

U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
FINDING OF NO SIGNIFICANT IMPACT
Coyote Creek Mine
Federal Coal Lease Serial Number: NDM 110277
New Federal Mining Plan

A. Introduction

The Office of Surface Mining Reclamation and Enforcement (OSMRE) for U.S. Department of the Interior (DOI) Regions 5, 7, 8, 9, 10, and 11 determined that should the Bureau of Land Management (BLM) approve Federal coal lease NDM 110277, the Coyote Creek Mining Company (CCMC) would need a new Federal mining plan before mining coal in two Federal lease tracts. A request for a new Federal mining plan requires OSMRE to prepare a Federal Mining Plan Decision Document in which OSMRE makes a recommendation to the Assistant Secretary of Land and Minerals Management (ASLM) to approve, disapprove, or approve with conditions the new Federal mining plan. Under the National Environmental Policy Act (NEPA) of 1969, as amended, OSMRE and the BLM have completed an environmental assessment (EA) as joint lead agencies to analyze the environmental effects of leasing and mining Federal coal lease NDM 110277. The accompanying EA discloses the potential environmental effects of leasing and mining Federal coal beginning in 2021 through the life of the mine for the tracts. The BLM gave the EA the following tracking number: DOI-BLM-MT-0000-2018-0006-EA.

CCMC operates the Coyote Creek Mine (Permit NACC-1302), which is located approximately 5 miles southwest of Beulah, North Dakota. The North Dakota Public Service Commission (NDPSC) will review and make a decision on a revision to Permit NACC-1302 in accordance with the Surface Mining Control and Reclamation Act of 1977 and the North Dakota State Coal Regulatory Program (30 Code of Federal Regulations [CFR] Part 934). If approved, the Federal mining plan (the project) would allow mining within the SW $\frac{1}{4}$ of Section 24, Township (T) 143 North (N), Range (R) 89 West (W) and the SE $\frac{1}{4}$ of Section 26, T143N, R89W, which are included in Federal coal lease NDM 110277, from the date of approval through the life of the mine for the tracts. The most recent NDPSC permit renewal for the Coyote Creek Mine Permit NACC-1302 was issued effective October 22, 2014, and the tracts associated with Federal coal lease NDM 110277 were excluded. The Federal lease tracts for which the new Federal mining plan is being requested are located within the currently approved mining permit boundary; however, mining of Federal coal will require a revision to the NDPSC permit, as stated above, before CCMC can mine the Federal coal in the Federal lease tracts.

The NEPA-required review for this project has been jointly conducted by the BLM North Dakota Field Office and OSMRE for DOI Regions 5, 7, 8, 9, 10, and 11 as a pilot project for improving the leasing, permitting, and mining plan approval process for Federal coal. The accompanying EA discloses the potential environmental effects of this project beginning in 2021 through the life of the mine for the tracts.

B. Statement of Environmental Significance of the Proposed Action

Pursuant to 30 CFR 746, OSMRE is recommending selection and approval of the Proposed Action (Section C). The undersigned person has determined that approval of a Federal mining plan, which authorizes Federal coal removal equivalent to 2 years of current mining operations and additional surface disturbance of approximately 284 acres in Sections 24 and 26 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 United States Code 4332(2)(C); therefore, an environmental impact statement is not required.

C. Reasons

OSMRE jointly prepared the *Coyote Creek Mine Lease by Application for Emergency Lease Sale of Federal Coal, Serial Number: NDM 110277 Mercer County, North Dakota DOI-BLM-MT-0000-2018-0006-EA* (hereafter, the EA) to satisfy OSMRE's requirements under NEPA. OSMRE jointly prepared this EA to

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evaluate the environmental effects resulting from approving the Federal mining plan related to Federal coal lease NDM 110277 pursuant to NEPA; applicable Federal regulations; and Council on Environmental Quality (CEQ), DOI, and OSMRE regulations and guidance regarding implementing NEPA. As part of the evaluation process, OSMRE will make a recommendation to the ASLM to approve, disapprove, or approve the mining plan with conditions.

