

**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
RECORD OF DECISION
NARO NORTH FEDERAL COAL LEASE APPLICATION
WYW150210
CAMPBELL COUNTY, WYOMING**

INTRODUCTION

Powder River Coal Company filed an application with the Bureau of Land Management (BLM) to lease two tracts of Federal coal as maintenance tracts for the North Antelope/Rochelle Complex on March 10, 2000. The two tracts are referred to as the NARO North and NARO South Lease By Application (LBA) Tracts. A maintenance tract is a tract of Federal coal that is adjacent to and can be mined by an existing coal mine. Powder River Coal Company, a subsidiary of the Peabody Holding Company, Inc., operates the North Antelope/Rochelle Complex, which is adjacent to the NARO North and NARO South LBA Tracts. In 2003, the North Antelope/Rochelle Complex was renamed the North Antelope Rochelle Mine. For the purposes of consistency with the *South Powder River Basin Coal Environmental Impact Statement* (EIS), the mine is referred to as the North Antelope/Rochelle Complex in this Record of Decision.

BLM determined that the NARO North and NARO South LBA Tracts would be processed separately, that a separate decision would be made to hold a lease sale for each tract, and that they would be offered for sale separately. This Record of Decision is for the NARO North LBA Tract only. The NARO North LBA Tract was assigned case file number WYW150210. As applied for, it includes approximately 2,369.38 acres and Powder River Coal Company estimates that the tract includes an estimated 323 million tons of in-place Federal coal reserves in Campbell County, Wyoming. The tract was applied for under the Code of Federal Regulations (CFR) at 43 CFR Subpart 3425.

BACKGROUND

The Lease By Application Process

Powder River Coal Company has a permit approved by the Wyoming Department of Environmental Quality, Land Quality Division (WDEQ/LQD) and a Mineral Leasing Act (MLA) mining plan approved by the Secretary of the Interior to conduct surface coal mining operations on their existing North Antelope/Rochelle Complex leases. The mine also has an air quality permit approved by the Wyoming Department of Environmental Quality, Air Quality Division (WDEQ/AQD) for two alternative mining scenarios. Under scenario one, a maximum of 105 million tons of coal per year would be mined during the years 2004-2006. Under scenario two, up to 84 millions tons of coal per year would be mined during the years 2002-2007.

Under the LBA process, maintenance tracts are nominated for leasing by companies with adjacent existing mines. Powder River Coal Company previously applied for Federal coal adjacent to the North Antelope/Rochelle Complex using the LBA process. In 1992 they were issued a maintenance lease for the North Antelope/Rochelle LBA Tract. In 1998 they were issued a maintenance lease for the Powder River LBA Tract. To process an LBA the BLM evaluates the quantity, quality, maximum economic recovery (MER) and fair market value (FMV) of the Federal coal and evaluates the environmental impacts of leasing and mining the Federal coal. A Federal coal lease provides the lessee the mining rights but does not authorize mining. The impacts of mining are considered in the environmental analysis because mining is a logical consequence of issuing a maintenance lease. The *South Powder River Basin Coal EIS* evaluates the impact of leasing five tracts of Federal coal, including the NARO North LBA Tract, in the Powder River Basin, Wyoming (Attachment 1, Figure 1). The Office of Surface Mining Reclamation and Enforcement (OSM) is a cooperating agency on the EIS because OSM is the Federal agency that administers programs that regulate surface coal mining in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Forest Service is a cooperating agency on the EIS because three of five Federal coal tracts considered in the *South Powder River Basin Coal EIS* include portions of the Thunder Basin National Grassland administered by the Forest Service. The NARO North LBA Tract includes approximately 1,718.6 acres of National Forest System (NFS) lands administered by the Forest Service (see Figure 3-11 in the *South Powder River Basin Coal EIS*).

By law and regulation the LBA process is an open, public, and competitive leasing process and bidding is not restricted to the applicant. The NARO North LBA Tract is contiguous with the North Antelope/Rochelle Complex; it is not contiguous with any other existing surface coal mines (Attachment 1, Figure 1). Powder River Coal Company applied for the tract as a maintenance tract for the North Antelope/Rochelle Complex. In the *South Powder River Basin Coal EIS*, the alternatives analyzed in detail assume that the applicant will be the successful bidder if a competitive sale is held.

Recent Coal Leasing Activity in the Wyoming Powder River Basin

Since decertification of the Powder River Federal Coal Region in 1990, eleven Federal coal leases in Campbell and Converse Counties, Wyoming, have been issued after competitive sealed-bid sales using the LBA process (see Table 1-1, *South Powder River Basin Coal EIS*). These leases include approximately 27,457 acres and 3.18 billion tons of mineable coal. Ten of the new leases were issued to the following existing mines for the purpose of extending operations at those mines: Jacobs Ranch Mine (2), Black Thunder Mine (2), North Antelope/Rochelle Complex (2), Eagle Butte Mine (1), Antelope Mine (2), and North Rochelle Mine (1). In 1992 the West Rocky Butte Tract adjacent to the existing Rocky Butte lease was leased to the Northwestern Resources Company who planned to start a new mine. Caballo Coal Company, a subsidiary of Peabody Holding Company, Inc. and operator of the adjacent Caballo Mine, now holds both of the Rocky Butte leases.

In 1974, 1979, and 1981 the BLM prepared three regional EISs analyzing the impacts of surface coal mining in the Wyoming portion of the Powder River Basin. In 1984 a fourth regional EIS was prepared and issued in draft form, but it was not made final and the proposed actions were not implemented. The North Antelope Mine and Rochelle Mine, which now comprise the North Antelope/Rochelle Complex, were included in the impact analyses in all four of the BLM's regional EISs. All of the mines in operation in the Wyoming portion of the Powder River Basin, as well as a mine proposed on the original Rocky Butte lease and a mine proposed for the terminated Keeline lease, were included in the 1981 and 1984 EIS analyses. To evaluate the impacts of leasing tracts of Federal coal in the Powder River Basin in Wyoming the BLM has prepared six environmental assessments (EAs) and seven EISs since the 1990 decertification of the Powder River Federal Coal Production Region. Most recently, the *Final South Powder River Basin Coal EIS* was mailed to the public in December 2003 and the *Final West Hay Creek Coal Lease Application EIS* was mailed to the public in June 2004.

Pending Coal Leasing Applications and Other Proposed Projects In the Wyoming Powder River Basin

There are eight pending maintenance lease applications in the Wyoming portion of the Powder River Basin including the NARO North LBA Tract. The pending lease applications currently include approximately 1.98 billion tons of Federal in-place coal. In addition to the NARO North LBA Tract, the pending applications and associated mines are: NARO South, North Antelope/Rochelle Complex; Little Thunder, Black Thunder Mine; West Roundup, North Rochelle Mine; West Hay Creek, Buckskin Mine; West Antelope, Antelope Mine; Maysdorf, Cordero-Rojo Mine; and West Extension, Eagle Butte Mine.

The Jacobs Ranch, Black Thunder, North Rochelle, North Antelope/Rochelle Complex, and Antelope Mines form an almost contiguous group of mines located in Campbell and Converse Counties, east and southeast of Wright, Wyoming (Attachment 1-Figure 1). Associated with this group of mines are pending applications to lease five maintenance tracts of Federal coal, including the NARO North LBA Tract.

In addition to the ongoing coal leasing and mining, oil and gas leasing and development are occurring in this area. Both conventional and coal bed natural gas (CBNG) wells have been drilled around and within this group of mines. Conventional and CBNG resources are currently being recovered from areas held in Federal, State, and private oil and gas leases in this area, and additional CBNG drilling and development is currently proposed. Federal oil and gas lease ownership in the NARO North LBA Tract is described in Figure 3-15 and Table 3-10 of both the draft and final EIS documents. Table 3-10 was updated between the preparation of the draft and final documents to reflect changes in lease ownership. The Federal lessees, as well as private interest owners identified by Powder River Coal Company, were included on the mailing list for the South Powder River Basin Coal EIS; they were notified of the date and time of the scoping meeting that was held in October of 2001 and they received copies of the Draft and Final EIS documents. When the *Draft South Powder River Basin Coal EIS* was released, one potentially

affected oil and gas lessee expressed concern about the impact that the proposal to lease the Federal coal in the NARO North LBA Tract would have on the rights of existing oil and gas lessees (see *Final South Powder River Basin Coal EIS*, Appendix M, Letter 7). After the Final EIS was released, BLM received a letter from this operator stating that the issues raised in the previous comment letter had been resolved and that the lessee was withdrawing all objections to leasing the NARO North LBA Tract (Attachment 2, Letter from Tindall Operating Company).

There are currently five active conventional oil and gas wells and eight active CBNG wells located on the NARO North LBA Tract, according to the Wyoming Oil and Gas Conservation Commission database. As discussed in Section 4.1.2.1 of the Final EIS, the BLM Wyoming Reservoir Management Group (WSO-RMG) prepared an analysis of CBNG resources for the *South Powder River Basin Coal EIS*. The WSO-RMG estimated that, as of 2000, the coal in the NARO North LBA Tract had an average content of seven standard cubic feet of CBNG per ton of coal and the estimated recoverable CBNG resource in the tract at that time was 2.261 billion cubic feet.

