

APPENDIX E

PUBLIC SCOPING MAILING LISTS
and
PUBLIC SCOPING COMMENT LETTERS RECEIVED

Public Outreach Mailing List (addresses deleted)

		BLM Library
	Environmental Protection Specialist	National Park Service - Air Quality
		NPS - Air Quality
Matt	McKeown	Rocky Mtn Region Solicitor
Peter	Morgan	Sierra Club
Taylor	Jones	WildEarth Guardians
		Advisory Council on Historic Preservation
Mitchell	Leverette-Division Chief	BLM WO320
Don	Sutherland	Bureau of Indian Affairs
		Defenders of Wildlife
Hal	Quinn	National Mining Association
		NPS 2310
		U.S. Department of Energy
		US EPA
Dan	Roane	
Jason M. Ryan	Business Analytics Director	US Western Surface Operations
		Big Horn Conservation District
	Weed Control Supervisor	Big Horn County
	Commissioners	Big Horn County
Michael	Gulledge	Billings Gazette
Jamie	Connell-State Director	BLM - Montana State Office
Coal	Coordinator	BLM Montana State Office
Darryl LaCounte	Regional Director	Bureau of Indian Affairs
	Superintendent	Bureau of Indian Affairs-Crow Agency
	District Manager	Bureau of Land Management
		Custer Gallatin National Forest
	Water Protection Bureau	Department of Environmental Quality
	Air Resources Management	Department of Environmental Quality - Air Resources Management
	Regional Supervisor	Department of Fish, Wildlife & Parks
	Regional Supervisor	Department of Fish, Wildlife and Parks
	Safety Bureau	Department of Labor and Industry
	Administrator	Department of Natural Resources and Conservation - Water Resources Division
	Administrator	Department of Natural Resources and Conservation - Trust Land Management Division
Jenny	Harbine	Earthjustice

Appendix E

Steve Doug	Bullock McRae	Governor of Montana Greenleaf Livestock
Greg	Julian	Dept of Nat Res & Conservation Mineral Management Service Montana Association of Counties Montana State Historic Preservation Office
Rae Carolyn Sharon	Peppers Pease-Lopez Stewart-Peregoy	MT State Representative House District 41 MT State Representative House District 42 MT State Senator Senate District 21 Northern Cheyenne Cultural Commission Northern Plains Resource Council
Natalie Mike	Snyders Scott	Sierra Club US Army Corps of Engineers US Army Corps of Engineers, Omaha District US Environmental Protection Agency
	Ecological Services	US Fish and Wildlife Service US Geological Survey US Natural Resources Conservation Service
Ryan Jon Steve Clint Daniel	State Office Zinke Tester Daines McRae Hadley	US Representative-Montana US Senator-Montana US Senator-Montana
Don Shiloh	Bailey Hernandez Administrator	Montana Environmental Information Center Western Environmental Law Center Apache Tribe of Oklahoma
Amy M.	Atwood	Center for Biological Diversity BNSF Railway Company National Wildlife Federation
	Division of Habitat Resource Conservation Managing Editor	US Fish & Wildlife Service Associated Press Biodiversity Conservation Alliance
Darryl Shannon	Mayor Maunder Anderson	City of Sheridan Cloud Peak Energy Powder River Basin Resource Council
Mayor Roger	County Engineer County Planner City of Sheridan Miller-President	Sheridan County Sheridan County City Hall Trout Unlimited

Appendix E

Mark	Rogaczewski	WDEQ Land Quality Division
Mike	Evers	WWC Engineering
Jonathan	Downing	Wyoming Mining Association
Alan & Jimmie	Pierce	
Albert & Debra	Pierce	
		Fidelity Exploration
Florence	Young	
James & Margoriem	Hamilton	
Jeanette M	Davis	
Jodi & Tom	Edwards	-
Kathy & Dr. Michael	Strahan	Wolf Mountain Coal
Kevin	Smith	Department of Natural Resources and Conservation
Lane	Larson	
Mark & Mary Kay	Van Haele	
		RAIL LINK Decker (Schultz Coal Co.)
Robyn	Kimble	
Ron	Quinn	Decker Coal Company
Todd	Yeager	Bureau of Land Management
Walter J. & Lila V.	Taylor	

Tribal Consultation Mailing List (addresses deleted)

Crow Tribal Council
Crow Tribe
Northern Cheyenne Tribal Council
Northern Cheyenne Tribe
Standing Rock Sioux Tribal Council
Standing Rock Sioux Tribe
Santee Sioux Tribal Council
Apache Tribe of Oklahoma
Cheyenne-Arapaho Tribes of Oklahoma
Comanche Nation
Kiowa Business Committee
Cheyenne River Sioux Tribal Council
Cheyenne River Sioux Tribe
Crow Creek Sioux Tribe
Flandreau Santee Sioux Tribe
Lower Brule Sioux Tribal Council
Oglala Sioux Tribal Council
Oglala Sioux Tribe
Rosebud Sioux THPO
Rosebud Sioux Tribal Council
Rosebud Sioux Tribe
Arapahoe Business Council
Eastern Shoshone Tribe
Northern Arapaho Business Council
Northern Arapaho Tribe
Shoshone Business Council



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
BILLINGS REGULATORY OFFICE
POST OFFICE BOX 2256
BILLINGS MT 59103

Please reply to attention of:

March 04, 2016

OSMRE/DO
MAR 08 2016
Received

Regulatory Branch
Montana State Program
Corps No: **NWO-2007-00980-MTB**

Subject: ATTN: OSMRE, Spring Creek Mine LBA 1 EA

16-03-09-02

ATTN: Spring Creek Mine LBA 1 EA
C/O: Lauren Mitchell
OSMRE Western Region
1999 Broadway, Suite 3320
Denver, Co 80202-3050

Dear Ms. Mitchell:

Reference is made to your request for comments regarding the Spring Creek Mine LBA 1 EA. The Spring Creek Mine is located approximately 32 miles north of Sheridan, Wyoming and the proposed plan modification is for federal coal lease MTM94378.

Under the authority of Section 404 of the Clean Water Act, Department of the Army permits are required for the discharge of fill material into waters of the United States. Waters of the U.S. include the area below the ordinary high water mark of stream channels and lakes or ponds connected to the tributary system, and wetlands adjacent to these waters. Isolated waters and wetlands, as well as man-made channels and ditches, may be waters of the U.S. in certain circumstances, which must be determined on a case-by-case basis. For projects expected to require a Section 404 permit, a 404(b)(1) Analysis will need to be completed before a permit can be issued.

The Omaha District, Regulatory Branch is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete our Customer Service Survey found on our website at <http://per2.nwp.usace.army.mil/survey.html>. If you do not have Internet access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax. If you have any questions, please call me at the Billings Regulatory Office at (406) 657-5910, and reference File No. **NWO-2007-00980-MTB**.

Sincerely,

SMITH.BRIAN.
R.1085310085

Brian R. Smith
Regulatory Project Manager

Digitally signed by
SMITH.BRIAN.R.1085310085
DN: cn=US, ou=U.S. Government, ou=DoD,
ou=PKI, ou=USA,
cn=SMITH.BRIAN.R.1085310085
Date: 2016.03.04 07:52:41 -0700



3/15/2016

DEPARTMENT OF THE INTERIOR Mail - ATTN: Spring Creek Mine LBA 1 EA, C/O Lauren Mitchell



NEPA-MT, OSM <osm-nepa-mt@osmre.gov>

ATTN: Spring Creek Mine LBA 1 EA, C/O Lauren Mitchell

1 message

David Lagesse <justdavengwen@comcast.net>
Reply-To: justdavengwen@comcast.net
To: Lauren Mitchell <OSM-NEPA-MT@osmre.gov>

Mon, Mar 7, 2016 at 10:09 PM

Dear OSMRE and Lauren Mitchell,

Obama's "Clean Power Plan" Targets Coal Industry

Just like that, the Obama administration assumes the kind of power that controls whole segments of the U.S. economy. Again. The Clean Power Plan will more than decimate the coal industry, as an American Action Forum report finds that this regulation will close 66 power plants, destroy 125,800 jobs, and slash the coal industry by 48% by 2030. You'd think Americans would want some kind of input through Congress on a government decree of that scope, but that's the creep of regulation for you. Already, the coal industry has lost 47,500 jobs since the beginning of Obama's term. "These troubling figures are also static, one-time snapshots at industry employment," writes AAF Director of Regulatory Policy Sam Batkins. "They hardly capture the true economic costs to the region and the local community of losing so many jobs so quickly. The PricewaterhouseCoopers study implying that one energy job supports 3.7 additional jobs hints at the total economic damage, but remaking an entire industry in one administration is no small feat." However, to Obama, those union jobs are just collateral damage on his way to appease the enviro-fascists.

Dem/Libs are willing to shutdown entire segments of an industry, without having anything in place and established to replace them. Sure, there are electric cars that can be powered by Solar Power, but at this time, only the very rich can afford them, and they're not numerous enough so everyone can have one.

What do we do with all those gasoline and diesel engine cars and trucks that are now on the road? Turn them into stationary "Homes for the Homeless" ala the movie 'Soylent Green'?

Coal mining and coal-powered plants are being forced to shut down without any replacement for all of that loss of power, with nothing readily available or as cheap, to keep people's homes warm and lit. George Soros is reportedly buying up the closed-down coalmines for a song! This sounds like a Conflict of Interest!

If you close all the coalmines, you also close down what is left of the Steel Industry; steel manufacturing needs coke, which is made from coal.

Regards,
David Lagesse

<https://mail.google.com/mail/b/194/u/0/?ui=2&ik=43b91ac1ea&view=pt&cat=LBA1%20SPRING%20CREEK%20EA%2FLBA1%20SUBST%20CMNT&search=...> 1/1



March 7, 2016

ATTN: Spring Creek Mine TR1 EA
C/O: Lauren Mitchell
OSMRE Western Region
1999 Broadway, Suite 3320
Denver, CO 80202-3050

Submitted via email: lmitchell2@osmre.gov and OSM-NEPA-MT@osmre.gov

Dear Ms. Mitchell:

Western Fuels Association (WFA) is a not-for-profit cooperative that supplies coal and transportation services to consumer-owned electric utilities throughout the Great Plains, Rocky Mountain and Southwest regions. Our services assist with the generation of an estimated 4,400 megawatts of electricity. This is enough to supply the electric needs of approximately 3 million households. The sales of coal from our related entities are primarily to related, rural cooperative owned utilities.

We appreciate the opportunity to comment on the pending Spring Creek Mine Environmental Assessment (EA) being conducted by the Office of Surface Mining. The mining permit for the Spring Creek Mine coal lease MTM 94378 was approved in June 2012 after a thorough environmental assessment was completed and much of the coal covered by it has already been mined. We are among those disappointed that the trial court decided that more environmental analysis was needed for this active, already permitted mine. It is sad that such a decision fails to recognize the robust, multi-year regulatory process that has already been conducted and questions the validity of the existing permit. That said, since the court determined that yet more environmental analysis must be conducted, we voice our support that an Environmental Assessment is more than adequate to evaluate the impacts that continued mining operations might have on the environment. Spring Creek should not have to do an Environmental Impact Statement in order to continue mining.

Coal fired power generation, including that supplied by Spring Creek, will be a major contributor to America's energy future, even as the nation attempts to minimize GHG emissions through the Clean Power Plan. Even with the implementation of that regulation, coal is forecast to continue to make up about 30% of the generation mix nationally for the foreseeable future. This demonstrates the continued need for the Spring Creek Mine to provide a long term source of clean, reliable, low cost fuel for the Nation.

The Office of Surface Mining's consideration of the economic impacts of the mine on the local community should be weighed heavily. The benefits of the Spring Creek Mine to its 250+ employees and their families, and the \$100 million per year in taxes, royalties, and goods and services it brings to the southeast Montana region each year should be given high priority in the

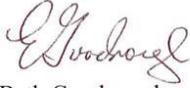
Gillette Field Office • 1901 Energy Court • Suite 328 • Gillette, WY 82718 • Telephone (307) 682-8051

Spring Creek TR1 EA
Page 2

analysis of the project. The scope should not contain undue restrictions that impede the ability of the mine to continue to provide significant revenue and employment to the region.

Thank you for providing this opportunity to comment on the scope of the environmental assessment.

Sincerely,



Beth Goodnough
Manager, Regulatory Affairs and Lands

March 8, 2016

Ms. Lauren Mitchell
Office of Surface Mining Reclamation and Enforcement, Western Region
1999 Broadway, Suite 3320
Denver, CO 80202-3050

RE: Spring Creek Mine LBA 1 EA

Dear Ms. Mitchell,

I am writing to comment on the Office of Surface Mining Reclamation and Enforcement's ("OSM") mining plan modification for Spring Creek Mine's federal coal lease, MTM 94378, as the OSM prepares an environmental assessment (EA). The Spring Creek Mine has consistently demonstrated its strong and award-winning commitment to environmental stewardship. The mine also makes significant contributions each and every year to the State of Montana and local communities while providing safe, reliable and low-cost electricity to our nation.

Please make sure the EA takes a hard look at the central reason why the EA and subsequent lease have to be approved which is based on the central role coal and available coal leases play in national security of the United States of America. The national security of the country depends on the availability of coal leases as fuel stock for our coal burning electrical generation facilities to delivery of a constant electrical stream to governmental agencies, business and homes in our nation. Computer technology is the primary support mechanism for the United States national security system, space program, military, local law enforcement, along with millions of computers in business and health care which require a constant flow of electrical supply. These important machines cannot operate with integrity if their electrical supply is interrupted which is consistent with electrical supply provided by renewable sources. These sources are not reliable enough to be part of the electrical baseload without carbon based backup. Until such time occurs when OSM can verify and prove this unfortunate reality has changed, it must continue to make new coal leases available. Therefore, the Spring Creek Mine's federal coal lease, MTM 94378 and corresponding EA should be approved.

Should OSM decide to not approve the EA in connection with the Spring Creek Mine lease, please provide the undersigned with the Code of Federal Regulation (CFR) which provides OSM the authority to sacrifice the national security of the United States of America. Further, any reference to renewable energy sources in your EA should be accompanied by a footnote advising the public of the current unreliable nature of such electrical source.

Please have the EA also take a hard look at the socio economic impacts associated with the proposed coal lease. Your needs to include advising the public that coal provides the lowest cost form of electricity to the public. Your EA should also include facts such as citing the higher cost of other forms of electrical generation, particularly renewable sources, are socially and economically regressive towards the poorer income segments of the public.

Your analysis should also advise the public that costs associated electricity generation only compare operating costs and do not include the capital expenditure, federal tax credits and life of project. As you know, when all costs are included, electrical generation by renewable sources is uneconomic. This data should be included in your analysis.

In addition, your discussion on any aspect of climate change analysis should also include data readily available basing climate primarily on tidal changes in the Pacific Ocean. The EA needs to take a hard look at all data available pertaining to climate change, not just the data that supports positions of environmental groups opposed to coal leasing. That fact would provide viable fodder for a challenge to the Interior Board of Land Appeals should the EA not be approved and the proposed coal lease is denied.

For the reasons stated above, the Spring Creek Mine's federal coal lease, MTM 94378 and corresponding EA should be approved.

Thank you for the opportunity to comment on an industry and company that is vital to so many community members and organizations across both Montana and Wyoming and that provide national security to the United States of America.

Very truly yours,

D. Steven Degenfelder
4491 Sunrise Drive
Casper, Wyoming 82604

March 9, 2016

ATTN: Spring Creek Mine LBA 1 EA

C/O: Lauren Mitchell
OSMRE Western Region
1999 Broadway, Suite 3320
Denver, CO 80202-3050

Dear Ms. Mitchell,

I am writing to comment on the Office of Surface Mining Reclamation and Enforcement's ("OSM") mining plan modification for Spring Creek Mine's federal coal lease, MTM 94378, as the OSM prepares another Environmental Assessment (EA).

It was with great disappointment that I read that the decision from the U.S. District Court for the District of Montana, Billings Division, requires that OSM must now conduct an additional EA and conduct a second "hard look" for the Spring Creek Mine LBA 1 permit amendment despite the amendment being fully approved four years ago - an unwarranted court requirement in my view.

For 20 years prior to my retirement I was part of the corporate Environmental and Sustainable Development groups of Cloud Peak Energy (CPE) and its predecessors, providing support to Spring Creek Mine (SCM) and other CPE operations. With that I know first-hand of the diligent environmental stewardship at SCM, and the associated environmental cultures and practices that are embedded in the entire organizational structure and go well above and beyond the minimum of regulatory compliance. **Below I have listed just a few key examples and I would appreciate OSM taking these into full account within the court-ordered second "hard look" and EA:**

- **SCM's voluntary site-specific implementation of the CPE umbrella ISO-14001 Environmental Management System (EMS).** SCM has successfully incorporated this system into all facets of operations every day for 10 years – that has been verified annually by independent external audits. The system includes seven standards, including those for air quality, water use and quality, greenhouse gas emissions from mining operations, reclamation, hazardous waste minimization, among other environmental aspects of the operation. **I ask that OSM take these effective program standards into account, especially those for air quality, reclamation and reduction of operational greenhouse gases, when conducting the second "hard look" ordered by the court.**

R.K. Green comments on SCM LBA 1 EA
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SCM and the other CPE mines are among the few mining operations in the country that have implemented this stringent international standard of continuous environmental improvement, and among fewer still that have integrated this system into daily operations for a decade. Details about components of this EMS include the following:

- The CPE-SCM EMS consists of policy, objectives and targets that:
 - (1) Account for legal requirements, voluntary commitments beyond legal environmental compliance, and significant environmental aspects;
 - (2) Facilitate environmental protection and prevention of pollution in balance with socio-economic needs;
 - (3) Incorporate environmental considerations into CPE-SCM business planning and decisions;
 - (4) Are followed by all persons working for or on behalf of CPE-SCM, including service contractors.

- The CPE-SCM EMS incorporates:
 - (1) Commitment from all levels and functions of the organization, particularly top management, for establishment and continual improvement of a system that controls and minimizes potential environmental impacts of the operation;
 - (2) Identification of the environmental aspects of operational activities, products and services that can be controlled and/or influenced, and developed management and control strategies for those determined to have potential significance;
 - (3) A system to ensure the availability of resources essential to establish, implement, maintain and improve the environmental management system;
 - (4) Defined, documented and communicated roles, responsibilities and authorities in order to facilitate effective environmental management;
 - (5) Established, implemented and maintained procedures to identify and address potential emergency or incident situations that can have environmental impacts;
 - (6) Internal monitoring procedures measuring performance and key characteristics of the operation that may have a significant environmental impact;

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(7) Internal auditing procedures to evaluate the performance of the environmental management system and compliance with legal and other requirements;

(8) Specific procedures to address any actual or potential nonconformance with legal and other requirements; and

(9) Procedures for top management review of the suitability, adequacy and effectiveness of the environmental management system.

- **SCM's innovative and successful reclamation practices** that have been recognized by national awards in 2005 and 2009. **These OSM Excellence in Surface Mining and Reclamation Awards recognized SCM's advanced procedures for biologic and hydrologic diversity in reclamation, including shrub establishment and naturalized drainage reconstruction, as well as voluntary measures establishing rare plant species in reclamation.** The latter highlighted SCM's extensive efforts to incorporate rare species plantings in reclamation, from seedling development to special substrate development to hand-planting seedlings – all above and beyond any regulatory requirements. **I ask that OSM take these acknowledgements of SCM's reclamation abilities and successes into account when conducting the second "hard look" at reclamation aspects.**
- **SCM has focused environmental practices and procedures** that have the full support and facilitation from mine and corporate management - resulting in an excellent environmental compliance record while producing millions of tons of coal every year. **During my 20-year association with SCM operations there occurred only a few environmental violations; these were administrative, with no associated environmental harm. I ask that OSM take this exemplary environmental record into account when conducting the second "hard look" at factors of air quality, reclamation and other aspects of the reassessment.**

In addition to leadership in applied environmental practices, SCM was among the group of all CPE operations and corporate functions that received the **OSM Good Neighbor Award in 2012 for educational public outreach in the areas of environment, reclamation and mining operations as well as strong support of neighboring communities.** Educational outreach efforts by SCM and CPE provide the public with a better understanding of the environmental and reclamation aspects of mining, from basic processes to details on innovative reclamation techniques that they have

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developed. Community outreach by CPE and SCM include ongoing strong support of regional programs in the Sheridan-Crow Agency-Hardin-Billings area to address substance abuse, homelessness, food bank supplies, clinic and hospital advancements, senior service needs, educational needs and Head Start programs, among many others. Details of these community programs are provided in CPE annual reports. SCM and CPE have also provided voluntary services and funding in times of local emergencies. This is exemplified by the CPE-SCM first responder flood relief provided to the Lodge Grass and Crow Agency areas during 2011 flood events, and continuing assistance with shelter, food and clothing in the Sheridan and Billings areas for those displaced by the floodwaters. **These are all representative examples of SCM and CPE voluntary actions as good corporate neighbors and I ask that OSM take these positive Social and Economic Impacts into consideration within the second Environmental Assessment.**

Lastly, the **direct economic impacts of SCM and CPE taxes, jobs and expenditures for goods and services are substantial for Montana**, particularly for Big Horn County and the greater region, and need to be fully recognized in the reassessment. As representative examples, the most recent annual report for CPE outlines that the direct and distributed taxes and royalties to Montana totaled over \$50M in 2014 and that community contributions and purchases of goods and services in Montana totaled another \$18M for that period. Details of these annual economic streams are provided in each of the CPE annual reports. **These are significant revenue figures that are important to the region and to Montana and I ask that OSM take these positive Social and Economic Impacts into full consideration within the second Environmental Assessment.**

Thank you in advance for including all of the above points in your second “hard look” and environmental-social reassessments of the Spring Creek Mine permit. They are simply a few examples of Spring Creek Mine’s strong culture of environmental and community stewardship in all facets of the operation, and additional supporting information and details can be found in the Cloud Peak Energy annual reports.

Sincerely,



Robert K. Green
Frenchtown, Montana

R.K. Green comments on SCM LBA 1 EA
March 9, 2016
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Office of Surface Mining Reclamation and Enforcement
Western Region Office
c/o Lauren Mitchell
1999 Broadway, Suite 3320
Denver, CO 80202

Submitted electronically to: osm-nepa-mt@osmre.gov

ATTN: Spring Creek Mine LBA 1 EA

March 10, 2016

Dear Ms. Mitchell,

On behalf of both Northern Plains Resource Council (Northern Plains) and its members and the Western Organization of Resource Councils (WORC) and its members, we are submitting the following scoping comments to the Office of Surface Mining Reclamation and Enforcement (OSMRE) in response to the public notice that it will prepare an environmental assessment (EA) for a federal mining plan modification, MTM-94378, for Spring Creek Mine's federal coal lease. Our comments on this mining plan modification are submitted in an effort to aid OSMRE in identifying issues and concerns that we believe should be addressed in the environmental analysis. Please ensure that our comments are entered into the public record.

Northern Plains is a grassroots conservation and family agriculture group based in Billings, Montana. Northern Plains organizes Montana citizens to protect our water quality, family farms and ranches, and unique quality of life. Northern Plains is dedicated to providing the information and tools necessary to give citizens an effective voice in the decisions that affect their lives. WORC is a regional network of eight grassroots community organizations that includes 12,200 members and 40 local chapters in seven states; Northern Plains is a member of WORC. WORC is committed to building sustainable environmental and economic communities that balance economic growth with the health of people and stewardship of their land, water, and air resources.

Northern Plains formed in 1972 over the issue of coal strip mining and its impacts on private surface owners who own the land over federal and state mineral reserves as well as the environmental and social impacts of mining and transporting coal. Our members care deeply about Montana, its future, and the issues surrounding coal. Many of our members' livelihoods as ranchers and farmers depend entirely on clean air and water, native soils and vegetation, and lands that remain intact and productive. The strip mining of coal affects them directly. Many more of our members will be affected by the transportation of the coal stripped from the ground at the Spring Creek Mine and shipped through our state.

220 S. 27th Street, Suite A, Billings, MT 59101
Tel: 406.248.1154 Fax: 406.248.2110 Email: info@northernplains.org www.northernplains.org

Spring Creek Mine is a surface coal mine located in Big Horn County, Montana, approximately 32 miles north of Sheridan, Wyoming. Operations began at Spring Creek in 1980. The mine is wholly owned and operated by Spring Creek Coal LLC, a subsidiary of Cloud Peak Energy, Inc. The currently approved mining plan encompasses 7,061 acres.¹ The remaining coal reserves within this approved plan total 122.4 million tons.² The proposed mining plan modification (MTM-94378), the subject of this scoping notice, would add 1,117.7 federal coal acres to the approved mining plan and would include 117.3 million tons of federal coal, of which approximately 18.4 million tons has already been mined and removed.

