

U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
FINDING OF NO SIGNIFICANT IMPACT
Belle Ayr Mine
Federal Coal Lease WYWI61248
Mining Plan Modification

A. Introduction

Contura Coal West LLC (CCW) owns and operates the Belle Ayr Mine (BAM), which is located in Campbell County, Wyoming, approximately 10 miles south-southeast of Gillette. In 2011, the Bureau of Land Management (BLM) issued federal coal lease WYWI61248 to BAM for one tract within the surface mining permit No. PT0214 issued by the Wyoming Department of Environmental Quality (WDEQ)-Land Quality Division (LQD) in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the Wyoming State Coal Regulatory Program (30 CFR Part 950). If approved, this mining plan modification (the Project) would allow the mining of federal coal within lease WYWI61248, and more specifically within a tract of land known as Belle Ayr North (BAN), from the date of approval through the life-of-the mine. The accompanying *Belle Ayr Mine, Federal Coal Lease WYWI61248, Mining Plan Modification Environmental Assessment* (hereafter, the EA) details the environmental effects of this Project, beginning in 2017 through the life-of-mine (LOM) for the area. The EA is tiered off and incorporates by reference the Final Environmental Impact Statement for the South Gillette Area Coal Lease Applications (hereafter 2009 SGAC EIS).

On June 11, 2014, WDEQ-LQD approved CCW's application to amend the Mine Permit No. PT0214-T8 to include approximately 976 acres of the federal coal lease area within the existing and approved Belle Ayr Mine permit boundary (Temporary Filing Number [TFN] 6 1/057). On January 28, 2015, CCW submitted an application to amend Mine Permit No. PT0214-T8 to include approximately 695 acres of the BAN tract (TFN 5 3/160). On June 29, 2017 WDEQ-LQD approved the permit amendment application.

As discussed in **chapter 4** of this EA, mitigation measures required by BAM WDEQ-LQD Permit No. PT0214 (in accordance with WDEQ-LQD Rules and Regulations) and BAM air quality permit P0014896 will offset/reduce potential resource impacts.

B. Statement of Environmental Significance of the Proposed Action

Pursuant to 30 CFR Part 746, Office of Surface Mining Reclamation and Enforcement (OSMRE) is recommending selection and approval of the Proposed Action (see **section C**). The undersigned person has determined that approval of a federal mining plan modification authorizing continuation of mining operations for approximately 10.4 more years and additional surface disturbance of approximately 695 acres to recover the federal coal would not have a significant impact on the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 USC 4332(2)(C); therefore, an Environmental Impact Statement (EIS) is not required.

C. Reasons for a Finding of No Significant Impact

OSMRE prepared the EA to satisfy OSMRE's requirements under NEPA. OSMRE prepared this EA to re-evaluate the environmental effects resulting from the currently approved federal

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mining plan modification related to WYWI61248, pursuant to the requirements of NEPA; the Council on Environmental Quality (CEQ), DOI, and OSMRE regulations; and guidance regarding implementing NEPA. As part of the re-evaluation process, OSMRE will make a recommendation to the Assistant Secretary of Lands and Minerals (ASLM) on a new decision to approve, disapprove, or approve the mining plan with conditions.

OSMRE is the lead federal agency responsible for development of this EA because, under the SMCRA and Mineral Leasing Act (MLA), OSMRE will prepare a mining plan decision document (MPDD) in support of its recommendation to the ASLM regarding federal mining plans or mining plan modifications to either approve, approve with conditions, or deny the proposed mine plan. The ASLM will decide whether the mining plan is approved, disapproved, or approved with conditions. As such, this EA followed the CEQ's, DOI's, and OSMRE's regulations and guidance for implementing NEPA. The EA analyzed the potential impacts associated with the Proposed Action and No Action Alternative. The Proposed Action would authorize mining of approximately 221.7 million tons (Mt) and recovery of approximately 208.4 Mt of federal coal, at an estimated rate of 20 million tons per year (Mtpy) and with a surface disturbance of 695.0 acres. The Proposed Action includes design features to reduce or eliminate potential adverse impacts to the environment.

The EA also analyzed the impacts of the No Action Alternative. Under the No Action Alternative OSMRE would not recommend and the ASLM would not approve the proposed mining plan.

