasis added].

How will the existing on-site water treatment facilities and practices adequately address phosphorus loading from renewed mining? How will it address other known and expected pollutant discharges? PCCC must demonstrate that proposed activities for the permitted area will not violate the terms of the TMDL or state water quality laws, and must mitigate impacts of its operations pursuant to SMCRA. PCCC and OSMRE have not made these demonstrations. To the contrary, they have flagged serious issues that call into question their ability to do so - particularly in light of two major proposed development projects in Black Diamond.

The Villages, Lawson Hills, and the Reserve at Woodlands, are two planned development projects will bring 11,000 more residents to Black Diamond. EA at 135. These development projects are slated to commence and continue during the timeframe of proposed mine operations. Part of the Lawson Hills development and all of the Woodlands development will be in the Lake Sawyer watershed and will undoubtedly contribute additional pollution – including phosphorus pollution- to Lake Sawyer. EA at 138.

Not only are direct and indirect impacts resulting from discharges of polluted water discounted in the EA – including discharges that are likely to result in potentially frequent exceedances of state water quality standards - but OSMRE also fails to account for the cumulative impacts to Lake Sawyer and the surrounding watershed that will result from these development projects. Why are the cumulative impacts to water quality and local hydrology not quantified, if not to avoid a finding of significance? These details merit close scrutiny and analysis in an EIS.

c. A New NPDES Permit is Required

Not only might the proposed activities result in permit exceedances and TMDL violations, but the current NPDES permit for the project area was issued in 2012 when PCCC was permitted only to perform reclamation activities at the mine. A new NPDES permit is required if this project is approved. It must comply with the TMDL and all applicable water quality laws, including Washington's andi-degradation policies. The current NPDES permit includes limits on phosphorus, pH, turbidity, dissolved oxygen, oil sheen, hexavalent chromium, and copper; however potential impacts to surface water quality identified by OSMRE in the EA include increases in sediment load, total suspended solids, bicarbonate alkalinity, calcium, magnesium,

[1] May 13, 2014 Letter from King County to Joe Wilcox, Office of Surface Mining Reclamation and Enforcement, "Comments on Environmental Assessment of Proposed Revision of Permit WA0007D for Resumption of Coal Mining at John Henry No. 1 Mine. Attached as Attachment 1.

sodium, specific conductivity, sulfate, chloride, manganese, and zinc. EA p. 30. The Water Resources Appendix to the EA identifies known increases in bicarbonate alkalinity, calcium, magnesium, sodium, specific conductivity, and sulfate that occurred during the time the mine was last operational. Where is OSMRE's analysis of the potential pollutant loadings for these parameters and toxics, and the analysis of current loadings in waterbodies within this watershed? Iron exceeded water quality standards in 25.7 percent of samples at the 12-4 well from 1993-2011 (EA at 36), and the area is known to contain high amounts of arsenic Where is OSMRE's analysis of the impacts to water quality and the local hydrologic system resulting from iron and arsenic?

Surface water runoff from the John Henry mine area is captured by drainage ditches and conveyed to eight different sedimentation ponds before being discharged from the permit area at NPDES discharge points. EA at 23-24. Two of these ponds, A and A^1, were removed from the NPDES permit in 2012 and have not been included in the new surface water monitoring schedule. Why are these ponds excluded from monitoring? If mining operations recommence, all sedimentation ponds should be included in a monitoring program – yet this was not reviewed in the EA. These issues also all tie in to the material damage that will result to the hydrologic regime in the event that this permit is not denied.

ii. Water Quality Impacts: the Hydrologic Regime

Pursuant to SMCRA and its implementing regulations, PCCC must demonstrate, and OSMRE must assess and ensure, that all surface mining and reclamation activities shall be conducted to minimize disturbance of the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, to assure the protection or replacement of water rights, and to support approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of this part. 30 CFR § 816.41 (a)(1). These hydrologic-balance protection requirements apply to all coal mining activities including in situ coal processing. 30 CFR § 947.828. These requirements have not been met.

In the Appendix 2 to the EA, regarding Water Resources, p. 2-9 includes the analysis that: "[c]omparison to baseline metrics outlined in the John Henry No. 1 Mine CHIA show the effects that mining and reclamation activities at the John Henry No. 1 Mine have had on the hydrologic balance to date. *The water monitoring program data illustrate that there have been consistent* ***large increases*** ***in bicarbonate alkalinity, calcium, magnesium, sodium, specific conductivity, and sulfate concentrations in surface water exiting the permit area, as compared to baseline data****. There have been lesser increases in chloride, manganese, and zinc at these monitoring points."* [Emphasis added]. The impacts to hydrologic balance include "large increases" in various water quality parameters – these impacts merit an EIS.

a. Impacts to the Lakes

This project poses a significant risk to water quality in the lakes. A secondary risk could arise if there is increased overland flow and input of sediment sorbed pollutants to the Green River. This deserves a closer look because the Green River is less than 2 miles from the lake.

The lakes, particularly Lake Sawyer, already have a problem with phosphorous, which leads to eutrophication. The Lake Management plan states that "The Lake Sawyer basin is important in the Green River system because of a well-documented late-winter run of coho salmon, which migrates through Lake Sawyer bound for spawning areas in Ravensdale Creek."

The John Henry coal mine has been shown to increase the phosphorus in the lake, degrading the water quality. Because phosphorus is attached to sediment, this increase in phosphorus is also an increase in fine sediment input to the lake. The sediment (with phosphorus) will remain in the lake and resuspend periodically. Once in the lake, the phosphorus will remain and continue to cause water quality issues unless the sediment is dredged from the lake. As the water quality in Lake Sawyer is degraded, it is left to the community of Black Diamond to improve it. The residents will need to take additional steps to counteract the inputs from the mine if they want to maintain the lake as a place for boating, swimming, and fishing. These measures will affect personal activities as well as growth in the area.

