

U.S. DEPARTMENT OF THE INTERIOR  
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT  
FINDING OF NO SIGNIFICANT IMPACT  
Dry Fork Mine  
Federal Coal Leases WYW-0271200 and WYW-0271201  
Mining Plan Modification

**A. Introduction**

Western Fuels-Wyoming, Inc. (WFW) owns and operates the Dry Fork Mine (DFM), which is located in Campbell County, Wyoming, approximately 4.5 miles northeast of Gillette. The Wyoming Department of Environmental Quality (WDEQ)-Land Quality Division (LQD) issued Permit No. PT0599 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 mining within the A2Tr1 tract, which includes portions of federal coal leases WYW-0271200 and WYW-0271201 from the date of approval through the life-of-the mine for the tract. The approved permit boundary includes the entire A2Tr1 tract. Federal coal leases WYW-0271200 and WYW-0271201 were originally acquired by Sentry Royalty Company (a division of Peabody Energy) in 1967. The leases changed hands several times, however in 1989, North Gillette Coal Company (NGCC) and WFW acquired the leases through a Wyoming limited partnership known as Dry Fork Coal Company (DFCC). WFW was the general partner of DFCC and NGCC was the limited partner. The accompanying Environmental Assessment (EA) details the environmental effects of this Project beginning in December 31, 2016, through the life-of-mine for those areas.

The latest WDEQ-LQD permit renewal for the DFM Permit No. PT0599 was issued effective May 12, 2014, and included mining in the A2Tr1 tract associated with portions of federal coal leases WYW-0271200 and WYW-0271201 area.

**B. Statement of Environmental Significance of the Proposed Action**

Pursuant to 30 CFR Part 746, the 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 5.3 more years and additional surface disturbance of approximately 306.4 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 NEPA, 42 USC 4332(2)(C); therefore, an Environmental Impact Statement (EIS) is not required.

**C. Reasons**

OSMRE prepared the *Dry Fork Mine Amendment 2, Tract 1 Federal Mining Plan Modification Environmental Assessment* (hereafter, the EA) to satisfy OSMRE's requirements under the National Environmental Policy Act (NEPA). OSMRE prepared this EA to evaluate the environmental effects resulting from approving federal mining plan modification request related to adding portions of federal coal leases WYW-0271200 and WYW-0271201, pursuant to the requirements of NEPA; the Council on Environmental Quality (CEQ), Department of Interior (DOI), and OSMRE regulations; and guidance regarding implementing NEPA. As part of the evaluation process, OSMRE will make a recommendation to the Assistant Secretary of Lands

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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 the EA because it has the decision-making authority regarding a recommendation for the proposed federal mining plan modification under the Mineral Leasing Act of 1920 (MLA). 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 recovery of approximately 32 million tons (Mt) at a maximum rate of 6 million tons per year (Mtpy) and with a surface disturbance of 306.4 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. The No Action Alternative would not result in a new mining plan decision document from OSMRE, or a new decision by the ASLM.

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 the CEQ's, DOI's, and OSMRE's regulations and guidance, the public involvement requirements have been met. OSMRE conducted public outreach and received comment regarding the preparation of the EA for a 30-day period, ending April 8, 2016. The EA and unsigned FONSI were made available to the public for review during a 30-day comment period that ended June 2, 2017, prior to OSMRE making a final decision. All substantive public comments received to date have been fully considered in the EA and in reaching this FONSI.

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.

Context: WFW proposes to meet demand for coal and continue mine operations through approximately 2055 by

1. securing federal mining plan modification approval authorizing mining of leased federal coal within portions of federal coal leases WYW-0271200 and WYW-0271201, and
2. continuing to mine, process, and transport coal from the DFM.

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Approval of the Proposed Action is a site specific action that would authorize mining of approximately 32 Mt of federal coal at a maximum rate of 6 Mtpy and a surface disturbance of 306.4 acres. The effects of the action have been analyzed at the local and regional scale.

Intensity: The following discussion is organized around the 10 Significance Criteria described within the federal regulations at 40 CFR §1508.27. The following criteria have been considered in evaluating the severity of impacts for this proposal.

### ***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.

The contribution of the Proposed Action to greenhouse gas (GHG) emissions to Wyoming and U.S. 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. 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, and noise are considered moderate, short term, long term, and permanent. Impacts to cultural resources would be negligible and long term.

The Proposed Action would result in considerable beneficial impacts to socioeconomics in the area of influence. There would be an extension of employment for approximately 82 employees, primarily from Campbell County, Wyoming for up to approximately 5.3 years. The Proposed Action represents an estimated economic benefit to this area over the 37.0-year life of mine (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.

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 and the mining activities do not cross any public roads. 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. 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.

**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:**

There are no park lands, prime farmlands, wilderness, wild and scenic rivers, or ecologically critical areas within the EA project area. There are no jurisdictional wetlands (aquatic resources) within the tract boundary. Inventories of historic or cultural resources have been completed for the EA project area and 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. 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 determined the effects to be moderate and short-term and negligible and long-term, respectively. 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 (EA Section 2.4.1)). 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:**

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 DFM and other mining operations in the region, the combustion of that coal at coal-fired power plants in the U.S., ranching, 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.

**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. According to information provided in the EA, six cultural resources sites (48CA1134, 48CA1300, 48CA1302, 48CA1565, 48CA7048, and 48CA7049) were identified in the overall Amendment 2 survey area, which includes the A2TrI tract. Only two of the six cultural resources sites (48CA7048, and 48CA7049) were identified within the A2TrI tract. Both sites are associated with historic activity (post-1920 era) and both sites are ineligible for listing on the National Register of Historic Places (NRHP) and do not require further investigation.

Letters of consultation were sent out to 30 Native American tribes/tribal representatives during the preparation of this EA. The consultation included sending out public-outreach and Tribal-consultation letters to the 18 Native American tribes that could be affected by the Proposed Action evaluated in this EA. OSMRE received responses from the Comanche Nation and the Cheyenne Arapaho. The Comanche Nation responded that "No Properties" were identified within the proposed project boundary. The Cheyenne Arapaho THPO requested more information regarding the project to which OSMRE responded by providing a project map and other project material. On May 23, 2017, OSMRE received a response from the Cheyenne Arapaho stating that "No Properties" were identified within the proposed project boundary.

**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 current U.S. Fish and Wildlife Service (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 2016 Information for Planning and Conservation (IPaC) project-specific assessment but is included in the Campbell County assessment.

On March 6, 2013, the USFWS issued a letter acknowledging 'block clearance' for the State of Wyoming in response to a request from the Wyoming Game and Fish Department. Consequently, the USFWS no longer recommends surveys for the black-footed ferrets in either black- or white-tailed prairie dog towns in the State of Wyoming (USFWS 2016c). Prairie dog towns, which provide habitat for black-footed ferrets, are not found within the A2Tr1 tract. 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 A2Tr1 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 A2Tr1 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 DFM 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).

There would be "No Effect" on Ute ladies' tresses because habitat for the Ute ladies' tresses orchid (*Spiranthes diluvialis*) is marginal on this amendment area due to the lack of suitable wetlands. However, the marginal wetlands were surveyed on August 13, 2010 but no Ute ladies'-tresses orchids were found.

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 DFM would promote the return of T&E species once reclamation has been completed.

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**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:**

The Proposed Action would not violate any 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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11/17/2017  
Date

