

U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
FINDING OF NO SIGNIFICANT IMPACT
Dry Fork Mine
Federal Coal Lease WYW-0311810
Mining Plan Modification

A. Introduction

Western Fuels-Wyoming, Inc. (WFW) owns and operates the Dry Fork Mine (DFM), which is located in Campbell County, Wyoming, approximately 4.5 miles northeast of Gillette. The Wyoming Department of Environmental Quality (WDEQ)-Land Quality Division (LQD) issued Permit No. PT0599 in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the Wyoming State Coal Regulatory Program (30 CFR Part 950). If approved, this mining plan modification (the Project) would allow mining within the A3 tract, which includes portions of federal coal lease WYW-0311810 from the date of approval through the life-of-the mine for the tract. The approved permit boundary includes the entire A3 tract. Federal coal lease WYW-0311810 was originally acquired by Sentry Royalty Company (a division of Peabody Energy) in 1967. The lease changed hands several times, however in 1989, North Gillette Coal Company (NGCC) and WFW acquired the lease through a Wyoming limited partnership known as Dry Fork Coal Company (DFCC). WFW was the general partner of DFCC and NGCC was the limited partner. The accompanying environmental assessment (EA) details the environmental effects of this Project beginning in December 31, 2018, through the life-of-mine for those areas. The latest WDEQ-LQD permit renewal for the DFM Permit No. PT0599 was issued effective April 17, 2019, and included mining in the A3 tract associated with portions of federal coal lease WYW-0311810 area.

B. Statement of Environmental Significance of the Proposed Action

Pursuant to 30 CFR Part 746, the Office of Surface Mining Reclamation and Enforcement (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 9.7 more years and additional surface disturbance of approximately 640.3 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 (EIS) is not required.

C. Reasons

OSMRE prepared the *Environmental Assessment Dry Fork Mine Amendment 3 Federal Mining Plan Modification* (hereafter, the EA) to satisfy OSMRE's responsibilities under the National Environmental Policy Act (NEPA). OSMRE prepared this EA to evaluate the environmental effects resulting from approving federal mining plan modification request related to adding portions of federal coal lease WYW-0311810, pursuant to the requirements of NEPA; the Council on Environmental Quality (CEQ), Department of Interior (DOI), and OSMRE regulations; and guidance regarding implementing NEPA. As part of the evaluation process, OSMRE will make a recommendation to the Assistant Secretary of Lands and Minerals (ASLM) on a new decision to approve, disapprove, or approve the mining plan with conditions.

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 Mineral Leasing Act of 1920 (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 recovery of approximately 58.1 million tons (Mt) at a maximum rate of 15.0 million tons per year (Mtpy) and with a surface disturbance of 640.3 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 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 Finding of No Significant Impacts (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 EA for a 30-day period, ending April 22, 2019. The EA and unsigned FONSI were made available to the public for review during a 30-day comment period that ended August 8, 2019 prior to OSMRE making a final decision. All substantive public comments received to date have been fully considered in the EA and in reaching this FONSI (see **EA appendix B**).

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: WFW proposes to meet demand for coal and continue mine operations through approximately 2064 by

1. securing federal mining plan modification approval authorizing mining of leased federal coal within portions of federal coal lease WYW-0311810, and
2. continuing to mine, process, and transport coal from the DFM.

Approval of the Proposed Action is a site specific action that would authorize mining of approximately 58.1 Mt of federal coal at a maximum rate of 15.0 Mtpy and a surface disturbance of 640.3 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. 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 lease, and approved mining plan.

As discussed in **section 4.4.6** of this EA, the contribution of the Proposed Action to greenhouse gas (GHG) emissions to Wyoming and U.S. totals would be minor and short-term. The direct impacts on air quality from a state and U.S. comparison are considered to be moderate and short term (**EA section 4.4.5.1**). Regionally 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 Wyoming and the U.S. The indirect impacts on air quality 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, and ownership and use of the land, are considered moderate, short term, long term, and permanent (**EA sections 4.2, 4.3, 4.5, and 4.8-4.11**). Impacts to wetlands/aquatic features, visual resources, and transportation and from noise and hazardous/solid wastes would be minor, short and long term (**EA sections 4.7 and 4.13-4.16**). Impacts to cultural resources would be negligible and long term (**EA section 4.12**). There would be no direct or indirect effects to alluvial valley floors (AVFs) from the Proposed Action (**EA section 4.6**).

The Proposed Action would result in impacts to socioeconomics in the area of influence. There would be an extension of employment for approximately 82 employees, primarily from Campbell County, Wyoming for up to approximately 9.7 years. The socioeconomic impacts are derived from payroll, insurance, retirement contributions, local expenditures, taxes, and federal coal royalty payments (**EA Section 4.17**).

