

4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

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S2D2S SS08011000 SX064A00 19XS501520

**Notice of Record of Decision for the San Juan Mine Deep Lease Extension Mining Plan
Modification**

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of Record of Decision.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, the Office of Surface Mining Reclamation and Enforcement (OSMRE) has prepared a Record of Decision (ROD) for the Westmoreland San Juan Mining, LLC (SJCC) proposed Deep Lease Extension (DLE) at the existing San Juan Mine (Project) in San Juan County, New Mexico. This Notice of Availability (NOA) serves to notify the public that the ROD has been prepared and is available for review. In developing the ROD, the OSMRE considered the public comments received on the Final EIS.

AVAILABILITY: You can download the ROD at the following OSMRE Western Region website:

<https://www.wrcc.osmre.gov/initiatives/sanJuanMine.shtm>.

FURTHER INFORMATION: For further information about the Project, contact: Gretchen Pinkham, OSMRE Project Manager, at 303-293-5088 or by email at osm-nepa-co@osmre.gov. Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business

hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Background on the Project

II. Background on the San Juan Generating Station

III. Mining Plan Modification for the DLE

IV. Alternatives

V. Environmental Impact Analysis

VI. Decision

I. Background on the Project

As established by the Mineral Leasing Act (MLA) of 1920, the Surface Mining Control and Reclamation Act (SMCRA) of 1977, as amended (30 U.S.C. §§ 1201-1328), and the Cooperative Agreement between the State of New Mexico and the Secretary of the U.S. Department of the Interior (DOI) in accordance with Section 523(c) of SMCRA (30 U.S.C. 1273(c)), SJCC's Permit Application Package (PAP) must be reviewed by the OSMRE and a mining plan modification approved by the Assistant Secretary for Land and Minerals Management (ASLM) before SJCC may significantly disturb the environment in order to develop the DLE Federal Coal Lease Tract NM-99144. The NM Mining and Minerals Division (NM MMD) is the SMCRA regulatory authority principally responsible for reviewing and approving PAPs. Under the MLA, the OSMRE is responsible for making a recommendation to the ASLM about whether the proposed mining plan modification should be approved, disapproved, or approved with conditions (30 CFR 746.13). The NM MMD approved the PAP for the DLE on October 22, 1999. The ASLM first approved the mining plan modification for

DLE Federal Coal Lease Tract NM-99144 on January 17, 2008, after receiving a recommendation from the OSMRE for approval that included a Finding of No Significant Impact signed by the OSMRE in 2007 and the Bureau of Land Management's (BLM) 1998 decision record on an amendment to the 1988 Farmington Resource Management Plan to include Federal Coal Lease Tract NM-99144.

The OSMRE's NEPA analysis supporting the 2008 mining plan modification was challenged in the U.S. District Court of New Mexico. *WildEarth Guardians v. U.S. Office of Surface Mining et al.*, Case 1:14-cv-00112-RJ-CG (D. NM) (amended petition filed March 14, 2014). On August 31, 2016, the Court granted the OSMRE's Motion for Voluntary Remand, which remanded the matter to the OSMRE to prepare an EIS within 3 years of the Court's order. The Final EIS available today has been prepared in accordance with the voluntary remand.

The San Juan Mine has contractual obligations to deliver approximately 3 million tons of coal per year to the San Juan Generating Station (Generating Station) from 2008 through 2022. Mining activities within the DLE have been ongoing since the OSMRE approval in 2008 and continue presently. Per the voluntary remand, mining operations within the DLE are allowed to proceed during the EIS process. However, the court-approved voluntary remand indicated that the Secretary's approval of the 2008 mining plan modification for the DLE would be vacated if the agency does not complete the required NEPA analysis in a timely manner. As a result, the OSMRE has prepared the Final EIS to re-evaluate its previous mining plan modification recommendation for this area. Among other information, the Final EIS considers (1) the PAP submitted to the OSMRE and NM MMD, and (2) new information available since the 2008 MPDD approval for potentially affected resources considered under direct, indirect, and cumulative analytical frameworks.