While the Mineral Leasing Act of 1920 (as amended by the 1976 Federal Coal Leasing Amendments Act) designates the Bureau of Land Management (BLM) as the lead federal agency responsible for leasing federal coal lands, the Surface Mining Control and Reclamation Act (SMCRA) gives OSMRE the primary responsibility to administer programs that regulate surface coal mining operations. A federal coal leaseholder in Montana must submit a permit application package as well as any proposed modifications to the approved, permitted mining plan (as in this case) to OSMRE and the Montana Department of Environmental Quality (DEQ) for review to ensure that the revised plan complies with permitting requirements. The plan (or modification) must also show how the lands in the leased tracts would be mined and reclaimed. OSMRE, in cooperation with Montana DEQ, must prepare an environmental analysis of the proposed action. A decade ago, in 2006, OSMRE prepared an EA for this proposed mine plan modification, and Montana DEQ prepared a permit approval document in 2011; in 2012 OSMRE signed the final approval document for this mine plan permit modification. However, all of these documents and approvals failed to adequately address critical environmental and social issues involved with this proposed modification to the approved mine plan permit.

In response to litigation brought by Northern Plains, WORC, and others, a federal magistrate judge on October 23, 2015, ruled that the previous mine plan modification approval for MTM-94378 granted by OSMRE violated the Administrative Procedure Act (APA) and National Environmental Policy Act (NEPA). The decision was based on the fact that OSMRE failed to provide public notice of its FONSI [Finding of No Significant Impact] to the public and failed to take the requisite "hard look" at the impacts that could result from this mine plan modification, as required by NEPA.³ On January 21, 2016, a U.S. District Judge confirmed the magistrate judge's decision.⁴ As a result, and in accordance with the District Judge's order, OSMRE has agreed to prepare an environmental analysis document for this proposed mining plan modification.

Late last year, OSMRE also initiated scoping for a separate NEPA compliance document for another proposed lease modification at the Spring Creek Mine (MTM-069782), a tract of land that is surrounded by the tracts being considered in this lease modification proposal (MTM-94378). As we advocated in our November 13, 2015, scoping comments on MTM-069782, we again believe that OSMRE should consider writing a single, broader, and more thorough

¹ Plaintiffs' Statement of Undisputed Facts in *Northern Plains, et al. vs. OSM, et al.*, 1:14-cv-00013-SPW-CSO, Document 77

² OSMRE public scoping notice for Spring Creek Mine's proposed lease by modification MTM-069782, Oct. 2015

³ *Northern Plains, et al. vs. OSM, et al.*, 1:14-cv-00013-SPW, Document 129

⁴ *Northern Plains, et al. vs. OSM, et al.*, 1:14-cv-00013-SPW, Document 135

environmental impact statement (EIS) that looks at the significant and cumulative impacts of both proposed mine plan permit modifications instead of preparing two separate EAs.

Because the purpose of an EA is to determine whether a proposed action may or will have a significant impact on the environment and, if so, prepare an EIS, OSMRE would more appropriately carry out its responsibilities under NEPA with this one document. Additionally, because mining plans are mandated before an operator can take any action on a federal coal leasehold or on federal lands “which might cause a significant disturbance to the environment,” 30 U.S.C. 207(c), mining plans *by definition* are federal actions with presumed significant impacts warranting analysis in an EIS (*Accord, Ohio Valley Env'tl. Coalition v. Hurst*, 604 F. Supp. 2d 860, (S.D. W. Va. 2009)). A federal agency must prepare an EIS when any “major federal actions significantly [affect] the quality of the human environment” or whenever substantial questions are raised as to whether or not a project may cause significant degradation of some human environmental factor (42 U.S.C. § 4332(2)(C)(i)).

Consequently, we believe that OSMRE must prepare one NEPA document – an EIS – for both proposed mine plan permit modifications. We believe this is necessary in order for OSMRE to take a hard look at the cumulative impacts of both proposed mine plan modifications that are adjacent to each other and in order to fulfill its responsibilities under NEPA. Further, Northern Plains and WORC believe that production and development of an EIS in this instance, which is likely to take more than eight months, constitutes “good cause,” thereby allowing OSMRE to extend the 240-day window for completion of the NEPA process ordered by U.S. District Judge Susan P. Watters in January 2016.

Issues and Concerns That Must Be Thoroughly Analyzed and Evaluated

The National Environmental Policy Act is our nation's basic charter for the protection of the environment. It is understood that NEPA requires the agency to ensure that all available data is gathered and properly analyzed prior to implementation of a proposed action. But we also wish to point out that under NEPA and CEQ [Council on Environmental Quality] regulations implementing NEPA, agencies must fully consider the “no-action” alternative. Project approval is not – and should not be – automatic. We believe that there are many environmental, social, and economic consequences of this proposed action, and it is probable that the proposed action should not be approved.

Many of the scoping comments we provide below mirror the scoping comments submitted in November 2015 for lease modification proposal MTM-069782. We elaborate on and update many of those comments herein.

Status of Reclamation at the Spring Creek Mine

We believe that OSMRE must carefully review and fully analyze the status of reclamation progress at the Spring Creek Mine prior to issuing any proposed mine permit modifications (either MTM-94378 or MTM-069782). To say that the Spring Creek Mine has fallen behind in its contemporaneous reclamation obligations under SMCRA would be an understatement.

Reclamation success is measured by bond release. Without bond release, there is no proof of successful mine reclamation. Data received from OSMRE show that only 14% of disturbed land at the Spring Creek Mine, or 622 acres, has achieved Phase II bond release (when the permit holder has completed soil replacement and when spoil and soil tillage and vegetation is establishing in accordance with the approved reclamation plan). And, *none* of the 4,371 acres of disturbed land at the Spring Creek Mine has achieved Phase III bond release,⁵ the benchmark that demonstrates successful establishment of plant communities suitable to the region's dry climate and post-mining land use. Thus, despite 35 years of operation, there has also been no Phase IV bond release at the Spring Creek Mine, which would show that the permittee has successfully completed all surface coal mining and reclamation activities and that all disturbed lands within any drainage basin have been reclaimed in accordance with Phase I, II, and III requirements.

It is paramount that OSMRE *fully* analyze Spring Creek's reclamation plan including Spring Creek's ability (if at all) to cover its current and future reclamation obligations. Specifically, and at a minimum:

- OSMRE must analyze the status of reclamation at the Spring Creek Mine including, but not limited to, an assessment of bond release at the mine operations (all phases), an assessment of any barriers to bond release, and identification of mine areas eligible for bond release.
- OSMRE must analyze and provide a detailed schedule and time frame for achievement of reclamation success for lands and waters at the Spring Creek Mine.
- OSMRE must analyze the direct, indirect, and cumulative impacts of authorizing more land and water (both surface and underground aquifers) for disturbance by coal mining at the Spring Creek Mine, as well as other mines within the Montana portion of the Powder River Basin.
- OSMRE, as a matter of law, must use the metrics as identified in its oversight guidance (REG-8) to measure reclamation success.
- OSMRE must evaluate an alternative whereby OSMRE disapproves the proposed mining plan modification until such time as the majority of mined lands at the Spring Creek Mine have achieved Phase III bond release.

Under SMCRA, contemporaneous reclamation is supposed to occur at coal strip mines.⁶ Under OSMRE's oversight guidance (REG-8), analysis of "reclamation success as measured by bond release" is required. Consequently, bond release is the *only* lawful and objective measure by which OSMRE may evaluate reclamation success at the Spring Creek Mine and within the Powder River Basin.

There is a woeful lack of evidence of contemporaneous reclamation and/or reclamation success as measured by bond release throughout the West, and this is a significant issue in

⁵ *Spring Creek Mine Cumulative Reclamation Status Table EY-1999-Present [September 2015]*. Personal communication from OSMRE Program Analyst Frank Bartlett, Sept. 23, 2015.

⁶ 30 U.S.C. 1202(e) (in the Statement and Purpose section of SMCRA, "assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface coal mining operations")

Montana. Coal strip mines have been operating in Montana for more than 40 years. But as of September 2015, of the 41,005 acres that have been disturbed by coal strip mining operations, only 20,290 acres have achieved Phase I reclamation and bond release, which means that a permittee has completed the backfilling, re-grading, topsoil replacement, re-contouring, and drainage control required for a bonded area. Of particular concern, during this time only 491 acres in all of Montana have achieved Phase IV bond release.⁷ This bond release verifies that all surface coal mining and reclamation activities and all disturbed lands within any drainage basin have been reclaimed in accordance with Phase I, II, and III requirements (and includes successful restoration of the hydrologic balance that supports post-mining land use).

The environmental document prepared by OSMRE must fully disclose the status of current reclamation activities at the operating Spring Creek Mine and how it correlates to the reclamation plan for that mine as well as what the company is doing to meet its obligation under SMCRA for contemporaneous reclamation. This data and its objective analysis should influence any plans for expansion of the mine.

OSMRE's analysis of reclamation at the Spring Creek Mine should analyze the direct, indirect, and cumulative impacts of authorizing more land for disturbance by coal mining not only in this particular proposed mining plan modification area, but also at the Spring Creek Mine as a whole. In particular, given the lack of reclamation occurring at other areas of the mine, how does permitting even more coal for mining encourage more reclamation and prevent the mine from falling even further behind in its responsibilities under SMCRA? It is our opinion that OSMRE should assess the timing of reclamation activities within this proposed mining plan modification area and consider any impacts due to prolonged or untimely reclamation, including re-establishment of vegetation and restoration of water resources.

OSMRE's analysis should also include an assessment of bond release at the Spring Creek Mine for all phases of reclamation, an assessment to any barriers to bond release, and identify any existing mine areas eligible for bond release. OSMRE should include an anticipated schedule and timeframe for achievement of reclamation success for lands and waters at the Spring Creek Mine. Finally, we would note that OSMRE should include and explain the metrics identified in REG-8 that it uses to measure reclamation success.

Permit Area Hydrology

As previously mentioned, no acres at the mine have been permanently reclaimed. Land cannot be considered permanently reclaimed until the operator has reclaimed affected water resources (30 C.F.R. § 800.40). It is therefore incumbent upon OSMRE to consider the restoration of water resources within the scope of this proposed mine plan modification review. It is also incumbent upon OSMRE to analyze compliance with SMCRA's other important performance standards such as minimization of impacts to the hydrologic balance within the

⁷ "Undermined Promise II," Western Organization of Resource Councils, Natural Resources Defense Council, and National Wildlife Federation. 2015 (<http://underminedpromise.org/UnderminedPromiseII.pdf>) *and Cumulative Montana Reclamation Status Table EY-1999 to Present [September 2015]*. Personal communication from OSMRE Program Analyst Frank Bartlett, Sept. 23, 2015.

mine permit boundary and prevention of material damage to the hydrologic balance outside the permit area. Northern Plains and its members are quite concerned about the impact that the Spring Creek Mine now has and will continue to have on water resources of the area; the environmental compliance necessary to examine the mine permit necessitates that this issue be re-examined.

The tracts at issue in this proposed mine plan modification are located in southern Montana near the border with Wyoming in the valley floors of Spring Creek, South Fork Spring Creek, and North Fork Spring Creek. Surface drainage is from ephemeral streams, which flow toward the Tongue River Reservoir and then to the Tongue River, which flows 110 miles north to Miles City where it joins the Yellowstone River.

Water is a precious resource in this semi-arid region of the state. Coal seams are filled with water and function as vital aquifers in this region. Coal strip mines sever and destroy these aquifers. The impacts of this severance can be seen many miles from the mine. Not only do down-gradient wells and springs dry up when the aquifer is severed, but springs and seeps above the mine that are hydrologically tied to the coal-seam aquifers will be drained and will dry up. Many of these springs are important sources of water for livestock (as well as wildlife) and require no electricity for pumping and, thus, are a valued resource. These springs also provide runoff for intermittent and ephemeral streams and pools that support riparian vegetation, which is important if not critical habitat for numerous wildlife species, including amphibians, migratory birds, and a diversity of aquatic life especially adapted to these environments.

Permitting documents require a thorough baseline survey of water resources in the area and a description of the hydrologic balance. The information gathered should include water quantity, water quality, peak flow, recharge capacity, soil permeability, and seasonal variation of these elements. OSMRE must review the data on-hand to determine if site characterization needs to be updated. Strip mining would alter stream-flow patterns and pit inflows would be discharged into the drainages in the area, degrading their quality. The connectivity of the surface water with groundwater would be disrupted and compromised.

OSMRE must review the analysis of direct, indirect, and cumulative impacts to water resources – both surface water and groundwater as well as their connections – that could be impacted in the foreseeable future by mining the additional acreage contained within the modification to the approved mining plan. In preparing its environmental document, OSMRE must analyze whether elements of the existing mine permit, including the hydrologic and geologic site characterization, determination of probable hydrologic consequences (PHC), and cumulative hydrologic impact assessment (CHIA), provide adequate characterization and analysis to evaluate impacts to surface and groundwater resources from the agency's proposed action. Water uses and water rights in the area of impact must also be considered.

As described above, the Spring Creek Mine has failed to successfully achieve reclamation of the hydrologic balance for ground or surface waters for any area in or outside its current mine operation in the past 35 years of the mine's operation. It is therefore incumbent upon OSMRE to consider the restoration of water resources within the scope of the environmental document being prepared for the proposed permit modification. OSMRE must

determine how additional leasing and mining would impact the hydrologic balance of not only the area contained in the MTM-94378 permit modification proposal but also the entire mine area. Northern Plains also requests that the agency analyze the timetable and costs to reclaim the aquifer to pre-mining capacity and quality and the engineering techniques that would be used to restore the aquifer.

Vegetation

In order to achieve Phase III bond release, the permittee must establish vegetative communities that are able to persist for years. Thus, reclaiming with species that are endemic to the area is critical to success. The environmental document must contain complete vegetative surveys of the proposed permit modification tracts in order to have an adequate baseline for preparation of a reclamation plan. The document should also assess the availability of those plants for revegetation purposes and their sources.

Construction of any kind is notorious for spreading weeds. As part of the baseline vegetative surveys, a survey and detailed map of all weed infestations now found in the area of the project should be completed. A complete and scientifically valid plan for the prevention of introduction of weeds as well as control of any introduced weeds must be included in the environmental document. Adequate bonds for the control of weeds must be levied and should be disclosed in the environmental document.

Wildlife Resources

While the proposed permit modification is not a large expanse of habitat and is located between two active coal strip mines, wildlife resources would be affected. Updated baseline data for any terrestrial wildlife species, including game using the area (e.g., mule deer, antelope) and non-game mammal species, birds, amphibians, and reptiles should be included in the environmental document. These studies should include estimates of current population numbers, population trends (and causes for those trends), habitat requirements of each species and habitat conditions, as well as identification of critical wildlife habitat (e.g., winter range, fawning ranges, nesting sites). Distribution maps should be provided where possible.

Prairie bird species (both game birds and non-game resident and migratory species) are an important ecological component of the short-grass prairie and sage-brush steppe habitats such as found in the mine permit area, and updated data on these species should be included in the environmental document. Raptors such as burrowing owls, short-eared owls, golden eagles, ferruginous hawks, and merlins are likely inhabitants of the area. What neo-tropical migratory species inhabit the area; which species breed in the area and which simply pass through? What are the regional trends for these species and is any habitat in the Spring Creek area considered critical for their survival? Nest areas must be identified and avoided. The 2006 EA acknowledges that sage grouse are present in the area; please ensure that updated information on the bird is included in the environmental document prepared and ensure that the goals of the Montana Sage Grouse Initiative Management Plan are addressed.

Air Quality

What is the ambient air quality of the area and what are the sources of impairment today? The environmental document should include this information as well as an analysis of any connected and cumulative impacts to the Class I airshed of the Northern Cheyenne Reservation. In the dry and windy environment of the Spring Creek Mine, construction and mining activities that denude the soil will eventually lead to blowing dust, dirt, and debris. Please detail in the environmental document the potential changes to air quality from construction activities in the permit area.

Coal mining operations include scraping off overburden soils, digging, drilling, blasting, dragline operation, and loading and unloading coal. The coal is then transported from the mine via railroad. All of these activities can increase particulate matter and other harmful parameters, which have negative impacts on air quality and human health.

As a result of both blasting and mine operations, coal dust is in the air at any coal strip mine. Coal dust not only affects the health of the mine workers but has a negative effect on the surrounding environment. What suppression methods will be required for coal dust in relation to the mining, processing, and storage of coal? There is also the potential for emissions of nitrogen oxides (“orange clouds”) as a result of blasting operations. Nitrogen oxides can rise into the air and present a health threat to people at the mine and those living nearby. Please ensure that the environmental document details the control measures (such as reducing the size of the cast blasting shot, borehole liners, different blasting agents or additives, among others) that OSMRE would have the mine use in its operations in order to protect air quality.

A connected and cumulative impact of proposed mining is the transportation of the coal mined to its destination (see below for more comments on downrail issues). Air quality concerns that should be addressed in the environmental document for the proposed permit modification include downrail air quality impacts. Railroad engines emit diesel fumes and coal dust can blow off the coal being hauled. Both will increase particulate matter and, thus, impact the health of citizens all along the rail routes. Medical studies have shown a clear link between both diesel emissions and coal dust and disease. Children, the elderly, pregnant women, and people with chronic disease are most at risk, but the health effects from particulate matter exposure may occur years later, so even healthy individuals should be concerned.

Diesel fumes contain particulate matter and benzene residues. Particulate matter is solid matter suspended in air. The size of particles is directly linked to their potential for causing health problems. Particles 10 microns in diameter or smaller are of concern. Fine particles (such as those found in diesel fumes) are less than 2.5 microns in diameter. They can be breathed deep into the lung and down into the air sacs (alveoli). Scientific medical studies have shown a clear

link between diesel fumes and increased asthma attacks, increased risk of heart attacks, cancer, and many other health issues.⁸

In a paper titled, “PRB Coal Degradation, Causes and Cures,” Roderick J. Hossfeld and Rod Hatt explain that “PRB coal is extremely friable [crumbly] and will break down into smaller particles virtually independent of how the coal is transported or handled.” They go on to say that “once PRB coal is exposed by mining, the degradation process begins – the majority of the damage can occur in a very short time, even as short as a few days. The extent of the degradation that occurs depends in large part on . . . how long the coal is exposed to the atmosphere during transportation.”⁹

There are numerous scientific studies that link coal dust from moving trains (even far from where the coal is mined) to human health impacts. A study prepared by the Multnomah County [Oregon] Health Department¹⁰ states that “coal dust may contain traces of heavy metals, such as lead, mercury, chromium, and uranium that are toxic to the human nervous system.” The study also identifies that “children are particularly vulnerable to heavy metals.”

A study by Daniel A. Jaffe et al.¹¹ measured particulate matter (PM) emissions at two rail sites in Washington State. The “measurements demonstrate that rail traffic emits substantial quantities of diesel exhaust and that PM_{2.5} concentrations are significantly enhanced for residents living close to the rail lines. . . . after passage of coal trains there was a statistically significant enhancement in large particles . . . [that] most likely consist of aerosolized coal dust.” The Jaffe study goes on to state that “the enhancement in PM_{2.5} is not only due to the [emission] spikes that occur as a train passes, but also the residual that accumulates in the local airshed.”

OSMRE must fully consider and analyze the effects to air quality, including human health impacts, from the proposed expansion of Spring Creek Mine. This analysis should also include analysis of downrail air quality impacts as described below.

Connected and Cumulative Impacts

The Council on Environmental Quality (CEQ) regulations implementing NEPA require that a federal agency consider both the connected actions and cumulative impacts that might result if the proposed project was approved. Cumulative impacts are defined in 40 C.F.R. §1508.7 as the impact on the environment that results from the *incremental impact* of the action *when added to* other past, present, and reasonably foreseeable future actions [emphasis supplied]. There are numerous connected and cumulative impacts that the environmental document prepared for the proposed permit modification must address.

⁸ See, e.g., Jaffe et al., 2015. “Diesel particulate matter and coal dust from trains in the Columbia River Gorge, Washington State, USA.” *Atmospheric Pollution Research*. Available online: <http://www.sciencedirect.com/science/article/pii/S1309104215000057>

⁹ <http://krtcommodities.com/files/PRB%20COAL%20DEGRADATION.pdf>

¹⁰ “The Human Health Effects of Rail Transport of Coal Through Multnomah County, Oregon: Health Analysis and Recommendations for Further Action” February 2013.

http://media.oregonlive.com/environment_impact/other/Coal%20Report%20.pdf

¹¹ “Diesel Particulate Matter Emission Factors and Air Quality Implications from In-Service Rail in Washington State, USA” January 2014. http://www.atmos.washington.edu/jaffegroup/uploads/Jaffe_2014_trains_final.pdf

1) Coal Export and Downrail Impacts of Increased Coal Train Traffic

Spring Creek Mine exported more than 4 million tons of coal to Asia in 2014 through export facilities in British Columbia. Cloud Peak Energy, Inc. (CPE), the parent company of the subsidiaries that own and operate the Spring Creek Mine, has been advocating for increased West Coast port capacity for many years. While recent downturns in the coal export market have resulted in CPE announcing that it plans to ship less coal for export, it is worth noting that in August 2015, CPE purchased a 49% share of the proposed Gateway Pacific export facility in Bellingham, Washington, in order to boost its coal export capacity. Additionally, CPE has an agreement to ship up to 17.6 million tons of coal annually from this proposed export terminal.

The impacts to Montanans and Montana communities from any increase in rail traffic are real and significant – and these impacts will go far beyond "inconveniences."¹² There would be health, safety, quality of life, as well as actual financial costs to Montana citizens and communities from an increase in coal train traffic. These issues must be fully considered and analyzed in the environmental document prepared for this proposed permit modification.

Billings, Montana, is currently most affected by coal train traffic as it is a bottleneck for rail traffic. All outgoing coal trains from the PRB headed for Pacific Northwest ports pass through Billings. Many other Montana (and Pacific Northwest) communities would also be affected by any increase in coal export train traffic. The increased number of trains would mean more noise, a greater potential that emergency responders would be delayed in reaching residents when there is a medical emergency (or a fire or the need for police), and a greater potential for vehicle collisions with trains and for pedestrian accidents. More trains would mean an increase in the amount of airborne pollutants (particulate matter) from diesel engines as well as from coal dust (see discussion of these issues earlier in our comments). These issues must be fully considered and analyzed in the environmental document prepared for this proposed modification.

The financial costs of increased train traffic to downrail communities must be discussed in this environmental document. It is true that if a rail company needs to upgrade their track or a bridge or a crossing in order to facilitate current or increased train traffic, they will do so and they will pay for it. However, if a city or county wants to have a particular crossing in their community upgraded to deal with local impacts and the rail company does not need to do this in order to facilitate increased train traffic, under existing law the railroads do not have to respond to these local government concerns. The only choice citizens have at that point is to pay for any upgrade with public money – taxes from somewhere be it federal, state, county, or municipality taxes.

2) Carbon Emissions and Their Relationship to Global Climate Change

Department of the Interior Secretarial Order No. 3289 directs that “[e]ach bureau and office of the Department must consider and analyze potential climate change impacts when

¹² See “Heavy Traffic Still Ahead,” Western Organization of Resource Councils, 2014. Available online: <http://www.heavytrafficehead.org>.

undertaking long-range planning exercises . . .and making major decisions regarding potential use of resources under the Department’s purview.”

Wherever the coal from the proposed expanded permit area is burned, carbon emissions and other pollutants will be released. OSMRE must fully consider and analyze all reasonably foreseeable direct, indirect, and cumulative impacts this proposed project would have on carbon emissions and global climate change.

Coal is the world’s most carbon-intensive fossil fuel. When coal is burned, carbon dioxide (CO₂) and other greenhouse gases (GHG) are released into the atmosphere. Until coal is mined, the carbon in the coal is trapped under the ground. It has been well established by the scientific community that the burning of coal and other fossil fuels is putting our world on a dangerous path toward irreversible climate change.¹³

Every natural system and ecological community in both Montana and the world is already experiencing impacts due to global climate change. Within the last century, Montana has seen a 1.3°F increase in its average temperature, leading to a loss of snowpack, extreme heat waves, and an increase in the frequency and danger of wildfires. Human health, wildlife populations, recreation, and agriculture are all threatened by heat waves and wildfires. Inadequate winter snows along with the timing of snowmelt are critical for irrigation, power generation, wildlife, and recreation.