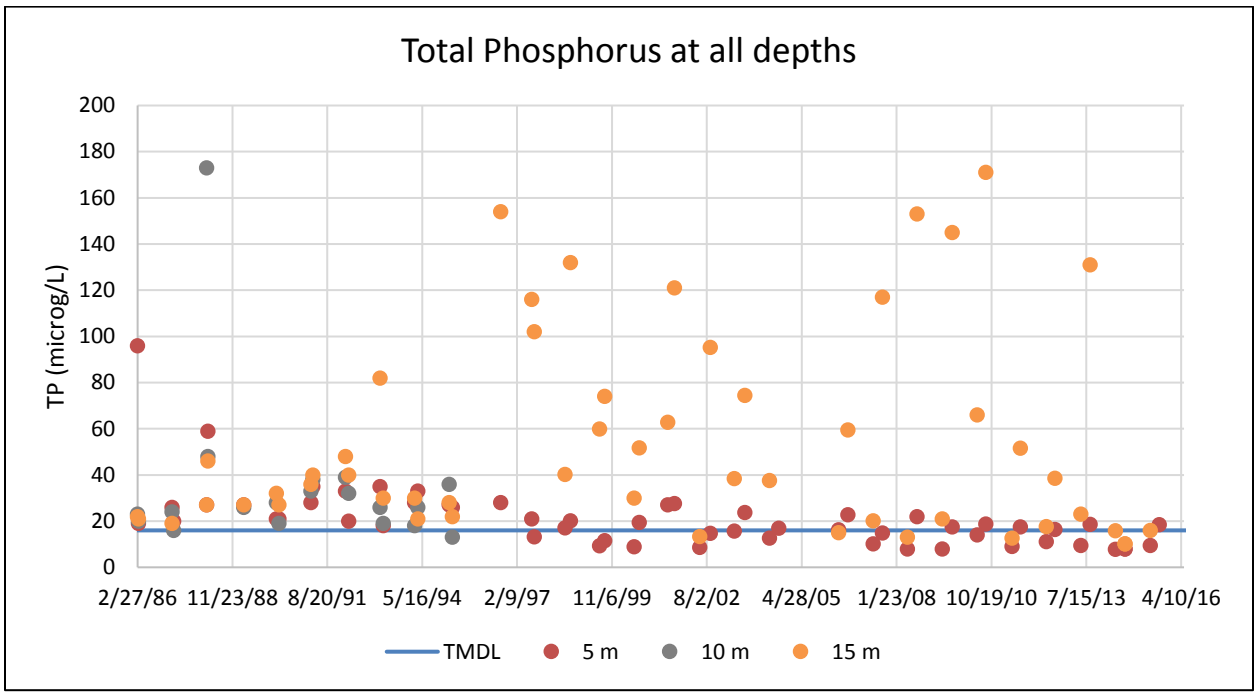
The community and King County took measures in the 1990s to address water quality issues in Lake Sawyer. The communities have been moved off septic as a means of reducing nutrient input to the lakes. While the move has helped, phosphorus levels remained high leading to the TMDL.

b. King County Lake Sawyer Management Plan

King County's Lake Sawyer Management Plan was developed in response to high phosphorous levels in the 1990s in Lake Sawyer and published in 2000. The recycling of phosphorous once it is in the lake is highlighted as contributing to water quality issues in the lake. Over the year 1994-1995, when intense sampling was performed, the phosphorous re-release from bottom sediments was estimated at 250 kg P which was 19% of the annual loading rate. External loading from the watershed accounted for 73% of the phosphorus load. It was recognized even then that the internal cycling and re-release of phosphorus already in the lake meant that new inputs of phosphorus needed to be severely limited and watershed development carefully regulated. From the TMDL appendix: the TMDL limit is set so that the risk of eutrophic conditions in Lake Sawyer is 5% and this is an upper-limit for in-lake total phosphorus concentration of 16 microg/L. This was modeled to be a loading capacity of total phosphorus to Lake Sawyer of 1.9 kg P per day or 715 kg P per year. The watershed is under a general mandate to reduce phosphorous by 50%.

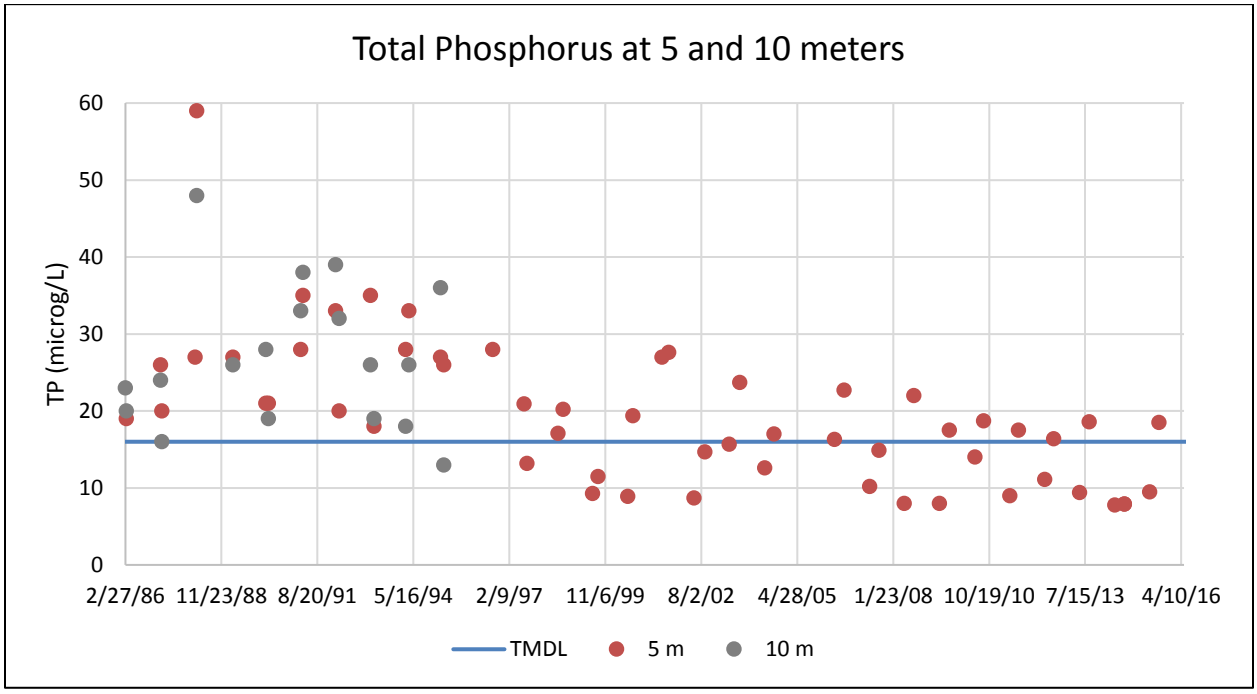
There are two graphs from the Lake Sawyer data on total phosphorus available on the King County website. The first [Graph 1] shows total phosphorus measured over the water column. The green dots are 15 meters depth. This is where the re-suspension is most noticeable. Phosphorus on sediments at the bottom of the lake are re-suspended to negatively impact water quality. The incidence increases with mining and continues after mining because the phosphorus remains in the lake.

