

**United States Department of the Interior
Bureau of Land Management**

RECORD OF DECISION

DOI-BLM-CO-SO50-2012-0013

December 2012

**Final Environmental Impact Statement (FEIS),
Federal Coal Lease Modifications COC-1362 & COC-67232**

Location: Grand Mesa, Uncompahgre and Gunnison National Forests,
Paonia Ranger District,
Gunnison County, Colorado

**U.S. Department of the Interior
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**Bureau of Land Management
Record of Decision
for the
Final Environmental Impact Statement,
Federal Coal Lease Modifications COC-1362 & COC-67232**

1.0 Introduction

This Bureau of Land Management (BLM) Record of Decision (ROD) formally adopts the Final Environmental Impact Statement (FEIS) for Federal Coal Lease Modifications COC-1362 & COC-67232 completed by the US Forest Service (USFS) Grand Mesa, Uncompahgre and Gunnison National Forests (GMUG), Paonia Ranger District. I concur with the selection of Alternative 3 as described in the attached USFS ROD (August 2, 2012). As identified in 40 CFR 1506.3(a), “An agency may adopt a Federal draft or final EIS or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under their [the CEQ] regulations.” BLM affirms that this FEIS meets all requirements of the Council on Environmental Quality (CEQ), Department of Interior (DOI) and BLM for preparation of an EIS. This decision will allow the BLM, with the consent of the USFS, to lease the federal mineral estate underlying the National Forest System (NFS) lands included in Federal coal lease modifications COC-1362 and COC-67232.

The BLM was a Cooperating Agency in the preparation of the FEIS. Per 40 CFR 1506.3(c), the BLM adopts the FEIS without re-circulating, as the BLM has concluded that its comments and suggestions were incorporated during the National Environmental Policy Act (NEPA) process.

1.1 Background

A FEIS has been prepared by GMUG in cooperation with:

- Uncompahgre Field Office of the BLM,
- Southwest District Office of the BLM,
- Colorado State Office of the BLM,
- Western Region of the Office of Surface Mining, Reclamation and Enforcement (OSM), and
- Colorado Division of Reclamation, Mining and Safety (DRMS).

The FEIS analyzes and discloses the impacts of modifying Federal coal leases COC-1362 and COC-67232 in response to applications received by the BLM Colorado State Office. On January 16, 2009, the BLM received an application from Mountain Coal Company (MCC) to modify lease COC-1362 by adding approximately 800 acres; and an application from Ark Land Company (ALC) to modify lease COC-67232 by adding about 921 acres. Coal in the existing leases is mined at the West Elk Mine near Somerset, Colorado. The applications were made to ensure that compliant and super-

compliant coal reserves are recovered and not bypassed. These applications are being processed according to procedures set forth in 43 CFR 3432.

The coal lease modification areas lie in portions of sections 10, 11, 14, 15, 22 and 23 of T. 14S., R. 90W., 6th PM in Gunnison County, Colorado. The BLM is required by law to consider leasing Federally-owned minerals for economic recovery. The modification areas are within USFS surface lands managed by the GMUG. The coal estate is administered by the BLM. Mineral leases beneath land under the jurisdiction of the USFS may be issued only with the consent of the USFS (43 CFR 3400.3-1). The USFS is also responsible for prescribing conditions and stipulations for the use and protection of non-mineral surface resources and values.

Within the lease modification areas, the coal will be accessed and recovered by underground longwall mining methods from the existing West Elk Mine. The coal will be transported using the existing coal transportation system and surface facilities.

Under a foreseeable mine plan scenario, surface impacts within these modification areas will include constructing methane drainage wells (MDWs) and associated access routes required to safely mine the coal resources. These access routes are authorized under the Colorado Roadless Rule (36 CFR Part 294). Methane gas is a byproduct of the process of mining coal. Methane concentrations in excess of 5% can be explosive, and must be removed, most commonly through drainage wells, to keep concentrations below that dangerous level. Specific locations of the MDWs and roads are not known at the leasing stage, and will not be known until specific mine plans are approved by DRMS, BLM, OSM, and the Mine Safety and Health Administration (MSHA) during the mine permitting process subsequent to leasing.

On August 2, 2012, the Forest Supervisor signed the USFS ROD that gave consent to the BLM to modify coal leases underlying NFS land and prescribed stipulations to protect non-mineral surface resources. This USFS consent decision was implemented on December 3, 2012 following resolution of an administrative appeal of the USFS FEIS and ROD. On December 17, 2012, the USFS received a 60-day Notice of Intent to Sue under 16 U.S.C. § 1540(g)(2)(A), which states that WildEarth Guardians plans to challenge the USFS FEIS and ROD. Per 40 CFR 1506.3(d), the BLM acknowledges this Notice of Intent to Sue.

The regulations (43 CFR 3400.3-1) which pertain to leasing of Federal lands administered by a surface management agency outside of the DOI require leases be subject to conditions the other agency may prescribe to insure the use and protection of the lands for the primary purpose for which they are being administered. The purpose of this ROD is for the BLM, as a Cooperating Agency, to formally adopt the GMUG FEIS so that it can provide a basis for NEPA compliance in the BLM's modification of the leases. This BLM ROD also documents the suitability of the FEIS for this purpose.

1.2 Purpose of and Need for Action

The purpose of the USFS and BLM's actions is to respond to applications to access Federal coal reserves through modifying existing leases.

The proposed action complies with the overall guidance given in the GMUG Land and Resource Management Plan as amended (USFS, 1991), which encourages environmentally sound energy and mineral development, and the BLM Uncompahgre Basin Resource Management Plan (BLM, 1989), which states that Federal coal estate will be identified as acceptable for further leasing consideration.

The GMUG has identified the need to consider consenting to two coal lease modifications for Federal coal lands immediately adjacent to existing Federal coal leases COC-1362 and COC-67232. The BLM is charged with deciding whether to accept the coal lease modification proposals, reject the applications, or modify the proposed lease modifications in accordance with NEPA, the Mineral Leasing Act of 1920, as amended, and the Federal Land Policy and Management Act of 1976.

The purpose of the Federal agencies' actions is to facilitate recovery of Federal coal resources in an environmentally sound manner. Further, the purpose includes ensuring that compliant and super-compliant (high quality or characterized by a high BTU, low-ash, and low moisture content) coal reserves are recovered and not bypassed. The proposed action responds to the Federal government's overall policy to foster and encourage private enterprise in the development of economically sound and stable industries, to help assure satisfaction of industrial, security and environmental needs (Mining and Minerals Policy Act of 1970).

