

Foidel Creek Mine
Federal Coal Lease COC54608 Modification
Mining Plan Modification
Finding of No Significant Impact
Routt County, Colorado
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Introduction

On March 17, 2015, the Office of Surface Mining and Reclamation Enforcement (OSMRE) Western Region determined that Permit Revision (PR) 10, a modification to Federal Coal Lease COC54608 to include Wolf Creek Reserve development and mining at Peabody's, Twentymile Coal Company, LLC's (TC), Foidel Creek Mine, would require a federal mining plan decision document (MPDD). Under the National Environmental Policy Act (NEPA) of 1969, as amended, OSMRE has completed an environmental review of the Bureau of Land Management's (BLM) environmental assessment (EA) completed in December, 2015, that analyze the environmental effects of the modification to Federal Coal Lease COC54608. BLM gave the EA the following tracking number DOI-BLM-CO-N010-2014-0044-EA. OSMRE is adopting the EA for use in the preparation of the mining plan decision document for PR-10. TC currently operates the Foidel Creek Mine which is an underground longwall coal mine located about 20 miles southwest of Steamboat Springs in Routt County, Colorado. TC has been mining at the Foidel Creek Mine by underground methods since 1983. The Foidel Creek Mine is made up of 6 federal coal leases, private coal leases, and state coal leases and produces approximately 4 million tons of coal per year.

The modification to Federal Coal Lease COC54608 proposes to add 310 acres of un-leased federal coal, within the Wolf Creek seam, under privately owned surface at the TC Foidel Creek Mine. The Wolf Creek seam is located below the Wadge seam. It is estimated that the federal coal reserves included in this lease modification would total approximately 340,000 recoverable tons of high volatile, group B, bituminous coal and would extend the life of the mine by approximately one to two years. There would be no new or additional surface disturbance; BLM's unsuitability criteria apply only to surface coal mining, and therefore are not applicable for this proposed lease modification.

Federal Coal Lease COC54608 was originally issued in February 1996 for 2,600 acres of coal within the Wadge seam. Recovery of the Wadge seam within Federal Coal Lease COC54608 occurred from June 1996 to September 2001. In August 2002, mining of the Wadge seam coal within COC54608 was completed; therefore, TC relinquished 2,280 acres of lease COC54608. TC retained 320 surface acres of lease COC54608 for access to their continued mining operations. TC completed mining operations in the Wadge seam on other authorized federal, State, and private leases within the Surface Mining Control and Reclamation Act (SMCRA) permit boundary, issued by the state of Colorado Division of Reclamation and Mining Safety (CDRMS) in June 2016.

On January 8, 2015, TC submitted PR-10 to CDRMS to add approximately 40.7 million tons of coal within the Wolf Creek seam to their SMCRA permit C-1982-056. Then on July 8, 2015, TC submitted PR-11 which amended PR-10. PR-11 requested access to 40.4 million tons of fee and state coal from the 40.7 million tons of fee, state, and federal coal originally requested in PR-10. PR-10 now contains approximately 340,000 tons of federal coal within the Wolf Creek seam. CDRMS approved PR-11 on March 30, 2016. There is no federal action for PR-11 because the coal is private beneath private land, therefore, a MPDD was not required for PR-11. The PR-11 mining plan, as currently approved, would result in the loss of some State and private coal due to the need to truncate longwall panels in order to bypass the federal coal in COC54608. In the event that the mining plan modification is not approved, TC would re-visit the

PR-11 mine plan, modify the mining plan to optimize development and maximize recovery of the remaining mineable and recoverable reserves of the private and state coal, and submit the revised mining plan as a new Permit Revision for review by CDRMS. TC anticipates that a modified development plan (truncated panels at the permit boundary and gate roads along the permit boundary) and possibly retreat mining would be utilized to maximize conservation and recovery of the coal resource, so that any loss of the associated State and private coal would be negligible.

Statement of Environmental Significance

OSMRE adopted BLM's EA (DOI-BLM-CO-N010-2014-0044-EA). OSMRE determined that the proposed lease modification to add 310 acres of un-leased federal coal under privately owned surface land at the TC Foidel Creek Mine would not constitute a major federal action significantly affecting the quality of the human environment within the meaning of the NEPA. OSMRE was also a cooperator in the preparation of the EA. Pursuant to 30 CFR Part 746, OSMRE is recommending selection and approval of the Proposed Action Alternative. The undersigned person has determined that approval of a federal mining plan modification authorizing the continuation of mining operations for approximately one to two years would not have a significant impact on the quality of the human environment under section 102(2)(C) of the NEPA, 42 USC 4332(2)(C).