Graph 1:



The second graph [Graph 2] is the upper lake levels – to 10 meters. The upper portion of the lake started to recover with the cessation of mining and mining related impacts. This shows the movement of phosphorus laden sediment to the bottom of the lake as well as reduction of input.

Graph 2:



Resuming mining activities will result in a reversal of this progress in violation of state and federal law.

c. Cumulative Hydrologic Impact Assessment (CHIA)

The mine is monitored primarily through outfall monitoring. Limits are set at the outfalls through a NPDES permit that are meant to avoid harming the existing water quality in the area. Data from monitoring during the previous operation of the mine conclusively illustrate the negative effect of the mine on water quality.

NPDES outfall permit is in violation when 4 consecutive exceedances of 41 microg/L phosphorus as a monthly average. However, the daily maximum was set at 82 microg/L and was exceeded. Flow from the outfalls will travel to the lakes to further impair water quality. Between 1993-2011, the water quality criteria at the monitored outfalls was exceeded for phosphorous and copper.

In addition to phosphorus and copper, the assessment states "Comparing surface water monitoring point 002 water quality data to baseline data (data collected before mining commenced) resulted in the identification of numerous constituent exceedances. The concentrations in water quality data from 1993-2011 are greater than the concentrations in the baseline dataset for iron in 15.5 percent of all samples, for manganese in 49 percent of all samples, and for specific conductivity in 100 percent of all samples. Similar to water quality conditions at point 001, point 002 exhibited an increase in specific conductivity and TDS attributable to increase in bicarbonate, calcium, magnesium, sulfate, and sodium concentrations." Detail of the frequency of elevated phosphate loading in the monitored outfalls is shown in Figure 6. Data from January 1993-January 2011 demonstrate that the loading fluctuates and has only been frequently below the TMDL maximum since mining ceased. The discharge limit is exceeded when the mine operates. The peak exceedance value of 172 microg/L is more than 4 times the allowed maximum of 41 microg/L. The same trend is apparent in data from the other monitored mine outfall locations (see figure 7 and 8 in the CHIA).

The proposed sampling regime for water quality is quarterly or annual unless two consecutive exceedance values are found. This sampling frequency means that there could be elevated levels of arsenic for a year and phosphorus for 6 months. If elevated levels are found, the only action is more frequent water quality sampling. Because the mine was in operation in the past and the data from that time demonstrates water quality impacts, there needs to be more frequent testing with remedy actions outlined in the event of exceedance. Re-operation of the mine means that the water quality is being tested not to see if there is a problem but to stop any problem from growing worse. It is already known that there will be negative impacts on water quality.

The above evidences the significant impacts to water quality and material damage to hydrology both inside and outside of the permit area that will result from approving this permit and the Proposed Action Alternative. PCCC has violated state water quality standards for years as a result of discharges from the mine area - they should not be permitted to expand their operations

and amplify their harmful impacts to surface waters, particularly when their track record shows they will not clean up the mess they leave behind.

iii. Water Quality Impacts: Significant Impacts of Reclamation, if Performed

After surface mining, land must be reclaimed and returned to its approximate original contour, or AOC. 30 U.S.C. §1265 (b)(3). There is no guarantee that the applicant will perform proper reclamation, particularly in light of its history, and even if reclamation is performed, creation of a pit mine lake poses significant risks to water quality as well as fish and wildlife.

The presence of open pit mines, and converting a pit mine into a post-mine lake, or PML, may cause significant impacts to ground and surface water, and they hydrologic regime for the entire surrounding area. The EA indicates that PCCC will backfill pit mine 1 to create a PML. Why would this process not use a bottom up method such as that currently being used at Washington's Centralia mine? This raises concerns regarding slope stability, accurate elevations, and safety – these are not addressed in EA. Furthermore, the post-mine lake will be a drain for the entire area, draining water from nearby water bodies. Allowing the empty pit mine to fill in with water could result in water quality issues downstream at Mud Lake and beyond.

According to a letter dated December 5, 2000, from the United States Department of Interior to the U.S. Fish and Wildlife Service, "PCCC proposes to add approximately 58 acres to the existing permit area and revise the reclamation plan to create a lake upstream from existing wetlands as part of the post mining use. The new lake will have 33.7 surface acres…Approximately 55 percent of the Mud Lake watershed will be diverted to fill the new lake." Appendices to the EA at 3-68. Though OSMRE repeatedly asserts that impacts will not be significant and that the project area is only 29.7 acres, such assertions omit information regarding the 33.7 acre post-mine lake that will be constructed out of the pit mine. The EA lacks sufficient information regarding how the post-mine lake will be created and how water quality impacts will be monitored and mitigated at the post-mine lake. An EIS should be prepared to examine the impacts of this significant change to the hydrological system.

Other risks flow from coal mine waste at the mine site. How will coal mine waste be handled throughout the project? Per 30 CFR 816.81, all coal mine waste… must be hauled or conveyed to area for final placement in a manner that minimizes adverse effects of leachate and surface-water runoff on surface and ground water quantity and quality, ensure mass stability and prevent mass movement during and after construction, and ensure that final disposal facility is suitable for reclamation and revegetation compatible with the native surroundings and the approved post-mining use. Where is evidence that PCCC will comply with this legal requirement in the EA?

b. Significant Impacts to Air Quality and Improper Analysis of Climate Change

As discussed in our 2014 Comments, this project poses significant implications for both local and regional air quality and for regional progress in confronting climate change. If approved, it will set bad precedent favoring a return to a dirty fuel source that Washington has not pursued for over a decade. This is unacceptable, particularly when State and local policies favor stricter scrutiny of fossil fuel projects and a transition towards green energy sources.

i. Air Quality Impacts

King County exceeds PSCAA's PM2.5 health goal of 25 micrograms of particulate matter per cubic meter. EA at 48. Further, the County was in nonattainment from 1992- 2000 for particulate matter – while operations at the John Henry No. 1 Coal Mine were ongoing. EA at 50. OSMRE should analyze the output of particulate matter expected as a result of mining and future burning of this coal, including the impacts to King County's air quality and particular matter levels if 40% of the total coal is burned at Ash Grove Cement in Seattle.