Agriculture, the largest industry in Montana, constitutes 64% of the state’s land area and is Montana’s Number One economy. The Intergovernmental Panel on Climate Change projects that in the 21st Century global temperatures will increase 4°F in the spring and summer months and 5°F in fall and winter. Earlier snowmelt alters growing seasons. Increasing summer temperatures can reduce the weights and yields of cattle and crops. More cold temperatures later in winter and into spring can negatively impact calf survival. Water supplies will be affected by less snowpack in a warmer winter. More violent storms and other weather pattern changes are also caused by climate change and interfere with agricultural operations. These impacts often result in economic losses for producers.

According to the 2009 report of the U.S. Global Change Research Program, “[t]he global warming observed over the past 50 years is due primarily to human-induced emissions . . . from the burning of fossil fuels (coal, oil, and gas), with additional contributions from the clearing of forests and agricultural activities.”¹⁴ The potential climate impacts that would result from the proposed expansion of the Spring Creek Mine cannot be ignored. These impacts stem from not only the mining operations but also from the storage, transport, and ultimate combustion of the coal. OSMRE must fully consider and analyze the long-term, connected, direct, and indirect impacts that the expansion of the Spring Creek Mine would have on global climate change.

Regarding coal combustion specifically, recent federal case law dictates that OSMRE is required to analyze the climate effects of coal combustion. In two separate 2015 rulings, the U.S.

¹³ See <http://climate.nasa.gov/scientific-consensus/>

¹⁴ “Global Climate Change Impacts in the United States.” 2009. Report of the U.S. Global Change Research Program. Accessible online: <https://nca2009.globalchange.gov/>

District Court of Colorado found OSMRE's NEPA analyses to be inadequate because OSMRE failed to adequately address the climate effects of coal combustion.¹⁵

Finally, OSMRE must fully address and analyze the “social cost of carbon” in the environmental document it prepares. Developed in 2010 by numerous federal agencies and offices under the leadership of the Office of Management and Budget, the social cost of carbon estimates the global financial cost of each ton of extra carbon pollution in the atmosphere and seeks to incorporate impacts as diverse as drought, fire, diminished agricultural productivity, and more. This document was updated in 2013 and, backed by numerous peer-reviewed scientific and economic research papers, it is the best existing tool to help agencies and the public make decisions regarding projects that impact the climate.

Agencies have already used it in both rulemaking and project-level NEPA review. In June 2014, a U.S. District Court ruled against the federal government in *High Country Conservation Advocates, et al. v. U.S. Forest Service, et al.* citing, among other things, its failure to analyze the social cost of carbon. After this decision and in response to a letter from more than two dozen conservation organizations, the U.S. Department of Agriculture affirmed that the social cost of carbon is an “appropriate tool for measuring and disclosing the social and economic implications” of federal coal leasing decisions. We expect the environmental document prepared by OSMRE to fully consider and analyze this issue.

3) Oil-and-Gas Development

While coal bed methane (CBM) development in Montana has been at a temporary standstill due to the cheaper production costs and quicker production time that are the advantage for deep oil-and-gas development, ongoing and proposed CBM production in Wyoming continues to impact southeastern Montana, particularly with regard to water quality issues.

If/when CBM production increases, ranchers and other residents of the area could face the prospect of cumulative impacts from the construction of miles of access roads and pipelines, hundreds of well pads, compressor stations, and the construction of impoundments to dispose of methane wastewater. Other cumulative impacts that could occur include but are not limited to:

- noise impacts;
- impacts on everyday ranching operations;
- impacts on irrigation diversion and transportation structures from increased suspended sediment caused by increased erosion and sediment loading;
- impacts to water quality;
- loss of property value;
- air quality impacts including visibility impairment and degradation;
- increased dust affecting air quality, vegetation, and livestock;
- increased traffic on county, state, and private access roads and the resulting increased accident rates;

¹⁵ *Dine Citizens Against Ruining Our Env't v. United States Office of Surface Mining Reclamation & Enforcement*, 82 F. Supp. 3d 1201, 1206 (D. Colo. 2015); *WildEarth Guardians v. U.S. Office of Surface Mining, Reclamation and Enforcement*, 2015 WL 2207834 at *15 (D. Colo. May 8, 2015).

- increased risk of fires; and
- increased infestation and spread of noxious weeds.

These cumulative impacts would have additional indirect cumulative impacts on the region's economy – an economy heavily dependent on agriculture-sector jobs. OSMRE must consider the added and potentially devastating cumulative impacts to the ranching community from continued and potentially increased CBM development projects.

Conclusion

The purpose of the environmental document prepared for the proposed mine plan permit modification (MTM-94378) is to disclose all the information and analyze and evaluate that information so that the environmental consequences of the project are fully disclosed to the public and for consideration by decision makers. Those consequences (costs) are then to be weighed against the benefits of the proposed project in the final analysis.

While Montana would receive severance taxes, other taxes, and royalties from the mining of the Spring Creek coal that is part of this permit modification, those taxes and royalties do not and cannot mitigate all the project's significant and severe – in many cases irreparable – impacts to the numerous non-mineral resources in the project area; the agricultural economy and vitality of the area and its residents; and the health, life, and safety of the area's residents and those who live downrail.

We believe that OSMRE must fully consider the consequences of the proposed permit modification (MTM-94378) to the approved Spring Creek coal strip mine permit, including all the connected and cumulative impacts that will result if a permit modification is granted. These comments are submitted with the hope that the environmental document that is prepared by OSMRE will bring substantive and meaningful information together so that a fully informed decision on this project can be made. Indeed, that is our expectation.

Sincerely,



Kate French, Chair
Northern Plains Resource Council



Bob LeResche
Western Organization of Resource Councils

cc: Janice Schneider, Assistant Secretary for Land and Minerals Management, U.S.
Department of the Interior
Tom Livers, Director, Montana Department of Environmental Quality

3/15/2016

DEPARTMENT OF THE INTERIOR Mail - Spring Creek Mine LBA 1 EA



NEPA-MT, OSM <osm-nepa-mt@osmre.gov>

Spring Creek Mine LBA 1 EA

1 message

Walters, Keith (CPE) <Keith.Walters@cldpk.com>
To: "OSM-NEPA-MT@osmre.gov" <OSM-NEPA-MT@osmre.gov>

Fri, Mar 11, 2016 at 2:00 PM

ATTN: Spring Creek Mine LBA 1 EA

C/O: Lauren Mitchell

OSMRE Western Region

1999 Broadway, Suite 3320

Denver, CO 80202-3050

Dear Ms. Mitchell,

I am a proud employee of the Spring Creek Coal mine. The coal mining industry, in addition to providing reliable, low-cost energy to power the country, has afforded me the opportunity to provide for a reasonably comfortable life for my family. This has not been without some setbacks. Acid rain regulation precipitated closure of a previous employer's mine saw our family relocated cross country. Though we have acclimated well, I find I am not looking forward to starting over again.

I am writing to comment on the Office of Surface Mining Reclamation and Enforcement's ("OSM") mining plan modification for Spring Creek Mine's federal coal lease, MTM 94378, as the OSM prepares an environmental assessment (EA).

I wish to encourage the OSMRE to maintain a reasonably focused approach that focuses on those potential environmental effects that result from the activities associated with mining the coal at and around the mine site. You will no doubt receive a number of comments from the "environmental lobby" suggesting the scope of the EA be expanded in all manner of directions. This is not appropriate. Just as it is unreasonable to evaluate the exhaust emissions from iron that may eventually be manufactured into an automobile engine at the ore mining stage, so is it folly to attempt to evaluate combustion emissions from coal at the mining stage. It is not possible to know what purpose the coal will ultimately be used for, when or how it may eventually be consumed, or what emission controls may be in place at the time of consumption. These are questions much better answered and analyzed during the extensive permitting processes for the facilities that seek to use the coal.

Please limit this NEPA analysis to the factors relevant to the extractive activities. The NEPA process was created to insure there is a mechanism to provide for the evaluation of all potential impacts, not to provide for multiple reevaluations of the same but distant potential impacts at every stage of a project and every potentially related project because someone did not like the decision at a previous stage.

The Spring Creek Mine is a responsible partner in the defense of our human environment. The Spring Creek Mine has consistently demonstrated its strong and award-winning commitment to environmental stewardship. The Spring Creek Mine is actively engaged in its local communities where its employees live and families and friends spend their time, supporting local businesses, contributing to education and non-profit community groups and providing millions of dollars in tax and royalty dollars to the Montana economy.

The mine plays a vital role in its communities, and any restrictions imposed by the OSM pursuant to the pending EA that impact the Spring Creek Mine's ability to continue operations will have a serious detrimental impact on neighboring communities.

Thank you for the opportunity to comment on an industry and company that is vital to so many community members and organizations across both Montana and Wyoming and that provide substantial benefits to our nation from the responsible development of coal energy resources.

<https://mail.google.com/mail/b/194/u/0/?ui=2&ik=43b91ac1ea&view=pt&search=inbox&th=153677ae20cc6c16&siml=153677ae20cc6c16>

1/2

Appendix E

3/15/2016

DEPARTMENT OF THE INTERIOR Mail - Spring Creek Mine LBA 1 EA

Sincerely,

Keith P. Walters, PE
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Ranchester, WY 82839

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keith.walters@cldpk.com



NEPA UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region08

March 11, 2016

Ref: EPR-N

Lauren Mitchell
OSMRE Western Region
1999 Broadway, Suite 3320
Denver, Colorado 80202

Re: Spring Creek Mine Mining Plan Modifications Environmental Assessment

Dear Ms. Mitchell:

The U.S. Environmental Protection Agency Region 8 has reviewed the U.S. Department of Interior, Office of Surface Mining Reclamation and Enforcement (OSMRE) Public Notice to prepare an Environmental Assessment (EA) for the Spring Creek Mine (SCM) Mining Plan Modification. We are providing scoping comments and recommendations related to the assessment of impacts with regard to climate change. Our comments are provided for your consideration pursuant to our responsibilities under Section 102(2)(C) of the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act (CAA).

The SCM is a coal mine located approximately 32 miles north of Sheridan, Wyoming, and uses a combination of dragline and truck shovel mining methods. The Bureau of Land Management issued federal coal lease MTM 94378 in 2007. In 2012, OSMRE issued an EA for the mining plan modification for federal coal lease MTM 94378, authorizing surface coal mining at a production rate of up to 24 million tons per year with an ultimate recovery of 117.3 million tons of coal. As a result of the decision *Wild Earth Guardians v. U.S. Office of Surface Mining, Reclamation and Enforcement, et al.*, No. CV 14-13-BLG-SPW-CSO (D. Mont. Feb. 27, 2013), issued on October 23, 2015, OSMRE is preparing this EA to address deficiencies as directed by the court for the mining plan modification for federal coal lease MTM 94378. These include taking a hard look at direct impacts to air quality and indirect impacts from combustion from the expansion, updating the EA, and complying with applicable public notice and participation requirements.

Greenhouse Gas (GHG) Emissions and Climate Change

The EPA recommends that OSMRE include in the EA an estimate of the GHG emissions associated with the project during construction and operation, a qualitative description of relevant climate change impacts, and practicable mitigation measures to reduce project-related GHG emissions. In addition, we recommend that the analysis include GHG emissions from reasonably foreseeable downstream emissions such as coal transportation and electrical power generation. We suggest the following approach:

“Affected Environment” Section

Include in the “Affected Environment” section of the EA a summary discussion of climate change and ongoing and reasonably foreseeable climate change impacts relevant to the project, based on U.S. Global Change Research Program assessments.¹ These future climate scenarios can be useful when considering mitigation to reduce potential impacts of the proposal that could be altered by a changing climate.

“Environmental Consequences” Section

The EPA recommends that the EA estimate the GHG emissions associated with the proposal and its alternatives. Example tools for estimating and quantifying GHG emissions can be found on CEQ’s website.² These emissions levels can serve as a reasonable proxy for climate change impacts when comparing the alternatives and mitigation.

“Cumulative Impacts and Reasonably Foreseeable Actions”

We note that there is a second expansion underway for the Spring Creek mine for a lease by modification (LBM MTM-069782). The notice for the “TRI EA” was noticed in October 2015. We recommend that this EA address the potential cumulative impacts from this reasonably foreseeable action.

Mitigation

The EPA recommends that the EA describe measures to reduce GHG emissions associated with the project, including reasonable alternatives or other practicable mitigation opportunities, and disclose the estimated GHG reductions associated with such measures. The EPA further recommends that the EA commit to implementation of reasonable mitigation measures that would reduce or eliminate project-related GHG emissions.

Climate Change Adaptation

The EPA recommends that OSMRE discuss how future climate scenarios addressed in the “Affected Environment” section may impact the proposal. Changing climate conditions can affect a proposed project, as well as the project’s ability to meet the purpose and need presented in the EA. In some cases, adaptation measures may avoid the potentially significant environmental impacts of failure to adequately address the threat of a changing climate on the proposal.

Effects of Climate Change on Project Impacts

When considering the potential impacts of the proposal, we recommend the OSMRE consider the future climate scenarios in the “Affected Environment” section to determine whether the environmental impacts of the alternatives would be exacerbated by climate change. If impacts may be exacerbated by climate change, additional mitigation measures may be warranted.

¹ <http://www.globalchange.gov/>

² https://ceq.doe.gov/current_developments/GHG_accounting_methods_7Jan2015.html

The EPA appreciates the opportunity to participate in the scoping process for the Spring Creek Mining Plan Modifications EA. If you have any questions or comments, please feel free to contact me at 303-312-6704, or your staff may contact Dana Allen at 303-312-6870 or allen.dana@epa.gov.

Sincerely,



Philip S. Strobel
Director, NEPA Compliance and Review Program
Office of Ecosystems Protection and Remediation



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March 11, 2016

VIA E-MAIL AND OVERNIGHT DELIVERY

ATTN: Spring Creek Mine LBA 1 EA
C/O Lauren Mitchell
Western Region Office, OSMRE
1999 Broadway, Suite 3320
Denver, CO 80202-3050
Email: OSM-NEPA-MT@osmre.gov

Re: Spring Creek Mine LBA 1 EA

Dear Ms. Mitchell:

Thank you for the opportunity to submit the following comments on behalf of Spring Creek Coal LLC (“Spring Creek”) for your consideration as the Office of Surface Mining Reclamation and Enforcement (“OSMRE”) prepares an Environmental Assessment (“EA”) to reevaluate the environmental impacts of OSMRE’s June 27, 2012 approval of a mining plan modification for Spring Creek Mine’s federal coal lease MTM 94378 in response to the recent court decision in *WildEarth Guardians v. OSMRE*, Case No. 1:14-cv-00013-SPW (D. Mont.). As the owner and operator of the Spring Creek Mine, Spring Creek owns federal lease MTM 94378 and has substantially relied upon the 2012 mine plan modification approval which is the subject of OSMRE’s proposed National Environmental Policy Act (“NEPA”) analysis.

EXECUTIVE SUMMARY

Spring Creek encourages OSMRE to re-approve the mining plan modification for federal coal lease MTM 94378. Spring Creek urges OSMRE to take into account the following considerations and legal principles as it undertakes its current NEPA analysis:

- Spring Creek and its corporate parent, Cloud Peak Energy Inc., have a strong record of environmental stewardship and dedication to the safety of their employees and well-being of their local communities. Spring Creek has received national awards from OSMRE for excellence in environmentally-successful reclamation.
- As noted in the attached letters from Montana Governor Steve Bullock and Sheridan, Wyoming Mayor John Heath, the Spring Creek Mine is a significant employer and valued member of the community and makes substantial economic contributions to the federal and Montana State governments through annual royalty and tax payments.

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- The U.S. coal industry, to our knowledge, is one of the most heavily regulated industries in the world.
- The lawsuit which gave rise to OSMRE's proposed EA had little to do with OSMRE's approval of the 2012 Spring Creek mining plan modification or the lack of sufficient regulatory processes, but was instead one chapter in an orchestrated, comprehensive litigation effort by well-funded special interest groups whose unifying purpose is to stop all coal production and coal-fired electricity generation in the United States.¹
- OSMRE should tier its current EA to the robust 2006 leasing EA prepared by the Bureau of Land Management ("BLM") in which both OSMRE and the Montana Department of Environmental Quality ("MDEQ") served as cooperating agencies.
- OSMRE has limited and narrowly-focused administrative discretion when deciding whether to approve a federal mine plan modification. OSMRE's review is limited and focused by design under applicable statutes and regulations because it is the final step after completion of a long, time-consuming and robust multi-agency regulatory process with countless opportunities for public participation along the way. OSMRE is neither the sole, nor the primary, reviewer. Among the restrictions curtailing OSMRE's discretion in the mining plan modification for the Spring Creek Mine are the following:
 - BLM's 2007 leasing decision which conveyed property and contract rights to Spring Creek;
 - MDEQ's binding mining permit and air quality permit, both of which established substantive operational standards for the development of the coal that is subject to the federal mine plan;
 - OSMRE's obligations under the Mineral Leasing Act of 1920 ("MLA") and Department of the Interior ("DOI") regulations to ensure that Spring Creek achieves maximum economic recovery of the federal coal reserves in MTM 94378. 30 U.S.C. § 201(a)(3)(C); 30 C.F.R. § 746.13(e); 43 C.F.R. § 3482.1(c)(7).
 - Spring Creek's obligations under the MLA, DOI regulations, and the terms of federal lease MTM 94378 to diligently develop the leased federal coal reserves and maintain continued operation. 30 U.S.C. § 207(b)(1); 43 C.F.R. §§ 3480(a)(8),(12) and 3483.1(a)(1)-(2); and

¹ See WildEarth Guardians' webpage dedicated to its campaign against coal, "Keep It In The Ground": http://www.wildearthguardians.org/site/PageServer?pagename=priorities_climate_energy_coal#.VuCol2jF81J (last accessed March 9, 2016).



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- Spring Creek previously commenced mining in the tracts included in federal lease MTM 94378 in reliance on existing regulatory approvals and, therefore, OSMRE's NEPA review should be limited to analyzing any impacts of developing those coal reserves that still remain in this federal lease.
- No new environmental impacts have been identified in the context of the *WildEarth Guardians v. OSMRE* legal challenge or otherwise that would support any decision other than a reaffirmation of OSMRE's 2012 approval of the mining plan modification for federal lease MTM 94378.
- OSMRE must honor Spring Creek's property and contract rights inherent in federal lease MTM 94378. Spring Creek paid substantial amounts of money for this lease more than eight years ago and has since that time made significant investments in reliance upon its clear right to develop this lease. Any new, after-the-fact restrictions would constitute a breach of contract and regulatory taking of these valid and lawfully acquired rights.

DISCUSSION

I. Introduction to the Spring Creek Mine

The Spring Creek Mine is the largest coal mine in Montana, providing hundreds of people with good paying jobs and the ability to provide for their families. The Spring Creek Mine is owned and operated by Spring Creek Coal LLC (formerly the Spring Creek Coal Company), a wholly-owned subsidiary of Cloud Peak Energy Inc.

The Spring Creek Mine is located in southeast Montana approximately 30 miles north of Sheridan, Wyoming. The Mine extracts thermal coal from the Anderson-Dietz Seam, which averages approximately 80 feet in thickness. The Spring Creek Mine shipped approximately 17.4 million tons of low sulfur, 9,244 Btu coal in 2014. Coal mined from Spring Creek is shipped primarily to electric utilities and industrial customers in the northwest, midwest, northeast and southwest United States, various Canadian provinces and has in the past been exported to Asian utility customers via the Westshore terminal in British Columbia, Canada.

The Spring Creek Mine has a strong record of environmental stewardship while providing safe, reliable and low-cost electricity and substantial revenues to federal and State governments. The Spring Creek Mine is a good neighbor and has demonstrated its commitment to environmental stewardship through world-class reclamation. In 2005, the Spring Creek Mine received OSMRE's National Excellence in Surface Mining and Reclamation Award for achievements in establishing and maintaining a rare plant species, the woolly twinpod. Again, in 2009, the Spring Creek Mine received OSMRE's National Award for achievements in establishing excellent topographic and vegetative diversity of the South Fork reclamation area.



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Based on 2014 operations, the Mine paid over \$80 million per year in federal and State production taxes and royalties, with a substantial portion of that amount going directly to the State of Montana. The Mine also contributes to local businesses and nonprofits from purchased goods, services and community contributions.

The Spring Creek Mine is actively engaged in the local communities where its employees live and their families and friends spend their time. The Spring Creek Mine's valued economic and community contributions are outlined in the attached letters from Governor Bullock of Montana and Mayor Heath of Sheridan, Wyoming.

II. Historical Background Leading Up to OSMRE's Current NEPA Evaluation

A. Spring Creek's Federal Lease Application

The regulatory permitting and environmental review process for federal coal lease MTM 94378 began on March 7, 2005, when Spring Creek submitted a lease by application ("LBA") to the BLM for 1,207.5 acres of federal coal adjacent to Spring Creek's existing Spring Creek Mine.

Spring Creek's lease application triggered a series of public notice and comment periods related to the leasing and development of the federal coal, including a comment period soliciting public input on the environmental impacts associated with leasing and developing the federal coal reserves. On June 2, 2005, BLM published notice of the LBA in the Federal Register. 70 Fed. Reg. 32,369 (June 2, 2005). On April 27, 2005, the Powder River Regional Coal Team conducted a public meeting and recommended that BLM move forward with the application.

To fulfill its NEPA obligations, BLM prepared a leasing EA in 2006 and early 2007, in which OSMRE and MDEQ were cooperating agencies. BLM held a thirty-day public scoping period commencing on March 15, 2006 through April 15, 2006. The public scoping process also included two public meetings on March 22, 2006: one held in Lame Deer, Montana and another in Sheridan, Wyoming. On November 28, 2006, BLM sent a letter to interested members of the public informing them of the availability of the EA and the opportunity to submit comment. On December 5, 2006, BLM published a Notice of Availability of the leasing EA, in the Federal Register. 71 Fed. Reg. 70, 526 (Dec. 5, 2006). BLM also conducted a public hearing in Billings, Montana on December 6, 2006, and accepted comments on the EA for a thirty day period. BLM received only one verbal comment at the public hearing and that comment was in support of the project. The leasing EA comment period ended January 2, 2007.

Based on the analysis in the leasing EA, on March 2, 2007, BLM authorized lease MTM 94378 and signed a Finding of No Significant Impact ("FONSI") determining that the lease would not have a significant impact on the quality of the human environment. BLM issued the coal lease MTM 94378 to Spring Creek on November 9, 2007 with an effective date of December 1, 2007.



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B. Spring Creek's State Permits

Once Spring Creek obtained federal lease MTM 94378, Spring Creek was required to apply for and obtain an amended mining permit from MDEQ authorizing the mining operations on the federal lease. On January 23, 2008, Spring Creek filed its permit application package ("PAP") to amend its state mining permit with MDEQ, which MDEQ determined to be administratively complete on August 6, 2009. Spring Creek also submitted the PAP to OSMRE, as required by the applicable State and federal laws. The PAP included a proposed mining plan modification, which MDEQ explained would be subject to final approval by the DOI.

On September 23, 2008, Spring Creek submitted to MDEQ's Air Resources Management Bureau an Air Quality Permit Application Package, requesting that the Mine's maximum annual coal production be increased from 20 million tons per year to 24 million tons per year. On December 3, 2008, MDEQ's Permitting and Compliance Division issued Spring Creek a new Air Quality Permit (#1120-09).

On August 11, 2009, MDEQ notified appropriate agencies of the availability of Spring Creek's mining PAP, and through April 5, 2011, received feedback and analysis of the amendment from BLM, OSMRE, the Montana State Historic Preservation Office, the Montana Fish, Wildlife, and Parks Department, and the U.S. Fish and Wildlife Service.

Commencing on August 20, 2009, Spring Creek published notice of the administratively complete PAP in the Sheridan Press for four consecutive weeks. The notice provided an opportunity for public comment for 30 days from the last date of publication. No comments were received.

On May 17, 2011, MDEQ completed a Checklist Environmental Assessment, which it prepared to evaluate Spring Creek's PAP pursuant to the Montana Environmental Policy Act ("MEPA"). MDEQ determined that Spring Creek's PAP was acceptable on May 19, 2011. On May 19, 2011, MDEQ advertised a Notice of Acceptability and the MEPA EA in the Sheridan Press for two consecutive weeks, followed by a 10-day public comment period. MDEQ received no comments during this public comment period. On June 21, 2011, MDEQ issued Written Finding approving Application 00183 and amended Surface Mine Permit 79012.

C. OSMRE's June 27, 2012 Mining Plan Modification Approval

The last approval Spring Creek was required to obtain before commencing operations on federal lease MTM 94378 was OSMRE's approval of a mining plan modification.