2.0 Decision

It is my decision to adopt the USFS GMUG Federal Coal Lease Modifications COC-1362 & COC-67232 FEIS (2012) as per 43 CFR 1506.3. It is my determination, based on USFS recommendation, that there are no significant recreation, timber, economic, or other values that may be incompatible with leasing the lands in question and whether or not to modify the existing leases. See 30 U.S.C. § 1272(e)(2) and 43 CFR 3461.5(a)(2)(i). Consistent with the decision of the USFS, I am selecting Alternative 3, as described in the FEIS. Stipulations described in Appendix A of this ROD will apply. Additionally, pursuant to lease addenda attached to the coal leases COC-1362 and COC-67232 executed on January 14, 2009, it is my decision to apply methane gas mitigation measures. (Described in Section 7.0 of this ROD).

The FEIS meets the standards for an adequate EIS under the CEQ regulations. As a Cooperating Agency, the BLM's concerns, comments and suggestions were satisfactorily considered by USFS during the NEPA process. The FEIS forms a sound basis for NEPA compliance related to BLM's responsibilities for coal leasing on NFS lands.

The BLM concurs with the USFS' findings of consistency with laws, regulations and policy

in the GMUG National Forest's FEIS and ROD.

3.0 Overview of the Alternatives

3.1 Alternative 1 (No Action)

USFS would not grant consent to modify the leases and mining would not occur in the areas proposed for modification. Impacts from mining coal under the proposed modification areas would not occur, and the effects from on-going land uses could continue, including coal mining activities such as exploration and monitoring related to mine activities on existing leases, and continued recreation and grazing. The land would continue to be managed according to Forest Plan standards, goals and guidelines.

3.2 Alternative 2 – 2001 Roadless Conservation Rule

Modify existing Federal coal leases COC-1362 and COC-67232 by adding 800 and 921 additional acres (respectively). The USFS would consent to and BLM would modify the leases with stipulations/notices/addendums in Tables 2.1a and 2.1b of the FEIS. However, under the provisions of 2001 Roadless Area Conservation Rule, road construction would not be allowed in the modification areas. Because a leasing decision itself does not involve any mineral development or surface disturbance, it is necessary to project the amount of surface use or activity that will likely result during lease development in order to disclose potential effects and inform decision-making. The RFMP, which describes the likely post-lease activity for this alternative is described in Section 3.2 of the FEIS. Additional information on this alternative is in Section 2.1 of the FEIS.

3.3 Alternative 3 – Colorado Roadless Rule (Preferred Alternative)

Alternative 3 is similar to Alternative 2 except that it is analyzed under the framework of the Colorado Roadless Rule. This rule went into effect on July 3, 2012. The Colorado Roadless Rule specifically provides for coal mining in this area by allowing the construction of temporary roads.

Modify existing Federal coal leases COC-1362 and COC-67232 by adding 800 and 921 additional acres (respectively). The USFS would consent to and BLM would modify the leases with all stipulations/notices/addenda in Tables 2.1a and 2.1b of the FEIS. Under the Colorado Roadless Rule, post-lease temporary road building could be permitted in the lease modifications because it is in the area known as the “North Fork Coal Mining Area” in the Rule. This would allow for MDW drilling and temporary road access, and would therefore allow for mining the coal under the RFMP (described in Section 3.2 of the FEIS). Because a leasing decision itself does not involve any mineral development or surface disturbance, it is necessary to project the amount of surface use or activity that will likely result during lease development in order to disclose potential effects and inform decision making. The RFMP, which describes the likely post-lease activity for this alternative is described in Section 3.2 of the FEIS. Additional information on this

alternative is in Section 2.1 of the FEIS.

3.4 Alternative 4 – COC-1362 only (Environmentally Preferable Alternative)

Many commenters expressed concerns regarding Roadless area effects due to post-lease development. Similarly, some commenters suggested an alternative requesting agencies' consent/leasing for proposed modification to COC-1362 only, while not consenting to proposed modification to lease COC-67232. In response to those comments, the USFS brought Alternative 4 forward for further analysis from Alternatives Considered but Eliminated from Detailed Study in the DEIS. As part of the analysis of this alternative, the USFS requested an additional review from BLM to make determinations of mineable resources.

Alternative 4 analyzed the effects of post-lease surface activities

- a) under the Colorado Roadless Rule including temporary road construction, as described in Alternative 3 above, or
- b) with no road construction as described in Alternative 2 above.

A RFMP was developed (Section 3.2 of the FEIS) to address indirect and cumulative effects specific to the COC-1362 modification.

3.5 Alternatives Considered But Eliminated From Detailed Analysis

The USFS and BLM identified five alternatives that were considered but not carried forward for detailed analysis: 1) mitigate the potential greenhouse gas emissions of the project by requiring MCC to use MDW ventilation air methane; 2) mitigate the potential greenhouse gas emissions of the project by requiring MCC to purchase carbon credits or conduct offset mitigations; 3) prevent all future disturbance from road construction, methane drainage well pads and the like in Roadless Areas; 4) shrink the boundaries of the lease to conform to the area where the coal will be mined underground; 5) protect values of the area by using this set of stipulations for the Proposed Action.

Section 2.2 of the FEIS describes these five alternatives and the reasons for not carrying each forward for detailed analysis.

4.0 Management Considerations and Rationale for the Decision

The BLM concurs with the rationale (“Reasons for the Decision”) presented in the USFS ROD that the selection of Alternative 3 best meets the Purpose and Need, and is consistent with the applicable laws, regulation and policy described in the FEIS, while responding to public concerns and providing protection to important forest resources. The FEIS also includes information and analysis relative to the subsurface resources that BLM is responsible for managing.

The FEIS addresses and analyzes a wide range of surface resources managed by the USFS and applies necessary mitigation measures, expressed as stipulations, to protect those

resources (Tables 2.1a and 2.1b of the FEIS).

The purpose and need of this project was for the USFS to consider consenting to, and for the BLM to consider issuing coal lease modifications for Federal coal lands immediately adjacent to existing Federal coal leases COC-1362 and COC-67232. The purpose of the lease modifications is to ensure that compliant and super-compliant coal reserves are recovered.

The BLM, charged with administration of the mineral estate on these Federal lands, is required, by law, to consider leasing Federally-owned minerals for economic recovery. Under 43 CFR 3432 (as amended by the Energy Policy Act of 2005), the holder of a Federal coal lease may apply to modify a lease by adding up to 960 acres. The Federal agencies are responding to applications to modify existing leases.