Not only does the EA underplay the direct and indirect impacts to air quality and climate change that will result from the Proposed Action Alternative, it fails to analyze the cumulative impacts that will result simultaneously in the area if the Villages, Lawson Hills and Reserve at Woodlands Residential Developments are constructed at the same time that mining takes place – as is planned. These housing projects will almost triple the population of Black Diamond. The air quality impacts due to dust, noise, and emissions, from traffic other mining operations, as well as the water pollution and hydrologic impacts that will result from mining operations, will be compounded by the dust, noise, and emissions, as well as water pollution and hydrologic impacts, from construction and trucks at the development sites, and later, by the huge population increase.

The Proposed Action Alternative and the development projects also in the works will have serious and significant impacts on the quality of life for inhabitants of Black Diamond. These projects combined will likely completely alter the town, and yet OSMRE has dedicated just one paragraph to this issue in which it concludes that "the effects of the emissions…are not anticipated to lead to pollutant concentrations that would violate the NAAQS or impair regional air quality conditions and would be considered negligible and short-term." EA at 142. "Indirect cumulative impacts from coal transportation and increased residential traffic [as a result of the new developments] would be considered moderate and short-term due to the increase of potentially 6,050 additional vehicles…" Id. This analysis is strikingly deficient.

ii. Climate Change Impacts

OSMRE fails to accurately assess the impact of the greenhouse gas emissions it reports, including both methane and carbon dioxide (CO_2).

First, OSMRE uses an outdated global warming potential (GWP) of 28 when assessing the impact of the methane emissions from mining, transporting, and burning coal from the proposed PCCC project. EA at 40-41. This figure is inaccurate and impermissibly skews OSMRE's assessment of the climate impacts. The use of a methane GWP of 28 purports to represent the impact of methane emissions over a 100-year timescale, but in doing so OSMRE deliberately omits both methane's far greater near-term warming influence and accurate information on methane's impact measured over a 100-year period. GWP expresses warming caused by a greenhouse gas relative to the warming caused by an equivalent mass of carbon dioxide. GWP allows emissions of non-CO_2 pollutants to be expressed in terms of CO_2-equivalent. In disclosing methane's GWP, OSMRE uses estimates provided by the Intergovernmental Panel on

Climate Change (IPCC) more than twenty years ago, but purports to use data from 2014. EA at 40 (citing "IPCC 2014") and EA at 37 (citing "IPCC 2015"). Yet these are not IPCC's 2014 or 2015 figures, and they had been supplanted even prior to 2014. In September 2013, the IPCC released its Fifth Assessment Report[2] estimating that methane has 36 times the global warming potential of carbon dioxide over a 100 year time frame and at least 87 times the global warming potential of carbon dioxide over a 20-year time frame.[3] Both the EPA and the Department of Energy have recognized that the newer estimates represent the best available science regarding the impact of non-CO2 GHGs. Specifically, although EPA uses the older IPCC values in compiling EPA's GHG Inventory, EPA has explained that EPA believes more recent estimates to be more accurate and better reflect scientific consensus; EPA uses the old values for the narrow purpose of compiling the inventory because the convention establishing the inventory has specified old values and has not been updated.[4] The Department of Energy has similarly recognized that the Fifth Assessment Report values using climate feedbacks (*e.g.*, 36 and 87 for methane) reflect the current scientific consensus.[5] OSMRE must acknowledge these increased figures for methane's GWP, and must use them to disclose and analyze the methane emissions from PCCC's proposal.

Second, OSMRE violated NEPA by refusing to provide any meaningful assessment of the *impact* of carbon dioxide emissions rather than simply the *amount* of such emissions, even though utilizing the social cost of carbon protocol would have allowed OSMRE to do just that. According to OSMRE, "[w]ithout any monetized benefits or costs for other resource impacts, monetized estimates of the [social cost of carbon] would be presented in isolation, without any context for evaluating their significance." EA at 38. OSMRE further notes that some of the economic benefits of the proposal have been disclosed, but tries to explain away the discrepancy – quantifying some of the benefits while quantifying none of the harms – by noting that "the disclosure of revenue, wages, jobs, and royalties is primarily a regional *economic impact analysis*." *Id.* (emphasis added). This blatant dodge – disclosing purported economic benefits of coal mining while refusing to disclose *any* economic costs of mining and burning PCCC coal – and justifying it in the name of doing an "economic impact analysis," has been tried before by OSM and judicially rejected. For example, in approving a mine plan for the Bull Mountain coal mine in Montana, OSM refused to use the social cost of carbon to analyze climate impacts in an environmental assessment (EA), asserting (as it does here) that its disclosure of taxes, wages, etc. from the mine was merely an "economic impact assessment" that somehow justified the unequal and misleading treatment of opposite sides of an economic issue. *Montana Environmental*

[2] IPCC, Climate Change 2013: The Physical Science Basis: Chapter 8, page 714, Table 8.7, available at https://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WG1AR5_Chapter08_FINAL.pdf (last visited October 16, 2017). Attached as Attachment 2.

[3] *Id.*

[4] https://www3.epa.gov/climatechange/ghgemissions/gwps.html (last visited October 16, 2017). Attached as Attachment 3.

[5] Department of Energy, Opinion and Order 3357-C, DOE/FE Dkt. 11-161-LNG, at 30 (Dec. 4, 2015) ("We agree with Sierra Club that using 20- and 100-year methane GWPs of 87 and 36 is most appropriate for use today and that climate carbon feedbacks should be captured in the GWP values for methane."). Attached as Attachment 4.

Information Center v. OSM, 9:15-cv-00106-DWM (D. Mont. Aug. 14, 2017) (slip. Op. at 40). The federal district court in Montana squarely rejected this excuse:

> In its response to comments on the draft Mining Plan EA, [OSMRE] asserted that these numbers are an "economic impact assessment, to be distinguished from a cost-benefit analysis." AR 021640. This is a distinction without a difference where, as here, the economic benefits of the action were quantified while the costs were not.

Id. at 40 n.9.