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 entirely on private lands and the mining activities do not cross any public roads. Public access to the area affected by mining are 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. According to **EA sections 4.4, 4.13, and 4.16**, potential risks to public health and safety would be negligible and would occur over limited, brief periods. After full reclamation has occurred, no public health or safety concerns are expected, and the land would be suitable for historical uses of grazing and wildlife uses and recreational use.

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

As discussed in Section 3.4 of the A2TRI EA, which is incorporated by reference, there are no park lands, wilderness, wild and scenic rivers, or ecologically critical areas within the EA project area. Based on the results of the survey, one isolated stockpond in the A3 tract qualified as a wetland but the 0.3-acre stockpond feature did not qualify as a jurisdictional wetland (**EA section 3.7**). According to information provided on the Natural Resources Conservation Service (NRCS) website, approximately 362 acres of the soil map units within the A3 tract were classified as prime or unique farmlands if irrigated (**EA section 3.8**). However, none of the areas are irrigated and no surface water or groundwater irrigation rights within the A3 tract are designated with an irrigation use. Inventories of historic or cultural resources have been completed for the EA project area and no sites within the Proposed Action tract are classified as National Register of Historic Places (NRHP) eligible sites that would require mitigation prior to disturbance (**EA section 4.12**). 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 and indirect effects on and from climate change and, as discussed in **EA section 4.4**, determined the effects to be moderate and short-term and negligible and long-term, respectively. Approvals of federal mining lands and mining plan modifications have been made in the area for several decades. The environmental 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). 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 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 considerations:

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

OSMRE evaluated the possible issues in the context of past, present, and reasonably foreseeable activities, including past, present, and reasonably foreseeable mining for the DFM 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 (**EA section 4.4.6**).

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. According to information provided in the EA, four cultural resources sites (48CA1298, 48CA1299, 48CA7245, and 48CA7246) were identified in the A3 survey area. All four sites are associated with historic activity (post-1920 era) and are ineligible for listing on the National Register of Historic Places (NRHP) and do not require further investigation (**EA section 4.12**).

Letters of consultation were sent out to Native American tribes/tribal representatives during the preparation of this EA. The consultation included sending out public-outreach and Tribal-consultation letters to the 23 Native American tribes that could be affected by the Proposed Action evaluated in this EA. OSMRE received responses from the Comanche Nation and the Cheyenne Arapaho. The Comanche Nation responded that “No Properties” were identified within the proposed project boundary. The Cheyenne Arapaho THPO requested more information regarding the project to which OSMRE responded by providing a project map and other project material. On May 23, 2017, OSMRE received a response from the Cheyenne Arapaho stating that “No Properties” were identified within the proposed project boundary.

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 Campbell, County, Wyoming includes the northern long-eared Bat (*Myotis septentrionalis*). The Ute ladies'-tresses (*Spiranthes diluvialis*) (ULT) did not appear on the 2018 Information for Planning and Conservation (IPaC) project-specific assessment but is included in the Campbell County assessment.

The primary habitat (woodlands and prominent rocky features) for the northern long-eared bat (*Myotis septentrionalis*) are extremely limited in the A3 tract. Vegetation communities are dominated by shrubland and grassland habitats, and no known underground cavities or caves exist in the area. Small water bodies (ephemeral streams and impoundments), which represent potential foraging habitat where insects tend to concentrate, are present within the A3 tract and surrounding survey area. No northern long-eared bat populations have been documented within Campbell County; however, the species has been documented in dense woodland habitats in Crook County near Sundance, Wyoming, and the closest known species occurrence is located approximately 30 miles northeast of the DFM permit area (BLM 2015c). A portion of

the proposed project as defined in this EA falls within the area of influence (AOI) for the northern long-eared bat; therefore, OSMRE has complied with the programmatic biological opinion (BO) and fulfilled the Section 7 consultation requirements under the Endangered Species Act through submission of the Northern Long-eared Bat 4(d) rule streamlined consultation form to the Wyoming Ecological Field Services Office. WFW will consider the USFWS recommended conservation measures for actions that may affect the northern long-eared bat: conduct tree removal activities outside of the northern long-eared bat pup season (June 1 to July 31). This will minimize impacts to pups at roosts not yet identified. Conservation recommendations are discretionary activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information for conservation of the species (USFWS 2019).

There would be “No Effect” on Ute ladies’ tresses because habitat for the Ute ladies’ tresses orchid (*Spiranthes diluvialis*) is marginal on this amendment area due to the lack of suitable wetlands. However, the marginal wetlands were surveyed on August 4, 2016 but no Ute ladies’-tresses orchids were found.

In the unlikely event that T&E species would be encountered as a result of the Proposed Action, they would be temporarily displaced; however, current reclamation practices in place at the DFM would promote the return of T&E species once reclamation has been completed.

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

10.15.2019

Date