The USFS, through the ROD for the FEIS, has consented to BLM modifying the leases pursuant to 43 CFR 3420.4-2.

5.0 Consultation and Consistency Review

5.1 Coordination and Consultation

5.1.1 Endangered Species Act Section 7 Consultation

USFS prepared a Biological Assessment for the FEIS. All known endangered or threatened species in the area were considered. Due to “may affect, likely to adversely affect” determinations for Canada lynx and water depletions related to the four endangered Colorado River fish, formal consultation with the US Fish and Wildlife Service (USFWS) was completed. Depletions are covered under the GMUG’s Programmatic Biological Opinion ES/GJ-6-CO-F-033-CP062 and Canada lynx are covered under the Southern Rockies Lynx Amendment. USFWS has concurred with the findings.

Compliance with terms and conditions of the Biological Opinion are addressed in lease stipulations for threatened and endangered species (Appendix A of this BLM ROD and FEIS Table 2.1a).

5.1.2 National Historic Preservation Act Section 106 Consultation

Three cultural resource inventories have occurred within the project area and no heritage resources were located. The lease modifications are found to have no potential to affect cultural resources, as defined in regulations 36 CFR 800. Stipulations shown in FEIS Table 2.1a will protect currently undiscovered sites. Site specific resource surveys must be conducted prior to any ground disturbing activities (Appendix A of this BLM ROD and FEIS Table 2.1a). At this time, consultation with the State Historic Preservation Office is not required.

5.1.3 Tribal Consultation

Tribal consultation is required by Executive Order 13175, which states that “Each agency shall have an accountable process to ensure meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.” The following affected tribes were contacted during the scoping period that occurred prior to the initiation of the preparation of the DEIS: Ute Mountain Utes, Southern Utes, and (Northern) Utes.

6.0 Public Involvement and NEPA Process

6.1 Forest Service

The Notice of Opportunity to Comment on the USFS Environmental Assessment (EA) initially prepared for this project was published in *the Grand Junction Daily Sentinel* (newspaper of record) and in the *Delta County Independent* on April 21, 2010. The Notice of Opportunity to Comment asked for public comment on the proposed lease modifications from April 21-May 21, 2010. In addition, as part of the public involvement process, the GMUG sent out approximately 120 letters to state, Federal, local agencies, tribes, environmental groups, and interested individuals; posted scoping materials to the GMUG’s website; and posted to the USFS’s Schedule of Proposed Actions.

During that initial comment period, approximately 684 versions of email form letters were received from Wild Earth Guardians supporters; 1900 versions of email form letters were received from Defenders of Wildlife supporters; 23,771 versions of email form letters were received from supporters of Natural Resources Defense Council; 5647 versions of email form letters were received from supporters of Earth Justice; 576 hardcopy/faxed various form letters were received from local community members in four counties in support of mining in this area; 74 original comments were received; and 4 original comments with attachments were received in response to this scoping effort.

Using the comments from the public, environmental groups, other agencies, and those developed internally, the interdisciplinary team developed a list of issues to address. Other comments were responded to in the USFS EA.

The USFS issued a decision on the EA in November 2011. Several environmental groups appealed that decision in December 2011 and, the USFS appeal team reversed it in February 2012.

The USFS NOI to prepare an EIS was published in the *Federal Register* on April 25, 2012. Approximately 830 copies of letters/emails informing interested parties (including state, Federal, local agencies, tribes, environmental groups, and individuals expressing desire to remain on mailing lists) of this intent were also sent out on April 25, 2012, inviting additional comments throughout the process. Additional notification was not sent out to those who

submitted form letters through other groups' clearinghouse websites on the previously prepared EA except for those who submitted original or somewhat original comments. USFS's Schedule of Proposed Actions was also updated.

A notification letter announcing the DEIS was sent to approximately 768 individuals. The Environmental Protection Agency (EPA) published a Notice of Availability (NOA) in the *Federal Register* on May 25, 2012. Additional legal notices were published in the *Grand Junction Daily Sentinel* and *Delta County Independent*. The USFS accepted comments from the public through July 9, 2012. Approximately 24,680 comment letters were received on the Draft EIS. Of those, 67 were original or contained some original comments.

Responses to comments received during the 30 day period following the printing of the NOI and the 45 day comment period on the DEIS, as well as other comments specifically included by reference can be found in Appendix H of the FEIS. Comments received during this time can be viewed in entirety in Appendix I of the FEIS.

The EPA published a NOA in the *Federal Register* on August 10, 2012, for the FEIS. The review period ended September 9, 2012.

6.2 Bureau of Land Management

In addition to the USFS public involvement and NEPA process, the BLM performed an internal ID Team scoping effort at the outset of the NEPA process and prepared a list of key issues, within the jurisdiction of the agency, to be addressed in the BLM NEPA process. (See BLM Key Issues table below).

BLM Key Issues	
Topic	Issue
Air Quality	Effects of the Proposed Action may occur on air quality including ambient ozone, PM2.5, PM10, VOCs, Class I areas in compliance with the Clean Air Act.
	Cumulative effects to air quality associated with coal burning may occur as a result of the Proposed Action.
Socioeconomics	Coal mining activities are vital to the local and regional economies.
	Coal from the North Fork Valley helps fuel clean coal technology and provide the USA with low-cost, reliable energy.
Climate Change	Effects on climate change may occur from mining coal which stem from the release of methane through the mine ventilation system, release of methane through any gob vent boreholes and release of CO2 caused by the burning of coal that is mined.

BLM Key Issues	
Topic	Issue
Methane	Consider alternatives to venting including flaring, capture and use, or destroying ventilation air methane (VAM).
Evaluation of Impacts	Evaluate the direct, indirect and cumulative impacts of the proposed action.
Reasonably Foreseeable Actions	Consider lease action with other reasonably foreseeable actions in North Fork Valley.

The BLM prepared a preliminary EA that incorporated by reference the USFS DEIS and supplemented the DEIS with additional analysis. This preliminary EA was posted for a 30-day public comment period on June 8, 2012. During this comment period the BLM received 11 comment letters that were not also sent to USFS as comments on the DEIS. Following the close of the public comment period, the BLM has continued to receive supplemental comment letters from Earth Justice; these letters were received on October 24, 2012, on November 13, 2012, and on November 21, 2012. Responses to these BLM-specific comments can be found in Appendix B of this BLM ROD.

7.0 Mitigation Measures

Mitigation for potential impacts to surface resources will take the form of USFS stipulations applied to lease modifications issued pursuant to this decision. The stipulations are described in detail in Appendix A of this ROD.