There are several mechanisms that can be used to facilitate recovery of the conventional oil and gas and CBNG resources prior to mining if the Federal coal in the tract is leased now:

- BLM will attach a Multiple Mineral Development stipulation to the lease which states that BLM has the authority to withhold approval of coal mining operations that would interfere with the development of mineral leases issued prior to the coal lease [see Attachment 3(c)].
- Conventional oil and gas wells must be abandoned while mining and reclamation operations are in progress but could be recompleted or redrilled following mining if the value of the remaining reserves would justify the expense of reestablishing production.
- BLM has a policy in place on CBNG-coal conflicts (BLM Instruction Memorandum No. 2003-253), which directs BLM decision-makers to optimize the recovery of both resources and ensure that the public receives a reasonable return. This memorandum offers royalty incentives to CBNG operators to accelerate production in order to recover the natural gas while simultaneously allowing uninterrupted coal mining operations. In addition, this memorandum also states that it is the policy of the BLM to encourage oil and gas and coal companies to resolve conflicts between themselves; and when requested, the BLM will assist in facilitating agreements between the companies.
- Mining of the NARO North LBA Tract cannot occur until the coal lessee has a permit to mine the tract approved by the Wyoming Department of Environmental Quality and a MLA mining plan approved by the Secretary of the Interior. Before the MLA mining plan can be approved, BLM must approve the Resource Recovery and Protection Plan for mining the tract. Prior to approving the Resource Recovery and Protection Plan, BLM can review the status of CBNG and conventional oil and gas development on the tract

and the mining sequence proposed by the coal lessee. The permit approval process generally takes the coal lessee several year, during which time CBNG resources can be recovered.

- Prior to mining the Federal coal, the coal lessee can negotiate an agreement with owners and operators of existing oil and gas facilities on the tract, including owners and operators of oil and gas well and pipeline facilities, regarding removal of those facilities prior to mining.

Other proposed developments in the Wyoming Powder River Basin that have advanced to the planning and permitting stages and that could be completed in the foreseeable future include: a power plant (Two Elk Power Plant) proposed by the North American Power Group (NAPG) and a railroad line from the Powder River Basin to Minnesota proposed by Dakota, Minnesota, and Eastern Railroad (DM&E). Construction of the Two Elk Power Plant has been delayed while NAPG obtains funding and completes the process of getting all of the required permits approved. The Surface Transportation Board (STB) released the Final EIS for the proposed DM&E Powder River Basin Expansion Project on November 19, 2001. On January 30, 2002, the STB issued a Record of Decision for the DM&E project. As a result of lawsuits that were filed against the project, several issues have been remanded to the STB for further review and action. Prior to commencing any construction activities DM&E must obtain permits or approvals from other Federal agencies including the BLM, the Forest Service and the Army Corps of Engineers.

The proposed power plant and the DM&E railroad line and the ongoing and proposed oil and gas operations (including CBNG) are separate projects being developed independently of the issuance of a maintenance coal lease for the NARO North LBA Tract. If these other projects are developed as proposed and the NARO North LBA Tract is leased and mined as proposed, there would be some overlap in the impacts of constructing and operating those projects and the environmental impacts of mining the tract. The cumulative effects of all of these projects (the Two Elk Power Plant, the DM&E railroad, the ongoing and proposed oil and gas development and production, and the coal mining that would follow the leasing of NARO North LBA Tract and the other LBA tracts) are described in the *South Powder River Basin Coal EIS*. They were also described in the *Final Environmental Impact Statement and Proposed Plan Amendment for the Powder River Basin Oil and Gas Project* (BLM-WY 2003).

DECISION

The decision is to select the Proposed Action. Under the Proposed Action a lease for the NARO North LBA Tract, Federal coal tract WYW150210, as applied for would be issued to the successful qualified high bidder, if the highest bid received at a competitive lease sale meets or exceeds the fair market value (FMV) as determined by the BLM and if all other leasing requirements are met. The competitive lease sale will be held under the regulations found at 43 CFR Subpart 3422, Lease Sales. As described under the Proposed Action in the EIS, Federal coal tract WYW150210 includes 2,369.38 acres more or less and Powder River Coal Company

estimates that this tract contains approximately 323 million tons of in-place Federal coal resources in Campbell County, Wyoming.

This decision is consistent with the *Approved Resource Management Plan for Public Lands Administered by the BLM Buffalo Field Office* (2001, amended 2003). I have incorporated by reference in this decision standard coal lease stipulations addressing compliance with basic requirements of the environmental statutes and have attached BLM special stipulations (Attachment 3).

Under the Proposed Action, the NARO North LBA Tract includes approximately 1,718.6 acres of NFS lands in the Thunder Basin National Grassland administered by the Forest Service. Consequently, the Forest Service must consent and prescribe terms and conditions for the NARO North LBA Tract to be leased. The Forest Service provided consent to lease the lands with NFS surface in the NARO North LBA Tract in a decision signed on May 4, 2004. The decision is conditioned on application of the Notice for Lands of the National Forest System under Jurisdiction of the Department of Agriculture (FS Notice) on the NARO North Federal Coal Lease Tract (WYW150210) when the tract is leased (Attachment 3).

The U.S. Fish and Wildlife Service has provided written concurrence for leasing the NARO North LBA Tract pursuant to section 7(a)(2) of the Endangered Species Act of 1973, as amended (Attachment 4).

In the event that the bid or bids submitted at the competitive lease sale of the NARO North LBA Tract do not meet or exceed the FMV as determined by the BLM, the BLM may schedule a follow-up sale. If needed, the BLM will consider additional re-offers.

Under the Proposed Action, it is assumed that the applicant will be the successful bidder on the NARO North LBA Tract and that the coal will be mined, processed and sold by the North Antelope/Rochelle Complex. If the tract is mined, it would be environmentally preferable to mine and reclaim the NARO North LBA Tract as a maintenance lease in a logical sequence with the ongoing mining and reclamation operations at an adjacent existing mine. This would be consistent with the analysis of the impacts described in the EIS.

REASONS FOR THE DECISION

The reasons for selecting the Proposed Action are as follows:

- The decision to offer 2,369.38 acres containing approximately 323 million tons of in-place Federal coal reserves, in response to the coal lease application received March 10, 2000, is in conformance with the BLM land use plans covering this area.
- The decision to offer 2,369.38 acres containing approximately 323 million tons of in-place Federal coal reserves, in response to the coal lease application received March 10, 2000, is consistent and in compliance with the Thunder Basin National Grassland Plan

Management Direction for Management Area 8.4 Mineral Production and Development.

- The *South Powder River Basin Coal EIS* was prepared in response to applications BLM received to lease five tracts of Federal coal including the NARO North LBA Tract, to four existing mines in Wyoming. The environmental impacts of this decision were fully disclosed in that EIS. Public comment was addressed in the Final EIS.
- The purpose of the North Antelope/Rochelle Complex application for the NARO North LBA Tract was to allow them access to a continuing supply of low sulphur compliance coal that would be sold to power plants for the purpose of generating power. Continued leasing of the low sulphur Powder River Basin coal enables coal-fired power plants to meet Clean Air Act requirements without constructing new power plants, revamping existing plants, or switching to other alternative fuels. Generally, the cost of constructing new power plants, retrofitting or revamping existing plants, or re-tooling and switching to other alternative fuels effect additional costs to energy customers.
- The LBA tract configuration under the Proposed Action provides for maximum economic recovery of the coal resource.
- When an application to lease Federal coal is submitted, the BLM must decide whether to process the application and hold a competitive sealed-bid lease sale for the coal or reject the application and not offer the coal for lease. Regardless of the decision, the BLM must notify the applicant in a timely fashion of its decision. The EIS provides the BLM with the information needed to meets its obligations to respond to an application in a timely fashion.
- A primary goal of the National Energy Policy is to add energy supplies from diverse sources including domestic oil, gas, and coal in addition to hydropower and nuclear power. The BLM recognizes that the continued extraction of coal is essential to meet the nation's future energy needs. As a result, private development of Federal coal reserves is integral to the BLM coal leasing programs under the authorities of the Mineral Leasing Act of 1920, the Federal Land Policy and Management Act of 1976 and the Federal Coal Leasing Amendments Act of 1976.
- The BLM coal leasing program encourages the development of domestic oil, gas, and coal reserves and reduction of the United States' dependence on foreign sources of energy. The leasing and subsequent mining of Federal coal reserves provide the United States, the State of Wyoming, and affected local counties with income in the form of lease bonus payments, lease royalty payments, and tax payments; production of federal coal also provides the public with a supply of cost-efficient, low sulphur coal for power generation. The alternative selected meets the goals of the National Energy Policy and achieves the objectives of the Federal coal leasing programs managed by the BLM. It is strongly supported by the Wyoming Governor and other state and local officials.

PUBLIC INVOLVEMENT

On September 12, 2000, the BLM published notice of the receipt of this lease application in the *Federal Register*. Copies of this notice were sent to voting and non-voting members of the Powder River Regional Coal Team (PRRCT), including the governors of Wyoming and Montana, the Northern Cheyenne Tribe and Crow Tribal Council, Forest Service, OSM, U.S. Fish & Wildlife Service, U.S. National Park Service, U.S. Geological Survey, and others.