OSMRE is the co-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 under the Mineral Leasing Act of 1920. For this reason, this EA follows the CEQ, DOI, and OSMRE regulations and guidance for implementing NEPA. The EA analyzes the potential impacts associated with the Proposed Action and No Action Alternative. The Proposed Action would authorize recovery of approximately 5.23 million tons of coal at a rate of 2.5 million tons per year and with a surface disturbance of 284 acres. The Proposed Action includes design features to reduce or eliminate potential adverse impacts to the environment.

The EA also analyzed the impacts of the No Action Alternative. The No Action Alternative would not result in a new mining plan decision document from OSMRE or a new decision by the ASLM.

The attached EA considers the Proposed Action, discloses the potential environmental effects of the Proposed Action, and provides sufficient evidence and support for this finding of no significant impact (FONSI). The EA was prepared by a third-party consulting firm at the direction of OSMRE and the BLM. During the development of the EA, OSMRE reviewed the document to ensure compliance with 43 CFR 46(d); all relevant provisions of CEQ regulations; and other program requirements. This 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 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 and the BLM conducted public outreach and received comments regarding the preparation of the EA during a 14-day period ending on October 29, 2018. The EA and unsigned FONSI were made available to the public for review during a 30-day comment period before OSMRE made its final decision. All substantive public comments received to date have been fully considered in the EA and in reaching this FONSI.

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

Context: CCMC proposes to mine Federal coal and to continue mine operations through approximately 2040 by

1. securing Federal mining plan approval authorizing mining of leased Federal coal within Federal coal lease NDM 110277, and
2. continuing to mine, process, and transport coal from the Coyote Creek Mine.

Approval of the Proposed Action is a site-specific action that would authorize mining of approximately 5.23 million tons of Federal coal at a rate of 2.5 million tons per year and a surface disturbance of 284 acres. The effects of the action have been analyzed at the local and regional scale.

Intensity: The following discussion is organized around the 10 significance criteria described within the Federal regulations at 40 CFR 1508.27. OSMRE has considered the following criteria 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. Project design features to reduce potential short-term and long-term impacts to topography, air quality, water resources,

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vegetation, fish and wildlife, threatened and endangered species, cultural resources, visual resources, and soils are incorporated into the design of the Proposed Action as described in the state-issued mining permit. Additionally, resource protection measures related to air quality, migratory birds, threatened and endangered species, cultural resources, and paleontological resources are required by the state-approved mine permit, stipulations to the Federal coal lease, and approved Federal mining plan.

The Proposed Action would result in a continuation of existing mining levels at the Coyote Creek Mine through 2040. An analysis of the direct effects on greenhouse gases (GHG) in the EA shows that GHGs would continue at current levels and would be short term and not significant. Likewise, the EA shows that the Proposed Action's indirect effects on GHG emissions (based on the burning of the coal excavated from the analysis area) are expected to be long term and not significant. The analysis of the Proposed Action's direct and indirect effects on air quality in the EA shows that these effects would be short term and not significant. Regionally, the comparative emissions are higher, but the region has been and is expected to remain in attainment. Indirectly, the Proposed Action would contribute to criteria emissions and GHG emissions through the combustion of coal at the Coyote Station power plant.

The Proposed Action would result in a continuation of existing mining levels at the Coyote Creek Mine through 2040. An analysis of the direct and indirect effects on groundwater in the EA shows that mining operations would produce no significant diversion of water from groundwater flow systems, and reclamation to approximate original contours would minimize diversion of water from groundwater flow from pre-mining drainages. Additionally, an analysis of the direct and indirect effects on surface waters in the EA shows that short-term adverse impacts to surface water flow and wetlands would occur from the Proposed Action, but impacts are not expected to be significant.

The Proposed Action would result in short-term impacts, which are not expected to be significant, to socioeconomics in the analysis area. There would be an increase of at least \$550,000 deposited into Mercer County's general fund as a result of Federal coal royalty payments.

OSMRE informally consulted with the U.S. Fish and Wildlife Service (USFWS) and jointly prepared a biological assessment with the BLM regarding the effects of the Proposed Action on the Dakota skipper (*Hesperia dacotae*). The USFWS concurred with the effect determination on February 6, 2019, of may affect, not likely to adversely affect. OSMRE and the BLM determined that there would be no effect to other listed, proposed, and candidate species and critical habitat identified within the analysis area for the proposed project (Appendix A of the EA).