In addition to the USFS stipulations that apply to the potential surface impacts associated with these lease modifications, the BLM, through this ROD, will apply mitigation for the release of methane gas from the mine.

On January 14, 2009, the BLM and MCC executed lease addenda on COC-1362 and COC-67232, which grant the following authority:

Sec. 3. Notwithstanding the language in Section 2 of this lease and subject to the terms and conditions below, lessee is authorized to drill for, extract, remove, develop, produce and capture for use or sale any or all of the coal mine methane from the above described lands that it would otherwise be required to vent or discharge for safety purposes by applicable laws and regulations. For purposes of this lease, "coalmine methane" means any combustible gas located in, over, under, or adjacent to the coal resources subject to this lease, that will or may infiltrate underground mining operations.

Sec. 4. Notwithstanding any other provision of this lease, nothing herein shall, nor shall it be interpreted to, waive, alter or amend lessee's right to vent, discharge or otherwise dispose of coal mine methane as necessary for mine safety or to mine the coal deposits

consistent with permitted underground mining operations and federal and state law and regulation. Lessee shall not be obligated or required to capture for use or sale coal mine methane that would otherwise be vented or discharged if the capture of coal mine methane, independent of activities related to mining coal, is not economically feasible or if the coal mine methane must be vented in order to abate the potential hazard to the health or safety of the coal mines or coal mining activities. In the event of a dispute between lessor and lessee as to the economic or other feasibility of capturing for use or sale the coal mine methane, lessor's remedy as a prevailing party shall be limited to recovery of compensatory royalties on coal mine methane not captured for use or sale by lessee. Lessee shall have the right to continue all mining activities under this lease, including venting coal mine methane, pending resolution of any dispute regarding the application of the terms of Sections 3 and 4.

Pursuant to the lease addenda and subsequent BLM request, West Elk contracted with third-parties to evaluate various methane uses and their technological and economic feasibility at the mine, and then produced a report which was provided to BLM on September 24, 2009. MCC provided a supplement to this report detailing the West Elk Mine's economic conditions to BLM on November 23, 2009.

The 2009 West Elk Mine E-Seam Gas Economic Evaluation Report (2009 Report) analyzes methane capture for pipeline sale, capture for onsite electric generation, and flaring. The 2009 Report showed that in 2009 there were no economically feasible uses of the methane emitted from the mine. The BLM evaluated this report and found it to be credibly supported by relevant economics and technology. (It is to be noted that the BLM also evaluated a report related to the lease addenda prepared by Power Consulting and provided to the BLM in January 2010, and found that report to be unpersuasive based on its reliance on a carbon credit market that in 2009/2010 did not support economic methane use at the West Elk Mine, and a market which at the signing of this ROD is significantly devalued since the 2009/2010 analysis.)

As a part of the 2009 Report, MCC proposed that annual evaluations of new technology, coupled with economic trigger values, will determine when future analysis is required. These trigger values are: 1) natural gas price of \$18.66MM/Btu; 2) price per Megawatt/Hour (MWh) for electricity paid by the mine of \$114/MWh; and 3) carbon offset price of \$19.25/ton.

MCC provided the BLM with updated information pursuant to Section VII of the R2P2 report in April, 2012, which showed that none of the above stated trigger values had been reached, and thus an additional detailed analysis is not necessary. The BLM agrees with MCC's conclusions based on this updated information, and has provided MCC with an approval of its proposed economic trigger values and continuing evaluation of new methane use technology.

7.1 Adaptive Management

The unique geologic, terrain, and economic conditions at each coal mine determine whether, when, and how methane use mitigation options are feasible. Additionally, if coal leases are overlaid with oil and gas leases, the coal and oil and gas operators must reach an agreement with regard to any potential methane use and/or liberation.

There are currently three Federal oil and gas leases that cover portions of the West Elk Mine (COC-65116, COC-65115, and COC-68483). These leases do not cover any portion of the lease modification areas or coal leases COC-1362 and COC-67232.

The West Elk Mine has lease addenda (described above in Section 7.0) that allow for methane use when economically feasible, and for which the BLM requires additional analysis when certain economic trigger values are reached. Pursuant to these lease addenda on leases COC-1362 and COC-67232, if determined to be economically feasible, the BLM will require the appropriate mitigation use, or the equivalent royalty payments.

The current conditions at the West Elk Mine are not conducive to any of the methane use options analyzed in the 2009 West Elk Mine E-Seam Gas Economic Evaluation Report. The geology of the current mining area is not resulting in high methane liberation. The terrain is very rugged, and as such, placing pipelines through the area to the MDWs is geographically, technically, and economically infeasible. The MDWs used at the West Elk Mine are temporary and those used to liberate methane from the E-Seam mine workings are in service for an average of 12 weeks per MDW as underground mining progresses. There can be a range of 1 to 5 E-Seam MDWs draining at any given time while methane content of the exhausted gases can range from 20% - 95%; this temporary and fluctuating nature of the MDWs drainage reliability is a major contributor to the infeasibility of economic methane use.

Additionally, to make a methane flaring option economically feasible, a robust carbon credit market is necessary. Such a market does not currently exist, but as described above in Section 7.0, a future increase in carbon credit price is one of the trigger values that will necessitate further review of methane use by the West Elk Mine.

While the methane use options analyzed in the 2009 Report are not currently economically feasible, the West Elk Mine is able to utilize liberated methane to heat the mine when outside temperatures so require. The BLM supports this methane use, which is within the purview of the lease addenda. Therefore, when methane liberation concentrations in the mine and outside temperatures allow West Elk to use methane to heat the mine, this BLM ROD requires the West Elk Mine to do so.

The lease addenda on COC-1362 and COC-67232, coupled with the accepted trigger values described above in Section 7.0, require additional potential future analysis by MCC. If such analysis shows that additional methane use measures are warranted, the BLM will require the appropriate use or royalty payment as provided by the lease addenda.

8.0 Appeals

This decision may be appealed to the Interior Board of Land Appeals (IBLA) in accordance with the regulations contained in 43 CFR, Part 4. Appeal and stay procedures are outlined in Form 1842-1, which is attached.