OSMRE also asserts that it cannot use the social cost of carbon to estimate impacts of carbon dioxide emissions "because the purpose of an EA is to determine whether to prepare an EIS or a [FONSI]" and that "specific threshold levels for the determination of significance" "have not been established." EA at 38. First, as noted above, the federal district court in Montana had no trouble invalidating an EA prepared by OSMRE to evaluate the climate impacts of coal mining on the basis of its failure to use the social cost of carbon. Second, OSMRE and the public use dollars every day – providing a dollar estimate of the climate harms of the proposal are far more meaningful to most members of the public than annual CO2e, which OSMRE uses here. Third, OSMRE discloses that mining, transporting, and burning PCCC coal would generate 240,110 tons of CO2e per year for six years, and that is using an improperly low GWP of 28 for methane, as explained above. EA at 44, Table 8. Over the life of the proposal, that equates to more than 1.4 million tons of CO2e. That is a significant amount of CO2 by any measure. Finally, the most recent social cost of carbon figures estimate each ton of carbon dioxide emitted into the atmosphere will cause between $12 and $123 of global economic harm.[6] That means over the life of the proposal, the social costs of PCCC's proposal range from approximately $16.8 million to $172.2 million in harm to the public.[7] By any standard, that level of impact is significant and more than justifies OSMRE's obligation to prepare an EIS in this instance.

iv. Significant Impacts to Fish and Wildlife

Per WAC 197-11-330 (3), implementing SEPA, "[i]n determining an impact's significance (WAC 197-11-794), the responsible official shall take into account the following, that: (e) A proposal may to a significant degree: … (ii) Adversely affect endangered or threatened species or their habitat." 30 CFR § 816.97 (b) also mandates that "no surface mining activity shall be conducted which is likely to jeopardize the continued existence of endangered or threatened species …or which is likely to result in the destruction or adverse modification of designated critical habitats…". The EA relies upon inadequate consultations with U.S. Fish and Wildlife Service and National Marine Fisheries Services regarding this project. The EA violates federal

[6] *See, e.g.*¸US EPA, The Social Cost of Carbon, available at https://19january2017snapshot.epa.gov/climatechange/social-cost-carbon_.html (last visited October 16, 2017). Attached as Attachment 5.

[7] These figures would be even higher if OSMRE were to break out its analysis of greenhouse gas impacts by using the social cost of carbon and social cost of methane separately for these two distinct greenhouse gases, but calculating the impact of methane emissions by using a defensible GWP to convert methane to CO2e before using the social cost of carbon is a viable methodology that OSMRE could justify using here.

and state law protecting endangered and threatened species, including the Endangered Species Act at 16 U.S.C. Sections 1531-1544.

a. Salmon

This proposal will adversely affect salmonid habitat, including habitat for endangered or threatened salmon species. Per the EA, the project area provides habitat for coho salmon, steelhead salmon, and cutthroat trout. EA at 92. All three species "are known to occur above the outlet of Lake Sawyer (Covington Creek)." Id. Some populations of coho are endangered, and steelhead are threatened throughout the Puget Sound region. "Critical habitat has been designated for bull trout and Chinook salmon in the Green River which is approximately 1.2 miles from the mine footprint." EA at 93.

Resumption of mining will result in additional pollution to watersheds that support or may support salmonids, threatening local fish, wildlife, and bird species, including the threatened steelhead. When considering this issue at the regional level, this is particularly unacceptable in light of the hundreds of millions of dollars already spent, and still being spent, to recover Washington's salmon populations. Despite these resource concerns, "with the exception of climate change, air quality, and transportation, impacts were not evaluated on a regional or statewide level." EA at 16. The EA is flawed and an EIS should be prepared which evaluates the potential impacts to salmonids.

Also excluded from consideration in the EA are potential impacts to the Keta Creek Fish Hatchery, located approximately 7 miles southwest of the Proposed Action study area in Auburn. EA at 136. The hatchery is on Crisp Creek, a tributary of the Green River. The hatchery is owned and operated by the Muckleshoot Tribe and stocks fall Chinook. As some of the waterbodies in the project area will discharge or flow into the Green River, OSMRE must review the hydrological connections in the area and evaluate the potential impacts to the fall Chinook hatchery fish and to the Muckleshoot Tribe arising from the Proposed Action Alternative.

b. Marbled Murrelet

The project also has the potential to harm the endangered Marbled Murrelet. The analysis of impacts to Marbled Murrelet in the EA is wholly inadequate. It states: "[p]otential impacts would also occur as the result of mammal fatality during proposed mining activities. Potential impacts would be long- and short-term and minor and would be limited to areas disturbed by proposed mining and reclamation with no changes in the plant community structure or composition elsewhere within the permit boundary. Therefore, this project would have no effect on Murrelets. The project site is outside the range of the Streaked Horned lark and therefore would have no effect on the species…". EA at 98. This section makes no sense. It starts with "mammal fatalities," transitions to "long and short term but minor" impacts (to what – the species?) and then summarily concludes that "this project would have no effect on Murrelets." *Id.* OSMRE must be more specific and must analyze the potential impacts to the Marbled Murrelet.

v. Significant Impacts to Human Health and Safety

There will be significant costs and harmful impacts to local communities as a result of this project. WAC 197-11-330 (3) indicates that a finding of significance may rest upon "(e) A proposal may to a significant degree (iv) … may affect public health or safety." The impacts to human health and safety, including indirect and cumulative impacts to communities outside of the project area, are significant and were not given adequate consideration in the EA.

a. Truck Transportation

At the local level, OSMRE should consider the communities that will be impacted by the undetermined amount of trucks passing through daily along truck routes, potentially on local roads, bringing the coal to its final destination(s). The EA indicates that the project could require up to 82 truck trips per day to load a barge at an undetermined location ("Tacoma, Seattle, or possibly at other barge loading sites in Puget Sound..."). EA at 115. The EA does not properly analyze all of the impacts from transportation on the basis of 82 truck trips per day. OSMRE indicates that "the King County permit periodic review did not analyze this level of traffic. The additional truck trips associated with barge loading will likely need to go through a separate review process and possible King County permit modification." EA at 115. This is unacceptable – this review should be performed here in the EA.