OSMRE began its evaluation of Spring Creek's PAP and Spring Creek's mining plan modification during MDEQ's review of the PAP. During its review, OSMRE consulted with other federal agencies to ensure that OSMRE's eventual decision would comply with federal laws administered by those agencies. For example, on February 9, 2011, BLM recommended



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that OSMRE approve Spring Creek's mining plan modification upon finding that Spring Creek's proposed Resource Recovery and Protection Plan ("R2P2"), submitted to BLM on September 3, 2010, met the "requirements of the MLA, as amended, the regulations at 43 C.F.R. 3480, the lease terms, and Maximum Economic Recovery" of the federal coal reserves.

On June 6, 2012, OSMRE issued a FONSI for the Spring Creek mining plan modification, relying on the November 2006 leasing EA for lease MTM94378, which BLM prepared as the lead agency with OSMRE and MDEQ having served as cooperating agencies. Based on the EA, the PAP and other materials, which OSMRE independently evaluated, OSMRE concluded that the mining plan modification would not have a significant impact on the quality of the human environment, and therefore, an Environmental Impact Statement was not necessary.

On June 12, 2012, following review of the PAP, the OSMRE Regional Director recommended approval of the mining plan modification. On June 26, 2012, after completing its review, the OSMRE Director formally recommended Secretarial approval of the mining plan modification. On June 27, 2012, the Assistant Secretary of Land and Minerals approved the mining plan modification, which allowed mining of federal coal to commence on lease MTM 94387.

D. Litigation Challenging OSMRE's Mining Plan Approval

On February 27, 2013, WildEarth Guardians ("WildEarth") filed a complaint in the U.S. District Court for the District of Colorado seeking a declaration that OSMRE violated NEPA when it approved mining plan modifications for seven different coal mines in Wyoming, Colorado, New Mexico, and Montana, including Spring Creek's June 27, 2012 mining plan approval for federal lease MTM 94378. WildEarth's action was not about challenging procedural deficiencies in OSMRE's mining plan approvals. Instead, the action was just one of a long series of recent attacks, filed by WildEarth and other special interest organizations, challenging every aspect of the federal coal leasing and permitting process in the western United States in an attempt to halt all coal mining.²

² WildEarth and Western Organization of Resource Councils ("WORC") separately, and unsuccessfully, challenged the BLM's over-arching coal leasing program. See *WildEarth Guardians v. Salazar*, 783 F. Supp. 2d 61 (D. D.C. 2011); *W. Org. of Res. Councils*, No. 14-1993 (RBW), ECF No. 42 (Aug. 27, 2015) (dismissing plaintiffs' NEPA claims). WildEarth then unsuccessfully challenged the Environmental Protection Agency's refusal to regulate coal mines as stationary sources under the federal Clean Air Act. *WildEarth Guardians v. E.P.A.*, 751 F. 3d 649 (D.C. Cir. 2014).

Moreover, WildEarth and the Powder River Basin Resource Council ("PRBRC")—an affiliate of Northern Plains Resource Council ("NPRC")—have also challenged virtually every decision by BLM to approve federal coal leases in the Powder River Basin. WildEarth and PRBRC have been rebuffed in all of these cases. See *Powder River Basin Resource Council*, 180 IBLA 119 (2010) (rejecting challenges to BLM's West Antelope II leasing decision); *WildEarth Guardians*



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Upon OSMRE's motion, the Colorado court transferred the mine-specific challenges to the various courts in the states where the mines were located. On March 14, 2014, WildEarth amended its complaint challenging OSMRE's approval of Spring Creek's mining plan modification in the U.S. District Court for the District of Montana. WildEarth alleged that OSMRE failed to comply with NEPA's public participation and "hard look" requirements. Specifically, WildEarth argued that OSMRE was required to provide a public notice and comment opportunity for its June 6, 2012 FONSI and that OSMRE's NEPA analysis, which relied upon the 2006 leasing EA, failed to adequately evaluate the direct and indirect air quality impacts from mining and coal combustion activities.

On August 14, 2014, the Northern Plains Resource Council Inc. and the Western Organization of Resource Councils, Inc. (collectively "NPRC") also filed a similar NEPA action in the District of Montana. NPRC's action alleged the same public notice and participation violations, and added a claim that OSMRE's NEPA analysis failed to adequately analyze contemporaneous reclamation. On October 28, 2014, the Court consolidated WildEarth's and NPRC's actions into one case. Spring Creek, the State of Montana, and the National Mining Association all intervened on the side of OSMRE to defend OSMRE's mine plan approval for the Spring Creek Mine.

On October 23, 2015, Magistrate Judge Ostby issued Findings and Recommendations recommending that the District Court Judge should grant WildEarth's and NPRC's motions for summary judgment and find that OSMRE's approval of Spring Creek's mining plan modification violated NEPA's public participation and hard look requirements. The Findings and Recommendations did not, however, specify which environmental impacts OSMRE failed to adequately consider.

On January 21, 2016, District Judge Watters adopted Magistrate Ostby's Findings and Recommendations, with the exception of the proposed remedy. Judge Watter's Opinion and Order did not further discuss which environmental impacts OSMRE failed to consider. Instead, Judge Watters simply ordered OSMRE to prepare an updated EA to correct any NEPA deficiencies within 240 days.

v. Salazar, 880 F. Supp. 2d 77, 91-92 (D. D.C. 2012) (same), *aff'd sub nom. WildEarth Guardians v. Jewell*, 738 F.3d 298 (D.C. Cir. 2013) (same); *WildEarth Guardians v. B.L.M.*, 8 F. Supp. 3d 17 (D.D.C. 2014) (rejecting challenge to BLM's Bell Ayr North and Caballo West leasing decisions). In fact, just this past summer, the U.S. District Court for the District of Wyoming soundly rejected WildEarth's and PRBRC's consolidated challenge to BLM's decision to offer four federal coal parcels in Wyoming for public auction. *WildEarth Guardians v. United States Forest Serv.*, 2015 WL 4886082 (D. Wyo. Aug. 17, 2015) (rejecting challenges to BLM's North and South Porcupine and North and South Hilight leasing decisions).



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Although Judge Watters ordered additional NEPA analysis, she did not vacate the June 27, 2012 mining plan approval, allowing the Spring Creek Mine to continue to operate and employ its hundreds of employees pending the current NEPA review.

III. OSMRE's NEPA Review Should Focus on Evaluating The Environmental Impacts Of The Currently Approved Mining Plan

OSMRE's updated EA should focus on evaluating the environmental impacts of the currently approved mining plan modification. As discussed above, the current mining plan was initially prepared in 2008 to coincide with the mining operations proposed to MDEQ in the state mining permit PAP. Although MDEQ was not responsible for reviewing and approving the mining plan, the mining permit that MDEQ ultimately issued on June 21, 2011 relied upon the representations in the proposed mining plan for evaluating the Spring Creek Mine's compliance with state permitting requirements. MDEQ's June 21, 2011 permit approval was unchallenged and remains valid. The Spring Creek Mine has operated under the MDEQ permit since 2012. Therefore, under the applicable regulatory framework, OSMRE's current decision on the mining plan must be based upon the proposed mining operations approved by the State in its mining permit. See 30 C.F.R. § 926.30 Art. VI., B.1.a.(4).

There is clear precedent for OSMRE to limit its analysis in an updated EA to reevaluating an already-approved mine plan. In response to a similar court order issued for the Colowyo Mine in Colorado (see *WildEarth Guardians v. OSMRE*, No. 13-cv-00518-RBJ (D. Colo. May 8, 2015)), OSMRE reevaluated the environmental impacts of mining under a previously approved mining plan. In the final EA,³ OSMRE rejected comments proposing alternatives that would be "inconsistent with the approved [state] permit" or that would be "substantively different" than the mining operations that have occurred between state permit approval and the present. Colowyo EA at 2-19 – 2-20. In short, an alternative that would require an amendment to the state mining permit was rejected as inconsistent with the purpose of evaluating a mining plan that would implement the state mining permit.

Spring Creek urges OSMRE to follow its precedent established in the Colowyo EA and evaluate only those proposed alternatives that would implement the already-approved and operational state mining permit and OSMRE mining plan.

³ Available at

http://www.wrcc.osmre.gov/initiatives/colowyoMineSouthTaylor/documents/South_Taylor_EA_20150831_508_Compliant.pdf (last accessed March 4, 2016).



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IV. OSMRE Should Incorporate and Build Upon the Robust Environmental Analysis Already Conducted at the Leasing Stage

As discussed above, the November 2006 leasing EA, prepared by BLM with OSMRE and MDEQ as cooperating agencies, provides a thorough analysis of the environmental impacts of mining the coal under federal lease MTM 94378. The leasing EA thoroughly evaluates mining the same coal subject to MDEQ's mining permit and OSMRE's current mine plan approval.

Consistent with Council on Environmental Quality and DOI regulations, OSMRE may properly tier its current reanalysis to the 2006 leasing EA. *See, e.g.*, 40 C.F.R. § 1508.28(b) ("Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided"); 43 C.F.R. § 46.120(a) ("When available, the Responsible Official should use existing NEPA analyses for assessing the impacts of a proposed action and any alternatives."); *id.* § 46.120(d) ("Responsible Officials should make the best use of existing NEPA documents by supplementing, tiering to, incorporating by reference, or adopting previous NEPA environmental analyses to avoid redundancy and unnecessary paperwork."); and *id.* § 46.320 ("A Responsible Official may adopt an environmental assessment prepared by another agency, entity, or person . . . [and w]hen appropriate, the Responsible Official may augment the environmental assessment to be consistent with the bureau's proposed action.").

Consistent with the applicable regulations, Spring Creek encourages OSMRE to build upon the robust environmental analysis completed by BLM and OSMRE in support of BLM's 2007 decision to lease MTM 94378. No new environmental impacts have been identified that would support any decision other than an affirmation of OSMRE's 2012 mining plan approval.

In particular, throughout the litigation challenging OSMRE's June 27, 2012 mining plan modification decision, Plaintiffs WildEarth and NPRC failed to identify any "new circumstances" or "new information" that were not previously analyzed by BLM and OSMRE at the leasing stage. Accordingly, OSMRE's reliance on the robust leasing EA for NEPA compliance at the mining plan approval stage in 2012 was entirely proper and OSMRE may rely again on the 2006 leasing EA as the basis for its updated NEPA analysis. *See* 43 C.F.R. § 46.120(c); *see also* 40 C.F.R. § 1502.9(c)(1)(ii). OSMRE's 2012 mining plan decision should therefore be reaffirmed.

V. OSMRE's NEPA Review Is Limited By Its Regulatory Authority

A. The Mining Plan Must Ensure Diligent Development, Continued Operations, and Maximum Economic Recovery of the Coal in Lease MTM 94378

Through the Federal Coal Leasing Act Amendments of 1976, Pub. L. 94-377, 90 Stat. 1083 ("FCLAA"), Congress sought to "encourage the maximum ultimate recovery of the coal deposits in the leasable lands of the United States," by imposing diligent development and maximum



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economic recovery requirements. See *Hearing Before the Subcomm. on Mines and Mining*, 94th Cong. 133 (1975). The FCLAA’s amendments to the MLA are codified in 30 U.S.C. §§ 201(a)(3)(C) and 207(b) and require the Secretary to ensure, “[p]rior to issuance of a lease” that the lease will result in the “maximum economic recovery of the coal within the proposed leasing tract” and that the lessee will be “subject to the conditions of diligent development and continued operation of the mine[.]”

Consistent with these statutory mandates, Spring Creek’s federal lease MTM 94378 imposes on the Spring Creek Mine the requirements of diligent development, continued operation, and maximum economic recovery of the federal coal reserves. OSMRE must recognize and honor these statutory goals by ensuring that an approved mining plan achieves maximum economic recovery and facilitates Spring Creek’s duty to diligently develop the coal and maintain continued operations.

1. Maximum Economic Recovery

“Maximum economic recovery (MER) means that, based on standard industry operating practices, *all profitable portions of a leased federal coal deposit must be mined.*” 43 C.F.R. § 3480.0-5(21) (emphasis added). To ensure MER is achieved for leased federal coal, the DOI regulations implementing the FCLAA require the lessee to submit to BLM an R2P2 that explains how MER of the federal coal will be achieved. 43 C.F.R. § 3482.1(c)(7). BLM may not approve an R2P2 until after a complete PAP is submitted to the state regulatory authority and, then, BLM may only approve an R2P2 if it is “found to achieve MER of the federal coal[.]” *Id.* § 3482.2(a)(2).

At the mining plan approval stage, OSMRE has a statutory obligation to approve a mining plan that ensures MER of the federal coal. 30 U.S.C. § 201(a)(3)(C) (“no mining operating plan shall be approved which is not found to achieve the maximum economic recovery of the coal within the tract”). OSMRE’s determination of MER must be based upon BLM’s recommendation and approval of the R2P2. 30 C.F.R. § 746.13(e).

Consistent with these requirements, once BLM issued Spring Creek federal lease MTM 94378 and after Spring Creek submitted its PAP to MDEQ for approval, Spring Creek submitted an R2P2 for BLM review on September 3, 2010. On February 9, 2011, BLM recommended OSMRE approval of Spring Creek’s mining plan modification upon finding that Spring Creek’s R2P2 met the “requirements of the MLA, as amended, the regulations at 43 C.F.R. 3480, the lease terms, and Maximum Economic Recovery” of the federal coal reserves.

Accordingly, under federal lease MTM 94378 and the BLM-approved R2P2, Spring Creek is required to achieve MER by mining all profitable portions of the leased coal. OSMRE is likewise bound by BLM’s February 9, 2011 R2P2 and the mining operations approved therein when reevaluating Spring Creek’s mining plan modification, particularly in evaluating whether the approved mining plan achieves MER.



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2. Diligent Development and Continued Operations

The FCLAA and DOI regulations impose additional obligations upon Spring Creek to achieve diligent development of the coal reserves and maintain continued operations thereafter. 30 U.S.C. § 207(b)(1); 43 C.F.R. §§ 3480.0-5(a)(8),(12) and 3483.1(a)(1)-(2). DOI's regulations governing diligent development require a lessee to achieve "production of recoverable coal reserves in commercial quantities prior to the end of the diligent development period" which is 10 years after the lease is issued. 43 C.F.R. § 3480.0-5(a)(12).

Once diligent development is achieved, then the lessee is required to maintain "continued operation" of the mine. *Id.* § 3483.1(a)(1)-(2). "Continued operation means the production of not less than commercial quantities of recoverable coal reserves in each of the first 2 continued operation years following the achievement of diligent development and an average amount of not less than commercial quantities of recoverable coal reserves per continued operation year thereafter[.]" *Id.* § 3480.0-5(a)(8).

Similar to the MER requirement, the lessee's plan for achieving diligent development and continued operations must be set forth in the R2P2 submitted to BLM for review and approval. *Id.* § 3480.0-5(a)(34). The plan must include, among other things, a description of the mining sequence and annual production rate of the federal coal reserves. *Id.* § 3482.1(c)(3)(ii).

On February 9, 2011, BLM found that Spring Creek's R2P2 complied with all of the requirements of the MLA, the regulations in 43 C.F.R. 3480, and the lease terms, thereby implicitly finding that the R2P2 ensured Spring Creek planned mining sequence and annual production rate would achieve diligent development and continued operations. OSMRE must defer to BLM's finding that the R2P2 meets the requirements of the MLA when reevaluating the mining plan modification (30 C.F.R. § 746.13(e)), and refrain from imposing any mining plan conditions that would alter the already approved production rate.

B. OSMRE's NEPA Analysis, Including Consideration of Proposed Alternatives and Conditions, Must be Guided By The Statutory Obligations Imposed by the MLA

OSMRE's duty to consider alternatives or conditions in this updated EA is constrained by the statutory goals of achieving maximum economic recovery, diligent development, and continued operations discussed above. *See Save Our Cumberland Mountains v. Kempthorne*, 453 F.3d 334, 346 (6th Cir. 2006) ("an agency [is not required to] pursue policy alternatives that are contrary to the pertinent statutory goals or do not fulfill a project's purpose").

In *Save Our Cumberland Mountains*, which involved a NEPA challenge to OSMRE's approval of mining operations, the Sixth Circuit held that "[OSMRE] had no duty to discuss energy conservation as an alternative to the coal company's license application-as the Surface Mining



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Act itself encourages such mining while striking a balance between the economic, energy and employment advantages of coal mining on the one hand with the environmental hazards of coal mining on the other.” *Id.* at 346 (citing *Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 551-52 (1978) (rejecting “energy conservation” as a reasonable alternative to the proposal to license a nuclear plant because “[t]o make an impact statement something more than an exercise in frivolous boilerplate[,] the concept of alternatives must be bounded by some notion of feasibility”); *see also Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 768 (2004) (an agency’s NEPA analysis may be limited to evaluating certain impacts where the agency “simply lacks the power to act on whatever information might be contained in the EIS”).

Accordingly, OSMRE may not consider an alternative or impose conditions on the already-approved mining plan that would limit Spring Creek’s statutory and contractual obligation to achieve maximum economic recovery of the coal, diligent development, and continued operations, as required by the MLA, its implementing regulations, and the terms of MTM 94378.

C. OSMRE Has No Authority to Amend Spring Creek’s MDEQ Air Quality Permit

During the state permitting stage, on September 23, 2008, Spring Creek submitted to MDEQ’s Air Resources Management Bureau an Air Quality Permit Application Package, requesting that the Mine’s maximum annual coal production be increased from 20 million tons per year to 24 million tons per year, to account for the additional mining operations on lease MTM 94378. On December 3, 2008, MDEQ’s Permitting and Compliance Division issued Spring Creek a new Air Quality Permit (#1120-09). Spring Creek has been in compliance with Air Quality Permit #1120-09, as it has been renewed and revised since that time.

OSMRE lacks the authority to second guess the air quality restrictions in Spring Creek’s permit because OSMRE has no authority to regulate air quality impacts from mining activities under the Clean Air Act (“CAA”). MDEQ is the sole regulator of air quality within the State of Montana, as authorized by a U.S. Environmental Protection Agency approved CAA State Implementation Plan for control of criteria pollutants, including the particulates and ozone precursors. 40 C.F.R. Part 52, Subpart BB (Montana State Implementation Plan Approval). Therefore, the CAA provides MDEQ—not OSMRE—with the authority to regulate air emissions within the State and, as a result, OSMRE has no authority to directly control the air quality emissions from the Spring Creek Mine by altering the MDEQ air quality permit.

Moreover, OSMRE also lacks the authority to indirectly alter the air quality emissions at the Spring Creek Mine by withholding OSMRE’s consent for the mining plan, or by imposing conditions that would serve to reduce the rate of mining or amount of coal recovered, on the ground that the plan allows for the development of too much coal. *See* 30 U.S.C. § 201(a)(3)(C) (requiring OSMRE to approve a mining plan that ensures “the maximum economic recovery of the coal within the tract”); *id.* § 207(b) (a lessee must be “subject to the conditions of diligent development and continued operation”); *see also Save Our Cumberland Mountains*, 453 F.3d at



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346 (“an agency [is not required to] pursue policy alternatives that are contrary to the pertinent statutory goals or do not fulfill a project’s purpose”); *Dep’t of Transp.*, 541 U.S. at 756 (“[W]here an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant ‘cause’ of the effect. Hence, under NEPA and the implementing CEQ regulations, the agency need not consider these effects in [an] EA.”).

VI. OSMRE Cannot Deny Spring Creek’s Mining Plan Modification

OSMRE’s review and approval of a mining plan is limited to consideration of certain materials, state and federal agency recommendations and findings, and information prepared in compliance with NEPA. Specifically, under 30 C.F.R. § 746.13, OSMRE’s decision must be based upon, and circumscribed by:

1. Spring Creek’s mining permit PAP – which was previously reviewed and approved by MDEQ as fully compliant with Montana’s approved Surface Mining Control and Reclamation Act (“SMCRA”) program, as well as Montana’s Environmental Policy Act, on June 21, 2011;
2. BLM’s findings and recommendations regarding the mine’s R2P2 – which was previously reviewed and approved by BLM on February 9, 2011 as ensuring maximum economic recovery of the coal, diligent development, and continued operation;
3. Comments and recommendations from other agencies to ensure compliance with federal laws and the State program – such documentation was provided by the U.S. Fish and Wildlife Service, the State Historic Preservation Office, and MDEQ, and all such information found compliance with applicable laws and programs; and
4. Information prepared in compliance with NEPA – the 2006 leasing EA was prepared in compliance with NEPA and thoroughly evaluates the impacts of mining the same federal coal in lease MTM 94378 now evaluated. A FONSI was issued upon completion of the 2006 leasing EA.

All of the above information that OSMRE may consider for its mining plan decision supports approval of the currently-approved mining plan.

VII. A Denial Of Spring Creek’s Mine Plan, or the Imposition of Conditions That Would Effectively Deprive Spring Creek of its Rights Under the Lease, Would Amount To a Breach of Contract and/or Regulatory Taking

As discussed above, Spring Creek’s valid and existing lease imposes obligations and confers rights upon Spring Creek to diligently develop the federal leases tracts and to obtain the



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maximum economic recovery of the leased federal coal. Spring Creek has paid substantial amounts of money for these lease rights, has made significant capital and other investments, entered into numerous commercial dealings and otherwise engaged in significant business activities all in reliance on the mine's ability to develop the federally leased coal based on existing contractual rights and permits.

If OSMRE were now to deny the mining plan or impose conditions that restrict Spring Creek's ability to develop the leased coal in a timely and cost-effective manner, OSMRE will prevent Spring Creek's performance under the lease and therefore deprive Spring Creek of its vested rights under the lease. As a result, OSMRE / the Secretary would be liable to Spring Creek for contract damages resulting from that deprivation. *See Sun Oil Co. v. United States*, 572 F.2d 786, 817 (Ct. Cl. 1978) (finding the Secretary liable for breach of federal oil and gas lease for unjustifiably denying permit to construct offshore drilling platform based on unsupported environmental concerns, which were previously considered in an Environmental Statement at the leasing stage).

Alternatively, OSMRE's denial of a mining plan would amount to an unconstitutional taking of Spring Creek's lease. *See Lost Tree Vill. Corp. v. United States*, 787 F.3d 1111, 1113 (Fed. Cir. 2015) (Army Corps of Engineers' denial of section 404 permit amounted to a taking because it deprived owner of all economic uses of the property); *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 127 (1985) ("when a permit is denied and the effect of the denial is to prevent "economically viable" use of the land in question . . . a taking has occurred").

Accordingly, OSMRE must acknowledge Spring Creek's existing lease rights, and the federally imposed obligations on Spring Creek as a lessee, while analyzing proposed alternative(s) or considering any proposed mining plan conditions.

CONCLUSION

During this reevaluation process, which is the result of special interest anti-coal litigation, Spring Creek respectfully requests OSMRE to build upon the robust environmental analysis already completed by BLM and OSMRE for the leasing EA. Moreover, OSMRE's review is constrained both by the legal rights and obligations that derive from BLM's validly issued federal lease 94378, as well as OSMRE's own obligations to ensure diligent development and maximum economic recovery of the federal coal reserves contained in that lease. No new environmental impacts arising from the already permitted and approved mining plan have been identified and therefore OSMRE's 2012 approval of the Spring Creek mining plan modification should be reaffirmed.

Thank you in advance for your consideration of these comments and for incorporation of these points into any subsequent phases of OSMRE's NEPA analysis. Please feel free to contact me if additional details or explanation of these comments would be helpful in that process.



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March 11, 2016
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Very truly yours,

Andrew C. Emrich

Andrew C. Emrich, P.C.
of Holland & Hart LLP

Enclosures (Letters from Montana Governor
Steve Bullock and Sheridan, Wyoming Mayor
John Heath)

Case 1:14-cv-00013-SPW Document 130-3 Filed 11/06/15 Page 1 of 1
OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



ANGELA McLEAN
LT. GOVERNOR

October 20, 2015

Mr. Colin Marshall
President and CEO
Cloud Peak Energy
505 Gillette Avenue
Gillette, Wyoming 82716

Mr. Marshall:

As the Governor of Montana, I am proud to advocate for the health and economic vitality of the communities across Montana's 147,000 square miles. Our state is blessed with a diversity of natural resources that have allowed our people to make a living for generations and I will continue to support this important sector of our economy.

It has come to my attention that due to a pending court case, Cloud Peak Energy could be forced to significantly curtail operations at the Spring Creek Mine. I am concerned about the negative impacts of such an action on the local governments and communities who depend on the economic activity generated by the mine. The Department of Environmental Quality, which has intervened in the case, worked with Cloud Peak Energy through the initial permitting process.