Reasons for a Finding of No Significant Impact

The purpose of the action is established by the Mineral Leasing Act of 1920 (MLA) and SMCRA, which requires the evaluation of TC's Permit Application Package (PAP) submitted by TC to the CDRMS. Before TC may conduct underground mining and reclamation operations within the Federal Coal Lease COC54608 modification, federal approval of the mining plan modification must be granted. According to 30 Code of Federal Regulations (CFR), Part 746, OSMRE is the agency responsible for making a recommendation to the Assistant Secretary for Land and Minerals Management (ASLM) to approve, disapprove, or approve with conditions the proposed mining plan modification. The ASLM will decide whether the mining plan modification is approved, disapproved, or approved with conditions. The need for the action is to provide the opportunity for TC to exercise its valid existing rights granted under Federal Coal Lease COC54608 to extract coal from TC's leased federal coal under the MLA. The Proposed Action to approve the mining of the coal within Federal Coal Lease COC54608 and contribute to continued operations for approximately one to two additional years.

As the federal agency responsible with the decision-making authority regarding a recommendation for the proposed mining plan modification under the MLA, OSMRE reviewed BLM's EA for adoption. On December 23, 2016, WildEarth Guardians appealed BLM's decision to the Interior Board of Land Appeals (Interior Board of Land Appeals No. 2016-0080). The instant appeal does not challenge the adequacy of BLM's EA, therefore, the BLM's decision is effective. The litigation is administrative, not judicial meaning that the decision is in effect. Also, the challenge is not to the adequacy of the EA, therefore 40 CFR 1506.3(d) does not apply. Accordingly, OSMRE will proceed with the adoption.

As part of the adoption process, OSMRE reviewed the EA for consistency with OSMRE's NEPA Implementing Procedures. BLM's environmental analyses are consistent with the resource categories and general level-of-detail that OSMRE evaluates in its EAs and specific topics are summarized in the following paragraphs. OSMRE notes that potential noise impacts were not analyzed in the EA or identified in Table 1 of the EA. OSMRE reviewed the PAP for PR-10, which requests the inclusion of Federal Coal Lease COC54608 modification into SMCRA permit C-1982-056, allowing TC access to 340,000 tons of federal coal within the Wolf Creek seam. OSMRE found that there will be no substantial noise impacts resulting from the Proposed Action. The PAP states that the current maximum production of 12 million tons per year will decrease to 6 million tons per year, however that the average rate of mining will be 2.5 to 3.5 million tons per year based on market estimates. Therefore, noise generated from operations at the surface facilities is not anticipated to increase, and could potentially decrease. Also, noise generated from existing portals, existing main entries, and existing ventilation structures are not anticipated to change from current operations, as noted in the EA (page 50), there are no proposed changes to the surface facilities. Additionally, any potential noise impacts to employees through mining would be regulated by the Mine Safety and Health Administration.

The Proposed Action would modify the mining plan to authorize mining of a probable maximum of approximately 340,000 tons of federal coal. No additional surface disturbance is planned. The Proposed Action would extend mining at Foidel Creek for one to two years.

The EA's analysis and Finding of No Significant Impact (FONSI) conclusions regarding the federal coal, which is under OSMRE jurisdiction, did not change due to PR-11. Subsequent to publication of the BLM decision record and FONSI and issuance of the Lease Modification, the CDRMS approved PR-10 on June 15, 2016.

The No Action Alternative would not approve the mining plan modification. The 340,000 tons of federal coal would be bypassed and the life of mine would not be extended for an additional one to two years. Production would end with depletion of the existing recoverable reserves. Reclamation operations would commence and continue until TC's obligations for reclamation under SMCRA and the federal lease terms were met.

The EA considers a reasonable range of alternatives and in conjunction with the previously completed NEPA reviews, discloses the potential environmental effects. These reviews provide sufficient evidence and support for a FONSI.