The one certain purchaser of PCCC's coal is Lehigh Cement in British Columbia. Coal will be shipped to Lehigh by barge, however, the operations and scheduling of the barge, and trucks' routes and activities are unclear even in this final EA. An EIS should be prepared documenting all routes including specifics on how many barges will be used, the barge schedule at port, and where coal will be piled and stored prior to, during, and after shipping, amongst other details. Impacts to communities in the port or ports where the coal will be shipped should also be considered.

Impacts of trucking on communities near truck routes include truck noise, degraded air quality from dust and emissions that can cause health problems, and impacts to local roadways. OSMRE's analysis is insufficient in the EA. At the project site, workers at the mine, whom will likely come from Black Diamond, will be at risk from health impacts associated with mining and blasting. This will have a significant impact on a town with a population of 4,384 residents as of 2016. Black Diamond residents and communities near the site will also be impacted by blasting noise and vibrations. Based on maps presented in the EA this mine appears to be less than .1 miles away from some neighborhoods in Black Diamond – some houses appear to be within site of the project.

b. Recreational Activities

This project will also have real human impacts as a result of further degraded water quality, including potential water quality impacts to Lake 12 and Lake Sawyer, where people recreate. "Lake Sawyer is the fourth largest natural lake in King County with a surface area of 286.1 acres. The lake is located two miles northwest of Black Diamond and lies within the Big Soos Creek Basin of the Green River Watershed. The lake is used extensively for boating, water

skiing, swimming and fishing."[8] Lake No. 12 is also used for fishing and recreating and can be fished for stocked Rainbow Trout, Largemouth Bass, Brown Bullhead, and Pumpkinseed Sunfish.[9]

Lake Sawyer and Lake 12 are already polluted from mining at the site. As a result of pit mining at the proposed project site, "the primary water quality concerns [at Lake 12] identified by lake residents in 1998 were increasing algal blooms and aquatic plant density, in particular, the presence of the invasive Eurasian Watermilfoil."[10] Lake Sawyer provides salmon habitat, including for threatened salmon. These Lakes must be protected against further contamination, yet OSMRE has failed to give adequate consideration to these issues, let alone require appropriate BMPs or protective mitigation measures.

c. Air Pollution and Climate Change

Human health and safety will also be impacted indirectly should the permit be granted. In evaluating the indirect impacts of the project OSMRE should consider communities living in or near neighborhoods where this coal will be used, and how it will be used – burned to operate cement kilns. Ash Grove Cement in Seattle is on the Duwamish River, a superfund site. This facility has open coal piles in its yard and has been cited for numerous industrial wastewater NPDES permit violations and air quality violations. The communities around Ash Grove have been and are still disproportionately impacted by toxic pollution, and have higher populations of low income persons and/or persons of color.

OSMRE did not apply the social cost of carbon protocol in this analysis because "the purpose of an EA is to determine whether to prepare an EIS or a finding of no significant impact." Section 3.18.2.1.1. indicates that "while there will be impacts on human health from global climate change, assessing specific impacts from either the Proposed or No Action Alternative would be speculative and not discernable." EA at 123. However, a specific reference point or quantitative amount is not necessary to reach a determination regarding significance. OSMRE's analysis is flawed and the social costs of coal mining, processing, transportation, and its end use – burning for running cement kilns – and resulting climate change should be considered.

E.O. 12898 and the Presidential Memorandum that accompanies it also need to be addressed appropriately in the context of any federal action – such as federal permitting under the CWA and SMCRA – including federal actions that are subject to NEPA. E.O. 12898 provides that: "To the greatest extent practicable and permitted by law…each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs,

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[8] http://www.kingcounty.gov/services/environment/water-and-land/lakes/lakes-of-king-county/sawyer.aspx. (last visited October 17th, 2017). Attached as Attachment 6.

[9] http://wdfw.wa.gov/fishing/washington/68/ (last visited October 17th, 2017). Attached as Attachment 7.

[10] http://www.kingcounty.gov/services/environment/water-and-land/lakes/lakes-of-king-county/twelve.aspx (last visited October 17th, 2017). Attached as Attachment 8.

policies, and activities on minority populations and low-income populations."[11] OSMRE cannot disregard data regarding whom will bear the brunt of the health problems and exposure to toxic pollution resulting from this proposal.

3. MITIGATION MEASURES ARE REQUIRED PURSUANT TO NEPA, SMCRA, AND SMCRA'S IMPLEMENTING REGULATIONS

The Final EA appears to mischaracterize and downplay significance to avoid preparation of an EIS, when in fact the many significant impacts of this project necessitate mitigation. The mitigation measures currently required in the EA do not address all of the impacts, are insufficient to adequately mitigate harms, do not require all known current best management practices, and are not all phrased as mandatory conditions of the permit.

a. Mischaracterization of No Action Alternative and "Consequences"

As mentioned in our 2014 Comments letter in regard to the Draft EA, this Final EA still indicates in various sections (transportation, water quality, etc.) that many of the impacts resulting from the No Action alternative could be as bad as, or greater than, the Proposed Action alternative. The Commenter(s) is(are) unclear how this is possible or accurate. The commenters are also concerned that "impacts" are mischaracterized as "consequences" in the headings throughout the EA.

WAC 197-11-330 (3), implementing SEPA, states that "[i]n determining an impact's significance (WAC 197-11-794), the responsible official shall take into account the following, that: … (b) The absolute quantitative effects of a proposal are also important, and may result in a significant adverse impact ***regardless of the nature of the existing environment***." [Emphasis added]. The EA repeatedly and incorrectly suggests that the No Action Alternative will have the same, or more significant impacts than the Action Alternative. However when significance is analyzed "regardless of the nature of the existing environment," it is clear that impacts of the Action Alternative to resume coal mining are far greater.

The analyses of the No Action Alternative give too much weight to necessary reclamation activities – which are required regardless of which alternative is considered, since there are already pit mines on this property and reclamation is already required. Impacts from the resumption of coal mining should be the main consideration in an EIS, and only the additional reclamation activities required as a result of the additional acres proposed for new pit mining should be considered.

One example where data is presented in a skewed manner can be found on page 127 of the EA, where OSMRE concludes that the Proposed Action Alternative will result in 71,690 MT CO2e/year and reclamation activities would result in 3,137 MT of CO2e/year. However, Table 8 shows that the Proposed Action Alternative will result in a *total* 240,110 MT of CO2e by

[11] https://yosemite.epa.gov/sab/sabproduct.nsf/1AF3B472FCA0AE8D8525773F005D3336/$File/Improving+EPA+Review+of+Appalachian+Surface+Coal+Mining+Operations-4-1-10.pdf . (last visited October 17th, 2017). Attached as Attachment 9.