It is my understanding that the tract in dispute was approved for lease by the federal government in 2012 and currently brings in approximately \$50 million annually to the state of Montana via royalty and tax benefits. Furthermore, it is my understanding that if the Office of Surface Mining Reclamation and Enforcement's approved mine plan is vacated and mining of this tract is stopped, it could take at least two years to restart mining operations, resulting in significant job loss and tax revenues and severe impacts on the people who rely on this mine for their livelihood.

I am hopeful that a resolution to this issue can be found that does not result in the loss of employment and production at the Spring Creek Mine.

Sincerely,

STEVE BULLOCK
Governor

CITY OF SHERIDAN
55 Grinnell Plaza
P.O. Box 848
Sheridan, Wyoming 82801



From the Desk of Mayor John Heath

phone: 307.674.6483
fax: 307.674.7289
www.sheridanwy.net

August 26, 2015

Mr. Colin Marshall
President and CEO
Cloud Peak Energy
505 Gillette Avenue
Gillette, Wyoming 82716

Mr. Marshall:

As Mayor of the City of Sheridan, I am proud to represent the 17,000+ of Sheridan who make this a tremendous place to live, work, and enjoy. The lawsuit involving the Spring Creek Mine that was filed against the Bureau of Land Management by the group WildEarth, could be potentially negative for this community.

As you know, the Spring Creek Mine, owned and operated by Cloud Peak Energy, is located fully in Montana, but a majority of the mine's workforce along with many of its contractors and third-party suppliers reside in Sheridan, Wyoming. According to a recent press report, Cloud Peak Energy employs more than 280-people who live in the Sheridan area, making the company an important employer. Nearly, if not all, of these people work at the Spring Creek Mine.

Thus, we have a distinct interest in the proceedings that seek to vacate the mine's lease approval and are deeply concerned about the negative impact to our community from a decrease of production at Spring Creek Mine. Specifically, we are concerned about any potential reduction in the operations at Spring Creek Mine that may result from this litigation. A significant reduction of the mine's production would in all certainty have many far-reaching and harmful impacts on Sheridan and our community neighbors, affecting employment, tax revenue, government services, and more.

The mine and Cloud Peak Energy have proven to be responsible corporate citizens, and we are proud to work with companies like Cloud Peak Energy, which is an active community partner. We hope Spring Creek Mine will continue to provide much needed and valued economic and community contributions to Sheridan County.

Many thanks,

John Heath, Mayor

EXHIBIT C



March 11, 2016

ATTN: Spring Creek Mine LBA 1 EA
C/O: Lauren Mitchell
OSMRE Western Region
1999 Broadway, Suite 3320
Denver, CO 80202-3050

ATTN: OSMRE, Spring Creek Mine LBA 1 EA.

RE: Public comment – Spring Creek Mine LBA Environmental Assessment

Ms. Mitchell:

Thunder Basin Coal Company, LLC (TBCC) appreciates the opportunity to comment on the mining plan modification for Spring Creek Mine’s federal coal lease, MTM 94378, as the OSM prepares the environmental assessment (EA) re-evaluation. TBCC’s principal interest in the Spring Creek Mine’s EA re-evaluation is: our ongoing concern that NEPA analyses for coal mine projects be focused on obtaining any new information relevant to the decision rather than duplicating prior work; delaying necessary approvals for continuing operations of facilities that have demonstrated full compliance and even been awarded excellence in surface mining awards from OSM; and the precedence that is being set for agencies to potentially withdraw or delay already approved permits to mine at the request of groups that have agendas to hinder, delay or even prevent coal mining.

TBCC urges OSM to conduct a thorough EA re-evaluation in a timely manner to facilitate continued operations at Spring Creek Coal’s (SCC) Spring Creek Mine. OSM must remember that the NEPA process allows for the consideration of previous NEPA analysis and does not require that OSM prepare and collect all new data. OSM should in fact carefully evaluate all relevant and readily available data. This should facilitate a timely EA as the data and information has already been collected.

Significant investments from the company and local communities are at stake and rely on OSM to adequately conduct this EA in a timely manner to avoid further litigation and the possible invalidation of SCC’s mining permit. SCC commenced mining in federal coal lease MTM 94378 in 2012 in accordance with its state mine permit and federal mining plan modification approvals. Mining and contemporaneous reclamation operations have been ongoing since that time in the approved permit area. To strip SCC of its mining permit would have substantial consequences not only on the company and its employees, but the State of Montana as well. From the court case: “The Secretary’s decision to approve the mining plan amendment at issue here was the result of a long application process involving multiple state and federal agencies. A vacatur at this point, seven years after the initial application for the mining plan amendment was filed and three years after its approval, would have detrimental consequences for SCC and its employees, for the State of Montana, and for other agencies involved in this process. See, e.g., Tr. at 106-109. Not only production at the mine, but also reclamation and remediation efforts, would come to a halt.” See *January 21, 2016 order of the U.S. District Court for the District of Montana, in case WildEarth Guardians v. U.S. Office of Surface Mining Reclamation and Enforcement et al., Case 1:14-cv-00013-SPW (D. Mont.)*.

March 11, 2016
OSM
Page 2

The EA re-evaluation should only include the evaluation of direct air quality emissions and their potential environmental impacts if they were not analyzed previously. Analysis of indirect emissions should not be required. OSM states “The EA will update, clarify, and provide new and additional environmental information for direct, indirect and cumulative impacts to the environment from the Project.” Indirect air emissions from the burning of coal in this lease were evaluated when the electric generating facilities obtained their Air Quality permits from the respective States and EPA. During the permitting process, the Facility must demonstrate that they are in full compliance with the national ambient air quality standards (NAAQS) and must maintain a valid Air Quality permit. A change in environmental laws, such as NAAQS, does not require a new NEPA review because the standards do not constitute new information, nor do they provide a seriously different picture of the environmental landscape.

TBCC appreciates the opportunity to comment on this project. TBCC recognizes the cross-pressures OSMRE is presently under. It is important that the NEPA requirements are adequately addressed and the public is provided with adequate opportunity to comment as required. However, the NEPA process should not be driven by political or environmental pressures. OSM must remember that they are only responsible to analyze topics that are new and that would be meaningful to the project. There is no requirement to analyze topics that have been previously addressed. OSM has the option to make a “Finding of No Significant Impact” (FONSI) if it determines that there have been no substantive changes to the project, the project area or data used in the original NEPA analysis is still valid. OSM should carefully evaluate this option and should justify its decision in a manner that prevents any potential litigation opportunities. There is no reason or evidence to expect that substantive changes have occurred in the proposed project, the subject environment or the regulatory regime associated with the Spring Creek Mine.

Sincerely,



Keith Williams
Group President Western Operations

3/15/2016

DEPARTMENT OF THE INTERIOR Mail - ATTN: Spring Creek Mine LBA 1 EA



NEPA-MT, OSM <osm-nepa-mt@osmre.gov>

ATTN: Spring Creek Mine LBA 1 EA

1 message

Representative Barlow <Eric.Barlow@wyoleg.gov>
To: "osm-nepa-mt@osmre.gov" <osm-nepa-mt@osmre.gov>

Sat, Mar 12, 2016 at 4:21 AM

ATTN: Spring Creek Mine LBA 1 EA

C/O: Lauren Mitchell,

OSMRE Western Region

1999 Broadway, Suite 3320

Denver, Colorado 80202-3050

Dear Ms. Mitchell,

In considering the scope of the Environmental Review ordered by the Court for Spring Creek Mine, I respectfully request the following:

1. 1. The review be initiated as expeditiously as possible and completed within the 240 days the Court has provided,
2. 2. The scope of the review be limited to remedying the deficiencies the Court has identified in a manner contemporaneous to the original decision, and
3. 3. If OSMRE believes the Court is in error with this or future orders, that OSM request appellate review of those orders.

I further request the mine operator be given a wide berth within this review process to assist with OSMRE's obligation to the Court in remedying deficiencies which were not of the Operator's making.

<https://mail.google.com/mail/b/194/u/0/?ui=2&ik=43b91ac1ea&view=pt&search=inbox&th=1536a8f7c19f1b18&siml=1536a8f7c19f1b18>

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Appendix E

3/15/2016

DEPARTMENT OF THE INTERIOR Mail - ATTN: Spring Creek Mine LBA 1 EA

Thank you for your consideration.

Sincerely,

Eric Barlow

Wyoming House of Representatives

House District 3

<https://mail.google.com/mail/b/194/u/0/?ui=2&ik=43b91ac1ea&view=pt&search=inbox&th=1536a8f7c19f1b18&siml=1536a8f7c19f1b18>

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March 12, 2016

By Electronic Mail

ATTN: Spring Creek Mine LBA 1 EA
 C/O Lauren Mitchell
 Western Region Office
 Office of Surface Mine Reclamation and Enforcement
 1999 Broadway, Suite 3320
 Denver, CO 80202
OSM-NEPA-MT@OSM.gov

Re: Spring Creek LBA 1 Tract Mining Plan EA Scoping Comments

Dear Ms. Mitchell:

WildEarth Guardians (“Guardians”) submits the following comments on the Office of Surface Mining Reclamation and Enforcement’s (“OSM’s”) proposal to issue a mining plan modification to allow Cloud Peak Energy to expand its Spring Creek coal mine in the Powder River Basin of southeastern Montana. The mining plan modification would add 1,117.3 acres of publicly owned coal to the Spring Creek mine, allowing Cloud Peak Energy to mine nearly 100 million tons of new coal.

The Spring Creek mine is a massive strip mine located southeast of Billings, MT and northeast of Sheridan, WY. The mine is permitted to produce up to 30 million tons of coal annually, although the average production rate is 18 million tons per year. Still, the mine currently ranks as the seventh largest coal mine in the U.S. based on annual production. Coal from Spring Creek fuels power plants as far west as Arizona and Washington and as far east as Michigan and Missouri. According to the U.S. Energy Information Administration (“EIA”), nine power plants burned coal from the Spring Creek mine in 2015. *See* Table below.

Power Plants Fueled by Coal from Spring Creek Mine in 2015 (data from EIA Form 923 report, available online at <http://www.eia.gov/electricity/data/eia923/>).

Power Plant	State
BRSC Shared Storage	MI
Clay Boswell	MN
Coronado	AZ
M L Hibbard	MN

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Nelson Dewey Generating Station	WI
Presque Isle	MI
Stanton	ND
Taconite Harbor Energy Center	MN
Transalta Centralia Generation	WA

Additionally, Cloud Peak exports coal from Spring Creek through ports in the Pacific Northwest. The company is also attempting to secure new port capacity in Bellingham, Washington.¹

Because of its size, production levels, and the extent to which the mine fuels coal-fired power plants in the U.S. and abroad, the Spring Creek mine plays a major role in contributing to greenhouse gas emissions and climate change. The U.S. Bureau of Land Management (“BLM”) estimates that coal in the Powder River Basin produces 1.659 metric tons of carbon dioxide for every ton of coal burned.² This means that in 2015 alone, the Spring Creek mine’s 16.9 million tons of production produced more than 28 million metric tons of carbon dioxide emissions. According to the U.S. Environmental Protection Agency’s (“EPA’s”) greenhouse gas equivalency calculator, this equals the amount of greenhouse gas emissions released by more than 5.8 million cars annually.³

We request that OSM deny the proposed mining plan. Expanded mining poses significant direct, indirect, and cumulative impact to air quality, water quality, and special status species in the region. More coal mining also means more coal burning, which threatens to contribute to air pollution in the U.S. and fuel global climate change. If OSM decides to continue to process the proposed mining plan modification, we request the Agency address the following issues:

1. An Environmental Impact Statement is Required

According to OSM’s National Environmental Policy Act (“NEPA”) guidance, found within the Interior Department Departmental Manual, 516 DM 13, approval of a mining plan requires an environmental impact statement (“EIS”) where “[t]he environmental impacts of the proposed mining operations are not adequately analyzed in an earlier environmental document covering the specific leases or mining activity,” “[t]he area to be mined is 1280 acres or more, or the annual full production level is 5 million tons or more,” and “[m]ining and reclamation operations will occur for 15 years or more.” 516 DM 13.4(A)(4). Upon review of available information, it appears that all three criteria are met with regards to the proposed mining plan modification.

¹ Storrow, B., “Cloud peak energy, betting coal will rebound, buys port stake,” *Casper Star Tribune* (Aug. 20, 2015), available online at http://trib.com/business/energy/cloud-peak-energy-betting-coal-will-rebound-buys-port-stake/article_d958b906-4a4b-5411-bbd7-c7c8c5212608.html.

² See BLM, “Final Environmental Impact Statement, Wright Area Coal Lease Applications” (July 2010) at 4-140, available online at http://www.blm.gov/style/medialib/blm/wy/information/NEPA/hpdo/Wright-Coal/feis.Par.4494.File.dat/FR_NOA_FEIS.pdf.

³ See EPA, “Greenhouse Gas Equivalencies Calculator,” website available at <http://www2.epa.gov/energy/greenhouse-gas-equivalencies-calculator>.

Here, the proposed mining will impact more than 1,280 acres. According to prior approvals for the proposed mining plan, approval would add 2,042 acres to the Spring Creek mine permit area and surface disturbance within the permit area would increase by 1,224 acres. Furthermore, in terms of the actual acreage impacted by mining and mining related activities, it appears that the acreage will be 1,280 acres or greater. Additionally, according to OSM's notice, the Spring Creek mine is permitted to mine more than five million tons annually. Finally, OSM's approval would extend the life of the Spring Creek mine by 10 or more years. Together with reclamation activities, it appears that mining and reclamation activities would certainly occur for more than 15 years.

With regards to the third criteria—whether the environmental impacts of the proposed mining have been adequately addressed in an earlier document—we are concerned that OSM's proposal also appears to trigger the need for an EIS. We are concerned that any earlier NEPA analysis relied upon by OSM, whether prepared by the BLM or by OSM, fails to adequately analyze and assess the impacts of coal exports and coal combustion at power plants that are fueled by the Spring Creek mine, which are connected actions and reasonably foreseeable impacts associated with approving mining. We are further concerned that earlier analyses fails to adequately analyze and assess air quality impacts, impacts to threatened and endangered species, water quality impacts, as well as the impacts of any and all noncompliance with the Surface Mine Reclamation and Control Act ("SMCRA"), the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act. As OSM analyzes and assesses the impacts of the present proposal, we request OSM thoroughly and objectively assess whether an EIS is necessary on the basis of inadequate earlier NEPA analysis.

2. OSM Must Ensure that Montana's SMCRA Permit is Adequate Under SMCRA

In analyzing and assess the impacts of the proposed mining plan modification, as well as the appropriateness of issuing the plan, OSM must analyze and assess whether Montana's SMCRA permit is sufficient to meet the requirements of SMCRA. If the permit is not adequate, OSM must either craft its mining plan approval to address the inadequacies and/or disapprove of the proposed mining plan. The duty for OSM and the Secretary to ensure compliance with SMCRA is supported by both the Mineral Leasing act and SMCRA.

Under the U.S. Mineral Leasing Act, no company may mine federal coal leaseholds unless and until the Secretary of the Interior approves an "operation and reclamation plan," commonly referred to as a mining plan. 30 U.S.C. § 207(c); *see also* 30 C.F.R. § 740.5(a) (referring to Mineral Leasing Act "operation and reclamation plan" in defining "mining plan"). SMCRA incorporates and affirms mining plan requirements, and reserves sole authority for the Secretary to review and take action on mining plans. *See* 30 U.S.C. §§ 1273(c).

Under SMCRA, mining plans therefore serve a unique and important role. While regulation of coal mining, including permitting authority, is largely delegated to the states, the duty to review and take action on mining plans is one of few authorities not explicitly delegated. *See* 30 U.S.C. § 1273(c). Although states may issue permits to allow the mining of federal coal leases, the Interior Secretary retains the ultimate authority to decide whether to allow mining. In

fact, the Mineral Leasing Act and SMCRA bestow upon the Secretary full discretion to reject mining plans or to condition their approval, notwithstanding any state approvals. *See* 30 U.S.C. § 207(c); *see also* 30 C.F.R. § 746.14. This vital check ensures that coal owned by all Americans is not inappropriately disposed of or managed.

In determining whether to approve, disapprove, or conditionally approve a mining plan, the Secretary relies upon a recommendation from OSM that must be based upon, at a minimum:

- Compliance with the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.*;
- Compliance with other federal laws and regulations besides SMCRA;
- The findings and recommendations of other federal agencies and the public;
- The findings and recommendations of the state permitting agency;
- The SMCRA permit application package submitted by the company; and
- Any findings and recommendations made by OSM with regards to the mining of coal on federal lands.

30 C.F.R. § 746.13. Upon issuance of a mining plan, its terms and conditions must be complied with by the coal mine operator. *See* 30 C.F.R. § 746.11(b). A mining plan is therefore meant to be a deliberative and directed decision document, not simply a rubberstamp by the Secretary.

These review requirements demonstrate that Interior and OSM must take into account SMCRA compliance when acting upon mining plan proposals. Indeed, the duty to review a permit application package means OSM must squarely assess whether mining operations will fully comply with SMCRA. A permit application package includes, among other things, all information SMCRA requires to be submitted as part of an application. *See* 30 C.F.R. § 740.5 (defining “permit application package”). This encompasses information demonstrating how operation and reclamation activities will comply with applicable performance standards set forth at 30 C.F.R. § 810, *et seq.* *See e.g.* 30 C.F.R. § 780.18(a) (requiring that applications contain plans showing how operators will comply with performance standards). In reviewing a company’s permit application package under SMCRA, OSM necessarily has to review whether a company has shown that its operation and reclamation activities will comply with applicable performance standards, and thereby comply with the Act.

However, the duty for OSM to consider its *own findings and recommendations* regarding coal mining on federal lands certainly indicates the agency must take into account SMCRA compliance, even where a state is delegated regulatory authority. These “findings and recommendations” refer to determinations made by OSM pursuant to 30 C.F.R. §§ 740 and 745 with regards to its oversight of state regulation of coal mining on federal lands. While these provisions allow for the regulation of coal mining on federal lands to be delegated to states, they provide OSM and the states must into a “cooperative agreement” in accordance with 30 C.F.R. § 745. Under a cooperative agreement, both Interior and OSM retain authority to “[o]vers[ee]” and “evaluate” the state’s implementation of the cooperative agreement and regulation of mining on federal lands. 30 C.F.R. §§ 740.4(b)(5) and 30 C.F.R. § 745.13(m). Given this, the agencies clearly have the authority to make findings and recommendations as to whether mining—even under a cooperative agreement—is being conducted in accordance SMCRA.

In other words, SMCRA not delegate authority for states to review and take action on mining plans and does not allow Interior and OSM to relinquish their duty to make independent findings regarding SMCRA compliance when taking action on mining plans. While SMCRA may delegate authority to states to regulate coal mining on federal lands, such delegation does not strip the authority of Interior and OSM to find that state regulation is inadequate. In undertaking her independent duty to review and take action on mining plans, and to take into account permit applications, OSM findings and recommendations, and other factors, the Secretary therefore has a duty to ensure mining plans are approved only where mining would be conducted in compliance with SMCRA.

In fact, every state and federal cooperative agreement not only confirms the Secretary's sole authority to take action on mining plans, but also confirms that Interior and OSM retain authority to review state regulation of coal mining on federal lands, and even to issue mining plan decisions that may conflict with state approvals. For example, in Montana, the state's cooperative expressly states that OSM is responsible for "[r]eviewing the appropriate portions of the PAP [permit application package] for compliance with the non-delegable responsibilities of the Secretary pursuant to SMCRA[.]" 30 C.F.R. § 926.30, Article VI(B)(2)(a)(2). Thus, under the state's agreement, OSM is charged with reviewing permit application packages to assess compliance with non-delegable authorities under SMCRA, which includes the review and approval of mining plans. The agreement also reserves the right of the state "to amend or rescind any requirements of [a] permit to conform with any terms or conditions imposed by the Secretary in the approval of a mining plan." 30 C.F.R. § 926.30, Article VI(C)(3).

Overall, these and other cooperative agreements expressly acknowledge the independent authority of Interior to evaluate state-regulated mining activities on federal lands, as well as the duty of the Secretary—not states—to review and approve mining plans accordingly. In affirmatively taking action on mining plans, the Secretary cannot simply defer to a states' inadequate regulation of coal mining.

Put simply, this all means the Secretary cannot approve mining plans where there is noncompliance with SMCRA. For example, if OSM reviews a mining plan where a state issued permit fails to ensure surface mining will adequately protect hydrologic balance in accordance with 30 C.F.R. § 816.41, the Secretary would either need to reject the mining plan or approve the mining plan with modifications to assure compliance with 30 C.F.R. § 816.41. Similarly, if a company seeking a mining plan approval is not ensuring contemporaneous reclamation at its mine in accordance with 30 C.F.R. § 816.100, the Secretary would either need to reject the mining plan or condition approval upon the company remedying noncompliance. Or, if a delegated state permits mining on federal lands, but fails to require a sufficient performance bond in accordance with 30 C.F.R. § 800, *et seq.*, the Secretary would be barred from approving a mining plan authorizing such mining or otherwise condition approval upon submittal of an adequate performance bond.

To this end, OSM must independently and affirmatively, through the proposed NEPA analysis, review whether any underlying state-issued permits and/or regulations under SMCRA are sufficient under the Act. Because OSM must assure compliance with SMCRA, we are

attaching and incorporating by reference previous comments to MDEQ on Major Revision TR1. See Exhibit 1.

3. OSM Must Articulate a Valid Statement of Purpose and Need.

Environmental analyses prepared under the NEPA must state the purpose and need of the underlying government action. 40 C.F.R. § 1502.13 (“The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.”). “An agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones would accomplish the goals of the agency’s action, and the EIS would become a foreordained formality.” *Friends of Southeast’s Future v. Morrison*, 153 F.3d 1059, 1066 (9th Cir. 1998). Similarly, a purpose and need statement may not “adopt[] private interests to draft a narrow purpose and need statement that excludes alternatives that fail to meet specific private objectives.” *Nat’l Parks & Conservation Ass’n v. BLM*, 606 F.3d 1058, 1072 (9th Cir. 2009). Instead, the agency must draft the purpose and need statement in light of “the views of Congress” from “the agency’s statutory authorization to act, as well as other congressional directives.” *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991).

BLM’s 2006 EA for the underlying leases contained no statement of purpose and need. Instead, the EA merely repeated that the Spring Creek Coal Company was seeking to expand the life of its mine. Merely repeating the private interest in continued mining does not satisfy the requirements of NEPA. Rather, the OSM must articulate a purpose and need statement in light of the public purposes behind the governing statutes. For example, one public purpose of SMCRA is to contribute to “the Nation’s energy requirements.” 30 U.S.C. § 1201(b). Of course, if coal is going to be exported from the Spring Creek Mine, then approving the mining plan modification would not further that purpose. Indeed, studies show that coal exports lead to higher coal prices in the United States, which hurts American consumers. Another valid public purpose is the generation of public revenues. Mineral Leasing Act (MLA), 30 U.S.C. §§ 181 *et seq.*; Federal Coal Leasing Amendments Act (FCLAA), Pub. L. No. 94-377 (1976). If however the purpose of leasing the coal is to generate public revenues, the NEPA analysis must also include a monetary assessment of the myriad public costs caused by mining and combustion of coal. Further, OSM’s NEPA analysis must address the significant controversy caused by historic undervaluation of coal in coal leases, coal company evasions of public royalties via non-arms-length transactions, and the failure to adequately value coal exports.⁴ Of course, the existence of this controversy is a significance factor under NEPA and reason for preparation of an environmental impact statement. 40 C.F.R. § 1508.27(b)(4). Also, if the purpose is to provide jobs or local economic development, the analysis must also consider the local impacts of the inevitable mine closure and the effect of the mining operation on long-term sustainable economic drivers. BLM’s 2009 EA alluded to this but did not discuss the matter in any detail.

⁴ *E.g.*, Clark Williams-Derry, Sightline Institute, *Unfair Market Value: By Ignoring Exports, BLM Underprices Federal Coal* (2014), attached as Exhibit 2; Mark Squillace, *The Tragic Story of the Federal Coal Leasing Program*, 27 *Natural Res. & Env’t* No.3 (2013); Gov’t Accountability Office, *Coal Leasing: BLM Could Enhance Appraisal Process, More Explicitly Consider Coal Exports, and Provide More Public Information*, GAO-14-140 (Dec. 2013); Office of the Inspector General, *Coal Management Program*, U.S. Department of the Interior (June 2013); Tom Sanzillo, *The Great Giveaway: An Analysis of the United States’ Long-term Trend of Selling Federally-Owned Coal for Less than Fair Market Value* (2012).

