

U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
FINDING OF NO SIGNIFICANT IMPACT
Spring Creek Mine
Federal Coal Lease MTM 94378
Mining Plan Modification

A. Introduction

The Spring Creek Mine (SCM) is located approximately 32 miles north of Sheridan, Wyoming. The SCM, Federal Coal Leases MTM 94378, Mining Plan Modification covers the portions of the leases which lie within the approved Surface Mining Control and Reclamation Act of 1977 (SMCRA) permit area (the Project) and extends from December 31, 2015, through the life-of-mine for that area. Spring Creek Coal Company (SCC) currently operates the SCM under State Mining Permit (SMP) C1979012, issued by the Montana Department of Environmental Quality (MDEQ) and in accordance with Montana State Regulatory Program (30 CFR Part 926).

The MDEQ approved SCM's mine permit revision (Amendment Application 00183) for mining in the Federal Coal Lease MTM 94378 area on October 23, 2009. Based on a recommendation from the Office of Surface Mining Reclamation and Enforcement (OSMRE), the U.S. Department of the Interior (DOI) Assistant Secretary for Land and Minerals Management (ASLM), in accordance with the Mineral Leasing Act of 1920 (MLA), approved SCC's federal mining plan modification for mining within the federal coal leases on June 27, 2012. To date, mining operations approved under Amendment Application 00183 have been ongoing in the MDEQ approved permit area.

A decision by the United States District Court for the District of Montana in *WildEarth Guardians, et al. v. U.S. Office of Surface Mining Reclamation and Enforcement, et al*, Civil No. 14-13-SPW (D. Mont., Jan. 21, 2016) determined OSMRE violated the National Environmental Policy Act of 1969 (NEPA) when they recommended approval of the 2012 federal mining plan modification. Pursuant to the Court-approved remedy to resolve the violation, OSMRE agreed to re-evaluate the environmental impacts of current and future mining activities on this federal lease within the MDEQ permit boundary, for the period beginning December 31, 2015 and continuing through the life of mine (LOM). Prior to initiating the reevaluation, a public outreach period occurred from February 11 through March 12, 2016, including public notices, a public meeting and the opportunity to provide comments on development of the Environmental Assessment (EA). The Court-ordered EA was released for public comment on June 2, 2016.

B. Statement of Environmental Significance of the Proposed Action

Pursuant to 30 CFR Part 746, OSMRE is recommending selection and approval of the Proposed Action (see **section C**). The undersigned person has determined that approval of a federal mining plan modification authorizing continuation of mining operations for approximately 9 more years and additional surface disturbance of approximately 504 acres to recover the federal coal would not have a significant impact on the quality of the human environment under section 102(2)(C) of NEPA, 42 USC 4332(2)(C); therefore, an Environmental Impact Statement is not required.

C. Reasons

OSMRE prepared the *Spring Creek Mine, Federal Coal Lease MTM 94378, Mining Plan Modification Environmental Assessment* (hereafter, the EA) to satisfy OSMRE's requirements under NEPA. OSMRE prepared this EA to re-evaluate the environmental effects resulting from the currently approved federal mining plan modification related to MTM 94378, pursuant to the requirements of NEPA, the Council on Environmental Quality (CEQ), DOI, and OSMRE regulations and guidance regarding implementing NEPA. As part of the re-evaluation process, OSMRE will make a recommendation to the ASLM on a new decision to approve, disapprove, or approve the mining plan with conditions. The need for the re-evaluation in accordance with NEPA was established by a January 21, 2016, court order issued by the Federal District Court, the District of Montana. See *WildEarth Guardians, et al. v. U.S. Office of Surface Mining Reclamation and Enforcement, et al*, Civil No. 14-13-SPW (D. Mont. 2016).

OSMRE is the lead federal agency responsible for development of the EA because it has the decision-making authority regarding a recommendation for the proposed federal mining plan modification under the MLA. As such, this EA followed the CEQ's, DOI's, and OSMRE's regulations and guidance for implementing NEPA. The EA analyzed the potential impacts associated with the Proposed Action and No Action Alternative. The Proposed Action would authorize mining of approximately 84.8 million tons (Mt) of federal coal at a maximum rate of 18 million tons per year (Mtpy) and with a surface disturbance of 503.7 acres, excluding the 124.2 surface acres associated with MTM 94378 that has been disturbed through December 31, 2015. The Proposed Action includes design features to reduce or eliminate potential adverse impacts to the environment.