OSMRE's calculations – and only 3,137 *total* will be produced under the No Action Alternative. This is a more accurate comparison of the CO2e impacts of both alternatives.

The mining and excavation of coal from pit mines, moving it, crushing and screening it, and storing it on site until it is later trucked off of the property for its intended destinations - including shipments by barge to Canada – for its intended uses – to be burned at cement kilns - will surely result in more environmental and human impacts directly and indirectly, individually and cumulatively, than if this project does not move forward. To characterize impacts otherwise appears mistaken, at best, and deceptive at worst. Even if OSMRE does not revisit these sections of the EA, in light of these impacts, OSMRE is legally required to consider mandatory, concrete and scientifically supported mitigation measures.

b. OSMRE is Required to Ensure That PCCC Mitigate the Impacts of this Project

Despite the significant impacts identified by the commenters, the EA does not require mitigation measures that might render the project safer or reduce the harmful impacts of coal mining in violation of federal law.

The permit stipulations and BMPS identified in the Impact Assessment Summary are inadequate to mitigate impacts. OSMRE identifies that water quality will potentially exceed state water quality standards 33% of the time as a result of this project. EA at 129. First of all, this is a major, extremely significant impact that violates SMCRA's provisions regarding maintaining the hydrologic balance. Second of all, the identified "permit stipulations, design features, and best management practices" (or "stipulations") are woefully non-descriptive and general. What technologies, devices, or features will PCCC utilize to prevent water pollution as required by law? Why isn't OSMRE requiring specific technologies as mitigation measures to ensure that PCCC complies with the law?

The stipulations regarding air quality are also insufficient as OSMRE does not describe the "existing controls at coal combustion facilities." EA at 130. What are these controls and has OSMRE verified that they constitute the best known current technology? The stipulations for vegetation fail to specify when and how frequently reseeding will take place. Id. The stipulations regarding wetlands indicate that the permittee must minimize the amount of disturbed area: how much area of wetlands will be disturbed and to what extent? Where are the maps of the area depicting where and how PCCC will operate in wetlands, and BMPs specifying how PCCC is to minimize disturbance? According to the EA, a wetland delineation survey was prepared in 2011, identifying 11 wetlands within the permit area not including the sediment control ponds. EA at 84. PCCC must apply for a Clean Water Act section 404 permit for any dredging or fill of wetlands. Finally, regarding transportation, there should be additional BMPs for drivers or operators to follow that will reduce dust, noise, heat, and air pollution caused by driving – why is mitigation limited to "use of wheel washers"?

In the water resources and hydrology section of the EA, Section 3.4, OSMRE indicates that PCCC has adopted a variety of enhancements to mitigate suspended solids and other impacts on water quality parameters, including "construction of sumps just before the ponds, adding WDOE

approved polymers to aid in settling the sediment, placing gravel packs around the discharge standpipes to capture suspended solids, and, equipping discharge pipes with valves to control outflow volume." EA p. 30. PCCC must provide a detailed evaluation or plan of its current or planned on-site facilities and BMPS to demonstrate that it has implemented the best available technology currently available to ensure its discharges are in compliance with state water quality standards, including anti-degradation requirements, and that practices are consistent with the Washington State Department of Ecology's most recent Storm Water Management Manual for Western Washington.

When were these pumps installed? Which ponds have had pumps installed? What size and type are the sumps? Will sumps, polymers, gravel packs and outflow valves alone address current NPDES permit limitations on phosphorus, pH, turbidity, dissolved oxygen, oil sheen, hexavalent chromium, and copper discharges? Regarding sediment load and total suspended solids, are pumps the best available technology to minimize impacts when screens or other forms of secondary, or tertiary, treatment could be used? Will the treatment methods described address bicarbonate alkalinity, calcium, magnesium, sodium, specific conductivity, sulfate, chloride, manganese, and zinc?

The EA currently describes PCCC's water quality measures as voluntary efforts undertaken by the applicant, but best available current technology should mandated by OSMRE, and detailed in the EA and permit, to ensure compliance with SMCRA and with all applicable water quality laws. Mandatory conditions should specify the type and age of equipment and technology required for treatment, where it is to be installed and by what date, as well as operations and maintenance schedules necessary for this infrastructure to ensure adequate performance throughout the life of the project until completion of reclamation.

4. THE EA IMPROPERLY OMITS PCCC'S FAILURE TO PERFORM RECLAMATION AS REQUIRED AND PCCC'S HISTORY OF IMPROPER WASTE DISPOSAL ON SITE

As we discussed in our 2014 Comments letter, PCCC began mining operations at the John Henry No. 1 coal mine in 1985. Although the mine ceased operations in 1999 because of poor market conditions, the company left in its wake two open mine pits (referred to as Pit 1 and Pit 2) and four open piles of mining spoil that have not yet been reclaimed even though it has been roughly 15 years since any mining took place. OSMRE News Release (Sept. 2, 2010). OSMRE has allowed the pits to remain open and unreclaimed to accommodate PCCC's desire to mine in the future, if the coal market improves– and market conditions have not, in fact, improved for coal. The result is that PCCC has egregiously violated the clear "contemporaneous reclamation" obligations imposed on mine operators by federal surface mining regulations. See 30 C.F.R. § 816.100.

Further, in 1999, PCCC began importing off-site waste for permanent disposal at the mine without OSMRE's knowledge or permission. PCCC v. OSMRE, 174 IBLA 264. In 2001, PCCC applied to OSMRE for, and received, a permit revision that allowed the company to bring in and dispose of up to 500,000 cubic yards of off-site waste and fill material in Pit 1. See

PCCC, IBLA 2011-91, Order at 2 (Sept. 23, 2011). That fact is not disclosed or analyzed in the Final EA despite that commenters raised this concern in 2014, nor does the EA disclose several important factors that are relevant to the potential impact of storing off-site waste in a mine pit, including but not limited to the following: the actual quantity of off-site waste deposited at the mine, where it was deposited, the origin and content of that waste, its toxicity, its leaching properties, whether additional mining or reclamation activities will facilitate movement of the waste outside the mine boundary, whether current bonding is adequate to cover the cost of reclamation given this outside waste, and whether the unlined mine pit and surrounding geology make it likely that some of this waste may have already migrated off site. These details are shrugged off with a cursory note that "the detailed coal waste disposal plan is described in Section 3.4.8 of the currently approved PAP" – which is not included in the EA or available online records. The analysis of impacts – including analysis and disclosure of the shortcomings of the assumptions relied upon by the agency – must be found in the agency's Environmental Analysis, not in supplemental information provided by the applicant. *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1214 (9th Cir. 1998).