On October 25, 2000, the PRRCT reviewed coal lease application WYW150210 at a public meeting in Cheyenne, Wyoming. The PRRCT recommended that the BLM process the application. The BLM published its Notice of Intent to Prepare an EIS and a Notice of Scoping in the *Federal Register* October 3, 2001, and in the *Gillette News-Record* on September 25, 2001, and October 2, 2001. Scoping notices were mailed to Federal, State and local government agencies, conservation groups, commodity groups, and individuals who could be impacted by this lease application. The mailing list was jointly developed by BLM, Forest Service, and the applicants, including the Powder River Coal Company, for the five LBA tracts considered in the *South Powder River Basin Coal EIS* analysis. On October 10, 2001, a public scoping meeting was held in Gillette, Wyoming.

The *Draft South Powder River Basin Coal EIS* was mailed to the public and other interested parties, in late January 2003. On February 7, 2003, the Environmental Protection Agency (EPA) published its Notice of Availability of the Draft EIS in the *Federal Register*. BLM published a Notice of Availability and Notice of Public Hearing in the *Federal Register* on February 20, 2003, and in the *Gillette News-Record* and *Douglas Budget* on February 5 and February 12, 2003. To solicit public comment on the Draft EIS, the proposed lease sale, and the FMV and MER of the Federal coal included in the five tracts under consideration, a formal public hearing was held on March 4, 2003, in Gillette, Wyoming. With the publication of the EPA's Notice of Availability in the *Federal Register*, the 60-day review and comment period on the Draft EIS started on February 7, 2003, and ended on April 11, 2003. The Final EIS was mailed to the public and other interested parties in December 2003. The BLM and EPA each published a Notice of Availability of the Final EIS in the *Federal Register* on December 24, 2003.

During the EIS scoping period the BLM received 12 written comments and one oral comment. Twelve written comments were received on the Draft EIS. Four parties commented at the March 4, 2003, public hearing. Twenty-one written comments were received on the Final EIS. The comments made on the Draft EIS with BLM responses are included in the Final EIS, the comments received on the Final EIS are summarized in Attachment 5. Attachment 2 includes comments received on the Final EIS that directly reference the NARO North LBA Tract. The written comments and the transcript of the formal hearing are on file at the BLM Casper Field Office and BLM Wyoming State Office, Cheyenne, Wyoming. All comments that were received during the EIS process were considered in the preparation of both the Draft and Final EISs, and in this Record of Decision.

ALTERNATIVES ANALYZED IN DETAIL

The EIS analyzed two alternatives for the NARO North LBA Tract in detail: the Proposed Action and Alternative 1, the No Action Alternative. These alternatives are summarized below. A full description of each of the alternatives analyzed in detail may be found in Chapter 2 of the EIS.

In evaluating the NARO North LBA Tract, BLM evaluated unleased Federal coal adjacent to the applied for tract that the BLM could add to the tract to either increase the potential for competitive interest in the tract or to reduce the potential that some of the remaining unleased Federal coal would be bypassed in the future. BLM did not identify any adjacent unleased Federal coal that should be added to the tract at this time.

Proposed Action: Hold a Competitive Sale of Federal Coal Lands as Applied For (Selected Alternative):

The lands that were applied for in the NARO North LBA Tract will be offered for lease at a competitive sale. The tract as applied for includes approximately 2,369.38 acres. Powder River Coal Company estimates that it includes approximately 323 million tons of in-place Federal coal (see Attachment 1-Figure 2 and Table 1) and that approximately 306.9 million tons, or 95 percent, of that coal will be recoverable. This alternative assumes that the applicant will be the successful bidder on the NARO North LBA Tract and that the coal will be mined, processed and sold by the North Antelope/Rochelle Complex.

Table 1: Description of lands to be offered for competitive sale under the Preferred Alternative: T.42N., R.70W., 6th P.M., Campbell County, Wyoming

- Section 28: Lots 5 through 16;
- Section 29: Lots **5 through 16**;
- Section 30: Lots 9, 10, **11 through 20**;

T.42N., R.71W., 6th P.M., Campbell County, Wyoming

- Section 25: Lots **5 through 15**;
- Section 26: Lots **7, 8, 9, 10**;
- Section 35: Lots **1, 2, 7 through 10, 15 and 16**;

Total: 2,369.38 acres

As discussed above, the NARO North LBA Tract includes approximately 1,718.6 acres of NFS lands administered by the Forest Service (see Figure 3-11 in the *South Powder River Basin Coal EIS*). These lands are shown in bold in Table 1.

Alternative 1: No Action Alternative

The application to lease the Federal coal included in the NARO North LBA Tract BLM would be rejected and the tract would not be offered for lease at this time. Currently permitted mining

activity at the adjacent North Antelope/Rochelle Complex and Antelope Mine will continue, with or without leasing the NARO North LBA Tract, and portions of the tract adjacent to the existing mine will be disturbed to recover all of the coal in the existing leases. If it is assumed that this tract will never be leased and coal removal and the associated disturbance will never occur, this alternative is the environmentally preferable alternative. However, selection of this alternative would not preclude future applications to lease all or part of the Federal coal included in this tract.

ALTERNATIVES CONSIDERED BUT NOT ANALYZED IN DETAIL

Further descriptions of these alternatives may be found in Chapter 2 of the Final EIS.

Alternative 4: As under the Proposed Action, BLM would hold a competitive coal lease sale for the tract as applied for and then issue a lease to the successful bidder. This alternative assumed that the applicant would not be the successful bidder, and that the Federal coal would be developed as a new stand-alone mine. BLM estimates that 500 to 600 million tons of coal would be needed to attract a buyer interested in constructing a new mine in the Wyoming Powder River Basin. This alternative was considered and eliminated from detailed study because the current economics of mining in the Powder River Federal Coal Region appear to make construction of a new mine economically unfeasible on a tract of Federal coal of this size.

Alternative 5: The BLM would have postponed a sale of the NARO North LBA Tract to potentially increase the benefits to the public if coal prices increase within the Powder River Basin or to allow recovery of additional CBNG resources in the tract prior to mining.

This alternative was not analyzed in detail because it would not produce significantly different impacts than other alternatives analyzed in detail. Royalty and tax payments are collected at the time the coal is sold. They increase as coal prices increase, which allows the United States to benefit if coal prices have increased by the time of mining. Recovery of the coal would not disturb any remaining conventional oil and gas resources within the tract; they could be recovered after the coal is mined and the tract is reclaimed. Recovery of CBNG resources on the tract is occurring and recovery of a substantial portion of those resources on the tract would be anticipated after lease issuance because, as discussed in the Background section above, express terms of the proposed lease will protect the right of the holder of the first mineral lease issued for the tract to recover any commercial quantities of CBNG. BLM has a policy in place on CBNG-coal conflicts, which will allow the agency to offer the oil and gas lessee royalty reductions as incentives to accelerate production prior to the commencement of surface coal mining on the tract. The environmental impacts of mining the federal coal at a later time as part of an existing mine would be expected to be similar and about equal to the Proposed Action. If a new mine start is required to recover the coal in this tract, the environmental impacts would be expected to be greater than if the tract is mined as an extension of an existing mine.

MITIGATION, COMPLIANCE AND MONITORING

If the NARO North LBA Tract is leased, the lease will contain the standard coal lease stipulations. The attached BLM Special Stipulations (Attachment 3) regarding cultural resources, paleontological resources, threatened and endangered species, multiple mineral development of oil and gas or coal resources or both, resource recovery and protection, and public land survey will be added to the coal lease. The attached Forest Service Notice (Attachment 3) regarding cultural and paleontological resources and endangered and threatened species will also be added to the coal lease.

SMCRA gives the OSM authority to administer programs that regulate surface coal mining operations. The WDEQ regulates surface coal mining activities in Wyoming. If the North Antelope/Rochelle Complex is the successful, qualified high bidder on Federal coal tract WYW150210, a permit revision must be approved by the WDEQ/LQD and a MLA mining plan must be approved by the Secretary of the Interior before the coal can be mined. The existing mitigation measures specific to the currently approved mine plan for the adjacent mine will be revised to include mitigation measures specific to mining WYW 150210 when the mining permit is amended.

If the successful, qualified high bidder does not operate an adjacent mine and proposes to construct and operate a new mine, then a new permit and a new mining plan must be prepared and approved before the coal can be mined. Before WYW150210 can be mined, mitigation measures and monitoring plans specific to a mining and reclamation plan must be attached to any revised existing or new mining and reclamation plan.

Prior to mining of the areas subject to the coal lease all practicable means to avoid or minimize environmental harm will be adopted as leasing stipulations or, as consistent with normal practices, can be expected to be adopted as conditions of the mining permit. To ensure that the revised plan is in compliance with the leasing stipulations, BLM has a responsibility to review the Resource Recovery and Protection Plan prior to approval of the mining plan. Before any mining of the NARO North LBA Tract can begin, the Resource Recovery and Protection Plan must be approved by the BLM, the permit, or permit revision, must be approved by WDEQ/LQD, and the MLA mining plan must be approved by the Assistant Secretary of the Interior.