The undersigned has determined that the public involvement requirements of NEPA have been met through the NEPA process and publication of the BLM EA. Additionally, OSMRE posted the unsigned FONSI to the Western Region's website, soliciting public comments on the unsigned FONSI until February 27, 2017. The BLM EA is publicly available on their website at:

<https://eplanning.blm.gov/epl-front-office/eplanning/projectSummary.do?methodName=renderDefaultProjectSummary&projectId=41852>

This finding is based on determining the significance as defined by the context and intensity found in 40 CFR 1508.27 of effects from the Proposed Action.

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

The Proposed Action would meet demand for coal and continue mine operations through at least 2033 by:

- Securing a federal mining plan modification approval authorizing mining of leased federal coal; and,
- Continuing to mine, process, and ship (via rail and truck) coal to customers in need of coal.

Approval of the Proposed Action is a site-specific action that would not cause any additional acres of disturbance. Under the No Action Alternative, production would end with depletion of the existing recoverable reserves as early as 2029 and reclamation would commence. The effects of the action have been analyzed at the local and regional scale.

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

OSMRE has considered the 10 Significance Criteria in the federal regulations at 40 CFR 1508.27 in evaluating the severity of impacts.

1. Impacts that may be both beneficial and adverse.

Beneficial and adverse impacts from the Proposed Action are described in the adopted EA. There are no ground disturbing activities associated with the Proposed Action. Controlled subsidence (i.e. the land surface lowered as a result of mining) would occur over the longwall panels. The maximum predicted subsidence above the longwall panels under the Proposed Action is 64 inches for overburden thickness of 1,000 feet. Effects from subsidence are not expected to impact wildlife habitat, cultural resources, surface water, and groundwater.

Additional particulate matter, gaseous emissions, and hazardous air pollutants would be emitted for the additional mine life, but at negligible levels currently experienced and within permitted limits (EA Section 3.1.1). The contribution to greenhouse gas emissions (GHGs) compared to both Colorado and U.S. totals would be insignificant. It is expected that approximately one-third (112,000 tons) of the coal from this lease modification would be combusted at the Hayden Generating Station in Hayden, Colorado. The destination of the remaining two-thirds of coal is unknown at this time. In comparing the GHGs from the maximum 340,000 tons of coal mined at Foidel Creek Mine to the total US annual emissions of greenhouse gases, the indirect impacts are considered negligible and adverse. OSMRE acknowledges that per the recent Council on Environmental Quality (CEQ)'s August 2016 Final Guidance for Federal Agencies on Consideration of GHGs and the Effects of Climate Change agencies should no longer use

global or nationwide comparisons for effects determinations; however, “CEQ does not expect agencies to apply this guidance to concluded NEPA reviews and actions for which a final EIS or EA has been issued.” Therefore, OSMRE is not supplementing BLM’s EA to include further GHG or climate change analyses.

The direct and indirect effects to special status animal species, solid minerals, cultural resources, paleontological resources, hazardous or solid wastes, social and economic conditions, ground and surface hydrology are considered negligible or no impact.

Stipulations included in the lease reduce potential short-term and long-term impacts to topography, air quality, water resources, vegetation, fish and wildlife, threatened and endangered species, cultural resources, visual resources, and soils. Additionally, the air permit includes measures to reduce impacts on air quality.

The Proposed Action would result in minor beneficial economic impacts. The extension of mining operations would also extend the annual payroll, local expenditures, and taxes and royalty payments for approximately one to two years.

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

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

Effects from the Proposed Action that could affect health and safety are traffic, air quality, water quality, and noise. Impacts on Transportation and Access were not analyzed because the Proposed Action would occur on private land and would not result in impacts to public roadways or access points. Air and water impacts of the Proposed Action are discussed in the EA in Sections 3.1.1, 3.1.8, and 3.1.9, respectively. Impacts on air quality are negligible (see 1 above). Impacts on water would be minor to negligible and short term. Underground mining would not produce noise effects and therefore is not analyzed in the EA.

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 parklands, prime farmlands, wild and scenic rivers, wetlands, or ecologically critical areas within the project area (Table 1 in the EA). Inventories of historic or cultural resources have been completed, which identified three sites within or adjacent to the lease modification boundary. Subsidence that could be caused by underground mining of the Wolf Creek seam is not anticipated to affect cultural resources. OSMRE is in consultation with the Colorado State Historical Preservation Office.