Have these violations been remedied? Where is the analysis of this information in the Environmental Assessment? While the EA indicates in the Public Comments section that PCCC's history of improper waste disposal is addressed in the EA, it is not analyzed – rather, the EA refers to the PAP that was prepared by the applicant and is only available for viewing in person in Colorado or Olympia, WA. How will past wrongs be remedied and what assurances is OSMRE requiring that this type of violation will not reoccur?

As we stated in our 2014 Comments, given the long history of inactivity at the mine—both in terms of mining and reclamation—the proposed action should be a serious concern for nearby residents and OSMRE. Not only has PCCC successfully put off OSMRE attempts to require contemporaneous reclamation for more than a decade, it has left the community with two open pits and four spoil piles. Federal law requires this land to be reclaimed, but so far those legal requirements have not resulted in real world protections for the surrounding community.

The undisclosed dumping of outside wastes at the mine and the impact this waste may have on the surrounding community presents major concerns. These concerns are far too serious to simply dismiss potential impacts as "insignificant" or "negligible" without adequate study. For instance, the Black Diamond Elementary School is located approximately 2,000 feet from the permit boundary. Draft EA at 45. [The Final EA revises this distance to clarify that the school is "approximately 5,300 feet from the current disturbed area of Pit 2, and just over 4,000 feet from Pit 2 at its closest approach under the Proposed Action Alternative, which would be estimated to occur in 2017 – 2018." EA at 123]. The EA nonetheless concludes that any impacts from the "action" or "no action" alternatives are "negligible"—a determination that was apparently made without any regard to the undisclosed, unidentified, or unaccounted for outside waste that PCCC began dumping at the mine as early as 1999.

5. NO PURPOSE AND NEED HAVE BEEN IDENTIFIED FOR THIS PROJECT. ANY IDENTIFIED PURPOSE FAILS TO SUPPORT APPROVAL WHEN WEIGHED AGAINST PUBLIC POLICY

In performing a SEPA review, WAC 197-11-330 (3) requires that: "[i]n determining an impact's significance …the responsible official shall take into account the following, that (e) A proposal may to a significant degree: …(iii) Conflict with local, state, or federal laws or requirements for the protection of the environment." The permit should be denied as it conflicts with state and local policies on climate change and fossil fuels including coal.

King County has adopted a policy to achieve at least an 80% reduction in community level GHG emissions by 2050. Moreover, Washington State has established greenhouse gas reduction requirements for the State, codified at RCW § 70.235.020. By 2020, Washington is required to return statewide GHG levels to 1990 levels, on track for 50% reduction by 2050. Projections from the EA indicate that this project could increase King County's greenhouse gas emissions by 2%. This is a significant increase and an unnecessary risk to our communities in light of our commitment to reduce greenhouse gas emissions. Approving this project is particularly egregious when viewed against the lack of lack of market demand for coal, locally and globally, and the declining price of coal.

The purpose and need statement in the EA reads, in sum: "[t]he purpose and need of the Proposed Action is established by SMCRA, which requires the evaluation of PCCC's Application for Permit Revision and Application for Permit Renewal before PCCC may continue coal removal operations at the John Henry No. 1 Mine." EA at 7. However, this says nothing as to the purpose and need for PCCC to recommence mining. "In April 2009, OSMRE issued a permit revision order that required PCCC to either begin mining or commence final reclamation according to the reclamation plan in the PAP (OSMRE 2009). In that same permit revision order, **OSMRE required PCCC to demonstrate that it had a market for its coal,** through evidence of a sales contract, before it would approve additional mining. OSMRE issued a Cessation Order on May 24, 2010 (OSM C10-141-244-001) directing PCCC to cease mining operations and to revise its permit to move forward with final reclamation." EA at 6. [Emphasis added].Where is PCCC's demonstration of a market for its coal? Circumstances have not changed since 2010. There is no analysis of market conditions or proof of sales contracts for the full amount of coal proposed to be mined. By way of example, the average price of coal for electric power use was $43.33 per ton in 2009 and $42.58 in 2015.[12]

This point is underscored by OSM's own statements indicating that all but one potential buyer of PCCC coal are speculative, including OSM's note that "PCCC has stated that *there may be potential customers* at a lime kiln or pulp mill" locally, but that "actual buyers are these facilities are not known at this time." EA at 66 (emphasis added). Similarly, OSM noted that "according to PCCC" the Ash Grove Cement facility in Seattle "would likely buy coal from PCCC in the future." *Id.* at 42.

[12] https://www.eia.gov/coal/annual/ (last visited October 17th, 2017). Attached as Attachment 10.

SEPA's implementing regulations require consideration of the extent to which a project may "(iv) Establish a precedent for future actions with significant effects" when determining significance. This project threatens local communities with toxic pollution to waterways, air pollution and dust, greenhouse gas emissions that contribute to global climate change, and increased truck traffic. While this project is smaller in comparison with larger coal mining operations in the Appalachias or in the Powder River Basin, this project will allow coal companies to put their foot in the door here in Washington and will pave the way to additional and potentially larger coal mining permit applicants. This will set the tone in welcoming additional companies to recommence pursuit of dirty fossil fuel extraction in the Pacific Northwest. Expanded coal mining is not the right path forward. Our state is already moving away from dirty coal by closing coal energy plants and rejecting dangerous coal export terminal proposals. OSMRE should not jeopardize this progress.

C. CONCLUSION

At a minimum, if this project and permit are not denied, OSMRE must prepare an environmental impact statement to address the significant impacts that will result from this project and identify mitigating measures required, including identifying mandatory best technology and practices that will minimize project impacts as required by law. If PCCC is unable to meet regulatory requirements to minimize impacts and disturbance, to mitigate the significant impacts identified, or to conduct operations in a manner which preserves and enhances environmental and other values – which the undersigned have demonstrated - the permit application must be denied.

Thank you for this opportunity to comment.

Sincerely,

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