RECOMMENDED ALTERNATIVE

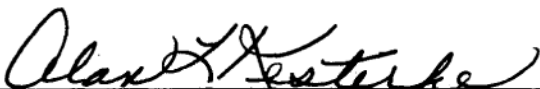
I recommend that, after a competitive lease sale, Federal coal tract WYW150210 and its associated 2,369.38 acres more or less, be issued to the successful, qualified high bidder provided it is determined that the highest bid meets, or exceeds, the FMV of the tract as determined by the BLM and that all other leasing requirements are met. This is the Selected Alternative described in this record of decision. The competitive lease sale will be held in accordance with the requirements at 43 CFR Subpart 3422. The lease will be subject to the attached BLM special lease stipulations and Forest Service Notice (Attachment 3).

 (acting)
Assistant Field Manager for Solid Minerals
Casper

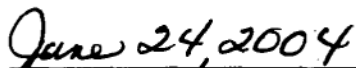
6/17/04
Date

APPROVAL

I agree with the recommendation of the Assistant Field Manager for Solid Minerals and I approve the decision to offer Federal coal tract WYW 150210 for competitive lease sale.




BLM Wyoming State Director
ASSOCIATE

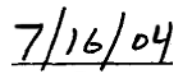


Date


Concur:



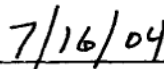
Director, BLM



Date



Assistant Secretary
Lands and Minerals Management, DOI



Date

ATTACHMENTS

1. Figures 1 and 2
2. Comment letters that specifically reference the NARO North LBA Tract
3. BLM Special Coal Lease Stipulations and Notice for Lands of the National Forest System under Jurisdiction of the Department of Agriculture on the NARO North Federal Coal Lease Tract (WYW150210)
4. USFWS letter in response to BLM formal request for consultation under Endangered Special Act, Section 7.
5. Summary of comments received on the “South Powder River Basin Coal Final Environmental Impact Statement”

ATTACHMENT 1:

FIGURES 1 and 2

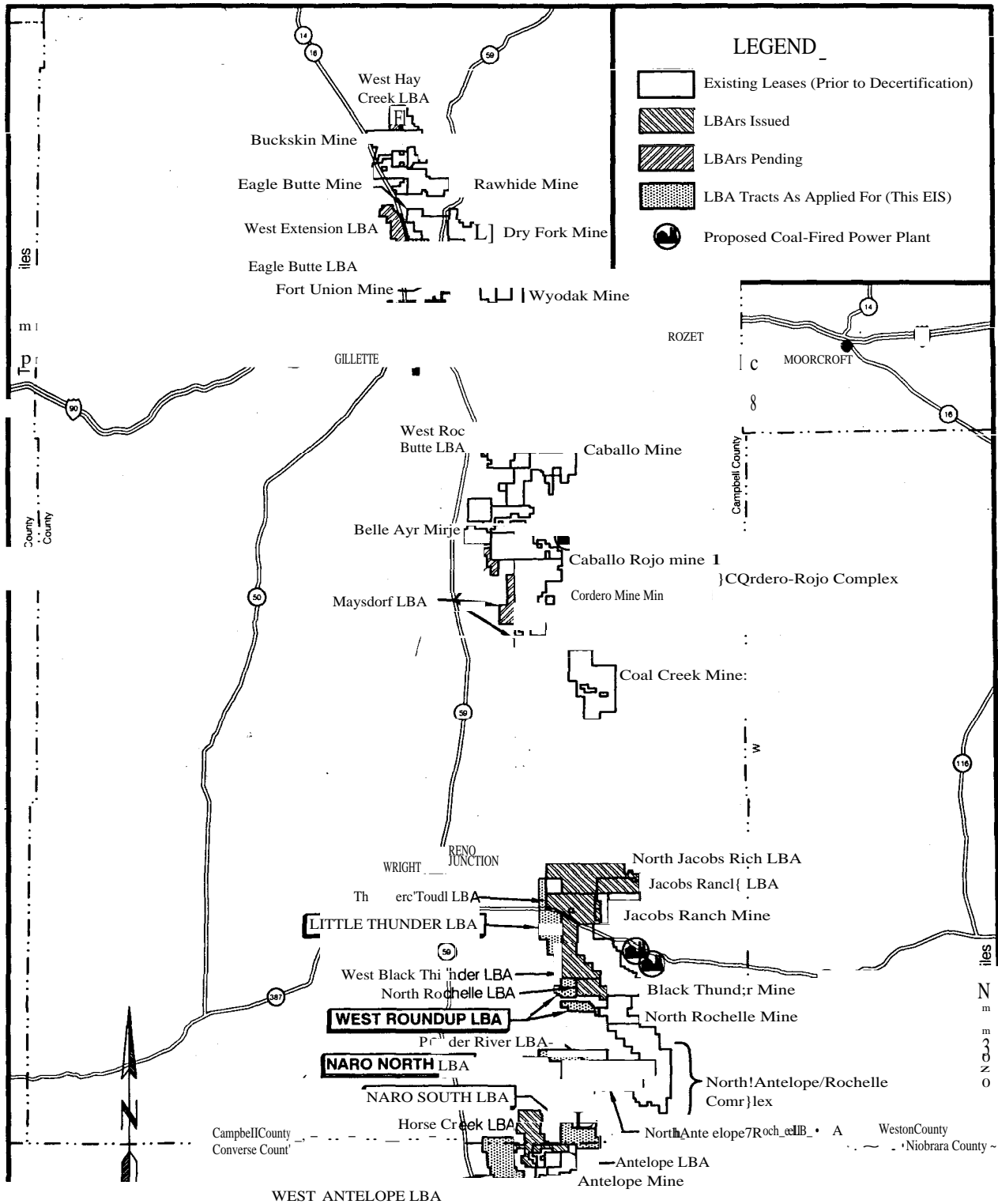


Figure 1. General Location Map with Federal Coal Leases and LBA Tracts.

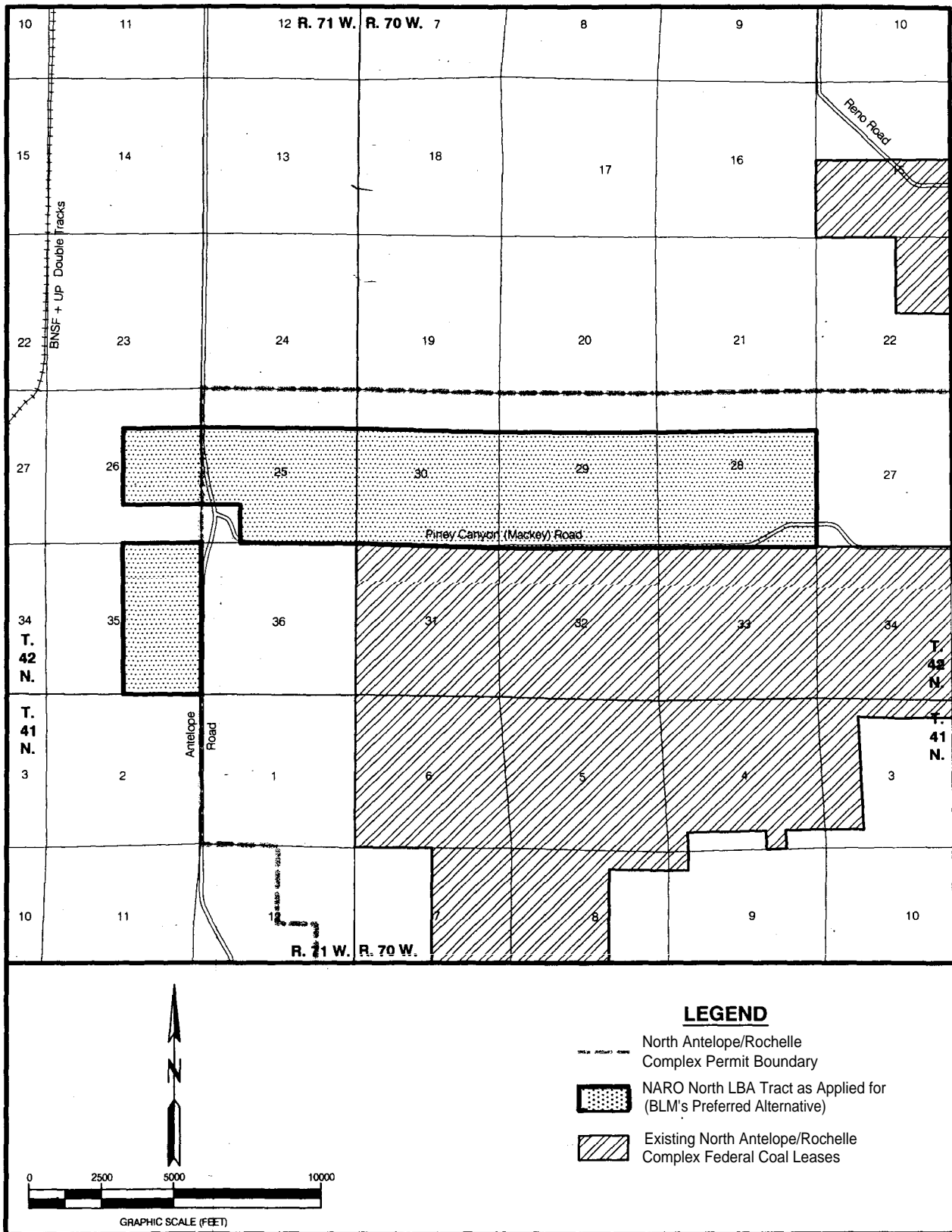


Figure 2. NARO North LBA Tract Configuration.

