



west virginia department of environmental protection

Division of Mining and Reclamation
601 57th Street SE
Charleston, WV 25304
304-926-0490

Joe Manchin III, Governor
Randy Huffman, Cabinet Secretary
dep.wv.gov

July 5, 2011

Derek Teaney
Appalachian Center for the Economy and the Environment
P.O. Box 507
Lewisburg, WV 24901

Jessica Yarnell
Sierra Club Environmental Law Program
85 Second Street, second Floor
San Francisco, CA 94110

Re: Petition to Declare 1668 Acres of Land, Including Spruce Fork Ridge of
Blair Mountain, Logan County, West Virginia, Unsuitable for Mining

Dear Mr. Teaney and Ms. Yarnell:

The West Virginia Department of Environmental Protection (“WVDEP”) received the above referenced petition from you on June 6, 2011. You filed this petition on behalf of the Sierra Club, Friends of Blair Mountain, National Trust for Historic Preservation, Ohio Valley Environmental Coalition, West Virginia Labor History Association and the West Virginia Highlands Conservancy. 38 Code of State Rules § 2-19.2.c authorizes the WVDEP to reject petitions to declare lands unsuitable for mining that it determines to be “frivolous”, as that term is used in the context of the State’s regulations dealing with lands unsuitable petitions. Pursuant to 38 CSR § 2-19.2.c, I have determined that this petition is frivolous and should be rejected for each of the following reasons:

1. 38 CSR § 2-19.9.a exempts certain lands from being designated as unsuitable for mining. These exempt lands include lands on which surface coal mining operations were being conducted prior to August 3, 1977 and lands covered by a permit issued

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after August 3, 1977. I have determined that a significant portion, approximately 494 acres, of the 1668 acres you seek to have declared to be unsuitable for surface mining are exempt from such a designation because this acreage is or has been covered by a permit issued after August 3, 1977. This represents a significant portion of the area your petition seeks to protect (appr. 29.6 %). The permits covering portions of the area you have identified in your petition include permit numbers: S-5005-03, S-5049-91, U-5003-89, U-5004-89, U-5088-86, S-5011-88, UO-447 and S-5013-90. Exhibit 1 to this letter is a map titled "Blair Mountain 2011 LU" on which the boundaries of these permits and the lands you have identified are plotted. In addition to these permitted areas, there is evidence of pre-August 3, 1977 mining at various points along the ridgeline you have identified. These areas are also exempt from a designation as unsuitable for mining. Because the law precludes the WVDEP from declaring a significant portion of the lands you have identified in your petition unsuitable for mining, your petition must be considered frivolous on this basis.

2. 38 CSR § 2-19.2.d provides that the WVDEP shall not consider a petition for an area which was previously and unsuccessfully proposed for designation which does not present new allegations of facts. At least three previous lands unsuitable petitions have been filed with the State seeking to have lands declared unsuitable for mining on the same factual basis, protection of lands that are historic on the basis that such lands were the site of events associated with the Battle of Blair Mountain in 1921. These petitions were filed on April 1, 1991, June 6, 1991 and July 24, 1991 (attached as Exhibits 2, 3 and 4). The State rejected these petitions by letters dated May, 17, 1991, July 8, 1991 and August 26, 1991, respectively (Attached as Exhibits 5, 6 and 7). The last of these petitions, the one filed July 24, 1991, sought a declaration that approximately 12,000 acres in the Blair Mountain area were unsuitable for mining. Exhibit 8 to this letter is a map titled "Blair Mountain 1991 LU" on which the boundaries of the lands that were the subject of the July 24, 1991 petition and the lands you have identified are plotted. Over 75% of the area you have identified in your petition lies within the boundaries of the area identified by the rejected July 24, 1991 petition. Because the law precludes WVDEP from considering more than three quarters of the lands you have identified in your petition, your petition must be considered frivolous on this basis.
3. A part of the State's basis for its rejection of the June 6, 1991 Blair Mountain lands unsuitable petition was that: "Considering that the petition purportedly intends to protect historic lands associated with the 'Battle of Blair Mountain' but that it includes thousands of acres which apparently have no connection to the Battle, while it excludes many sites which had a connection to the Battle, the [State] must find the

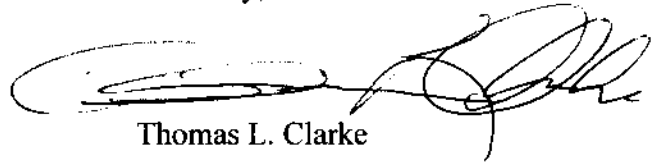
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petition frivolous in this regard, and does so find.” Exhibit 6, pp. 6 – 7. The latter of these defects is also present in the case of your petition - while purporting to protect historic lands associated with the Battle of Blair Mountain, it excludes many sites which had a connection to the Battle and must be considered frivolous on this basis. This problem is exacerbated by the fact that the WVDEP is legally precluded from considering your petition as to the vast majority of the lands you have identified for the reasons discussed in paragraphs 1 and 2 above.

4. A significant portion of the lands identified in your petition has been affected in the past and continues to be affected by oil and gas and logging operations. These activities have great potential to adversely affect the historic integrity of the lands you have identified. A declaration that the lands you have identified are unsuitable for mining would not effectively protect the historic integrity of these lands because it would have no effect on oil and gas and logging operations.

Because I am rejecting your petition as frivolous, no other findings are being made with respect to it.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas L. Clarke', written over a horizontal line.

Thomas L. Clarke

Cc Charles William Price, Sierra Club
Nell Ziehl, National Trust for Historic Preservation
Regina Hendrix, Ohio Valley Environmental Coalition
Barbara Rasmussen, Friends of Blair Mountain
Gordon Simmons, West Virginia Labor History Association
Julian Martin, West Virginia Highlands Conservancy
Brother Umberto, Christian Patriotic Front

Attachments