4. OSM Must Evaluate Connected, Similar, and Cumulative Actions

In establishing the scope of an environmental analysis, NEPA requires agencies to consider connected, cumulative, and similar actions. 40 C.F.R. § 1508.25(a). Actions are connected if:

[T]hey are closely related and therefore should be discussed in the same impact statement. Actions are connected if they (i) Automatically trigger other actions which may require environmental impact statements; (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously. [or] (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

Id. § 1508.25(a)(1). Actions are cumulative if “when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.” *Id.* § 1508.25(a)(2). Actions are similar if:

[W]hen viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze those actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternative to such actions is to treat them in a single impact statement.

Id. § 1508.25(a)(3).

Regarding connected actions, the Ninth Circuit has ruled that “[p]roposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.” *Klamath-Siskiyou Wildlands Ctr. v. BLM*, 387 F.3d 989, 998 (9th Cir. 2004) (citing 40 C.F.R. § 1502.4(a)). “The purpose of this requirement is to prevent an agency from dividing a project into multiple actions, each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.” *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 969 (9th Cir. 2006). “In determining whether there is a connection between projects, [the Ninth Circuit] employs an ‘independent utility’ test.” *N. Plains Res. Council v. Surface Transp. Bd.*, 668 F.3d 1067, 1087 (9th Cir. 2011). “The test asks whether ‘each of the two projects would have taken place with or without the other.’” *Id.* (quoting *Wetlands Action Network v. U.S. Army Corps of Eng’rs*, 222 F.3d 1105, 1118 (9th Cir. 2000)). Neither private parties nor federal agencies may evade the requirements of NEPA by breaking a larger operation into smaller, component parts, either spatially or temporally. *Wild Fish Conservancy v. Salazar*, 628 F.3d 513, 522-23 (9th Cir. 2010); *Save Our Sonoran v. Flowers*, 408 F.3d 1113, 1122 (2005).

Here, it is clear that mining at the Spring Creek Mine will continue for more than the 10-year, 1,117-acre federal coal tract that Spring Creek Coal Company has currently sought to mine. The 2006 EA recognized that in addition to the proposed mining, 222.6 million tons of recoverable coal would be mined, 4,812 acres would be disturbed, and the life of the mine would

extend for 15 years. BLM EA at 19. All future mining in the reasonably foreseeable development area constitutes interdependent parts of the larger operation, which is expected mining at Spring Creek to continue for 20 more years. Consequently all this mining must be considered in this NEPA analysis, which clearly would require preparation of an EIS.

5. OSM Must Fully Analyze and Assess the Direct and Indirect Surface Impacts of Mining the Spring Creek Lease Modification

OSM must fully analyze and assess the surface impacts of mining. We impress upon OSM to fully analyze and assess the impacts of mining to the following:

a. Impacts to Rare and Imperiled Fish, Wildlife, and Plants

OSM must analyze and assess impacts to rare imperiled fish, wildlife, and plants within and near the proposed lease area, including species listed under the Endangered Species Act as threatened, endangered, proposed, or candidate. We are particularly concerned over the effects of reasonably foreseeable impacts associated with coal combustion.

We are also concerned over the impacts of mining to threatened and endangered species that reside in the Missouri River drainage downstream of the Spring Creek mine. OSM must engage in Section 7 consultation under the Endangered Species Act to ensure its actions do not jeopardize the survival or recovery of threatened or endangered species.

b. Impacts to Surface Water Quality

With regards to water quality, OSM must fully analyze and assess water quality impacts to ensure compliance with state water quality standards. OSM must identify all existing water quality problems in the area that will be directly, indirectly, and cumulatively affected by the proposed action and disclose any contribution the proposed action will make to those water quality problems. We are especially concerned that the Tongue River downstream of the Spring Creek mine is not supporting is designated beneficial uses due to excessive pollution. OSM must address any contribution to this problem associated with mining and reclamation at the Spring Creek mine and reasonably foreseeable impacts related to the mining and reclamation.

c. Impacts to Air Quality

OSM must fully analyze and assess direct, indirect, and cumulative impacts to air quality, including impacts to air quality in the context of all national ambient air quality standards (“NAAQS”), prevention of significant deterioration (“PSD”) increments for Class I and II areas, and visibility impacts to Class I areas. We are particularly concerned over the impacts of the mining to NAAQS for ozone, particulate matter, and nitrogen dioxide (which is produced during blasting). OSM must specifically address all emissions sources, particularly those that are not explicitly permitted by the State of Montana (including blasting emissions). We request that OSM further address the impacts of fugitive emissions, including fugitive volatile organic compound and nitrogen dioxide emissions associated with blasting and stripping of overburden. OSM must quantify emissions from the mine to ensure an accurate and adequate analysis and

assessment of air quality impacts.

The need to fully analyze and assess air quality impacts is especially critical given that earlier NEPA documents were prepared prior to the adoption of a number of recent NAAQS, including the 2015 8-hour ozone NAAQS, which was signed on October 1, 2015 (80 Fed. Reg. 65292 (Oct. 26, 2015)), the 2010 1-hour nitrogen dioxide NAAQS (40 C.F.R. § 50.11(b)), the 2010, the 2010 1-hour sulfur dioxide NAAQS (40 C.F.R. § 50.17), and the 2012 annual PM_{2.5} NAAQS (78 Fed. Reg. 3086 (Jan. 15, 2013)).

OSM must assess the foreseeable impacts of transportation of coal from the Spring Creek Mine and the foreseeable combustion of this coal. 40 C.F.R. § 1508.08(b). As BLM noted in its 2011 EA for the nearby Bull Mountains Mine, “Transportation of coal by railroad is a connected action.” BLM 2011 EA Bull Mountains Mine. All of the coal mined at Spring Creek will be transported via rail either to markets in the Midwest, Southwest, or Pacific Northwest. There are only a limited number of train routes that this coal will take and the impacts from this coal train traffic will be significant and is controversial.⁵

Further, there is no question that all the coal to be mined will be destined for combustion. In addition to GHG emissions, burning coal causes myriad harmful effects.⁶ Coal combustion causes tremendous emissions of nitrogen oxides (NO_x), sulfur oxides (SO₂), particulate matter (PM), and mercury, among other deadly pollutants.⁷ This pollution causes widespread health impacts.⁸ One recent study by the Clean Air Task Force found the following health impacts for coal combustion in the United States:

Health Impact	Incidence (annual)	Valuation (in \$millions)
Mortality	13,200	\$96,300
Hospital Admissions	9,700	\$230
ER Visits for Asthma	12,300	\$5
Heart Attacks	20,400	\$2,230
Chronic Bronchitis	8,000	\$3,560

⁵ E.g., Western Organization of Resource Councils, *Heavy Traffic Ahead: Rail Impacts of Powder River Basin Coal to Asia by Way of Pacific Northwest Terminals* (2012) and Western Organization of Resource Councils, *Heavy Traffic Still Ahead* (2014), available at <http://heavytrafficehead.org/>, both reports are attached as Exhibits 3 and 4, respectively. See also statement of Whatcom Doctors at <http://www.coaltrainfacts.org/whatcom-docs-position-statement-and-appendices> detailing the harmful impacts of increased coal train traffic.

⁶ See Epstein, et al., *Full Cost Accounting for the Life Cycle of Coal*, available at http://www.chgeharvard.org/sites/default/files/epstein_full%20cost%20of%20coal.pdf.

⁷ *Id.* at 86-87.

⁸ Clean Air Task Force, *The Toll from Coal* 10 (Sept. 2010) (13,000 annual mortalities in US); Conservation Action Trust, *Urbanemissions.info*, Greenpeace, *Coal Kills: An Assessment of Death and Disease Caused by India’s Dirtiest Energy Source at 1* (2012) (80,000 to 115,000 premature deaths annually); Health and Environment Alliance, *The Unpaid Health Bill: How Coal Power Plants Make Us Sick*, at 5 (March 2013) (estimating 18,500 premature deaths due to coal pollution annually in European Union); Edward Wong, *Air Pollution Linked to 1.2 Million Premature Deaths in China*, N.Y. Times (Apr. 1, 2013) (reporting 1.2 million premature deaths annually due to air pollution in China).

Asthma Attacks	217,600	\$11
Lost Work Days	1,627,800	\$150 ⁹

The annual costs to the economy from these health impacts is staggering: over \$100 billion.¹⁰ When all of the externalities of coal are added up, the harm caused by coal to our national economy has been estimated at \$175-\$860 billion annually.¹¹ Indeed, it appears that the cost of the harms from burning coal is greater than the benefit derived from using coal for energy.¹² These effects of coal combustion must be acknowledged, addressed, quantified, and monetized in OSM's NEPA analysis. OSM must further determine whether the harm caused by coal combustion will be greater than the public benefit derived from coal taxes. *See* 42 U.S.C. § 4332(2)(B); 40 C.F.R. § 1502.23.

There is also significant concern about the air pollution impacts in the United States of U.S. coal that is shipped to Asia for energy generation. Air pollution from Asia returns to the United States in a matter of days.¹³ This pollution includes PM, NOx, SO2, soot, and mercury.¹⁴ For example mercury pollution from Asian sources has been documented in rivers and mountains in Oregon.¹⁵ OSM must address these impacts given the export of coal from Spring Creek.

The EIS should also quantify and monetize the impacts from the increased and cumulative impacts of mercury, a potent neuro-toxin that is released principally by coal fired power plants, that is causing wide-spread health effects across our nation and planet, and that is currently contaminating some of the most pristine waters in Montana—Montana has mercury related fish consumption advisories in some 310 waterbodies in the state.¹⁶ USGS found dangerous levels of mercury in Lake McDonald in Glacier National Park:

Lake whitefish and bull trout were sampled from Lake McDonald in Glacier NP. Both species had high Hg concentrations relative to the mean across all fish in the study, and after accounting for the effects of size and species, fish from Glacier NP were some of the highest in the large (400 mm SL) size class. Mercury concentrations in Glacier NP fish approached or exceeded the EPA criterion for protection of human health and the level at which reproductive impairment to piscivorous birds could occur. Additionally, Hg concentrations in many individuals exceeded the level at which tissue-based toxicity

⁹ Clean Air Task Force, *The Toll from Coal*, *supra* at 10.

¹⁰ *Id.*

¹¹ Epstein, et al., *Full Cost Accounting for the Life Cycle of Coal*, *supra*.

¹² Nicolas Z. Muller et al., *Environmental Accounting for Pollution in the United States Economy*; Ben & Rizk, *Economic Value of U.S. Fossil Fuel Electricity Health Impacts*.

¹³ Eric de Place, *Do Asian Coal Plants Pollute America?* *The Tyee* (Apr. 9, 2012).

¹⁴ United Nations Environmental Program, *Mercury: Time to Act*, at 29 (2013) (showing path for long range mercury deposition from Asia to western United States).

¹⁵ *Id.*

¹⁶ *See, e.g.*, Bellenger, *Economic Benefits of Methylmercury Exposure Control in Europe: Monetary Value of Neurotoxicity Prevention* (2012) (monetizing impacts of mercury exposure); UNEP, *A Time to Act*, *supra*; Environmental Defense Fund, *Mercury Alert: Cleaning Up Coal Plants for Healthier Lives* (Mar. 2011); Mahaffery, *Adult Women's Blood Mercury Concentrations Vary Regionally in the United States: Association with Patterns of Fish Consumption (NHANES 1999-2004)*, 117 *Envtl. Health Perspectives* 47 (2009); Sarah A. Strode et al., *Trans-Pacific Transport of Mercury*, *J. of Geophysical Research*, Vol. 113 (Aug. 2008).

to fish is a concern. This is particularly important considering bull trout is federally listed as threatened under the endangered species act.¹⁷

The source of the mercury pollution in Glacier National Park appears to be atmospheric deposition of mercury from coal-fired power plants in Asia, like those that the Spring Creek Mine supplies.¹⁸ Thus, the cumulative effects of coal exports to Asia appear to include mercury pollution in Glacier National Park and other waters in Montana and the northwest United States. OSM must consider this entirely foreseeable downstream effect of coal exports from the Spring Creek Mine to Asia.

6. OSM Must Analyze and Assess Cumulative Impacts

OSM must analyze and assess the impacts of similar and/or cumulative mining and coal leasing approvals that are under consideration by the U.S. Department of the Interior in the same area. Under NEPA, an agency must analyze the impacts of “similar” and “cumulative” actions in the same NEPA document in order to adequately disclose impacts in an Environmental Impact Statement (“EIS”) or provide sufficient justification for a FONSI in an EA. *See* 40 C.F.R. §§ 1508.25(a)(2) and (3).

Here, the U.S. Department of the Interior is currently weighing numerous coal decisions, similar to the proposed action at hand, which pose similar and cumulative impacts in terms of greenhouse gas emissions and climate impacts, particularly in terms of carbon costs. These include, but are not limited to:

- The BLM’s proposal to offer for sale and issuance the Greens Hollow coal lease (UTU-84102), a 60 million ton coal lease containing 6,175 acres in central Utah. The lease has been proposed by the BLM and a Supplemental EIS prepared, but it has not yet approved for sale and issuance.¹⁹
- The BLM’s proposal to offer for sale and issuance the Alton coal lease (UTU-081895), a 45 million ton coal lease containing 3,581 acres in southern Utah. The lease has been proposed by the BLM and a Draft EIS has been prepared, but it has not yet approved for sale and issuance.²⁰
- The BLM’s decision to offer for sale and issuance the Hay Creek II coal lease (WYW-172614), a 167 million ton coal lease containing 1,253 acres in the Powder River Basin of Wyoming. The lease was approved for sale and issuance by the BLM in 2013, although it has not yet been sold or issued.²¹

¹⁷ Collin A. Eagles-Smith, et al., USGS, Mercury in Fishes from 21 National Parks in the Western United States—Inter- and Intra-Park Variation in Concentrations and Ecological Risk, Open-File Report 2014-1051 (2014).

¹⁸ *See id.* at 2 (noting “widespread transport of Hg through atmospheric pathways”); UNEP, Time to Act, *supra* at 29 (showing long-range atmospheric transportation of mercury from Asia to northwestern United States).

¹⁹ *See* BLM, “Greens Hollow EIS,” website available at <http://www.blm.gov/ut/st/en/fo/price/energy/coal.html>.

²⁰ *See* BLM, “Alton Coal Lease Tract Lease by Application Draft Environmental Impact Statement,” website available at http://www.blm.gov/ut/st/en/prog/energy/coal/alton_coal_project/alton_coal_eis.html.

²¹ *See* BLM, “Hay Creek II Coal Lease Application,” website available at <http://www.blm.gov/wy/st/en/info/NEPA/documents/hpd/HayCreekII.html>.

- The BLM's decision to offer for sale and issuance the Maysdorf II South coal lease (WYW-180711), a 271 million ton coal lease containing 2,305 acres in the Powder River Basin of Wyoming. The lease was approved for sale and issuance by the BLM in 2013, although it has not yet been sold or issued.²²
- The BLM's proposal to offer for sale and issuance the Spring Creek II coal lease (MTM-105485), a 198 million ton coal lease containing 1,602 acres in the Powder River Basin of Montana. The lease is currently under review by the BLM and was applied for in 2013.²³
- The BLM's proposal to offer for sale and issuance a 5,091 acre coal lease to expand the Oxbow Mine in Colorado (COC-07616).²⁴
- OSM's proposal to approve an expansion of the Colowyo coal mine in northwestern Colorado. The proposal would expand the mine by more than 16,000 acres and continue the life of the mine for 20-40 years.²⁵
- OSM's proposal to approve an expansion of the Rosebud coal mine in the Powder River Basin of Montana. The proposal would expand the mine by more than 6,000 acres and continue the life of the mine for 19 years.²⁶
- OSM's proposals to approve expansions of the Belle Ayr mine in Wyoming, the Dry Fork mine in Wyoming, the Freedom mine in North Dakota, the Skyline mine in Utah, as well as the agency's proposal to approve ongoing mining at the Trapper mine in Colorado.²⁷

These are just a handful of the coal decisions pending before Interior that pose potentially significant climate impacts. Given past approvals, the cumulative impacts could be even more significant. It is imperative that OSM analyze the impacts of mining at Spring Creek consistent with the scope required under NEPA in order to ensure that impacts are fully analyze and assessed.

²² See BLM, "South Gillette Area Coal Leasing Project," website available at <http://www.blm.gov/wy/st/en/info/NEPA/documents/hpd/SouthGillette.html>.

²³ See Cloud Peak Energy, "Lease by Application," available at http://www.blm.gov/style/medialib/blm/mt/blm_programs/energy/coal.Par.60997.File.dat/CPE%20File%201%20Application.pdf; see also <http://thecoalfields.com/claims/mtm----105485>.

²⁴ See <http://thecoalfields.com/claims/coc----076716>.

²⁵ See OSM, "Colowyo Coal Mine Collom Permit Expansion Area Project Mining Plan Environmental Assessment," website available at <http://www.wrcc.osmre.gov/initiatives/colowyo/documentlibrary.shtm>.

²⁶ See OSM, "Western Energy Company Rosebud Coal Mine Area F Project," website available at <http://www.wrcc.osmre.gov/initiatives/westernEnergy.shtm>.

²⁷ See <http://www.wrcc.osmre.gov/initiatives/belleAyrMine.shtm>, <http://www.wrcc.osmre.gov/initiatives/dryForkMine/documentLibrary.shtm>, <http://www.wrcc.osmre.gov/initiatives/freedomMine.shtm>, <http://www.wrcc.osmre.gov/initiatives/skylineMine.shtm>, and <http://www.wrcc.osmre.gov/initiatives/trapperMine.shtm>.

7. OSM Must Address the Climate Impacts of the Proposed Mine Expansion

a. BLM Must Provide the Public with a Thorough, Honest, and Transparent Accounting of the Climate Impacts of the Proposed Mine Expansion

President Obama and Interior Secretary Sally Jewell have both recently called climate change “the single most pressing energy and environmental challenge of our time.”²⁸ The President has bolstered these statements with an array of forward-looking climate policies, including efforts to reduce carbon dioxide (CO₂) emissions from power plants, foster the growth of renewable energy, increase the use of electric vehicles, improve fuel efficiency standards, and prioritize energy efficiency in buildings.²⁹ Citing climate concerns, Secretary of the Interior, Sally Jewell, earlier this year announced a moratorium on new coal leasing and the initiation of a new programmatic environmental review of the federal coal program.³⁰

Unfortunately, at the same time that the Obama Administration is showing real leadership in addressing the causes and impacts of climate disruption, OSM continues to expand coal production.

Over 20 percent of our country’s annual greenhouse gas (GHG) emissions (including nearly a quarter of domestic CO₂ emissions) originate from coal, oil, and gas extracted from public lands.³¹ Keeping these dirty fuels in the ground is critical to safeguarding our climate, meeting international climate commitments, and achieving carbon emission reductions put forward in President Obama’s Climate Action Plan and Clean Power Plan.

As President Obama explained when rejecting the Keystone XL pipeline:

America is now a global leader when it comes to taking serious action to fight climate change. . . . Because ultimately, if we’re going to prevent large parts of this Earth from becoming not only inhospitable but uninhabitable in our lifetimes, we’re going to have to keep some fossil fuels in the ground rather than burn them and release more dangerous pollution into the sky.³²

In evaluating a proposal that would result in the mining and burning of nearly 100 million tons of federally-owned coal, OSM must do more than simply quantify CO₂ emissions that will result from burning the Spring Creek coal.

²⁸ Sally Jewell, Secretary of the Interior, Address at the Center for Strategic and International Studies 8 (Mar. 17, 2015), available at <http://www.doi.gov/news/speeches/loader.cfm?csModule=security/getfile&pageid=1014220>.

²⁹ See, e.g., Exec. Order No. 13,693, 80 Fed. Reg. 15871 (Mar. 25, 2015).

³⁰ See Secretarial Order No. 3338 (Jan. 15, 2016), available at http://www.blm.gov/style/medialib/blm/wo/Communications_Directorate/public_affairs/news_release_attachments_Par.4909.File.dat/SO%203338%20Coal.pdf.

³¹ Claire Moser et al., *Cutting Greenhouse Gas from Fossil-Fuel Extraction on Federal Lands and Waters*, CENT. FOR AM. PROGRESS (Mar. 19, 2015), <https://cdn.americanprogress.org/wp-content/uploads/2015/03/PublicLandsEmissions-brief.pdf>. Attached as Exhibit 5.

³² President Obama, Statement by the President on the Keystone XL Pipeline (Nov. 6, 2016), available at <https://www.whitehouse.gov/the-press-office/2015/11/06/statement-president-keystone-xl-pipeline> (last visited November 13, 2015).

Specifically, OSM must analyze and disclose the following issues, which were not addressed in the 2009 EIS:

- 1) Acknowledge the scientific consensus on the need to reduce CO₂ emissions;
- 2) Disclose whether the proposed mining and related burning of 200 million tons of federal coal are inconsistent with President Obama's federal greenhouse gas emission reduction targets;
- 3) Model the market impacts of the proposed expansion of federal coal mining;
- 4) Use the social cost of carbon to analyze and disclose the climate impacts of the proposal;
- 5) Consider the impact of the proposed mining in conjunction with other past, present, and reasonably foreseeable federal coal leases.

b. OSM Must Disclose Scientific Consensus on the Urgent Need to Reduce and Avoid Greenhouse Gas Emissions

There is overwhelming scientific consensus that in order to avoid the most catastrophic impacts of climate change, we must keep global temperature increase to less than 2 degrees Celsius above pre-industrial temperatures.³³ Meeting this imperative is no easy task. A January 2015 study published in the journal *Nature* concluded that in order to keep warming below this scientifically-accepted threshold, almost all of the world's fossil fuel reserves that are still in the ground, including U.S. coal reserves, must stay there.³⁴

The *Nature* study considered two scenarios: one assuming that carbon capture and sequestration (CCS) technology will be unavailable and one assuming widespread deployment of CCS after 2025. Without CCS, 88% of coal reserves globally—and **95% of coal reserves in the United States**—must remain unused before 2050 to meet the target of 2 °C.³⁵ Even when CCS is deployed, the study concluded that 82% of current coal reserves globally—and 92% of current U.S. coal reserves—must remain unburned.³⁶

OSM must not only acknowledge this new scientific information, it must address the policy implications that necessarily follow. As summarized by one prominent U.S. climate scientist, “[b]urning all fossil fuels would produce a different, virtually uninhabitable, planet.”³⁷ The Department of Interior and BLM must disclose the scientific conclusions about rising global temperatures and the need to keep carbon in the ground if we are to avoid the worst effects of

³³ See United Nations Framework Convention on Climate Change (UNFCCC), Report of the Conference of the Parties on its Fifteenth Session, held in Copenhagen from 7 to 19 December 2009. Part Two: Action taken by the Conference of the Parties at its Fifteenth Session, at 5. United Nations Climate Change Conf. Report 43 (UNFCCC, 2009), at <http://unfccc.int/resource/docs/2009/cop15/eng/11a01.pdf> (last visited Sept. 18, 2015).

³⁴ Christoph McGlade & Paul Ekins, *The geographical distribution of fossil fuels unused when limiting global warming to 2°C*, 517 NATURE at 187 (Jan. 9, 2015). Attached as Exhibit 6. The article defines “reserves” to include fossil fuel resources that are “recoverable under current economic conditions and have a specific probability of being produced.” *Id.*

³⁵ *Id.* at 189, Table 1.