ATTACHMENT 2:

**COMMENT LETTERS THAT SPECIFICALLY
REFERENCE THE NARO NORTH LBA TRACT
WYW150210**

**PDM-
MVER
COAL**

Powder River Coal Company
12433 N. Hwy 59
Caller Box 3034
Gillette, Wyoming 82717-3034

RECEIVED - BLM

JAN 2120M

CASPER FIELD OFFICE

United States Department of the Interior
Bureau of Land Management
Casper Field Office
2987 Prospector Drive
Casper, A Y 82604 -2968

ATTN: Nancy Doelger
RE: South Powder River Basin Coal Final EIS

Tindall Operating Company - Comment Letter 7

Powder River Coal Company wishes to clarify certain statements made in Tindall Operating Company Comment Letter noted as "7" in Volume 2 of 2, Appendix M of the South Powder River Basin Coal Final EIS. Tindall Operating Company states: "The Draft EIS also states in section 4.1.12 that "[n]egotiations are ongoing between the applicant mines and the existing oil and gas leases on how to proceed with both operations if the coal tracts are leased. To the contrary, Powder River Coal abruptly and unilaterally terminated any such negotiations with Tindall in November of 2002."

It must be noted that at the time this comment was submitted (March 31, 2003), Tindall Operating Company had in hand a letter from Powder River Coal Company dated March 14, 2003, indicating interest in establishing an agreed upon process for dealing with certain conflicts between oil and gas and mining operations at the North Antelope Rochelle Mine.

Powder River Coal Company never received a response from Tindall Operating Company with regard to this letter. In November 2003, Powder River Coal Company again initiated contact with Tindall Operating Company and proposed a process for dealing with conflicts. Tindall Operating Company did respond in this instance and a meeting has been proposed.

Department of the Army - Corps of Engineers - Comment Letter 2

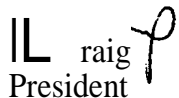
Powder River Coal Company wishes to clarify a statement made in the Corps of Engineers Comment letter noted as "2" in Volume 2 of 2, Appendix M of the South Powder River Basin Coal Final EIS. Mr. Matthew Bilodeau states: "However, portions of all proposed LBAs have not been the subject of formal wetland and waters delineations confirmed by the Corps and appear to contain jurisdictional and/or non-

jurisdictional waters. For example, the NARC South LBA includes Sections 28-30, Township 41N, Range 70W as well as Sections 24 and 25, Township 41N, Range 70W. These areas have not been reviewed no confirmed by the Corps."

It was recently confirmed via phone call with Mr. Bilodeau that he had inadvertently made this comment based on outdated information. Powder River Coal Company does indeed have a confirmed inventory of the above-referenced area.

Powder River Coal Company appreciates the opportunity to comment on this FEIS. If you have any questions regarding this letter, please contact Wanda Burget at (307) 685-6708.

Sincerely,

 L. Raig
President

Powder River Coal Company



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
WYOMING REGULATORY OFFICE
2232 DELL RANGE, BLVD., SUITE 210
CHEYENNE, WYOMING 82009-4942

RECEIVED - BLM

JAN 23 2004

CASPER FIELD OFFICE

January 21, 2004

Chandler Peter

Ms. Nancy Doelger
Bureau of Land Management
Casper Field Office
2987 Prospector Drive
Casper, Wyoming 82604

Dear Ms. Doelger:

This is a follow up to a comment letter provided February 12, 2003 on the Draft South Powder River Basin Coal Environmental Impact Statement. The EIS addresses potential Lease By Applications (LBA) from the Antelope, North Antelope/Rochelle Complex (NARC), North Rochelle, and Black Thunder Mines in Converse and Campbell Counties.

The February 12 letter contained an erroneous determination as it relates to the NARC South LBA associated with Sections 28-30, Township 41N, Range 70W as well as Sections 24 and 25, Township 41N, Range 71W. The letter stated these areas had not been reviewed nor confirmed by the Corps relative to jurisdiction for Section 404 of the Clean Water Act. These areas were part of a revised wetland and waters determination that was confirmed March 2, 2001. A copy of that determination is enclosed.

I regret any inconvenience this error may have caused your agency. If you have any questions concerning this matter, please contact me at (307) 772-2300. Please refer to File No. 200340022 in any future correspondence.

Sincerely,

Chandler J. Peter
Project MaAdger
Wyoming Regulatory Office

Copy furnished:

Drad Dingee
Peabody Group
Caller Box 3034
Gillette, Wyoming 82717-3034



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
215 NORTH 17TH STREET
OMAHA, NEBRASKA 68102-4978

March 2, 2001

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JAN 2 *3 2004

CASPER FIELD OFFICE

Wyoming Regulatory Office
2232 Dell Range Blvd., Suite 210
Cheyenne, Wyoming 82009

Mr. Brad Dingee
Peabody Group
Caller.Box 3034
Gillette, Wyoming 82717-3034

Dear Mr. Dingee:

This is in reference to your request received March 1, 2001 for verification of a wetland and waters of the U.S. delineation conducted on property surrounding the North Antelope/Rochelle Coal Mine Complex (located to the north, west and south). It is recognized that these areas may not be part of the mine's current permit area but may be added to the mine at a later time. The newly delineated area contains the following jurisdictional areas:

75.28 acres riverine wetlands
26.99 acres stockpond wetlands
11.42 acres riverine open water
44.62 acres stockpond open water
158.31 acres of jurisdictional waters and wetlands*

* Does not include 57.50 acres of ephemeral channel other waters of the U.S. as well as 1.44 acres of wetlands and other waters contained at Site 12E on Antelope Coal Mine which were constructed as mitigation under Corps authorization.

The delineation also includes 20.92 wetland acres and 1.33 open water acres of playa/depressional features (see Table 2 in report. Please also note that Table 5 inaccurately states that these features comprise 22.92 acres). In the case of Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, No. 99-1178 (January 9, 2001) (SWANCC), the U.S. Supreme Court held that the Corps exceeded its statutory authority by asserting jurisdiction over an abandoned sand and gravel pit in northern Illinois which provides habitat for migratory birds. Although the Court held that the Corps application of 328.3(a)(3) was invalid in SWANCC, the Court did not strike down 328.3(a)(3) or any other component of the regulations defining waters of the United States. In light of the Courts ruling, the Corps will no longer rely on the use of waters or wetlands as habitat by migratory birds as the sole basis for the assertion of regulatory jurisdiction

JAN 23 2004

CASPER FIELD OFFICE

over isolated, non-navigable, intrastate waters. Based on the information contained in the delineation report and the court ruling, it has been determined that the playa/depressional wetlands and waters addressed by the report are isolated and do not support interstate commerce. Therefore, they are not considered to be jurisdictional waters of the United States under Section 404 of the Clean Water Act. Although the Corps does not consider these features to be jurisdictional; the Wyoming Department of Environmental Quality and/or Office of Surface Mining may still require these features be identified for their regulatory purposes.

Based upon the information submitted, it is determined that the wetland and waters of the U.S. delineation lines shown on the plan map entitled Map D10-3-1 Wetlands and Other Waters of the U.S. dated 1/01 with no revisions, are accurate depictions of wetlands and waters of the United States for the delineated area. It is expected that the mine will submit a revised delineation map for the overall mine complex at a later date.

This determination is valid for a period of 5 years, until March 2, 2006, unless new information warrants a modification.

The Corps of Engineers regulates the placement of dredged and fill material into wetlands and other waters of the U.S. as authorized by Section 404 of the Clean Water Act (33 U.S.C. 1344). The Corps regulations were published in the November 13, 1986 edition of the Federal Register (Vol. 51, No. 219) at 33 CFR Parts 320 through 330. Our office has determined that West School and Trussler Creeks, their tributaries, as well as the adjacent and isolated wetlands on the mine meet the definition of waters of the U.S. as defined at 33 CFR Part 328.3(a)(1), (2), (3)iii, (4), and (7). As such they are subject to regulation by the Corps in accordance with Section 404. However, in the March 28, 2000 edition of the Federal Register, the Corps implemented an administrative appeals process for jurisdictional determinations. If you want to challenge the Corps assertion of jurisdiction over these areas, you must submit the enclosed form to this office within 60 days or you will forfeit your right to an administrative appeal.

If you have any questions concerning this matter, please contact Chandler Peter at (307) 772-2300.--Please refer to File No. -199840014 in any future correspondence concerning this action.