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 environmental impact statement—“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 on climate change and determined the effects to be negligible. In accordance with the CEQ's Final Guidance for Federal Departments and Agencies on Consideration of GHGs and the Effects of Climate Change in NEPA Review released on August 1, 2016, "CEQ does not expect agencies to apply this guidance to concluded NEPA reviews and actions for which a final EIS or EA has been issued." 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.

OSMRE concurs with BLM's determination not to include a social cost of carbon analysis in the climate change section because the EPA and other federal agencies use the social cost of carbon (SCC) to estimate the climate benefits of rulemakings. The SCC protocol was also developed for use in cost-benefit analyses of proposed regulations that could impact cumulative global emissions (Shelanski and Obstfeld 2015). The SCC is an estimate of the economic damages associated with an increase in CO₂ emissions. This is typically expressed as 1 million tons in a single year. This dollar cost figure from this calculation represents the value of damages avoided for an associated carbon emissions reduction.

The SCC is meant to be an estimate of climate change damages and includes, but is not limited to, changes in net agricultural productivity, human health, and property damages from increased flood risk. However, given current modeling and data limitations, it cannot include all damages or benefits.

Based on emission estimates for coal combustion, SCC calculations can quickly rise to large values; however, specific threshold levels for the determination of significance can vary depending on numerous project factors. NEPA does not require a cost-benefit analysis or the presentation of the SCC cost estimates quantitatively. Without a complete monetary cost-benefit analysis, which includes the social benefits of energy production, inclusion solely of a SCC analysis would be misleading. Therefore, OSMRE did not apply the SCC protocol in this analysis. GHG coal combustion emissions are quantified and contextualized against global and national GHG emissions above. This approach is consistent with framework identified in the August 1, 2016, Final CEQ guidance on climate change considerations during NEPA reviews - published after the EA, but prior to this decision. Although the CEQ guidance is forward looking; "Agencies should apply this guidance to all new proposed agency actions..." (CEQ p. 33). For example, the EA discusses the direct emissions from mining (p. 33 Table 5), and indirect downstream emissions from combustion (p. 34). The CEQ guidance discusses direct and indirect effects in the same context as the EA (CEQ p. 16). The guidance also reaffirmed that a cost-benefit analysis is not required here, and monetizing climate impacts is also not required when important qualitative considerations exist (CEQ p. 32). The EA discusses important qualitative considerations throughout the document (EA p. 39 - 40).

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 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 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 land ownership.*

The EA evaluated the possible issues in context of past, present, and reasonably foreseeable actions, including the Foidel Creek Mine operation, the transport of coal from the mine, the combustion of that coal, and ranching, recreation and other mines in the cumulative effects analysis area. The indirect GHGs from coal combustion mined annually from the Foidel Creek Mine were disclosed in the EA (Section 4.3.1). 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 or may cause loss or destruction of significant scientific, cultural, or historical resources.*

Inventories of historic or cultural resources have been completed, which identified three sites within or adjacent to the lease modification boundary. Subsidence that could be caused by underground mining of the Wolf Creek Seam is not anticipated to affect cultural resources. OSMRE is in consultation with the Colorado State Historical Preservation Office.

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

Formal Section 7 consultation was completed February 29, 2016 with the U.S. Fish and Wildlife Service (FWS) for the Proposed Action. BLM prepared a Biological Assessment, in which OSMRE was a cooperator, which is included as Attachment A in the EA. The BLM determined that the Proposed Action “may affect, but is not likely to adversely affect” the yellow-billed cuckoo and the lineage greenback cutthroat trout. In addition, the Proposed Action is not likely to destroy or adversely modify proposed critical habitat for the Yellow-billed Cuckoo. In the Biological Opinion (BO) (TAILS 06E24100-2016-F-0107), the FWS concurred with these determinations.

A “may affect, likely to adversely affect” determination was found for the four Colorado River Fish. However, in the FWS’s BO, it is the Service’s conclusion that the Proposed Action is not likely to jeopardize the continued existence of the four endangered fish. In addition, the Proposed Action is not likely to destroy or adversely modify any of the critical habitats designated for the four endangered fish.

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 law or requirement imposed for the protection of the environment. The Proposed Action is consistent with applicable plans, policies, and programs.

Marcelo Calle, Manager
Program Support Division

Date