Notice of Appeal: A public notice for this decision is scheduled to appear in the *Federal Register*. Within 30 days of this notification (“date of service”), a Notice of Appeal must be filed in writing to the office that issued this decision (43 CFR 4.411 and 4.413):

State Director
BLM Colorado State Office
2850 Youngfield Street
Lakewood, Colorado 80215

At the same time, a copy of the Notice of Appeal must also be sent to:

Regional Solicitor, Rocky Mountain Region
755 Parfet Street, Suite 151
Lakewood, Colorado 80215

Statement of Reasons: Within 30 days after filing the Notice of Appeal, you must also file a complete statement of the reasons why you are appealing. This must be filed with:

U.S. Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy Street, Suite 300
Arlington, Virginia 22203

If you fully stated your reasons for appealing when filing the Notice of Appeal, no additional statement is necessary (43 CFR 4.412 and 4.413).

Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor having jurisdiction over the State in which the appeal arose must be served a copy of: (a) the Notice of Appeal, (b) the Statement of Reasons, and (c) any other documents filed (see 43 CFR 4.413).

Within 15 days after any document is served on an adverse party, you must file proof of that service with the IBLA. This may consist of a certified or registered mail “Return Receipt Card” signed by the adverse party [see 43 CFR 4.401(c)].

Petition for a Stay: The decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a Notice of Appeal (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this

decision during the time that your appeal is being reviewed by the IBLA, the petition for a stay must accompany your Notice Of Appeal (43 CFR 4.21 or 43 CFR 2804.1). Except as otherwise provided by law, or applicable regulation, guideline, or policy, a petition for a stay of a decision pending appeal shall show sufficient justification based upon the following standards:

- the relative harm to the parties if the stay is granted or denied;
- the likelihood of the appellant's success on the merits;
- the likelihood of immediate and irreparable harm if the stay is not granted; and
- whether the public interest favors granting the stay.

As noted above, the motion for stay must be filed in the office of the Authorized Officer, in this case the BLM Colorado State Director. Unless these procedures are followed, your appeal will be subject to dismissal (see 43 CFR 4.402).

9.0 Approval

In consideration of the information presented above, I approve this BLM ROD adopting the USFS GMUG FEIS and concur with the USFS's selection of Alternative 3.

Helen M. Hankins

Approving Official

12-27-2012

Date

Helen M. Hankins
Colorado State Director
Bureau of Land Management
Department of the Interior

Attachments (3):

- 1 – Appendix A – USFS Stipulations
- 2 – Appendix B – BLM Comment Response Table
- 3 – Appeal Form 1842-1

Appendix A

Stipulations for Protection of Non-Mineral (Surface) Resources.

Resource Area	Stipulations Carried Forward from Parent Lease COC-1362 Specific to Forest Service Lands	Stipulations Carried Forward from Parent Lease COC-67232 Specific to Forest Service Lands	Stipulations Specific to Lease Modifications
<p>Cultural and Paleontological Resources</p>	<p>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:</p> <ul style="list-style-type: none"> • Contact the FS to determine if a site specific cultural resource inventory is required. If a survey is required then: • 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 proposed disturbance to cover possible site 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. • Implement mitigation measures required by the FS and BLM to 	<p>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:</p> <ul style="list-style-type: none"> • Contact the FS to determine if a site specific cultural resource inventory is required. If a survey is required then: • 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 proposed disturbance to cover possible site 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. • Implement mitigation measures required by the FS and BLM to 	<p>Use language from parent leases (required Standard Notice for Lands under the Jurisdiction of the Department of Agriculture.)</p>

Resource Area	Stipulations Carried Forward from Parent Lease COC-1362 Specific to Forest Service Lands	Stipulations Carried Forward from Parent Lease COC-67232 Specific to Forest Service Lands	Stipulations Specific to Lease Modifications
	<p>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.</p> <ul style="list-style-type: none"> 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 license, and shall leave such discoveries intact until directed to proceed by FS and BLM. 	<p>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.</p> <ul style="list-style-type: none"> 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 license, and shall leave such discoveries intact until directed to proceed by FS and BLM. 	
<p>Endangered or Threatened Species</p>	<p>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</p>	<p>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</p>	<p>Use language from parent leases, required Standard Notice for Lands under the Jurisdiction of the Department of Agriculture.</p>

Resource Area	Stipulations Carried Forward from Parent Lease COC-1362 Specific to Forest Service Lands	Stipulations Carried Forward from Parent Lease COC-67232 Specific to Forest Service Lands	Stipulations Specific to Lease Modifications
	<p>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.</p> <p>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.</p>	<p>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.</p> <p>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.</p>	
	<p>If there is reason to believe that Forest Service Sensitive species, Threatened or Endangered species of plants or animals, or migratory bird species of high Federal interest are present, or become present in the lease area, the Lessee/Operator shall be required to conduct an intensive field inventory of the area to be disturbed and/or impacted. The inventory shall include species or groups of species identified by the FS, and will be conducted to by a qualified specialist. A report of findings will be prepared and provided to the FS. A plan will be made that recommends protection for these species or action necessary to mitigate the disturbance consistent with the Forest Plan. The cost of conducting such inventory, preparing reports and carrying out mitigation measures shall be borne by</p>	<p>If there is reason to believe that Sensitive, Threatened or Endangered species of plants or animals, or migratory bird species of high Federal interest are present, or become present in the lease area, the Lessee/Operator shall be required to conduct an intensive field inventory of the area to be disturbed and/or impacted. The inventory shall be conducted by a qualified specialist, and a report of findings prepared. A plan will be made that recommends protection for these species or action necessary to mitigate the disturbance. The cost of conducting such inventory, preparing reports and carrying out mitigation measures shall be borne by the Lessee/Operator.</p>	<p>Use language from parent leases, required Standard Notice for Lands under the Jurisdiction of the Department of Agriculture.</p>