Sincerely,



Matthew A. Bilodeau
Program Manager
Wyoming Regulatory Office

Tindall Operating Company

12741 East Caley - Suite 142
Englewood, Colorado 80111
(303) 850-7272 Fax (303) 850-0175

BUREAU OF LAND
MANAGEMENT
CASPER FIELD OFFICE

April 2, 2004

United States Department of the Interior
Bureau of Land Management
Casper Field Office
2987 Prospector Drive
Casper, WY 82604-2968

Attn: Nancy Doelger

RE: South Powder River Basin Coal Draft EIS
Case File WYW 150210, NARO North Coal Lease Application

Dear Ms. Doelger:

in a letter dated March 31, 2003 ("Tindall Comment Letter"), Tindall Operating Company ("Tindall") submitted comments to the South Powder River Basin Coal Draft E-IS-Case File WYW 150210, NARO North Coal Lease Application ("NARO LBA"). The purpose of this letter is to notify you that the issues raised in the Tindall Comment Letter have been resolved between the relevant parties. Accordingly, Tindall hereby withdraws any and all objections it previously asserted to the NARO LBA, including the comments and objections in the Tindall Comment Letter.

Thank you for your attention to this matter. Should you have any questions or require additional information, please feel free to contact me.

Yours truly,



R. Lee Tucker, President
Tindall Operating Company

Cc: Wanda I. Berget
Powder River Coal Company
Call Box 3034
Gillette, WY 82717

Howard M. Schrinar
Director - Land
Peabody Energy Company
P.O. Box 1508
Gillette, WY 82717-1508

ATTACHMENT 3
BLM Special Coal Lease Stipulations
And
Notice for Lands of the National Forest System under
Jurisdiction of the Department of Agriculture
On the NARO North Federal Coal Lease Tract
(WYW 150210)

SEC. 15. SPECIAL STIPULATIONS -

In addition to observing the general obligations and standards of performance set out in the current regulations, the lessee shall comply with and be bound by the following special stipulations.

These stipulations are also imposed upon the lessee's agents and employees. The failure or refusal of any of these persons to comply with these stipulations shall be deemed a failure of the lessee to comply with the terms of the lease. The lessee shall require his agents, contractors and subcontractors involved in activities concerning this lease to include these stipulations in the contracts between and among them. These stipulations may be revised or amended, in writing, by the mutual consent of the lessor and the lessee at any time to adjust to changed conditions or to correct an oversight.

(a) *CULTURAL RESOURCES* - (1) Before undertaking any activities that may disturb the surface of the leased lands, the lessee shall conduct a cultural resource intensive field inventory in a manner specified by the Authorized Officer of the BLM or of the surface managing agency, if different, on portions of the mine plan area and adjacent areas, or exploration plan area, that may be adversely affected by lease-related activities and which were not previously inventoried at such a level of intensity. The inventory shall be conducted by a qualified professional cultural resource specialist (i.e., archeologist, historian, historical architect, as appropriate), approved by the Authorized Officer of the surface managing agency (BLM, if the surface is privately owned), and a report of the inventory and recommendations for protecting any cultural resources identified shall be submitted to the Assistant Director of the Western Support Center of the Office of Surface Mining, the Authorized Office of the BLM, if activities are associated with coal exploration outside an approved mining permit area (hereinafter called Authorized Officer), and the Authorized Officer of the surface managing agency, if different. The lessee shall undertake measures, in accordance with instructions from the Assistant Director, or Authorized Officer, to protect cultural resources on the leased lands. The lessee shall not commence the surface disturbing activities until permission to proceed is given by the Assistant Director or Authorized Officer.

(2) The lessee shall protect all cultural properties that have been determined eligible to the National Register of Historic Places within the lease area from location-related activities until the cultural resource mitigation measures can be implemented as part of an approved mining and reclamation or exploration plan unless modified by mutual agreement in consultation with the State Historic Preservation Officer.

(3) The cost of conducting the inventory, preparing reports, and carrying out mitigation measures shall be borne by the lessee.

(4) If cultural resources are discovered during operations under this lease, the lessee shall immediately bring them to the attention of the Assistant Director or Authorized Officer, or the Authorized Officer of the surface managing agency, if the Assistant Director is not available. The lessee shall not disturb such resources except as may be subsequently authorized by the Assistant Director or Authorized Officer.

Within two (2) working days of notification, the Assistant Director or Authorized Officer will evaluate or have evaluated any cultural resources discovered and will determine if any action may be required to protect or preserve such discoveries. The cost of data recovery for cultural resources discovered during lease operations shall be borne by the lessee unless otherwise specified by the Authorized Officer of the BLM or of the surface managing agency, if different.

(5) All cultural resources shall remain under the jurisdiction of the United States until ownership is determined under applicable law.

SEC. 15. SPECIAL STIPULATIONS (Continued) -

(b) *PALEONTOLOGICAL RESOURCES* - If paleontological resources, either large and conspicuous, and/or of significant scientific value are discovered during mining operations, the find will be reported to the Authorized Officer immediately. Mining operations will be suspended within 250 feet of said find. An evaluation of the paleontological discovery will be made by a BLM approved professional paleontologist within five (5) working days, weather permitting, to determine the appropriate action(s) to prevent the potential loss of any significant paleontological value. Operations within 250 feet of such discovery will not be resumed until written authorization to proceed is issued by the Authorized Officer. The lessee will bear the cost of any required paleontological appraisals, surface collection of fossils, or salvage of any large conspicuous fossils or significant scientific interest discovered during the operations.

(c) *THREATENED, ENDANGERED, CANDIDATE, or OTHER SPECIAL STATUS PLANT and ANIMAL SPECIES* - The lease area may now or hereafter contain plants, animals, or their habitats determined to be threatened or endangered under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq., or that have other special status. The Authorized Officer may recommend modifications to exploration and development proposals to further conservation and management objectives or to avoid activity that will contribute to a need to list such species or their habitat or to comply with any-biological opinion issued by the Fish and Wildlife Service for the proposed action. The Authorized Officer will not approve any ground-disturbing activity that may affect any such species or critical habitat until it completes its obligations under applicable requirements of the Endangered Species Act. The Authorized Officer may require modifications to, or disapprove a proposed activity that is likely to result in jeopardy to the continued existence of a proposed or listed threatened or endangered species, or result in the destruction or adverse modification of designated or proposed critical habitat.

The lessee shall comply with instructions from the Authorized Officer of the surface managing agency (BLM, if the surface is private) for ground disturbing activities associated with coal exploration on federal coal leases prior to approval of a mining and reclamation permit or outside an approved mining and reclamation permit area. The lessee shall comply with instructions from the Authorized Officer of the Office of Surface Mining Reclamation and Enforcement, or his designated representative, for all ground disturbing activities taking place within an approved mining and reclamation permit area or associated with such a permit.

(d) *MULTIPLE MINERAL DEVELOPMENT*- Operations will not be approved which, in the opinion of the Authorized Officer, would unreasonably interfere with the orderly development and/or production from a valid existing mineral lease issued prior to this one for the same lands.

(e) *OIL AND GAS/COAL RESOURCES* - The BLM realizes that coal mining operations conducted on Federal coal leases issued within producing oil and gas fields may interfere with the economic recovery of oil and gas; just as Federal oil and gas leases issued in a Federal coal lease area may inhibit coal recovery. BLM retains the authority to alter and/or modify the resource recovery and protection plans for coal operations and/or oil and gas operations on those lands covered by Federal mineral leases so as to obtain maximum resource recovery.

(f) *RESOURCE RECOVERY AND PROTECTION* - Notwithstanding the approval of a resource recovery and protection plan (R2P2) by the BLM, lessor reserves the right to seek damages against the operator/lessee in the event (i) the operator/lessee fails to achieve maximum economic recovery (MER) (as defined at 43 CFR 3480.0-5(21)) of the recoverable coal reserves or (ii) the operator/lessee is determined to have caused a wasting of recoverable coal reserves. Damages shall be measured on the basis of the royalty that would have been payable on the wasted or unrecoverable coal.

The parties recognize that under an approved R2P2, conditions may require a modification by the operator/lessee of that plan. In the event a coal bed or portion thereof is not to be mined or is rendered

SEC. 15. SPECIAL STIPULATIONS (Continued) -

unmineable by the operation, the operator/lessee shall submit appropriate justification to obtain approval by the Authorized Officer to lease such reserves unmined. Upon approval by the Authorized Officer, such coal beds or portions thereof shall not be subject to damages as described above. Further, nothing in this section shall prevent the operator/lessee from exercising its right to relinquish all or portion of the lease as authorized by statute and regulation.

In the event the Authorized Officer determines that the R2P2, as approved, will not attain MER as the result of changed conditions, the Authorized Officer will give proper notice to the operator/lessee as required under applicable regulations. The Authorized Office will order a modification if necessary, identifying additional reserves to be mined in order to attain MER. Upon a final administrative or judicial ruling upholding such an ordered modification, any reserves left unmined (wasted) under that plan will be subject to damages as described in the first paragraph under this section.

Subject to the right to appeal hereinafter set forth, payment of the value of the royalty on such unmined recoverable coal reserves shall become due and payable upon determination by the Authorized Officer that the coal reserves have been rendered unmineable or at such time that the operator/lessee had demonstrated an unwillingness to extract the coal.