The DLE underground operations use longwall mining methods consisting of one longwall miner and two continuous miners (i.e., pieces of equipment). The mine employed approximately 282 people in 2017. The mining plan modification would not add any acres of federal surface lands or any acres of federal coal to the approved permit area but would authorize the recovery of approximately 53 million tons of coal from 4,464.87 acres of federal coal and would add approximately 10 to 15 years to the life of the operation until 2033. For reasons discussed in sections II and III below, annual production rates of the mine are projected to be approximately 3 million tons per year in order to meet the contractual obligations with the Generating Station.

The BLM, U.S. Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (USFWS), and New Mexico MMD are Cooperating Agencies for this NEPA process. As the NEPA analysis proceeded, the OSMRE also consulted with the New Mexico State Historic Preservation Officer in compliance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (54 U.S.C. §§ 300101- 307108), as provided for in 36 CFR Part 800.2(d)(3) and providing for public involvement, as required. Consultations with Native American Tribes have been completed in accordance with DOI policy. The OSMRE has completed the Section 106 process and has included the final stipulations in Appendix B of the ROD and the stipulations will be in effect once the ROD is signed.

As part of its consideration of impacts of the proposed Project on threatened and endangered species, the OSMRE initiated informal consultation with the USFWS on May 8, 2018, pursuant to Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. §§ 1531 et seq.) and its implementing regulations. The consultation considered direct and indirect impacts from the proposed Project, including Project related coal combustion

emissions from the Generating Station. On June 27, 2018, USFWS signed a letter concurring with the OSMRE's findings in its Biological Assessment, completing the consultation process.

In addition to compliance with NEPA, NHPA Section 106, and ESA Section 7, all Federal actions will be in compliance with applicable requirements of the SMCRA; the Clean Water Act, 33 U.S.C. §§ 1251-1387; the Clean Air Act of 1970, as amended, 42 U.S.C. §§ 7401-7671q; the Native American Graves Protection and Repatriation Act of 1990, as amended, 25 U.S.C. §§ 3001-3013; and all applicable laws, regulations, and Executive Orders on topics such as Environmental Justice, Sacred Sites, and Tribal Consultation.

II. Background on the San Juan Generating Station

The Generating Station, operated by the Public Service Company of New Mexico, is one of the largest coal-fired generating stations in the United States and provides power to customers in Arizona, New Mexico, and Utah. The Generating Station is located approximately 4 miles northeast of Waterflow, NM and 15 miles west of Farmington, NM. Pursuant to an agreement with the EPA, the Generating Station shut down two of the four energy generation units (Units 2 and 3) on December 19, 2017, decreasing the power output from approximately 1,800 megawatts to 910 megawatts (specifically, Units 2 and 3). On December 31, 2018, Public Service Company of New Mexico (PNM) filed for abandonment of their share of the San Juan Generating Station with the State of New Mexico. Through 2022, the continued operation of Units 1 and 4 will require approximately 3 million tons of coal per year to produce the 910 megawatts.

III. Mining Plan Modification for the DLE

SJCC's mining plan modification would continue to develop the DLE, Federal Lease NM-99144, within the San Juan Mine. Due to the retirement of energy generating Units 2 and 3

at the Generating Station, the annual production rate of the DLE was reduced from the previous annual production rate of 6 million tons to an annual production rate of approximately 3 million tons beginning in 2017. Federal lease NM-99144 encompasses 4,464.87 acres and includes:

Township 30, North, Range 14 West, New Mexico Prime Meridian

Section 17: All;

Section 18: All;

Section 19: All;

Section 20: All;

Section 29: All;

Section 30: All; and portions of

Section 31: (Lots 1, 2, 3, and 4).

With the completion of the NEPA process (via publication of the Final EIS) and issuance of the Record of Decision, the OSMRE will submit a mining plan decision document to the ASLM that will recommend approval of the proposed mining plan modification for the continuation or cessation of the San Juan Mine to mine the DLE within federal coal lease NM-99144. The ASLM will decide whether the mining plan modification is approved, disapproved, or approved with conditions.