The EA also analyzed the impacts of the No Action Alternative, which would result in cessation of mining for approximately 2 years while SCC revised the state and federal permits to accommodate the loss of the federal coal associated with MTM 94378. Annual production would resume at a rate of approximately 5 Mt starting in 2018. The No Action Alternative would not result in a new mining plan decision document from OSMRE, or a new decision by the ASLM.

The attached EA considers the Proposed Action and a reasonable range of alternatives to the Proposed Action, discloses the potential environmental effects of the Proposed Action and reasonable alternatives, and provides sufficient evidence and support for this FONSI. The EA was prepared by a third-party consulting firm, at the direction of OSMRE. During the development of the EA, OSMRE independently reviewed the document to ensure compliance with 43 CFR Part 46, Subpart D and all relevant provisions of CEQ regulations, and other program requirements. This independent review included OSMRE's evaluation of all environmental issues disclosed in the EA and also those identified in comments received from the public. OSMRE takes full responsibility for the accuracy, scope, and the content of this document.

The undersigned has determined that, per the CEQ's, DOI's, and OSMRE's regulations and guidance, the public involvement requirements have been met. OSMRE conducted public outreach and received comment regarding the preparation of the Court-ordered EA from February 11 through March 12, 2016. The Court-ordered EA and unsigned FONSI were made available to the public for review during a 33-day comment period that ended July 5, 2016, prior to OSMRE making a final decision. All public comments received to date have been fully considered in the EA and in reaching this FONSI.

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

Context: SCC proposes to meet demand for coal and continue mine operations through approximately 2025 by

1. securing federal mining plan modification approval authorizing mining of leased federal coal within a previously authorized area (i.e., MTM 94378), and
2. continuing to mine, process, and transport coal from the SCM.

Approval of the Proposed Action is a site specific action that would authorize mining of approximately 84.8 Mt of federal coal at a maximum rate of 18 Mtpy and a surface disturbance of 503.7 acres, excluding the 124.2 surface acres associated with MTM 94378 that has been disturbed through December 31, 2015. The effects of the action have been analyzed at the local and regional scale.

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

1. Impacts that may be both beneficial and adverse:

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

The Proposed Action would contribute insignificant particulate emissions, gaseous emissions, and hazardous air pollutants in comparison to the Wyoming, Montana, and U.S. totals. Further, the contribution of the Proposed Action to greenhouse gas (GHG) emissions, both to Wyoming, Montana, and U.S. totals will be minor. The direct impacts on air and climate resources from a state and U.S. comparison are considered to be moderate and short term. Regionally (Big Horn County, Montana and Sheridan County, Wyoming), the comparative emissions are higher, but the region has and is expected to remain in attainment. Indirectly, the Proposed Action would contribute to criteria emissions and GHG emissions through rail transport and the combustion of coal at power plants located throughout the U.S. The emissions impacts resulting from the combustion of SCM coal under the Proposed Action would represent insignificant impacts relative to U.S. emissions and minor impacts relative to Montana emissions. The indirect impacts on air and climate resources are considered moderate and short term. The direct and indirect effects to topography, geology, water resources, soils, vegetation, fish and wildlife, species of special interest, visual resources, and noise are considered moderate, short term, long term, and permanent. Impacts to cultural resources would be negligible and long term.

The Proposed Action would result in considerable beneficial impacts to socioeconomics in the area of influence. There would be an extension of employment for approximately 259 employees, primarily from Sheridan County, Wyoming of up to approximately 9 years. The Proposed Action

represents an estimated economic benefit to this area over the 9-year life of mine (LOM) of wages, goods and services related to the mining operation, and payment of federal, state, and local taxes. The socioeconomic benefits are derived from payroll, insurance, retirement contributions, local expenditures, taxes, and federal coal royalty payments.

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

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

The EA project area is located primarily on private lands and the mining activities do not cross any public roads. Approximately 80 acres are federal surface, managed by BLM. Public access to the areas affected by mining is limited and strictly controlled by the mine. All mine activities with potential public exposure would also be subject to state mine permit approval and review by the Mine Safety and Health Administration (MSHA), which include safety standards. Precautions for public health and safety would also be implemented during transport of equipment along public roads to and from the EA project area. Emissions and effluent limits are within approved standards, as required by state permits, thereby limiting potential impacts to public health. Noise levels at the nearest residences would be well below levels that would affect human health. Potential risks to public health and safety would be negligible and would occur over limited, brief periods.