³⁶ *Id.*

³⁷ Hansen, et al., *Climate Sensitivity, Sea Level and Atmospheric Carbon Dioxide*, 371 Phil. Trans. R. Soc’y (2013).

climate disruption. In his sharp critique of the Department of Interior's "status quo" approach to the supply side of the climate problem, Bill McKibben wrote:

But you can't deal with climate on the demand side alone. . . . This is not climate denial of the Republican sort, where people simply pretend the science isn't real. This is climate denial of the status quo sort, where people accept the science, and indeed make long speeches about the immorality of passing on a ruined world to our children. They just deny the meaning of the science, which is that we must keep carbon in the ground.³⁸

c. OSM Must Disclose the Project's Conflict with the President's Greenhouse Gas Emission Reduction Targets

OSM must analyze whether the proposed Spring Creek mine expansion would interfere with efforts to meet federal greenhouse gas emission reduction targets recently established by President Obama. As explained by the Council on Environmental Quality in its 2014 Draft Climate Guidance, federal agencies evaluating the climate impacts of their decisions should "incorporate by reference applicable agency emissions targets such as applicable Federal, state, tribal, or local goals for GHG emission reductions to provide a frame of reference and make it clear whether the emissions being discussed are consistent with such goals."³⁹ Although the CEQ Guidance is still in draft form, the Guidance itself makes clear that it does not set out any new legal obligations under NEPA, but rather explains and clarifies those obligations that already exist under the statute, regulations, and the case law interpreting the two. *Id.*

In particular, OSM must address whether the proposed expansion, and the additional coal combustion it facilitates, are in line with the goals of President Obama's Clean Power Plan and Climate Action Plan. The Clean Power Plan, for example, calls for reducing power sector emissions to 30 percent below 2005 levels by 2030. Additionally, in November 2014 the President announced a joint U.S.-China agreement aimed at reducing climate pollution that calls for even more aggressively cutting net greenhouse gas emissions to 26-28 percent below 2005 levels by 2025.⁴⁰

d. OSM Must Discard the Myth of Perfect Substitution and Meaningfully Analyze the Market Impacts of the Proposed Mining

In previous environmental reviews for coal leasing and mining, BLM and OSM have discounted the contribution to climate change by claiming, often incorrectly, that federal coal leasing and mining has no impact on the climate. The theory, which has been squarely rejected by the federal courts, is that even if it were to deny a particular coal lease or mining plan, the same amount of coal would ultimately be mined elsewhere, and thus the greenhouse gas emissions of our electricity sector would remain the same regardless of the decision. This

³⁸ Bill McKibben, *Obama's Catastrophic Climate Change Denial*, NY TIMES, (May 12, 2015), available at http://www.nytimes.com/2015/05/13/opinion/obamas-catastrophic-climate-change-denial.html?_r=0.

³⁹ Council on Environmental Quality, "Revised Draft Guidance on the Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews," 79 Fed. Reg. 77,802, 77,826 (Dec. 24, 2014).

⁴⁰ White House Fact Sheet, *U.S.-China Joint Announcement on Climate Change and Clean Energy Cooperation* (November 11, 2014), available online at <https://www.whitehouse.gov/the-press-office/2014/11/11/us-china-joint-announcement-climate-change>.

“perfect substitution” theory is an erroneous fiction that ignores fundamental economic principles of supply and demand, and denies the public and decision-makers a full and fair opportunity to review and consider a project’s climate impacts, as required by NEPA.

Although courts reviewing an agency’s NEPA review generally will not delve into competing scientific methodologies, courts will nonetheless evaluate “whether the challenged method had a rational basis and took into consideration the relevant factors.” *Silverton Snowmobile Club v. U.S. Forest Serv.*, 433 F.3d 772, 782 (10th Cir. 2006) (quotation omitted). Here, the market impact of a decision to open up more than 200 million tons of coal must be considered and fully evaluated in order to “insure the professional integrity . . . of the discussions and analyses.” 40 C.F.R. § 1502.24

The implausible assumption that coal demand is unaffected by availability and price has been flatly rejected by the courts. The U.S. District Court for the District of Colorado recently addressed this issue in a challenge to the Forest Service’s authorization of mining activities on public land. *High Country Conservation Advocates v. United States Forest Serv.*, 52 F. Supp. 3d 1174, 1197-98 (D. Colo. 2014). The agency in that case had argued, in the court’s words, that “coal is a global commodity, and if the coal does not come out of the ground in the North Fork [Valley of Colorado,] consumers will simply pay to have the same amount of coal pulled out of the ground somewhere else—overall GHG emissions from combustion will be identical under either scenario.” *Id.* at 1197. The court rejected the Forest Service’s “perfect substitution” theory:

I cannot make sense of this argument, and I am persuaded by an opinion from the Court of Appeals for the Eighth Circuit that rejected a nearly identical agency justification for not analyzing the future effects of coal combustion. In *Mid States Coalition for Progress v. Surface Transportation Board*, the court held that an agency violated NEPA when it failed to disclose and analyze the future coal combustion impacts associated with the agency’s approval of a railroad line. 345 F.3d 520, 549 (8th Cir. 2003). In that case—like this one—the agency argued that emissions would occur regardless of whether the railroad line were approved because “the demand for coal will be unaffected by an increase in availability and a decrease in price.” *Id.* The court rejected this argument as “illogical at best” and noted that “increased availability of inexpensive coal will at the very least make coal a more attractive option to future entrants into the utilities market when compared with other potential fuel sources, such as nuclear power, solar power, or natural gas.”

High Country Conservation Advocates, 52 F. Supp. 3d at 1197-98.

Relying on basic economic principles, the court concluded that, “[a]t some point this additional supply will impact the demand for coal relative to other fuel sources, and coal that otherwise would have been left in the ground will be burned.” *Id.* at 1198. The agency’s failure to analyze this “reasonably foreseeable effect” violated NEPA. *Id.*

Moreover, OSM may not simply assume that perfect substitution would occur. “To take the required ‘hard look’ at a proposed project’s effects, an agency may not rely on incorrect

assumptions or data in an EIS.” *Native Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 964 (9th Cir.2005) (citing 40 C.F.R. § 1500.1(b)). It necessarily follows that the agency must disclose such assumptions and data to allow the public to verify the agency’s analysis and conclusions. Otherwise, “the public [i]s severely limited in its ability to participate in the decision-making process.” *WildEarth Guardians v. Montana Snowmobile Ass’n*, 790 F.3d 920, 926 (9th Cir. 2015) (Forest Service violated NEPA by failing to disclose data on the location of the big game winter range in EIS analysis of the impact of snowmobiles on big game wildlife and habitat). An agency violates NEPA’s public disclosure requirements when it asks the public “to assume the adequacy and accuracy of partial data without providing any basis for doing so.” *Id.* at 927; *see also N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1083 (9th Cir. 2011) (“NEPA requires that the agency provide the data on which it bases its environmental analysis.”) (citation omitted). Where, as here, analysis in an EIS is based on modeling, NEPA “requires up-front disclosures of relevant shortcomings in the data or models.” *Lands Council v. Powell*, 395 F.3d 1019, 1032 (9th Cir. 2005) (citing 40 C.F.R. § 1502.22; *Lands Council v. Vaught*, 198 F.Supp.2d 1211, 1239 (E.D. Wash. 2002)).

Multiple models exist that OSM could use to address the market issue. For example, OSM could utilize the Energy Information Administration’s National Energy Modeling System (NEMS) to analyze and disclose the likely market response to an additional 48 million tons of coal flooding the market from the Powder River Basin. This model has been in existence for many years, it has been widely used by federal agencies, and is available to OSM. Other models may be even more appropriate. We offer NEMS as only one example of the available quantitative tools at OSM’s disposal here.

d. OSM Must Use the Social Cost of Carbon to Analyze the Proposed Mining’s Impacts

OSM must analyze and assess the climate impacts of mining the Spring Creek tract using the social cost of carbon protocol.

The social cost of carbon protocol for assessing climate impacts is a method for “estimat[ing] the economic damages associated with a small increase in carbon dioxide (CO₂) emissions, conventionally one metric ton, in a given year [and] represents the value of damages avoided for a small emission reduction (i.e. the benefit of a CO₂ reduction).”⁴¹ The protocol was developed by a working group consisting of several federal agencies, including the U.S. Department of Agriculture, EPA, CEQ, and others, with the primary aim of implementing Executive Order 12866, which requires that the costs of proposed regulations be taken into account.

In 2009, an Interagency Working Group was formed to develop the protocol and issued final estimates of carbon costs in 2010.⁴² These estimates were then revised in 2013 by the

⁴¹ EPA, “Fact Sheet: Social Cost of Carbon” (Nov. 2013) at 1, available online at <http://www.epa.gov/climatechange/Downloads/EPAactivities/scc-fact-sheet.pdf>. Attached as Exhibit 7.

⁴² Interagency Working Group on Social Cost of Carbon, “Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866” (Feb. 2010), available online at

Interagency Working Group, which at the time consisted of 13 agencies.⁴³ This report and the social cost of carbon estimates were again revised in 2015.⁴⁴

Depending on the discount rate and the year during which the carbon emissions are produced, the Interagency Working Group estimates the cost of carbon emissions, and therefore the benefits of reducing carbon emissions, to range from \$11 to \$220 per metric ton of carbon dioxide. See Chart Below. In its most recent update to the Social Cost of Carbon Technical Support Document, the White House’s central estimate was reported to be \$36 per metric ton.⁴⁵ In July 2014, the U.S. Government Accountability Office (“GAO”) confirmed that the Interagency Working Group’s estimates were based on sound procedures and methodology.⁴⁶

Revised Social Cost of CO₂, 2010 – 2050 (in 2007 dollars per metric ton of CO₂)

Discount Rate	5.0%	3.0%	2.5%	3.0%
Year	Avg	Avg	Avg	95th
2010	10	31	50	86
2015	11	36	56	105
2020	12	42	62	123
2025	14	46	68	138
2030	16	50	73	152
2035	18	55	78	168
2040	21	60	84	183
2045	23	64	89	197
2050	26	69	95	212

Most recent social cost of carbon estimates presented by Interagency Working Group on Social Cost of Carbon. The 95th percentile value is meant to represent “higher-than-expected” impacts from climate change.⁴⁷

The social cost of carbon provides decision makers and the public with an informative, accessible mechanism for both analyzing and understanding the climate impacts of a proposed decision.

<https://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf>.

Attached as Exhibit 8.

⁴³ Interagency Working Group on Social Cost of Carbon, “Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory

Impact Analysis Under Executive Order 12866” (May 2013), available online at

https://www.whitehouse.gov/sites/default/files/omb/inforeg/social_cost_of_carbon_for_ria_2013_update.pdf.

Attached as Exhibit 9.

⁴⁴ Interagency Working Group on Social Cost of Carbon, “Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory

Impact Analysis Under Executive Order 12866” (July 2015), available online at

<https://www.whitehouse.gov/sites/default/files/omb/inforeg/scc-tsd-final-july-2015.pdf>. Attached as Exhibit 10.

⁴⁵ White House, “Estimating the Benefits from Carbon Dioxide Emissions Reductions,” website available at

<https://www.whitehouse.gov/blog/2015/07/02/estimating-benefits-carbon-dioxide-emissions-reductions>. Attached as Exhibit 11.

⁴⁶ GAO, “Regulatory Impact Analysis, Development of Social Cost of Carbon Estimates,” GAO-14-663 (July 2014), available online at <http://www.gao.gov/assets/670/665016.pdf>. Attached as Exhibit 12.

⁴⁷ See Exhibit 10 at 3.

Although agencies such as OSM, BLM, and the Forest Service often quantify the *amount* of carbon dioxide or CO₂-e (carbon dioxide equivalent) emissions from mining and burning coal from federal leases, these agencies have not yet taken the next step of consistently employing the social cost of carbon to tell the public about the *impact* of those emissions. An isolated calculation of the amount of carbon emissions that would result from a particular project does not provide any meaningful insight as to the effect that those emissions will have on our climate. By contrast, the social cost of carbon offers an actual estimate of the damage caused by each incremental ton of carbon emissions.

The social cost of carbon describes those damage estimates in monetary terms, which are far easier for decision makers and the public to comprehend and contextualize than tons of CO₂-e. In doing so, the social cost of carbon provides a concrete assessment of a project's social and environmental impacts and provides a tangible sense of the scale of damage that both the public and decision makers can readily understand. As explained by one legal commentator, the social cost of carbon "allow[s] agencies to consider those GHG emissions . . . in a meaningful way," and that "assigning a price to carbon emissions – even a conservative price – makes the cost of those emissions concrete for agency decision makers."⁴⁸

Of course, we do not imply that the impacts of climate change can be fully captured by a dollar figure. Droughts, floods, extreme weather events, rising sea levels, and other phenomena related to climate change present threats to our planet that extend far beyond economic harms. Agencies must analyze not only the quantitative (and monetizable) climate impacts of proposed actions, but the qualitative and non-monetizable impacts as well. Nevertheless, to the extent that a project's impacts can be quantified, the social cost of carbon is the best and most rigorous tool currently available for understanding the damages linked to carbon emissions, rather than simply the extent of the emissions themselves.

Although often utilized in the context of agency rulemakings, the protocol has been recommended for use and has been used in project-level decisions. For instance, the EPA recommended that an EIS prepared by the U.S. Department of State for the proposed Keystone XL oil pipeline include "an estimate of the 'social cost of carbon' associated with potential increases of GHG emissions."⁴⁹

Furthermore, although it was initially developed to help agencies develop regulatory impact assessments of proposed rules, the social cost of carbon need not and should not be limited to this application. This tool is particularly useful with regard to coal leasing because it allows decision makers to understand the impact of projects "that have small, or 'marginal,' impacts on cumulative global emissions."⁵⁰ As CEQ has confirmed, statements that a particular agency decision will result in only a small fraction of global GHG concentrations should not be

⁴⁸ Mark Squillace & Alexander Hood, *NEPA, Climate Change, and Public Land Decision Making*, 42 ENVTL. L. 469, 510, 517 (2012).

⁴⁹ EPA, Comments on Supplemental Draft EIS for the Keystone XL Oil Pipeline (June 6, 2011). Attached as Exhibit 13.

⁵⁰ See Exhibit 7 at 1.

used to avoid analyzing the impact of those emissions.⁵¹ Such statements, according to CEQ, reflect the nature of climate change rather than the impact of any particular project.⁵²

NEPA requires OSM to use the social cost of carbon because it is the best tool available to analyze the economic and environmental impact of increased carbon dioxide emissions. NEPA specifically requires federal agencies to analyze and disclose the environmental effects of their actions, including “ecological . . . aesthetic, historic, cultural, economic [and] health” impacts.⁵³ Where “information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known,” NEPA regulations direct agencies to evaluate a project’s impacts “based upon theoretical approaches or research methods generally accepted in the scientific community.”⁵⁴ The social cost of carbon is based on generally accepted research methods and years of peer-reviewed scientific and economic studies. It was developed by experts at a dozen federal agencies and offices, and it is both widely used and generally accepted in the scientific community. As such, it is the best tool now available for agencies to use in predicting and analyzing the climate impacts of proposed federal actions.

Federal agencies’ obligation to use the social cost of carbon to analyze the costs associated with GHG emissions through NEPA was directly affirmed by the court in *High Country Conservation Advocates v. U.S. Forest Service*, 52 F. Supp. 3d 1174 (D.Colo. 2014). In his decision, Judge Jackson identified the IWG’s social cost of carbon protocol as a tool to “quantify a project’s contribution to costs associated with global climate change.” *Id.* at 1190. “The critical importance of [climate change] . . . tells me that a ‘hard look’ has to include a ‘hard look’ at whether this tool, however imprecise it might be, would contribute to a more informed assessment of the impacts than if it were simply ignored.” *Id.* at 1193. To fulfill this mandate, they agency must use the social cost of carbon to disclose the “ecological[,] . . . economic, [and] social” impacts of the proposed action. 40 C.F.R. § 1508.8(b).

Importantly, other agencies within the Interior Department, including the BLM, have already utilized the social cost of carbon protocol in the context of analyzing the impacts of fossil fuel development under NEPA. In recent Environmental Assessments for oil and gas leasing in Montana, the agency estimated “the annual SCC [social cost of carbon] associated with potential development on lease sale parcels.”⁵⁵ In conducting its analysis, the BLM used a “3 percent average discount rate and year 2020 values,” presuming social costs of carbon to be \$46 per metric ton. *Id.* Based on its estimate of greenhouse gas emissions, the agency estimated total carbon costs to be “\$38,499 (in 2011 dollars).” *Id.* In Idaho, the BLM also utilized the social cost of carbon protocol to analyze and assess the costs of oil and gas leasing. Using a 3%

⁵¹ Consideration of Greenhouse Gas Emissions and Climate Change Effects in NEPA Reviews, 79 Fed. Reg. at 77,825.

⁵² *Id.*

⁵³ 40 C.F.R. § 1508.8.

⁵⁴ 40 C.F.R. § 1502.22(b)(4).

⁵⁵ BLM, “Environmental Assessment for October 21, 2014 Oil and Gas lease Sale,” DOI-BLM-MT-0010-2014-0011-EA (May 19, 2014) at 76, available online at [http://www.blm.gov/style/medialib/blm/mt/blm_programs/energy/oil_and_gas/leasing/lease_sales/2014/oct_21_2014/july23posting.Par.25990.File.dat/MCFO%20EA%20October%202014%20Sale_Post%20with%20Sale%20\(1\).pdf](http://www.blm.gov/style/medialib/blm/mt/blm_programs/energy/oil_and_gas/leasing/lease_sales/2014/oct_21_2014/july23posting.Par.25990.File.dat/MCFO%20EA%20October%202014%20Sale_Post%20with%20Sale%20(1).pdf). Attached as Exhibit 14.

average discount rate and year 2020 values, the agency estimated the cost of carbon to be \$51 per ton of annual CO₂e increase.⁵⁶ Based on this estimate, the agency estimated that the total carbon cost of developing 25 wells on five lease parcels to be \$3,689,442 annually. *Id.* at 83.

Recently, Michael Greenstone, the former chief economist for the President's Council of Economic Advisers, confirmed that it is appropriate and acceptable to calculate the social cost of carbon when reviewing whether to approve fossil fuel extraction.⁵⁷

To be certain, the social cost of carbon protocol presents a conservative estimate of economic damages associated with the environmental impacts climate change. As the EPA has noted, the protocol "does not currently include all important [climate change] damages." Exhibit 7. As explained:

The models used to develop [social cost of carbon] estimates do not currently include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature because of a lack of precise information on the nature of damages and because the science incorporated into these models naturally lags behind the most recent research.

Id. In fact, more recent studies have reported significantly higher carbon costs. For instance, a report published this month found that current estimates for the social cost of carbon should be increased six times for a mid-range value of \$220 per ton.⁵⁸ In spite of uncertainty and likely underestimation of carbon costs, nevertheless, "the SCC is a useful measure to assess the benefits of CO₂ reductions," and thus a useful measure to assess the costs of CO₂ increases.⁵⁹

That the economic impacts of climate change, as reflected by an assessment of social cost of carbon, should be a significant consideration in agency decisionmaking, is emphasized by a recent White House report, which warned that delaying carbon reductions would yield significant economic costs.⁶⁰ As the report states:

[D]elaying action to limit the effects of climate change is costly. Because CO₂ accumulates in the atmosphere, delaying action increases CO₂ concentrations. Thus, if a policy delay leads to higher ultimate CO₂ concentrations, that delay produces persistent economic damages that arise from higher temperatures and higher CO₂ concentrations.

⁵⁶ BLM, "Little Willow Creek Protective Oil and Gas Leasing," EA No. DOI-BLM-ID-B010-2014-0036-EA (February 10, 2015) at 81, available online at https://www.blm.gov/epl-front-office/projects/nepa/39064/55133/59825/DOI-BLM-ID-B010-2014-0036-EA_UPDATED_02272015.pdf. Attached as Exhibit 15.

⁵⁷ See Exhibit 16, Greenstone, M., "There's a Formula for Deciding When to Extract Fossil Fuels," *New York Times* (Dec. 1, 2015), available online at http://www.nytimes.com/2015/12/02/upshot/theres-a-formula-for-deciding-when-to-extract-fossil-fuels.html?_r=0.

⁵⁸ Moore, C.F. and B.D. Delvane, "Temperature impacts on economic growth warrant stringent mitigation policy," *Nature Climate Change* (January 12, 2015) at 2. Attached as Exhibit 17.

⁵⁹ See Exhibit 7.

⁶⁰ See Executive Office of the President of the United States, "The Cost of Delaying Action to Stem Climate Change" (July 2014), available online at https://www.whitehouse.gov/sites/default/files/docs/the_cost_of_delaying_action_to_stem_climate_change.pdf, attached as Exhibit 18.

Alternatively, if a delayed policy still aims to hit a given climate target, such as limiting CO₂ concentration to given level, then that delay means that the policy, when implemented, must be more stringent and thus more costly in subsequent years. In either case, delay is costly.⁶¹

The requirement to analyze the social cost of carbon is supported by the general requirements of NEPA and supported in federal case law. As explained, NEPA requires agencies to analyze the consequences of proposed agency actions and consider include direct, indirect, and cumulative consequences.

To this end, courts have ordered agencies to assess the social cost of carbon pollution, even before a federal protocol for such analysis was adopted. In 2008, the U.S. Court of Appeals for the Ninth Circuit ordered the National Highway Traffic Safety Administration to include a monetized benefit for carbon emissions reductions in an Environmental Assessment prepared under NEPA. *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 538 F.3d 1172, 1203 (9th Cir. 2008). The Highway Traffic Safety Administration had proposed a rule setting corporate average fuel economy standards for light trucks. A number of states and public interest groups challenged the rule for, among other things, failing to monetize the benefits that would accrue from a decision that led to lower carbon dioxide emissions. The Administration had monetized the employment and sales impacts of the proposed action. *Id.* at 1199. The agency argued, however, that valuing the costs of carbon emissions was too uncertain. *Id.* at 1200. The court found this argument to be arbitrary and capricious. *Id.* The court noted that while estimates of the value of carbon emissions reductions occupied a wide range of values, the correct value was certainly not zero. *Id.* It further noted that other benefits, while also uncertain, were monetized by the agency. *Id.* at 1202.

More recently, a federal court has done likewise for a federally approved coal lease. That court began its analysis by recognizing that a monetary cost-benefit analysis is not universally required by NEPA. *See High Country Conservation Advocates v. U.S. Forest Service*, 52 F.Supp.3d 1174 (D. Colo. 2014), citing 40 C.F.R. § 1502.23. However, when an agency prepares a cost-benefit analysis, “it cannot be misleading.” *Id.* at 1182 (citations omitted). In that case, the NEPA analysis included a quantification of benefits of the project. However, the quantification of the social cost of carbon, although included in earlier analyses, was omitted in the final NEPA analysis. *Id.* at 1196. The agencies then relied on the stated benefits of the project to justify project approval. This, the court explained, was arbitrary and capricious. *Id.* Such approval was based on a NEPA analysis with misleading economic assumptions, an approach long disallowed by courts throughout the country. *Id.*

Using any of the Interagency Working Group’s social cost of carbon values demonstrates that the combustion of coal from the proposed expansion will likely result in massive economic damages associated with climate change. The updated interagency SCC estimates for 2020 are between \$12 and \$123, depending on the discount rate applied (in 2007\$).⁶² The Interagency

⁶¹ *Id.* at 1.

⁶² *See* Exhibit 10 at 3. To put these figures in perspective, in 2009 the British government used a range of \$41-\$124 per ton of CO₂, with a central value of \$85 (during the same period, the 2010 TSD used a central value of \$21). The

Working Group does not instruct federal agencies which discount rate to use, suggesting the 3 percent discount rate (\$43 per ton of CO₂) as the “central value,” but further emphasizing “the importance and value of including all four SCC values[;]” i.e., that the agency should use the range of values in developing NEPA alternatives.⁶³ Under any discount rate, the total climate impacts from the proposal will reach into the hundreds of millions of dollars, and this must be disclosed to the public and decision makers.

8. OSM Must Rigorously Explore and Objectively Evaluate a Range of Reasonable Alternatives

NEPA requires agencies to consider “alternatives to the proposed action.” 42 U.S.C. § 4332(2)(C)(iii). It also requires agencies to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” *Id.* § 4332(2)(E). The alternatives analysis “is the heart of the environmental impact statement.” The alternative analysis “should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public.” 40 C.F.R. § 1502.14. In the alternative analysis the agency must:

- a. Rigorously explore and objectively evaluate all reasonable alternatives and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
- b. Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.
- c. Include reasonable alternatives not within the jurisdiction of the lead agency.
- d. Include the alternative of no action.
- e. Identify the agency’s preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.
- f. Include appropriate mitigation measures not already included in the proposed action or alternatives.

Id.

This requirement, like the “detailed statement” [EIS], seeks to ensure that each agency decision maker has before him and takes into proper account all possible approaches to a particular project (including total abandonment of that project) which would alter the environmental impact and the cost-benefit balance. Only in

UK analysis used very different assumptions on damages, including a much lower discount rate of 1.4percent. The central value supports regulation four times as stringent as the U.S. central value.

⁶³ See Exhibit 9 at 12.

that fashion is it likely that the most intelligent, optimally beneficial decision will ultimately be made.