The BLM may enforce this provision either by issuing a written decision requiring payment of the MMS demand for such royalties, or by issuing a notice of non-compliance. A decision or notice of non-compliance issued by the lessor that payment is due under this stipulation is appealable as allowed by law.

(g) *PUBLIC LAND SURVEY PROTECTION* - The lessee will protect all survey monuments, witness corners, reference monuments, and bearing trees against destruction, obliteration, or damage during operations on the lease areas. If any monuments, corners or accessories are destroyed, obliterated, or damaged by this operation, the lessee will hire an appropriate county surveyor or registered land surveyor to reestablish or restore the monuments, corners, or accessories at the same locations, using the surveying procedures in accordance with the "Manual of Surveying Instructions for the Survey of the Public Lands of the United States." The survey will be recorded in the appropriate county records, with a copy sent to the Authorized Officer.

NOTICE FOR LANDS OF THE NATIONAL FOREST SYSTEM
UNDER JURISDICTION OF DEPARTMENT OF AGRICULTURE

R2-FS-2820-13 (92)

Serial No. WYW150210

The permittee/lessee must comply with all the rules and regulations of the Secretary of Agriculture set forth at Title 36, Chapter II, of the Code of Federal Regulations governing the use and management of the National Forest System (NFS) when not inconsistent with the rights granted by the Secretary of Interior in the permit. The Secretary of Agriculture's rules and regulations must be complied with for (1) all use and occupancy of the NFS prior to approval of an exploration plan by the Secretary of the Interior, (2) uses of all existing_ improvements, such as forest development roads, within and outside the area permitted by the Secretary of the Interior, and (3) use and occupancy of the NFS not authorized by an exploration plan approved by the Secretary of the Interior.

All matters related to this stipulation are to be addressed to:

Forest Supervisor
Medicine Bow-Routt National Forests & Thunder Basin National Grassland
2468 Jackson Street
Laramie, WY 82070
307-745-2300

who is the authorized representative of the Secretary of Agriculture.

NOTICE

CULTURAL AND PALEONTOLOGICAL RESOURCES - The FS is responsible for assuring that the leased lands are examined to determine if cultural resources are present and to specify mitigation measures. Prior to undertaking any surface-disturbing activities on the lands covered by this lease, the lessee or operator, unless notified to the contrary by the FS, shall:

1. Contact the FS to determine if a site specific cultural resource inventory is required. If a survey is required, then:
2. Engage the services of a cultural resource specialist acceptable to the FS to conduct a cultural resource inventory of the area of proposed surface disturbance. The operator may elect to inventory an area larger than the area of prpv.~Cil aistui bcince to cover possible eite relocation which may result from environmental or other considerations. An acceptable inventory report is to be submitted to the FS for review and approval at the time a surface disturbing plan of operation is submitted.

3. Implement mitigation measures required by the FS and BLM to preserve or avoid destruction of cultural resource values. Mitigation may include relocation of proposed facilities, testing, salvage, and recordation or other protective measures. All costs of the inventory and mitigation will be borne by the lessee or operator, and all data and materials salvaged will remain under the jurisdiction of the U.S. Government as appropriate.

The lessee or operator shall immediately bring to the attention of the FS and BLM any cultural or paleontological resources or any other objects of scientific interest discovered as a result of surface operations under this lease, and shall leave such discoveries intact until directed to proceed by FS and BLM.

ENDANGERED OR THREATENED SPECIES - The FS is responsible for assuring that the leased land is examined prior to undertaking any surface-disturbing activities to determine effects upon any plant or animal species listed or proposed for listing as endangered or threatened, or their habitats. The findings of this examination may result in some restrictions to the operator's plans or even disallow use and occupancy that would be in violation of the Endangered Species Act of 1973 by detrimentally affecting endangered or threatened species or their habitats.

The lessee/operator may, unless notified by the FS that the examination is not necessary, conduct the examination on the leased lands at his discretion and cost. This examination must be done by or under the supervision of a qualified resource specialist approved by the FS. An acceptable report must be provided to the FS identifying the anticipated effects of a proposed action on endangered or threatened species or their habitats.

Signature of Licensee/Permittee/Lessee

ATTACHMENT 4:

**U.S. FISH AND WILDLIFE SERVICE
CONCURRENCE LETTER IN RESPONSE TO BLM
FORMAL REQUEST FOR CONSULTATION FOR
THE FIVE SOUTH POWDER RIVER BASIN COAL
LEASE BY APPLICATION TRACTS UNDER THE
ENDANGERED SPECIES ACT, SECTION 7**



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
4000 Airport Parkway
Cheyenne, Wyoming 82001


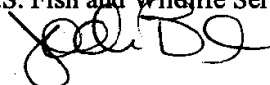
RECEIVED - BLM
FEB 19 2004
CASPER FIELD OFFICE

In Reply Refer To:
ES-61411/W.02/WY7940

February 14, 2004

Memorandum

To: Mike Karbs, Assistant Field Manager, Solid Minerals, Bureau of Land Management, Casper Field Office, Casper, Wyoming

From:  Brian T. Kelly, Field Supervisor, U.S. Fish and Wildlife Service, Wyoming Field Office, Cheyenne, Wyoming 

Subject: Concurrence for the Five South Powder River Basin Coal Lease By Application Tracts (North Antelope/Rochelle North, North Antelope/Rochelle South, Little Thunder, West Roundup, and West Antelope)

Thank you for your letter and attached biological assessments for the North Antelope/Rochelle North and North Antelope/Rochelle South, Little Thunder, West Roundup, and West Antelope Lease-By-Application (LBA) tracts, dated December 31, 2003, received in the Wyoming Field Office on January 2, 2004. In your letter you requested the U.S. Fish and Wildlife Service (Service) review the four biological assessments and provide written concurrence pursuant to section 7(a)(2) of the Endangered Species Act of 1973 (Act), as amended (50 CFR §402.13).

The Bureau of Land Management (Bureau) has made "no effect" determinations for the black-footed ferret (*Mustela nigripes*). When the Bureau makes a "no effect" determination, concurrence from the Service is not required, although, we do appreciate receiving a copy of the data used to make that determination for our records.

The Bureau has determined that the leasing of the five LBA tracts is not likely to jeopardize the continued existence of the mountain plover (*Charadrius montanus*). The Service has withdrawn the proposal to list the mountain plover and we will no longer be reviewing project impacts to this species under the Act. We do however, encourage the Bureau and their applicants to continue providing protection for this species as it remains protected under the Migratory Bird Treaty Act (16 U.S.C. 703) and as a sensitive species under Bureau policy (Bureau Manual 6840.06 E. Sensitive Species). Measures to protect the mountain plover from further decline may include (1) avoidance of suitable habitat during the plover nesting season (April 10 through July 10), (2) prohibition of ground disturbing activities in prairie dog towns, and (3) prohibition of any permanent above ground structures that may provide perches for avian predators or deter

plovers from using preferred habitat. Suitable habitat for nesting mountain plovers includes grasslands, mixed grassland areas and short-grass prairie, shrub-steppe, plains, alkali flats, agricultural lands, cultivated lands, sod farms, and prairie dog towns

Based on the information provided in the four biological assessments (North Antelope/Rochelle North and North Antelope/Rochelle South, Little Thunder, West Roundup, and West Antelope) the Service concurs with the Bureau's determination that leasing the five LBA tracts may affect, but is not likely to adversely affect the bald eagle (*Haliaeetus leucocephalus*) or the Ute ladies'-tresses orchid (*Spiranthes diluvialis*). Annual surveys of the existing mine permit areas and a 1 mile buffer and surveys of the proposed LBA tracts have shown that there are no nesting bald eagles or winter roost sites within these LBA tracts. Multiple year surveys of suitable habitat within the North Antelope/Rochelle North and North Antelope/Rochelle South, Little Thunder, West Roundup and West Antelope LBA tracts have failed to find evidence of Ute ladies'-tresses orchid. Additionally, suitable habitat along the Antelope Creek valley on the West Antelope LBA tract would not be disturbed by mining on this tract.

This concludes informal consultation pursuant to the regulations implementing the Act. These projects should be re-analyzed if new information reveals effects of the action that may affect listed or proposed species or designated or proposed critical habitat in a manner or to an extent not considered in this consultation; if the action is subsequently modified in a manner that causes an effect to a listed or proposed species or designated or proposed critical habitat that was not considered in this consultation; and/or, if a new species is listed or critical habitat is designated that may be affected by these projects.