Resource Area	Stipulations Carried Forward from Parent Lease COC-1362 Specific to Forest Service Lands	Stipulations Carried Forward from Parent Lease COC-67232 Specific to Forest Service Lands	Stipulations Specific to Lease Modifications
Canada Lynx	<p data-bbox="552 310 779 331">the Lessee/Operator.</p> <p data-bbox="552 370 989 610">To comply with the USDA Forest Service Conservation Agreement with Fish and Wildlife Service, to follow the conservation measures in the Canada Lynx Conservation Assessment and Strategy (Ruediger et al. 2000), the following special constraints will apply if surface use on the lease is proposed in lynx habitat:</p> <ul data-bbox="600 634 989 1419" style="list-style-type: none"> <li data-bbox="600 634 989 688">• Winter access will be limited to designated routes. <li data-bbox="600 699 989 911">• Further, should surface disturbing operations be proposed on the lease in lynx habitat, the following special constraints may apply, depending on site-specific circumstances: <li data-bbox="600 922 989 1040">• Remote monitoring of the development sites and facilities may be required to reduce snow compaction. <li data-bbox="600 1052 989 1230">• A reclamation plan (e.g. road reclamation and vegetation rehabilitation) for sites and facilities that promotes the restoration of lynx habitat may be required. <li data-bbox="600 1242 989 1360">• Public motorized use on new roads constructed for project-specific purposes will be restricted. <li data-bbox="600 1372 989 1419">• Access roads will be designed to provide for effective closures 	<p data-bbox="1014 370 1451 505">To comply with the Canada Lynx Assessment and Strategy (Ruediger et al. 2000), the following special constraints will apply if post-lease surface use is proposed in lynx habitat:</p> <ul data-bbox="1062 521 1451 574" style="list-style-type: none"> <li data-bbox="1062 521 1451 574">• Winter access will be limited to designated routes. <p data-bbox="1062 610 1451 773">Further, should post-lease operations be proposed on the lease in lynx habitat, the following special constraints may apply, depending on site-specific circumstances:</p> <ul data-bbox="1062 797 1451 1419" style="list-style-type: none"> <li data-bbox="1062 797 1451 915">• Remote monitoring of the development sites and facilities may be required to reduce snow compaction. <li data-bbox="1062 927 1451 1105">• A reclamation plan (e.g. road reclamation and vegetation rehabilitation) for sites and facilities that promotes the restoration of lynx habitat may be required. <li data-bbox="1062 1117 1451 1235">• Public motorized use on new roads constructed for project-specific purposes will be restricted. <li data-bbox="1062 1247 1451 1419">• Access roads will be designed to provide for effective closures and will be reclaimed or decommissioned at project completion if they are no longer needed for other management 	<p data-bbox="1476 370 1875 505">To comply with the GMUG Forest Plan 2008 amendment, the following special constraints will apply if surface use on the lease is proposed in lynx habitat:</p> <ul data-bbox="1524 521 1875 574" style="list-style-type: none"> <li data-bbox="1524 521 1875 574">• Winter access will be limited to designated routes. <p data-bbox="1476 610 1875 724">Further, should surface disturbing operations be proposed on the lease in lynx habitat, the following special constraints will apply:</p> <ul data-bbox="1524 740 1875 1398" style="list-style-type: none"> <li data-bbox="1524 740 1875 859">• Remote monitoring of the development sites and facilities will be required to reduce snow compaction. <li data-bbox="1524 870 1875 1049">• A reclamation plan (e.g. road reclamation and vegetation rehabilitation) for sites and facilities that promotes the restoration of lynx habitat will be required. <li data-bbox="1524 1060 1875 1179">• Public motorized use on new roads constructed for project-specific purposes will be restricted. <li data-bbox="1524 1190 1875 1398">• Access roads will be designed to provide for effective closures and will be reclaimed or decommissioned at project completion if they are no longer needed for other

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	<p>and will be reclaimed or decommissioned at project completion if they are no longer needed for other management objectives.</p> <ul style="list-style-type: none"> New permanent roads will not be built on ridge tops or in saddles, or in areas identified as important for lynx habitat connectivity. New roads will be situated away from forested stringers. 	<p>objectives.</p> <ul style="list-style-type: none"> New permanent roads will not be built on ridge tops or in saddles, or in areas identified as important for lynx habitat connectivity. New roads will be situated away from forested stringers. If post lease surface use occurs in lynx habitat, the Lessee will be required to submit an annual report to the USDA-FS and USFWS of all activities having occurred in lynx habitat. 	<p>management objectives.</p> <ul style="list-style-type: none"> New permanent roads will not be built on ridge tops or in saddles, if possible, or in areas identified as important for lynx habitat connectivity. New roads will be situated away from forested stringers, if possible.
Raptors	<p>For raptors (except American kestrel) the Lessee will be required to:</p> <ul style="list-style-type: none"> Conduct surveys for nesting raptors on the lease prior to development of any surface facilities, and No surface activities will be allowed within ¼ mile radius of active nest sites between the dates of February 1 and August 15, unless authorized by the Forest Service on a site-specific basis. No surface activities will be allowed within 1-mile radius of active bald eagle or peregrine falcon nest sites between the dates of February 1 and August 15, unless authorized by the Forest Service on a site-specific basis. 	<p>For raptors (except American kestrel) the Lessee will be required to:</p> <ul style="list-style-type: none"> Conduct surveys for nesting raptors on the lease prior to development of any surface facilities, and No surface activities will be allowed within ½-mile radius of active nest sites between the dates of February 1 and August 15, unless authorized by the Forest Service on a site-specific basis. 	<p>Use combined language from COC-67232 and COC-1362 which reflects Forest Plan standards as well as guidelines from the Biological Evaluation for this project:</p> <ul style="list-style-type: none"> Conduct surveys for nesting raptors on the lease prior to development of any surface facilities, and No surface activities will be allowed within ½-mile radius of active nest sites between the dates of February 1 and August 15, unless authorized by the Forest Service on a site-specific basis. No surface activities will be allowed within 1-mile radius of active bald eagle or peregrine falcon nest sites * between the dates of February 1 and August

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			<p>15, unless authorized by the Forest Service on a site-specific basis.</p> <p>(* No bald eagle or peregrine falcon nest site habitat has been identified within the lease modifications as indicated in the Biological Evaluation prepared for this analysis.)</p>
Big game winter range	<p>In order to protect big game wintering areas, elk calving areas, and other key wildlife habitat and/or activities, specific surface use may be curtailed during specific times of year. Specific time restrictions for specific species will be evaluated by the Forest Service at the individual project stage, and any additional site specific conditions of use developed at that time.</p>	<p>In order to protect big game wintering areas, elk calving areas, and other key wildlife habitat and/or activities, specific surface use may be curtailed during specific times of year. Specific time restrictions for specific species will be evaluated by the Forest Service at the individual project stage, and any additional site specific conditions of use developed at that time.</p>	<p>Use language from parent leases.</p>
Water depletions	<p>In the future, if water to be used for mine related activities is taken from a source that is not considered to be non-tributary waters by the U.S. Fish and Wildlife Service, or which exceeds a depletion amount previously consulted upon, the permitting agency must enter into consultation with the U.S. Fish and Wildlife Service to determine appropriate conservation measures to offset effects to listed fish and critical habitat in the upper Colorado River Basin.</p>	<p>In the future, if water to be used for mine related activities is taken from a source that is not considered to be non-tributary waters by the U.S. Fish and Wildlife Service, or which exceeds a depletion amount previously consulted upon, the permitting agency must enter into consultation with the U.S. Fish and Wildlife Service to determine appropriate conservation measures to offset effects to listed fish and critical habitat in the upper Colorado River Basin.</p>	<p>Use language from parent leases.</p>