The attached EA considers the Proposed Action and a reasonable range of alternatives to the Proposed Action, discloses the potential environmental effects of the Proposed Action and reasonable alternatives, and provides sufficient evidence and support for this Finding of No Significant Impacts (FONSI). The EA was prepared by a third-party consulting firm at the direction of OSMRE. During the development of the EA, OSMRE independently reviewed the document to ensure compliance with 43 CFR Part 46, Subpart D and all relevant provisions of CEQ regulations, and other program requirements. This independent review included OSMRE's evaluation of all environmental issues disclosed in the EA and also those identified in comments received from the public. OSMRE takes full responsibility for the accuracy, scope, and the content of this document.

The undersigned has determined that, per CEQ, Department of Interior (DOI), and OSMRE regulations and guidance, the public involvement requirements have been met. OSMRE conducted public outreach and received comments regarding the preparation of the EA from September 10, 2015 through October 10, 2015 for scoping and from June 9, 2017 to July 10, 2017 with release of the EA and unsigned FONSI. All substantive public comments received to date have been fully considered in the EA and in reaching this FONSI (see **Appendix A and B of the EA**).

This finding is based on the context and intensity of the proposed federal mining plan modification that would be conducted under the Proposed Action, as described in the following paragraphs.

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- a) **Context:** This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

CCW proposes to meet demand for coal and continue mine operations through approximately 2027 by

1. securing federal mining plan modification approval authorizing mining of leased federal coal within a previously authorized area (i.e., WYWI61248), and
2. continuing to mine, process, and transport coal from the BAM.

Approval of the Proposed Action is a site specific action that would authorize mining of approximately 208.4 Mt of federal coal at a maximum rate of 20 Mtpy and a surface disturbance of 695 acres. The effects of the action have been analyzed at the local and regional scale.

- b) **Intensity:** This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity.

The 10 Significance Criteria in the federal regulations at 40 CFR 1508.27 have been considered in evaluating the severity of impacts.

1. Impacts that may be both beneficial and adverse:

Beneficial and adverse impacts of the Proposed Action are described in the attached EA. Environmental design features to reduce potential short-term and long-term impacts to topography, air quality, water resources, vegetation, fish and wildlife, threatened and endangered (T&E) species, cultural resources, visual resources, and soils are incorporated into the design of the Proposed Action. Additionally, mitigation measures related to air quality, migratory birds, special status species, cultural resources, and paleontological resources are required by the state-approved mine permit and stipulations to the federal coal lease, and approved mining plan (**EA section 2.4.4**).

As discussed in **section 4.4.5** of this EA, the contribution of the Proposed Action to greenhouse gas (GHG) emissions to Campbell County, WY totals would be minor and short-term. The direct impacts on air quality from a state and U.S. comparison are considered to be moderate and short-term (**EA section 4.4.7.1**). Regionally the comparative emissions are higher, but the region has and is expected to remain in attainment. Indirectly, the Proposed Action would contribute to criteria emissions and GHG emissions through rail transport and the combustion of coal at power plants located throughout the U.S. The indirect impacts on air quality are considered moderate and short-term. The direct and indirect effects to topography, geology, water resources, soils, vegetation, fish and wildlife, species of special interest, visual resources, noise, and transportation are considered moderate, short-term, long-term, and permanent (**EA Sections 4.2-4.3, 4.5-4.11, and 4.13-4.15**). Impacts to cultural resources and hazardous and solid waste would be negligible and long-term (**EA Section 4.12 and 4.16**).

The Proposed Action would result in moderate and short-term beneficial impacts to socioeconomics in the area of influence. There would be an extension of employment for approximately 259 employees, primarily from Campbell County, Wyoming of up to approximately 10.4 years. The Proposed Action represents an estimated economic benefit to this area over the 12.6-year LOM of wages, goods and services related to the mining operation, and payment of federal, state, and local taxes. The socioeconomic benefits are derived from payroll, insurance, retirement contributions, local expenditures, taxes, and federal coal royalty payments (**EA Section 4.17**).

None of the environmental effects discussed in the EA are considered to be significant.