If you have any questions regarding this letter or your responsibilities under the Act, please contact Bradley Rogers of my staff at the letterhead address or phone (307) 772-2374, extension 25.

cc: BLM-State Office, Multi-Resources Chief, Cheyenne, WY (M. Griffith)
FWS, Federal Activities Specialist, Denver, CO (R. Dach)
WGFD, Statewide Habitat Protection Coordinator, Cheyenne, WY (T. Collins)
WGFD, Non-Game Coordinator, Lander, WY (B. Oakleaf)

ATTACHMENT 5:

SUMMARY OF COMMENTS RECEIVED ON THE SOUTH POWDER RIVER BASIN COAL FINAL ENVIRONMENTAL IMPACT STATEMENT

ATTACHMENT 5
FINAL SOUTH POWDER RIVER BASIN COAL EIS
COMMENT SUMMARY

Comment Number Agency, Organization, or Individual	Commenter Issues or Concerns
FEIS-1: Wendell Funk Palmyra, IL	<p>Research area is needed.</p> <p>Mining destroys landscape and results in consumption of coal resources.</p> <p>Energy conservation should be used to meet energy needs.</p> <p>Income to State and Federal governments is not significant.</p> <p>Fossil fuel consumption is causing climatic changes.</p>
FEIS-2: Converse County Commissioners Office . Douglas, WY	<p>Converse County Commissioners support the continued offering of Federal coal leases and positive and proactive land management; they request that BLM provide rationale in decision documents for any decisions to reduce the size of proposed lease tracts.</p>
FEIS-3: Converse Area New Development Organization (CANDO) Douglas, WY	<p>CANDO supports:</p> <ul style="list-style-type: none"> - Federal coal leasing in the Powder River Basin, . - proper land and resource management, and - maximizing lease size & tonnage.
FEIS-4: Representative Fred Parady Rock Springs WY	<p>Federal coal leasing in the Powder River Basin over the past decade has produced revenue streams which have been invested in infrastructure needed to educate youth and build communities.</p> <p>Leasing Federal coal tracts is crucial to future of coal mining operations and education and infrastructure for the State of Wyoming.</p>
FEIS-5: Wyoming Department of Education Superintendent Trent Blankenship Cheyenne. WY	<p>The Wyoming Department of Education supports leasing five tracts of Federal coal in the southern Powder River Basin.</p> <p>Past coal bonus bids have helped the State address K-12 capital construction needs. nri are important in addressing future K-12 capital construction needs.</p>

ATTACHMENT 5
FINAL SOUTH POWDER RIVER BASIN COAL EIS
COMMENT SUMMARY

Comment Number Agency, Organization, or Individual	Commenter Issues or Concerns
FEIS-6 Office of State Lands and Investments Director Lynne Boomgaarden Cheyenne, WY	<p>The Proposed Action of leasing the Federal coal tracts will not have a significant direct impact on the natural resource values under the jurisdiction of the Office of State Lands and Investments.</p> <p>The Office of State Lands and Investments does not have specific concerns if access to State lands is not restricted and State is not precluded from developing its interests in area.</p>
FEIS-7 Powder River Coal Company Ian Craig, President Gillette, WY	<p>Powder River Coal Company provides information to clarify:</p> <ul style="list-style-type: none"> - the status of conflict negotiations with conventional oil and gas well operator Tindall Operating Company and - the status of wetland inventories on portions of the NARO South LBA Tract.
FEIS-8 M&K Oil Company Jim McLeland, President Gillette, WY	<p>M&K Oil Company Identifies:</p> <ul style="list-style-type: none"> - the presence of a conventional oil and gas well owned and operated by M&K within the proposed West Roundup LBA Tract and - the need for mine-through agreement with coal lessee.
FEIS-9 Maxim Drilling and Exploration John C. Corkery, President Gillette, WY	<p>Maxim Drilling and Exploration Identifies the need to relocate gas gathering pipeline operated by Kinder Morgan on Little Thunder LBA Tract in order to avoid disruption of gas gathering service to a Maxim gas well.</p>
FEIS-10 Maxim Drilling and Exploration John C. Corkery, President Gillette, WY	<p>Maxim Drilling and Exploration identifies the need to relocate gas gathering pipeline operated by Kinder Morgan on West Antelope LBA Tract in order to avoid disruption of gas gathering service to Maxim gas wells.</p>
FEIS-11 Wyoming Game and Fish Dept. Bill Wichers Chcyonno, wY	<p>Wyoming Game and Fish Department has concerns about:</p> <ul style="list-style-type: none"> - disruption of ambient habitat conditions for native aquatic species if flows in ephemeral streams increase as a result of (;BM discharge, - lack of data on aquatic species, and - the need to include aquatic and wetland species monitoring in annual mine wildlife surveys.

ATTACH M ENT.5
FINAL SOUTH POWDER RIVER BASIN COAL EIS
COMMENT SUMMARY

<p style="text-align: center;">Comment Number Agency, Organization, or Individual</p>	<p style="text-align: center;">Commenter Issues or Concerns</p>
<p>FEIS-12 Dept. of the Army/Corps of Engineers Chandler Peter Cheyenne, WY</p>	<p>The Army Corps of Engineers provides information correcting their comments on Draft EIS pertaining to status of wetland determinations on NARO South LBA Tract.</p>
<p>FEIS-13 Honorable Dave Freudenthal Governor of Wyoming Cheyenne, WY</p>	<p>Governor Freudenthal supports leasing five tracts of Federal coal in the Powder River Basin and expresses confidence in the ability of the Wyoming Department of Environmental Quality's ability to both ensure regulatory compliance in permitting coal mining in the Powder River Basin and maintain cooperative relationships with Federal agencies and coal-mining companies.</p> <p>Wyoming's has a successful history in developing coal resources and protecting the environment.</p> <p>Federal coal is important to Local and State uuii wmiub and the national power supply.</p>
<p>FEIS-14 Campbell County Commissioners Gillette, WY</p>	<p>The Campbell County Commissioners support leasing Federal coal in the Powder River Basin. Mining is important to employment and economy in the County and State.</p> <p>The existing cooperative working relationship between the County, coal mining operators and CBM producers is critical to the county and the industry.</p>
<p>FEIS-15 Kennecott Energy Patricia Britton, Vice President, Law &Government Affairs Gillette, WY</p>	<p>Kennecott Energy supports the selection of Final EIS Alternative 3 for the Little Thunder LBA Tract, which would result in splitting the tract and offering two tracts for lease.</p>

**ATTACHMENT 5
FINAL SOUTH POWDER RIVER BASIN COAL EIS
COMMENT SUMMARY**

<p style="text-align: center;">Comment Number Agency, Organization, or Individual</p>	<p style="text-align: center;">Commenter Issues or Concerns</p>
<p>FEIS-16 Ducker, Montgomery, Lewis, & Aronstein, P.C. James K. Aronstein Denver, CO</p>	<p>Surface coal mining within the West Roundup LBA Tract would cause destruction of the CBM reservoir and venting, drainage, and waste of the CBM reserve on and around the tract.</p> <p>Leasing the Federal coal in the West Roundup LBA Tract will impact the rights of the senior oil and gas lessee.</p> <p>There are legal authorities establishing rights of senior oil and gas lessee.</p> <p>BLM must comply with the applicable land use plans.</p> <p>Methane is a greenhouse gas which contributes to global warming when it is vented.</p> <p>CBM is a clean burning fuel which should be utilized to meet society's energy needs instead of being vented.</p>
<p>FEIS-17 Office of the State Treasurer State of Wyoming Cynthia L6mmis, State Treasurer Cheyenne, WY</p>	<p>The State Treasurer supports leasing Federal coal in the Powder River Basin.</p> <p>Coal mining is important as a source of primary and secondary jobs in the State and revenue for K-12 capital construction, community colleges, cities, and counties.</p> <p>Severance taxes generated when coal is mined are invested in Wyoming's Permanent Mineral Trust Fund.</p>
<p>FEIS-18 Powder River Basin Resource Council Gillian Malone Sheridan, WY</p>	<p>Powder River Basin Resource Council is concerned about:</p> <ul style="list-style-type: none"> - Cumulative impact of CBM development and coal mining on groundwater quantity and quality, surface water quantity and quality, air quality, - Adverse health effects of NO_x, from coal mine blasting on infants, the elderly, and other sensitive members of the population, - Effects of drought on revegetation efforts and potential for invasion of noxious weeds, - Impact of mining activity on sage grouse, and - Cumulative impact of increased employment on housing availability in Gillette.

ATTACHMENT 5
 FINAL SOUTH POWDER RIVER BASIN COAL EIS
 COMMENT SUMMARY

<p style="text-align: center;">Comment Number Agency, Organization, or Individual</p>	<p style="text-align: center;">Commenter Issues or Concerns</p>
<p>FEIS-19 Environmental Protection Agency Region 8 Larry Svoboda Denver, CO</p>	<p>EPA is concerned with:</p> <ul style="list-style-type: none"> - Air quality degradation in the Powder River Basin, including exceedances of PM₁₀ 24-hour standard at several mines and predicted cumulative near field impacts over the level of the PSD Class II increments for PM₁₀ and NO_x and - The level and types of mitigation that should be implemented to reduce air quality impacts.
<p>FEIS-20 Wyoming State Historic Preservation Office Richard L. Currit Cheyenne, WY</p>	<p>National Register of Historic Places consultation must be completed prior to approval of the Mineral Leasing Act Mining Plan.</p>
<p>FEIS-21 Tindall Operating Company R. Lee Tucker Englewood, CO</p>	<p>Tindall Operating Company withdraws objections to the NARO North Coal Lease Application following resolution of issues between relevant parties.</p>