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Breeding birds	If surface disturbance is proposed on the lease, the lessee/operators will be required to conduct breeding bird surveys prior to surface disturbance as prescribed by the Forest Service.	If surface disturbance is proposed on the lease, the lessee/operators will be required to conduct breeding bird surveys prior to surface disturbance.	Use language from COC-1362 parent lease on both modifications.
Geologic hazards	No surface occupancy would be allowed in areas of high geologic hazard or high erosion potential, or on slopes which exceed 60%.	No surface occupancy would be allowed in areas of high geologic hazard or high erosion potential.	Use language from respective parent leases.
	Special interdisciplinary team analysis and mitigation plans detailing construction and mitigation techniques would be required on areas where slopes range from 40-60 percent. The interdisciplinary team could include engineers, soil scientist, hydrologist, landscape architect, reclamation specialist and mining engineer.	Special interdisciplinary team analysis and mitigation plans detailing construction and mitigation techniques would be required on areas where slopes range from 40-60 percent. The interdisciplinary team could include engineers, soil scientist, hydrologist, landscape architect, reclamation specialist and mining engineer.	Use language from parent leases.
Baseline Information	The operator/lessee would be required to perform adequate baseline studies to quantify existing surface and subsurface resources. Existing data can be used for baseline analyses provided that the data is adequate to locate, quantify, and demonstrate interrelationships between geology, topography, hydrogeology, and hydrology. Baseline studies are critical to the success of future observation and assessment of mining related effects on resources.	The operator/lessee would be required to perform adequate baseline studies to quantify existing surface and subsurface resources. Existing data can be used for baseline analyses provided that the data is adequate to locate, quantify, and demonstrate interrelationships between geology, topography, hydrogeology, and hydrology. Baseline studies are critical to the success of future observation and assessment of mining related effects on resources in the Dry Fork lease tract.	Use language from parent leases
Monitoring Program	The operator/lessee would be required to establish or amend a monitoring program to be used as a continuing record of change over time of area resources in order to assess mining	The operator/lessee of the lease tract would be required to establish or amend a monitoring program to be used as a continuing record of change over time of area resources in order to assess mining	Use language from parent leases

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	<p>induced impacts. The monitoring program shall provide the procedures and methodologies to adequately assess interrelationships between geology, topography, hydrogeology, and hydrology identified in the baseline assessment to mining activities on the lease area. The monitoring program shall incorporate baseline data so as to provide a continuing record over time.</p>	<p>induced impacts. The monitoring program shall provide the procedures and methodologies to adequately assess interrelationships between geology, topography, hydrogeology, and hydrology identified in the baseline assessment to mining activities in the lease tract area. The monitoring program shall incorporate baseline data so as to provide a continuing record over time.</p>	
<p>Riparian, wetland or floodplain</p>	<p>Surface use or disturbances (except for surface subsidence and resource monitoring purposes defined in the approved mining permit) will avoid riparian, wetland or floodplain areas, and a buffer zone surrounding these areas (the definition of riparian areas and appropriate buffer zone will be consistent with that defined in the Forest Service Manual and Water Conservation Practices Handbook. Wetland definition will follow Army Corps of Engineers guidelines) unless no practical alternatives exist.</p>	<p>Surface use or disturbances (except for surface subsidence and resource monitoring purposes defined in the approved mining permit) will not be permitted in riparian, wetland or floodplain areas, or within a buffer zone surrounding these areas (the definition of riparian areas and appropriate buffer zone will be consistent with that defined in the Forest Service Manual and Water Conservation Practices Handbook. Wetland definition will follow Army Corps of Engineers guidelines) unless no practical alternatives exist.</p>	<p>Use language from parent leases</p>
<p>Subsidence</p>	<p>If subsidence adversely affects surface resources in any way (including, but not limited to a documented water loss), the Lessee, at their expense will be responsible to: restore stream channels, stock ponds, protect stream flow with earthwork or temporary culverts, restore affected roads, or provide other measures to repair damage or replace any surface water and/or developed ground water source, stock pond, water conveyance facilities, with water from an alternate source in sufficient quantity</p>	<p>If subsidence adversely affects surface resources in any way (including, but not limited to a documented water loss), the Lessee, at their expense will be responsible to: restore stream channels, stock ponds, protect stream flow with earthwork or temporary culverts, restore affected roads, or provide other measures to repair damage or replace any surface water and/or developed ground water source, stock pond, water conveyance facilities, with water from an alternate source in sufficient quantity</p>	<p>Use language from parent leases</p>

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	<p>and quality to maintain existing riparian habitat, livestock and wildlife use, or other land uses as authorized by 36 CFR 251.</p>	<p>and quality to maintain existing riparian habitat, livestock and wildlife use, or other land uses as authorized by 36 CFR 251.</p>	
	<p>The Lessee/Operator shall be responsible for monitoring, repairing and/or mitigating subsidence effects on existing facilities under Special Use Permit with the Forest Service. Monitoring, repair and/or mitigation, if needed, would be performed at the Lessee's expense. These requirements will be coordinated with the District Ranger and the Special Use Permittee.</p>	<p>The Lessee/Operator shall be required to perform the following with respect to monitoring, repairing and/or mitigating subsidence effects on existing facilities under Special Use Permit with the Forest Service. Monitoring, repair and/or mitigation will be performed at the Lessee's expense. The Lessee may request variations on timing for surveys, monitoring and reporting. Approving such requests would be at the discretion of the District Ranger.</p> <p>a. Baseline condition surveys of existing facilities will be completed the Fall following award of lease. Reports of this survey will be deliverable to the Forest Service by December 1 of that same year.</p> <p>b. In consultation with the Special Use Permittee and the Forest Service, install equipment to monitor flow on water conveyance facilities during the Fall following award of lease. Flow monitoring shall commence the following spring and continue until one year post mining. Flow data shall be provided to the Forest Service annually by December 1.</p> <p>c. A Surface Facility Monitoring and Mitigation Plan (Plan) will be submitted to the Forest Service for review and approval not later than 12 months prior to scheduled undermining. The Plan will detail measures to be taken to monitor, repair and mitigate subsidence effects of</p>	<p>As parent lease for COC-67232 deals specifically with an irrigation ditch on that lease, use language from COC-1362 on both lease modifications.</p>