2. The degree to which the Proposed Action affects public health or safety:

The EA project area is located entirely on private lands. Public access to the area affected by mining are strictly controlled by the mine. All mine activities with potential public exposure would also be subject to state mine permit approval and review by the Mine Safety and Health Administration (MSHA), which include safety standards. Precautions for public health and safety would also be implemented during transport of equipment along public roads to and from the EA project area. Emissions and effluent limits are within approved standards, as required by state permits, thereby limiting potential impacts to public health. Noise levels at the nearest residences would be well below levels that would affect human health. According to **EA sections 4.4.4, 4.4.5, and 4.16**, potential risks to public health and safety would be negligible and would occur over limited, brief periods. After full reclamation has occurred, no public health or safety concerns are expected, and the land would be suitable for historical uses of grazing and wildlife uses and recreational use.

3. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farm lands, wetlands, wilderness, wild and scenic rivers, or ecologically critical areas:

As discussed in **sections 4.3, 4.8, 4.12, and 4.13** of this EA, there are no park lands, prime farmlands, wilderness, wild and scenic rivers, or ecologically critical areas within the EA project area. There are approximately 9.0 acres of jurisdictional wetlands (aquatic resources) within the tract boundary (see **EA section 4.7**). Inventories of historic or cultural resources have been completed for the EA project area and, as confirmed by the Wyoming State Historic Preservation Office (SHPO), no sites within the Proposed Action tract are classified as National Register of Historic Places (NRHP) eligible sites that would require mitigation prior to disturbance (see **EA section 4.12**). Additional cultural resources discussions are included below under **Item 8**.

4. The degree to which the impacts on the quality of the human environment are likely to be highly controversial:

As a factor for determining within the meaning of 40 CFR 1508.27(b)(4) (whether or not to prepare a detailed EIS) "controversy" is not equated with "the existence of opposition to a use." *Northwest Environmental Defense Center v. Bonneville Power Administration*, 117 F.3d 1520, 1536 (9th Cir. 1997). The term 'highly controversial' refers to instances in which "a substantial

dispute exists as to the size, nature, or effect of the major federal action rather than the mere existence of opposition to a use” *Hells Canyon Preservation Council v. Jacoby*, 9 F.Supp.2d 1216, 1242 (D. Or. 1998).

The EA has analyzed the direct and indirect effects on and from climate change and, as discussed in **section 4.4** of this EA, determined the effects to be moderate and short-term. Approvals of federal mining lands and mining plan modifications have been made in the area for several decades. The environmental design features and reclamation plan would reduce the effects on the environment; or, in some cases, would improve the current condition (e.g., soils, vegetation, and wildlife habitat (see **section 2.4.4**). No other anticipated effects have been identified that are scientifically controversial.

5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks:

As discussed above, there are no effects on the human environment under the Proposed Action that are highly uncertain or involve unique or unknown risks. OSMRE has experience implementing similar actions in similar areas.

6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principal about future considerations:

This decision is not precedent setting. The issues considered in the EA were developed by OSMRE within the context of past, present, and reasonably foreseeable actions. Significant cumulative impacts are not anticipated.

7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts – which include connected actions regardless of land ownership:

OSMRE evaluated the possible issues in context of past, present, and reasonably foreseeable activities, including past, present, and reasonably foreseeable mining for the BAM and other mining operations in the region, the combustion of that coal at coal-fired power plants in Campbell County, agriculture, livestock grazing, recreation, and oil and gas development.

Both the indirect and cumulative effects of coal combustion were disclosed in the EA. There were no significant cumulative effects identified (**EA section 4.4.5**).

8. The degree to which the action may adversely affect districts, sites, highways, structures, or other objects listed in or eligible for listing in the National Register of Historic Places (NRHP) or may cause loss or destruction of significant scientific, cultural, or historical resources:

The EA project area was surveyed for cultural and historic resources and, as confirmed by the Wyoming SHPO, no NRHP-eligible sites have been identified within the Proposed Action tract (see **EA section 4.12**).

BLM consulted representatives of 18 Native American tribes during the preparation of the 2009 SGAC EIS. In addition, OSMRE sent out public outreach and Tribal consultation letters to 18 Native American tribes that could be affected by the Proposed Action evaluated in this EA. On July 3, 2017 the Kiowa Tribe responded that they had no comments on the project. On August 18, 2017 the Comanche Nation stated that the location of the Project had been cross referenced with the Comanche Nation site files and an indication of “No Properties” have been identified.