IV. Alternatives

The OSMRE selected Alternative B, its preferred alternative, after consideration of all alternatives analyzed in the Final EIS. The analysis in the Final EIS considers direct, indirect, and cumulative impacts of the Proposed Action and two Alternatives. Per 40 CFR 1501.7, the issues raised during the scoping period (March 22–May 8, 2017) were used to inform the analyses and identify the alternatives considered in the EIS. Alternatives for the Project that were

analyzed in the Final EIS include:

- Alternative A – Proposed Action: As described above in Section I, second paragraph. The Proposed Action Alternative would be as approved from the time of the original PAP and initial approval of the mining plan modification in 2008 until 2033.
- Alternative B – Continuation of San Juan Mine Operations Following Generating Station Shut-Down in 2022: This alternative assumes that that the remaining units of the Generating Station shut down in 2022, but that mining continues at the DLE at the same rate (approximately 3 million tons annually) from 2023 through 2033. After 2023, this alternative assumes that either a new operator will purchase the Generating Station or the mine will send the coal to an unidentified coal-fired power plant(s). Without knowing the location of the end-use of the DLE coal, the Final EIS bounds the potential effects of combusting DLE coal at an unidentified power plant by relying on the analysis of effects at the San Juan Generating Station. Under Alternative B, the mining techniques would be identical to those for the Proposed Action.
- Alternative C – No Action Alternative: This alternative assumes that the OSMRE would recommend that the ASLM disapprove the mining plan modification for the DLE at the San Juan Mine, the ASLM disapproves of the mining plan modification, and mining ceases on August 31, 2019. Implementation of the No Action Alternative would result in the discontinuation of mining activities in the DLE on August 31, 2019, completion of all mining activities at the San Juan Mine in December 2019 and cessation of burning coal from San Juan Mine at the Generating Station approximately 6 months later. Under this alternative, SJCC would complete reclamation activities of all surface disturbance in accordance with its existing permit. Considering mining activities in the DLE have been

ongoing since 2008 and have continued throughout the NEPA process, the baseline conditions for the No Action Alternative includes mining through August 2019.

A wide range of additional Alternatives were considered by the OSMRE but not carried forward for detailed analysis in the EIS. The following Alternatives were not analyzed in the EIS because they either did not meet the purpose and need of the Project or were not considered technically feasible or economically feasible or cost-effective:

- Alternative D – “Just” Transition Alternative
- Alternative E – Alternative Panel Alignment, Timing or Sequence
- Alternative F – Continue to Mine at a Rate of 6 Million Tons Per Year
- Alternative G – Modifications to Underground Mining Technique
- Alternative H – Relocation of Portal Sites
- Alternative I – Alternative Coal Combustion Residue Disposal Sites

V. Environmental Impact Analysis

The Final EIS analyzes the potential environmental impacts to 16 different resource categories, including:

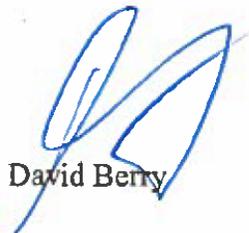
- Air Quality
- Climate Change
- Geology and Soils
- Archaeology and Cultural Resources
- Water Resources and Hydrology
- Vegetation
- Wildlife and Habitats
- Special Status Species

- Land Use, Transportation, and Agriculture
- Recreation
- Social and Economic Values
- Environmental Justice
- Visual Resources
- Noise and Vibration impacts
- Hazardous and Solid Wastes
- Public Health and Safety

VI. Decision

In consideration of the information presented above, the OSMRE approves the ROD and selects Alternative B (Continuation of San Juan Mine Operations Following Generating Station Shut-Down in 2022) as the Preferred Alternative as described in the FEIS (Section 2.2.2). This action can be implemented following approval of the MPDD by the ASLM.

Dated: April 22, 2019



David Berry

OSMRE, Western Regional Director