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:

Public access to the area affected by mining is strictly controlled by the mine, and the Proposed Action would not affect levels of traffic within the Federal lease tracts. 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, which includes safety standards. Precautions for public health and safety would also be implemented during transport of equipment along public roads to and from the Federal lease tracts. Emissions and effluent limits are within approved standards, as required by state permits, thereby limiting potential impacts to public health. After full reclamation, no public health or safety concerns are expected.

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

There are no park lands, prime farmlands, wilderness, wild and scenic rivers, or ecologically critical areas within the analysis area. Jurisdictional waters, including wetlands, are present within the Federal lease tracts; however, impacts to these waters are mitigated by an individual permit issued by the U.S. Army Corps of Engineers in 2018. A cultural resources inventory was completed for an area that includes the

Federal lease tracts, and one historic site was recorded in the Federal lease tracts (in the SW¼ of Section 24). This site is not recommended eligible for the National Register of Historic Places (NRHP), and it was determined that the Proposed Action would have no adverse effect on any cultural resources eligible for the NRHP 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 analyzes the effects on and from climate change and determines that the Proposed Action would result in direct effects and indirect effects that are long term and not significant. Approvals of Federal mining plans and mining plan modifications have been made in the area for several decades. The project design features and reclamation plan would reduce the effects on the environment. No other anticipated effects have been identified that are scientifically controversial.

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

There are no effects on the human environment under the Proposed Action that are highly uncertain or that 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 principle about future considerations:

This decision is not precedent setting. The issues considered in the EA were jointly developed by OSMRE and the BLM 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 landownership:

OSMRE evaluated the possible issues in context of past, present, and reasonably foreseeable activities, including past, present, and reasonably foreseeable mining for the Coyote Creek Mine and other mining operations in the region, the combustion of that coal at the Coyote Station, ranching, livestock grazing, and oil and gas development.

Both the indirect and cumulative effects of coal combustion are disclosed in the EA. No significant cumulative effects are 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 NRHP or may cause loss or destruction of significant scientific, cultural, or historical resources:

A cultural resources inventory was completed for an area that includes the Federal lease tracts, and one historic site was recorded in the Federal lease tracts. This site is not eligible for the NRHP, and no further

action was recommended. Based on the results of the cultural resource inventory, OSMRE has determined there would be no historic properties affected as a result of the Proposed Action.

A scoping letter was sent on October 9, 2018, to the following Native American Tribes:

- Cheyenne River Sioux Tribe
- Crow Tribe of Montana
- Crow Creek Sioux Tribe
- Flandreau Santee Sioux Tribe
- Fort Belknap Indian Community
- Fort Peck Tribes
- Lower Brule Sioux Tribe
- Three Affiliated Tribes: Mandan, Hidatsa, and Arikara Nation
- Northern Cheyenne Tribe
- Oglala Sioux Tribe
- Rosebud Sioux Tribe
- Standing Rock Sioux Tribe
- Turtle Mountain Band of Chippewa
- Yankton Sioux Tribe
- Spirit Lake Sioux Tribe
- Sisseton-Wahpeton Oyate Tribes

The purpose of the scoping letter was to identify any Native American religious concerns or other issues with the Proposed Action and to request comments on the Proposed Action. Scoping letters were followed up with telephone calls and emails to the relevant Tribal personnel. Continued consultation with the Tribes occurred throughout the stages of proposal development and implementation of the final Federal action. No cultural or religious concerns or traditional cultural properties have been identified through consultation with the Tribes.

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

During preparation of the EA, the BLM and OSMRE informally consulted with the USFWS regarding the effects of the Proposed Action on the Dakota skipper. On January 31, 2019, the BLM and OSMRE completed a biological assessment for review and concurrence by the USFWS (see Appendix A of the EA). On February 6, 2019, the USFWS concurred with the BLM's and OSMRE's effect determination of may affect, not likely to adversely affect. OSMRE and the BLM determined that there would be no effect to other listed, proposed, and candidate species and critical habitat identified within the analysis area.

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

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

Marcelo Calle, Manager
Program Support Division
Unified Regions 5, 7, 8, 9, 10, and 11
OSMRE

Date