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

There are no park lands, prime farmlands, wetlands (aquatic resources), wilderness, wild and scenic rivers, or ecologically critical areas within the EA project area. Inventories of historic or cultural resources have been completed for the EA project area and two sites within the Proposed Action tracts are classified as National Register of Historic Places (NRHP) eligible sites that would require mitigation prior to disturbance. Additional cultural resources discussions are included below under Item 8.

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

As a factor for determining within the meaning of 40 CFR 1508.27(b)(4) (whether or not to prepare a detailed EIS) “controversy” is not equated with “the existence of opposition to a use.” *Northwest Environmental Defense Center v. Bonneville Power Administration*, 117 F.3d 1520, 1536 (9th Cir. 1997). The term ‘highly controversial’ refers to instances in which “a substantial dispute exists as to the size, nature, or effect of the major federal action rather than the mere existence of opposition to a use” *Hells Canyon Preservation Council v. Jacoby*, 9 F.Supp.2d 1216, 1242 (D. Or. 1998).

The EA has analyzed the direct, indirect, and cumulative effects of the Proposed Action on climate change and determined the effects to be minor. No other anticipated effects have been identified that are scientifically controversial. Approvals of federal mining plans and mining plan modifications have been made in the area for several decades. The design features and

reclamation plan would reduce the effects on the environment; or, in some cases, would improve the current condition (e.g., soils, vegetation, and wildlife habitat).

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

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

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

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

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

The interdisciplinary team evaluated the possible issues in context of past, present, and reasonably foreseeable actions, including past, present, and reasonably foreseeable mining for the SCM and other mining operations in the region, the combustion of that coal at coal-fired power plants in the U.S., ranching, livestock grazing, recreation, and oil and gas development.

Both the indirect and cumulative effects of coal combustion were disclosed in the EA. There were no significant cumulative effects identified.

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

The EA project area was surveyed for cultural and historic resources. Two NRHP-eligible sites have been identified within the Proposed Action tracts. Both sites have been tested as part of mitigation efforts. A mitigation plan has been formulated for one site and the formulation of a plan for the second site is pending, based on the results of the testing conducted in 2015. The direct and indirect effects on cultural resource from the Proposed Action would be negligible but long term.

Representatives of 17 Native American tribes were consulted during the preparation of the 2006 LBA EA. The Northern Cheyenne Tribe Preservation Office requested additional information and participated in a discussion of the cultural resource issues related to the EA tracts and accompanied mine personnel on tour of several of the sites on February 14, 2006. As a result of the discussions, it was agreed that the Northern Cheyenne Tribe would conduct a tribal cultural survey for SCC and surveys have been conducted on all tracts. Public outreach and Tribal

consultation letters were also sent out to selected tribes that would be directly affected by the project.

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

The current U.S. Fish and Wildlife Service (USFWS) list of T&E species that may occur in Big Horn, County, Montana includes the black-footed ferret (*Mustela nigripes*) and the Sprague's Pipit (*Anthus spragueii*) (USFWS 2016a)

The black-footed ferret is listed as endangered for the SCM area. Based on information in the USFWS's (2013) recent update to the Black-footed Ferret Recovery Plan, the SCM is not located near an active or potential reintroduction area for this species. The Sprague's pipit is considered a candidate for listing, meaning that the USFWS has determined that listing under the ESA is warranted, but precluded by the need to address listing actions of a higher priority. The Sprague's pipit has not been documented in the SCM survey area or elsewhere in Big Horn County (MNHP 2016). The direct and indirect effects related to the Proposed Action on T&E species would be minimal and short term.

In the unlikely event that these species would be encountered as a result of the Proposed Action, these species would be temporarily displaced but current reclamation practices in-place at the SCM would promote the return of these species once reclamation has been completed. The direct and indirect effects related to the Proposed Action on T&E species would be would be minimal and short term.

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

The Proposed Action would not violate any known federal, state, local, or tribal laws or requirements imposed for the protection of the environment. During the public and agency involvement for this EA, state, local, and tribal interests were given the opportunity to participate in the EA process. The Proposed Action is consistent with applicable plans, policies, and programs.

Robert C. Postle, Manager
Program Support Division
Western Region
OSMRE

Date