9. The degree to which an action may adversely affect a threatened or endangered (T&E) species or its habitat that has been determined to be critical under the Endangered Species Act of 1973 (ESA):

The potential to encounter T&E species, as well as proposed and final designated critical habitat that may occur within the BAN project area and/or may be affected by the Proposed Action, was evaluated by utilizing the U.S. Fish and Wildlife Service’s (USFWS) Information, Planning, and Conservation System (IPaC) consultation process. IPaC species assessments fulfill the requirements of the USFWS under section 7(c) of the Endangered Species Act of 1973 (ESA). The USFWS suggests that a biological evaluation similar to a biological assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. A detailed biological evaluation, including conservation measures, was included in Section 3.10 of the 2009 SGAC EIS and in sections 3.3 and 4.10 of this EA.

The current USFWS list of T&E species that may occur in Campbell, County, Wyoming includes the black-footed ferret (*Mustela nigripes*), and the northern long-eared bat (*Myotis septentrionalis*) (USFWS 2016). The Ute ladies'-tresses (*Spiranthes diluvialis*) (ULT) did not appear on the January 2017 IPaC project specific assessment but is included in the Campbell County assessment.

The black-footed ferret is listed as endangered for the BAM area. Based on information in the USFWS’s (2013) recent update to the Black-footed Ferret Recovery Plan, the BAM is not located near an active or potential reintroduction area for this species. Because black-footed ferrets have not been documented in the area, there would be no effect to black-footed ferrets as a result of the Proposed Action.

The primary habitat for the long-eared bat (woodlands and prominent rocky features) are extremely limited in the BAN tract. Vegetation communities are dominated by shrubland and grassland habitats, and no known underground cavities or caves exist in the area. Small water bodies (ephemeral streams and impoundments), which represent potential foraging habitat where insects tend to concentrate, are present within the BAN tract and surrounding survey area. No northern long-eared bat populations have been documented within Campbell County; however, the species has been documented in dense woodland habitats in Crook County near Sundance, Wyoming, and the closest known species occurrence is located approximately 30 miles northeast of the BAM permit area (BLM 2015c). A portion of the proposed project as defined in this EA falls within the area of influence (AOI) for the northern long-eared bat; therefore, OSMRE has complied with the programmatic biological opinion (BO) and fulfilled the Section 7 consultation requirements under the Endangered Species Act through submission of the Northern Long-eared Bat 4(d) rule streamlined consultation form to the Wyoming Ecological Field Services Office (USFWS 2017).

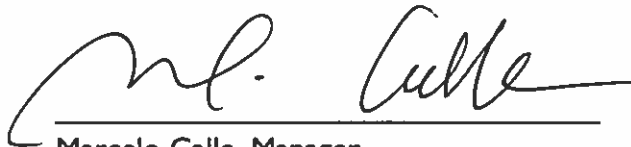
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The environs of the Duck Nest Creek drainage that passes through the study area and playa grasslands within the tract constitute the closest approximation of suitable habitat for the ULT. Additional ULT surveys were completed by ESCO Associates Inc. (ESCO) within and adjacent to the tract in 2010, 2011, and 2012 using USFWS protocol for assessment of the presence. No ULTs were located within the Belle Ayr North study area during the 2010, 2011, or 2012 searches (ESCO 2012). Given the fact that no ULT have been documented within or adjacent to the BAN tract and habitat for the blowout penstemon is nonexistent within the tract, the direct and indirect effects related to the Proposed Action on T&E species on vegetation would be negligible and short term (10.4 years).

In the unlikely event that T&E species would be encountered as a result of the Proposed Action, they would be temporarily displaced; however, current reclamation practices in place at the BAM would promote the return of T&E species once reclamation has been completed.

10. Whether the action threatens a violation of a federal, state, local, or tribal law, regulation, or policy imposed for the protection of the environment, where non-federal requirements are consistent with federal requirements:

As described in section 1.2.3 of the EA, the Proposed Action is in compliance with known federal, state, local, or tribal laws or requirements imposed for the protection of the environment. During the public and agency involvement for this EA, state, local, and tribal interests were given the opportunity to participate in the EA process. The Proposed Action is consistent with applicable plans, policies, and programs.



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Date