Calvert Cliffs Coordinating Comm., Inc. v. U.S. Atomic Energy Comm'n, 449 F.2d 1109, 1114 (D.C. Cir. 1971). Agencies must consider alternatives that would partially meet the purpose and need of a project. *NRDC v. Hodel*, 865 F.2d 288, 296 n.4 (D.C. Cir. 1988). “The existence of reasonable but unexamined alternatives renders a [NEPA] analysis inadequate.” *Friends of Southeast’s Future v. Morrison*, 153 F.3d 1059, 1065 (9th Cir. 1998). Agencies may not limit, however, the scope of alternatives to the goals of a private project proponent. *Simmons v. U.S. Army Corps of Eng’rs*, 120 F.3d 664, 669 (7th Cir. 1997). Such limitation is a “losing proposition,” and agencies have a “duty under NEPA to exercise a degree of skepticism in dealing with self-serving statements from a prime beneficiary of the project.” *Id.* Further, courts have long interpreted the mandate to consider reasonable alternatives to require agencies contemplating energy projects to consider reasonable alternative forms of energy generation and energy conservation. *NRDC v. Morton*, 458 F.2d 827, 833-38 (D.C. Cir. 1972); *Hodel*, 865 F.2d at 295-97 (agency required to consider conservation alternatives in analysis of decision to issue oil and gas leases); *Libby Rod & Gun Club v. Poteat*, 457 F. Supp. 1177, 1186-8 (D. Mont. 1978), *aff’d in part and rev’d in part on other grounds*, 59 F.2d 742 (9th Cir. 1979).

OSM must analyze a range of reasonable alternatives. In addition to the No Action Alternative, we request that the OSM consider in detail all or portions of the following alternatives either as primary alternatives, alternative mitigation measures or as alternatives to the proposed actions.

a. Clean Alternatives to Continued Coal Consumption, Including Renewable Energy and Energy Efficiency.

As noted, the law is clear that agencies must consider alternative means of accomplishing its asserted goal. The general purpose of coal mining under SMCRA is to meet the Nation’s energy needs. OSM may meet these goals by promoting renewable energy and energy conservation.

Coal fired power generation is fast becoming an obsolete and uneconomical source of electricity, as society is becoming less tolerant of the multifarious harms wrought by coal pollution. President Obama, in laying out his plan for action to combat the crisis of climate change, specifically singled out the need to stop the harm from coal and coal plants:

Today, about 40 percent of America’s carbon pollution comes from our power plants. But here’s the thing: Right now, there are no federal limits to the amount of carbon pollution that those plants can pump into our air. None. Zero. We limit the amount of toxic chemicals like mercury and sulfur and arsenic in our air or our water, but power plants can still dump unlimited amounts of carbon pollution into the air for free. That’s not right, that’s not safe, and it needs to stop.

So today, for the sake of our children, and the health and safety of all Americans, I’m directing the Environmental Protection Agency to put an end to the limitless dumping of carbon pollution from our power plants, and complete new pollution standards for both

new and existing power plants.⁶⁴

The President has clearly articulated what has been apparent for some time now: our country needs to transition away from dirty polluting energy from coal plants to renewable energy sources and more efficient use of energy.⁶⁵ Consistent with this plan, EPA has proposed to regulate the GHG emissions from existing coal fired power plants.⁶⁶

On national and international levels major investors—such as the World Bank, European Investment Bank, and the U.S. Import-Export Bank—have declined or refused to invest in coal energy.⁶⁷ It has been repeatedly noted that “coal is a dead man walking.”⁶⁸ Major private investors have recently announced that investments in coal are a dead end.⁶⁹ A recent report by Goldman Sachs sums up the current and projected state of the coal industry:

Thermal coal has enjoyed a long period of strong demand growth but in our view the next 10 years will not be as benign. . . .

Earning a return on incremental investment in thermal coal mining and infrastructure capacity is becoming increasingly difficult. Mines are long-lived assets with a long payback period, while thermal coal is a geographically abundant resource in an industry with relatively low barriers to entry. As coal demand becomes increasingly constrained, the competition among suppliers is likely to intensify. The change in outlook is reflected in the way diversified mining companies are reallocating their capital towards more attractive sectors.⁷⁰

Among the reasons behind the impending obsolescence of coal are (1) decreasing acceptance of pollution from coal and, accordingly, increased regulation of coal pollution; (2) increased competition from other energy sources, such as renewables and natural gas; and (3) increases in

⁶⁴ Barak Obama, President of United States of America, Remarks on Climate Change at Georgetown University (June 25, 2013), available at <http://www.whitehouse.gov/the-press-office/2013/06/25/remarks-president-climate-change>.

⁶⁵ Executive Office of the President, The President’s Climate Action Plan at 6-10 (June 2013).

⁶⁶ Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 79 Fed. Reg. 34829 (June 18, 2014).

⁶⁷ World Bank Group, *Toward a Sustainable Energy Future for All: Directions for the World Bank Group’s Energy Sector at 25* (“The WBG will provide financial support for greenfield coal power generation only in rare circumstances.”); European Investment Bank, *Ex-Im Bank Move Away from Coal Financing, Sustainable Business* (July 31, 2013), available at <http://www.sustainablebusiness.com/index.cfm/go/news.display/id/25102>.

⁶⁸ Steven Mufson, *Coal’s Burnout: Have Investors Moved to Cleaner Energy Sources*, Wash. Post (Jan. 1, 2011), available at <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/01/AR2011010102146.html> (quoting Kevin Parker, global head of asset management and member of the executive committee at Deutsche Bank); Derek Sands, *US Coal Industry “A Dead Man Walkin”*: *New York Mayor*, Platts (Feb. 27, 2011) (quoting Michael Bloomberg, mayor of New York City), available at <http://www.platts.com/latest-news/coal/Washington/US-coal-industry-a-dead-man-walking-New-York-6203214>.

⁶⁹ *E.g.*, Anthony Yuen, *The Unimaginable: Peak Coal in China*, Citi Research (Sept. 4, 2013) (explaining expected decrease in coal consumption in China and global ripple effects); Bernstein Research, *Asian Coal and Power: Less, Less, Less . . . The Beginning of the End of Coal* (June 2013).

⁷⁰ Christian Lelong et al., Goldman Sachs, *Rocks & Ores, The Window for Thermal Coal Investment Is Closing* 3 (July 24, 2013).

energy efficiency.⁷¹ A chief reason for the decreased social acceptance of coal is that its externalities—i.e., costs borne by society which are not included in the purchase price of coal—are tremendous, amounting annually to hundreds of billions of dollars in the United States alone.⁷² As society has become better able to recognize and calculate these costs that are being foisted upon it, there has been an ever-growing rejection of coal as a legitimate energy source. Stock value of coal companies is plummeting; stock in Peabody, the largest private sector coal company, has been reduced dramatically.⁷³ Bankruptcy seems probable for some (e.g., Arch Coal).⁷⁴

While the economics for coal in the United States and abroad look dismal for the future, development of renewable energy sources and investments in energy conservation and efficiency are promising.⁷⁵ In order to meet carbon reduction goals in the Northwest, for example, the NPCC's Sixth Power Plan proposes “reduced reliance on coal” and a “carefully coordinated retirement of and *replacement of half the existing coal-fired generation serving the region with conservation, renewable generation, and lower carbon emitting resources.*”⁷⁶ The Sixth Power Plan found that conservation is “by far the lowest-cost and lowest-risk resource available in the region.”⁷⁷ The plan also noted that “the most readily available and cost-effective renewable resource is wind power and it is being developed rapidly.”⁷⁸ As the Montana Public Service Commission has acknowledged, “Montana has outstanding wind energy potential. The wind generation potential in Montana far exceeds what the state’s utilities can use.”⁷⁹

Further, “[t]he region needs to devote significant effort to expanding the supply of cost-effective renewable resources, many of which may be small scale and local in nature.”⁸⁰ Given the risk that coal producers will ultimately be required to pay for their carbon pollution, “some renewable generation is cost-effective even without renewable portfolio standards.”⁸¹

⁷¹ *Id.* at 20-29.

⁷² National Research Council, *Hidden Costs of Energy* (2010); Nicholas Z. Muller et al., *Environmental Accounting for Pollution in the United States Economy* 101 *Am. Economic Review* 1649 (2011) (cost of economic harm from coal vastly exceeds market value generated by coal); Ben Machol & Sarah Razk, *Economic Value of U.S. Fossil Fuel Electricity Health Impacts* 52 *Env't Int'l* 75 (2013) (fossil fuel generation costs nation \$361-886 billion annually in externalized costs); Paul R. Epstein et al., *Full Cost Accounting for the Life Cycle of Coal* 1219 *Ann. N.Y. Acad. Sci.* 73 (2011) (life cycle of costs from coal causes \$175 to 523 billion in damages in United States annually).

⁷³ Moody's Investor Service, *Moody's Downgrades Peabody to Ba2; Outlook Stable* (Aug. 21, 2013), available at https://www.moodys.com/research/Moodys-downgrades-Peabody-to-Ba2-outlook-stable--PR_280688?source=email_rt_mc_body&app=n.

⁷⁴ Barron's, *Arch Coal Shares Could Fall to 75 Cents*, <http://online.barrons.com/articles/arch-coal-shares-could-fall-to-75-cents-1414686385> (“[R]estructuring on or before the May 16, 2018, term-loan maturity seems likely . . .”); Seeking Alpha, *Arch Coal: Walking Dead* (Sept. 2, 2012), available at <http://seekingalpha.com/article/841941-arch-coal-walking-dead>.

⁷⁵ See, e.g., Intergovernmental Panel on Climate Change, *Renewable Energy Sources and Climate Change Mitigation: Special Report* (2012).

⁷⁶ Northwest Power and Conservation Council, *Sixth Conservation and Electric Power Plan 1-14* (Feb. 2010).

⁷⁷ *Id.* at 3 (emphasis added).

⁷⁸ *Id.* at 4.

⁷⁹ Mont. Pub. Serv. Comm'n, *Draft Economic Impacts of Proposed Amendments of the Montana Department of Public Service Regulation's Qualifying Facility Rules 31* (Aug. 2013).

⁸⁰ Sixth Power Plan, *supra*, at 4.

⁸¹ *Id.* at 5.

In addition to wind, the Sixth Power Plan notes that other viable renewable and low carbon energy options include small scale geothermal projects, upgrades of existing hydropower projects, and bioresidue energy recovery.⁸² The Plan also encourages commercialization of deep-water wind energy and wave energy projects.⁸³

A highly detailed analysis of different future energy scenarios by Amory Lovins concluded that scenarios based on large scale renewable energy generation (called the “renew” scenario) and widespread distributed generation (the “transform” scenario) combined with aggressive energy efficiency measures have by far, the greatest social, economic, and environmental value. Such measures are affordable and feasible when compared with business as usual scenarios or scenarios involving significant development of nuclear power and coal with CCS.⁸⁴ And, the clincher, the renewable and distributed energy scenarios are superior in reliability, security benefits, environmental responsibility, public health benefits, and public acceptability.⁸⁵

In sum, coal energy is fast becoming obsolete: uneconomic, environmentally harmful, and socially unacceptable. Renewable energy and energy conservation and efficiency, on the other hand, are making tremendous gains in cost, and are far superior in environmental and social acceptability. Large-scale deployment of renewable energy and conservation measures are reasonable alternatives that should be considered as alternatives to continued coal mining at the Spring Creek Mine. As noted above, OSM is required to consider alternatives that are not within its jurisdiction. 40 C.F.R. § 1502.14(c). Consideration of such alternatives is particularly appropriate given that the proposed mining, which is partially for export, will not help, but harm, OSM’s asserted goal of improving the national energy security (by reducing reserves and increasing prices⁸⁶). Further, increased renewable energy development and energy conservation do not suffer from the negative economics and political controversy of coal mining.⁸⁷ Nor will they lead to the inevitable “bust” that will occur upon either exhaustion of the coal seam or changes in market conditions. OSM must consider alternatives that will not inevitably lead to a bust, economic recession, and hard times.

b. Alternative Mining Levels

We request the OSM consider in detail an alternative that limits the amount of coal tonnage and/or acreage to be mined to lower levels than are currently proposed. Such an alternative will limit the extent to which the direct and indirect impacts of mining, hauling, and

⁸² *Id.* at AP-11.

⁸³ *Id.* at AP-12.

⁸⁴ Amory B. Lovins & Rocky Mountain Inst., *Reinventing Fire: Bold Business Solutions for the New Energy Era* 213-15 (2011).

⁸⁵ *Id.*; see also Amory B. Lovins, *A Farewell to Fossil Fuels: Answering the Energy Challenge* Foreign Affairs (Apr./Mar. 2012).

⁸⁶ See *Unfair Market Value*, *supra*.

⁸⁷ *Cf.* *Hidden Costs of Energy*, *supra*; Muller et al., *Environmental Accounting for Pollution in the United States Economy*, *supra*; Machol & Razk, *Economic Value of U.S. Fossil Fuel Electricity Health Impacts*, *supra*; Epstein et al., *Full Cost Accounting for the Life Cycle of Coal*, *supra*; *Unfair Market Value*, *supra*; Gov’t Accountability Office, *Coal Leasing*, *supra*; Office of the Inspector General, *Coal Management Program*, *supra*; Sanzillo, *The Great Giveaway*, *supra*; Squillace, *supra*.

coal combustion will occur, as well as incentivize power plant owners to develop alternative non-coal-fired electricity generation.

c. Underground Mining

We request that OSM consider in a detail an alternative that would require underground mining, rather than surface strip mining. This alternative would not only significantly limit the surface impacts of mining, but would also limit the reclamation burden on the mining company.

d. Low or No Pollutant Emitting Equipment

We request that, in order to limit air quality impacts, that OSM consider in detail an alternative that requires the use of equipment that produce less or no emissions, such as natural gas-fired vehicles and machinery and electric machinery powered by solar panels or other renewable energy sources. We also request that OSM investigate whether it should require equipment maintenance standards to ensure that pollutant emitting machinery is maintained and operated such that air emissions are minimized to the maximum extent practicable.

e. Other Air Quality Mitigation Alternatives

We request that OSM consider in detail an alternative or alternative that mitigates the air quality impacts of the proposed mining. For instance, OSM should consider in detail an alternative that requires more stringent mitigation to eliminate nitrogen dioxide emissions during blasting (including an alternative that prohibits cast blasting to prevent orange clouds from forming), and an alternative that requires a compensatory reduction in emissions for any and all emissions that would continued and/or increase as a result of the proposed coal lease. This last alternative could involve the OSM and/or Cloud Peak securing commitments from oil and gas operators or other coal miners in the region to reduce their emissions.

f. An Alternative that Requires Cloud Peak to Undertake Actions to Limit or Reduce Other Greenhouse Gas Emissions

We request the OSM consider in detail an alternative or alternatives that mitigate greenhouse gas emissions associated with the proposed mining. OSM should consider requiring that Cloud Peak secure an increase in the efficiency of the power plants it fuels, either through contractual terms or other mechanisms, to reduce the total carbon dioxide emission rate (this could be accomplished through the establishment of a limit on carbon dioxide emissions at plants, either through a total cap or lower emission rate), require the use of low carbon fuels for the operation of any heavy machinery, and/or require that Cloud Peak use renewable energy to power the Spring Creek mine.

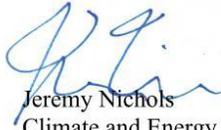
g. An Alternative that Requires Offsite Mitigation or Compensation for the Impacts in Other Ways

Offsite mitigation, as well as mitigation that requires compensation, is explicitly authorized under NEPA. The definition of mitigation includes “[c]ompensating for the impact by

replacing or providing substitute resources or environments.” 40 C.F.R. § 1508.20(e). In this case, we request the OSM consider an alternative or alternatives that would require Cloud Peak to offset its carbon dioxide emissions from the mine and the power plants it fuels with offsite mitigation by developing a comparable amount of renewable energy. Such a mitigation measure would provide additional generation and also help to create cleaner energy sources that will eventually offset the greenhouse gas emissions produced by coal mining and burning. OSM could play a key role in spurring utilities to begin investing in and developing renewable energy as a means to limit fossil fuel consumption.

For the reasons explained above, we urge OSM to reject the proposed mining plan modification. If, however, OSM decides to move forward with the proposed lease modification, it must prepare an EIS to adequately analyze and assess the impacts of mining. This is especially the case with regards to climate impacts, as there is significant new information on climate disruption, new federal greenhouse gas emissions reduction goals, and new tools available to federal agencies to help analyze climate impacts.

Sincerely,



Jeremy Nichols
Climate and Energy Program Director
WildEarth Guardians
2590 Walnut St.
Denver, CO 80205
(303) 437-7663
jnichols@wildearthguardians.org



WYOMING ANALYTICAL LABORATORIES, INC.

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Laramie, WY 82070 Fax: (307) 721-8956

OSMRE/DOI

MAR 15 2016

Received

ATTN: Spring Creek Mine LBA 1 EA
C/O: Lauren Mitchell
OSMRE Western Region
1999 Broadway, Suite 3320
Denver, CO 80202-3050

16-03-16-01

Dear Ms. Mitchell,

Count me in as a small but strong supporter of the Spring Creek Mine.

I own and operate a testing laboratory in Laramie, Wyoming. We are on the other side of our state from the mines in Wyoming and the Spring Creek Mine just over the line in Montana. The negative effects of the nuisance litigation and unreasonable demands on the coal and energy industries are reflected in our negative growth, too. We have 4 fewer technicians now than 6 months ago, and most of the others (4) we have cut back to working only 4 days per week.

When we were the contract lab for the Spring Creek Mine, we found the personnel to be ethical, intelligent, and environmentally conscientious – a company Montana and Wyoming can both be proud of, and worth enthusiastic support.

Most sincerely,

A handwritten signature in cursive script that reads "Jane V. Thomas".

Jane V. Thomas
President and Analytical Chemist
Wyoming Analytical Laboratories, Inc.
1660 Harrison St.
Laramie, WY 82070



THE COLORADO MINING ASSOCIATION

216 16th Street, Suite 1250
Denver, CO 80202
Tel: 303-575-9199 Fax: 303-575-9194
colomine@coloradomining.org
www.coloradomining.org

16-03-17-01

March 11, 2016

ATTN: Spring Creek Mine LBA 1 EA
C/O Lauren Mitchell
Western Region Office
Office of Surface Mining Reclamation and Enforcement
1999 Broadway, Suite 3320
Denver, CO 80202-3050

OSMRE/DOI
MAR 16 2016
Received

Submitted via Email osm.nepa.co@osmre.gov ATTN: Spring Creek Mine LBA 1 EA

Ladies and Gentlemen:

The Colorado Mining Association (CMA) is a trade association whose nearly 1000 members explore for, produce and refine coal, metals, oil shale, and industrial minerals as well as those who provide goods and services to the mining industry. CMA offers the following comments in regard to the proposed Environmental Assessment for the Spring Creek Mine, LBA1 Mining Plan Modification.

The Spring Creek Mine is a major employer in the region, supporting businesses in both Montana and Wyoming. In 2014 alone the mine was responsible for \$50 million to local businesses and nonprofits from purchased goods, services and community contributions in those states. Families in the surrounding area depend on the 250 jobs provided by the mine. Any restrictions imposed by the OSM pursuant to the pending Environmental Assessment that impact the Spring Creek Mine's ability to continue operations will severely impact neighboring communities and the businesses that provide goods and services to the mine. The State of Montana also benefits from the mine's continued operation, receiving \$53 million in taxes and royalties in 2014 alone.

The mine has an excellent record for environmental stewardship and was recognized in 2005 and 2009 with the prestigious National Reclamation Award from the Office of Surface Mining. Because of the rigorous process for permitting, any potential environmental impacts from the mine have been dealt with through the regulatory process.

OSM has already conducted an Environmental Assessment of the project. Therefore, CMA urges the agency to carefully comply with the Court Order, but to avoid unnecessary expenditure of resources to duplicate work that has already been completed and remains relevant, nor evaluate areas not required by the Court Order.

CMA believes that relevant questions to consider (the scope of the EA) might include:

1. Whether significant changes in the environment at the mine have occurred that would impact previous findings and conclusions. As we expect, there will be none and the mine plan should receive approval;
2. Whether any changes in information regarding the modification are so significant as to alter previous findings and conclusions;
3. Whether reasonably foreseeable consequences of combusting the coal will have a significant impact on climate on a local or global scale in view of worldwide emissions;
4. The relatively miniscule impact of combusting the coal from the Spring Creek mine should be considered in light of the fact that globally (outside the U.S.) nearly 1.2 million MW (1,200 gigawatts) of coal capacity is under construction or in the planning phase. This is almost four times the size of the entire U.S. coal fleet and underscores the insignificant impact resulting from coal produced at the Spring Creek Mine.

5. Whether the socioeconomic benefits of continued mining to the community where the mine is located outweigh concerns expressed by persons who do not live in the mine area and are not impacted by the potential loss of those benefits.

CMA appreciates the opportunity to comment on this important matter. Coal provides an affordable, reliable source of electricity for our nation and the Spring Creek Mine plays a critical role in providing our most abundant fuel.

Sincerely,

Stuart Sanderson
President

3/29/2016

DEPARTMENT OF THE INTERIOR Mail - ATTN: Spring Creek Mine LBA 1 EA, C/O Lauren Mitchell



NEPA-MT, OSM <osm-nepa-mt@osmre.gov>

ATTN: Spring Creek Mine LBA 1 EA, C/O Lauren Mitchell

1 message

Gordon Box <woodchuckwy@msn.com>

Sat, Mar 5, 2016 at 8:27 PM

Reply-To: woodchuckwy@msn.com

To: Lauren Mitchell <OSM-NEPA-MT@osmre.gov>

Dear OSMRE and Lauren Mitchell,

I am writing in strong support of the Spring Creek Mine and mining in general. It is critical that Office of Surface Mining Reclamation and Enforcement (OSMRE) quickly work to comply with the procedural requirements the judge explained in her decision.

The Spring Creek Mine is an important part of the southern Montana and produce many benefits for the people of Montana and the United States. The project keeps more than 250 people employed in the community and created more than \$53 million in tax revenue and royalties to Montana in 2014. The mine also creates \$50 million in economic activity for businesses and other community efforts. Energy production is an important part of our national economy and projects like the Spring Creek Mine continued operations are crucial to continued growth and prosperity.

Coal is an important part of the American energy portfolio. Miners like those at Spring Creek support more than 30 percent of our electricity needs at affordable rates. Utilizing these resources creates opportunities for businesses and individuals, and supports so much more than the miners and their families.

The Spring Creek Mine has demonstrated excellent environmental stewardship, responsibly utilizing public resources while simultaneously protecting and improving our beautiful country for future generations. Their record serves as an example to the rest of the nation and the world.

I strongly support the continued operations at Spring Creek Mine and the continued use of affordable, reliable energy production.

Regards,
Gordon Box

□

<https://mail.google.com/mail/b/194/u/0/?ui=2&ik=43b91ac1ea&view=pt&cat=LBA1%20SPRING%20CREEK%20EA&search=cat&th=15349f78739ff3c7&siml=15...> 1/1

Appendix E

Substantive Spring Creek OSM Scoping Comments

Commenter	Date	Address/email	Comment Topic										Notes	# of Comments	
			Water Quality	Air Quality	Wildlife	Level of NEPA/ NEPA Process	Noise	Reclamation	Climate Change	Permitting	Economy	Pro Mining			
Department of the Army	3/4/2016	P.O. Box 2256 Billings MT 59103												Mentions discharge permits for waters of the United States	
David Lagesse	3/7/2016	justdavengwen@comcast.net													
Western Fuels Association	3/7/2016	1901 Energy Court Suite 328 Gillette, WY 82718													
D. Steven Degenfelder	3/8/2016	4491 Sunrise Drive Casper, WY 82604													
Robert K. Green	3/9/2016	Frenchtown, MT													
Northern Plains Resource Council	3/10/2016	220 S. 27th St. Suite A Billings, MT 59101													
Keith Walters	3/11/2016	keith.walters@cldpk.com												Wants to limit the NEPA analysis	
NEPA Environmental Protection Agency	3/11/2016	1595 Wynkoop St. Denver, CO 80202-1129													
Holland & Hart	3/11/2016	acemrich@hollandhart.com												Submitted on behalf of Spring Creek Coal LLC	
Thunder Basin Coal Company LLC	3/11/2016														
Eric Barlow (WY state representative)	3/12/2016	eric.barlow@wyoleg.gov													
Wild Earth Guardians	3/12/2016	2590 Walnut St. Denver, CO 80205												Ensure that SMCRA permit is adequate	
Wyoming Analytical Laboratories, Inc.	3/15/2016	1660 Harrison St. Laramie, WY 82070													
Colorado Mining Association	3/16/2016	216 16th St. Suite 1250 Denver, CO 80202													
Form Letter in Support of Spring Creek	3/5/2016											1875	1875	1875 form letters in support of Spring Creek	1875
			3	3	2	8	1	2	3	2	1883	1885			1889
		Percent of Total	0.2%	0.2%	0.1%	0.4%	0.1%	0.1%	0.2%	0.1%	99.7%	99.8%			