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		the facilities during actual mining and for one year.	
Roadless	<p>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 the permit/operation approved by the Secretary of the Interior.</p> <p>Federal Coal Lease C-1362, as modified October 2001</p> <p>All or parts of the following lands encompassed in this lease are in the West Elk Inventoried Roadless Area and may be subject to restrictions on road-building pursuant to rules and regulations of the Secretary of Agriculture applicable at the time any roads may be proposed on the lease.</p> <p>Legal descriptions are approximate. Locations of any proposed surface use would be verified for relationship to IRA boundaries using site-specific maps if/when surface operations are</p>	<p>All or parts of the following lands encompassed in this lease are in the West Elk Inventoried Roadless Area and may be subject to restrictions on road-building pursuant to rules and regulations of the Secretary of Agriculture applicable at the time any roads may be proposed on the lease.</p> <p>All or parts of the following lands encompassed in this lease are in the West Elk Inventoried Roadless Area and may be subject to restrictions on road-building pursuant to rules and regulations of the Secretary of Agriculture applicable at the time any roads may be proposed on the lease.</p>	<p>For Alternative 2 (or, if applicable, Alternative 4) Consent to and modify lease(s) under the provision of the 2001 Roadless Rule</p> <p>On the following lands within inventoried roadless areas:</p> <ol style="list-style-type: none"> 1. All surface disturbances will be stabilized with effective runoff and erosion control measures. 2. Disturbances will be restricted to the minimum area necessary to safely and efficiently complete surface activities. 3. If rutting exceeds 6 inches on cross-country motorized access, all operations must cease until soil conditions improve. The District Ranger may authorize temporary use during these conditions for emergency situations. 4. Cross-country motorized access will require grade breaks or undulations every 330 ft. on steep ground (>30% slope). <p>For alternative 3 (or, if applicable, Alternative 4): Colorado Roadless Rule stipulations</p> <p>On the following lands within the Sunset CRA, surface operations incident to underground coal mining are subject to regulations in 36 CFR 294, subpart D:</p> <ul style="list-style-type: none"> • All roads that may be

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	proposed.		<p>constructed must be temporary.</p> <ul style="list-style-type: none"> • All temporary road construction must be consistent with applicable land management plan direction • Road construction may only occur if motorized access has been deemed infeasible by the responsible official; unless a temporary road is needed to protect public health and safety in cases of an imminent threat of flood, fire or other catastrophic event that, without intervention, would cause the loss of life or property • Temporary road construction must be completed in a manner that reduces effects on surface resources, and prevents unnecessary or unreasonable surface disturbance • All temporary roads must be decommissioned and affected landscapes restored when it is determined that the road is no longer needed for the established purpose • All temporary roads must prohibit public motorized vehicles (including off-highway vehicles) except: <ol style="list-style-type: none"> I. Where specifically used for the purpose for

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			<p>which the road was established; or</p> <p>II. Motor vehicle use that is specifically authorized under a Federal law or regulation.</p> <p>For any linear construction zone (LCZ) over 50 inches wide used to install pipelines, the Regional Forester must determine that they are needed, and the responsible official must determine that motorized access without a linear construction zone is not feasible.</p> <ul style="list-style-type: none"> • Construction and use of linear construction zones must be consistent with the GMUG Forest Land and Resource Management Plan, and may be no wider than their respective intended uses. • Installation of linear construction zones will be done in a manner that minimizes ground disturbance. • Reclamation of a linear construction zone will not diminish, over the long-term, roadless area characteristics. All authorizations approving the installation of linear facilities through the use of a linear construction zone shall include a responsible official

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			approved reclamation plan for reclaiming the affected landscape while conserving roadless area characteristics over the long-term. Upon completion of the installation of a linear facility via the use of a linear construction zone, all areas of surface disturbance shall be reclaimed as prescribed in the authorization and the approved reclamation plan and may not be waived.
Visuals	n/a	n/a	Within the lease modification areas, the lessee will work with the District Ranger and his/her representative to see that all mine operations are situated on the ground in such a manner that reasonably minimizes impacts to the scenic integrity of that landscape as prescribed in the Forest Plan.
Methane use	n/a	n/a	If flaring or other combustion is prescribed as part of any future mitigation measure, lessee will be required to submit a fire prevention and protection plan subject to responsible Forest Service official for approval.

Appendix B

Comment Number	Category	Commenter	Comment Text	Response
1	NEPA	CREDO Action	I urge you to select the "no action alternative" for the expansion of the West Elk mine in order to protect public health, wildlife and the environment	The BLM considered the No Action alternative analyzed in the USFS FEIS for which BLM was a cooperating agency. BLM determined that this alternative is not in the best interest of the public and it would not be consistent with the BLM's multiple use mandate under FLPMA because it would result in a bypass of federal coal that is available for lease under BLM and USFS coal screening.
2	Support	B. Nickell	Support for the West Elk Mine expansion	Thank you for your comment
3	NEPA	Earth Justice et al (7/9/2012)	Incorporate by reference all Earth Justice comments to USFS on the Draft EIS	The BLM has incorporated all USFS comments and responses.
4	NEPA	Earth Justice et al (7/9/2012)	Analyze a reasonable range of alternatives that looks at consenting/issuing only the modification on COC-1362	In response to public comment and agency analysis, the USFS FEIS for which BLM is a cooperating agency analyzes an alternative that would modify only the COC-1362 lease.
5	NEPA	Earth Justice et al (7/9/2012)	Analyze a reasonable range of alternatives that looks at applying a NSO stipulation to wilderness capable lands in the Sunset IRA	The USFS and BLM considered a NSO stip in response to public comment, but because of the potential need to drill methane vent wells to protect the safety of those in the mine, this stip was not added to the FEIS. Furthermore, because the Sunset IRA (now Sunset Trail CRA) is within the North Fork Coal exception area of the Colorado Roadless Rule, temporary road construction for methane vent wells is explicitly allowed in the area.
6	NEPA	Earth Justice et al (7/9/2012)	Incorporating the USFS EIS into an EA violates NEPA	The BLM has adopted the USFS EIS and issued a ROD. The BLM did not finalize its EA and FONSI and did not issue an associated Decision Record.
7	NEPA	Earth Justice et al (7/9/2012)	BLM's draft FONSI incorrectly concludes that none of the effects in the EA are significant	The BLM's draft FONSI was not finalized and thus there is not a conclusion that there are no significant effects.
8	NEPA	Earth Justice et al (7/9/2012)	BLM and USFS should issue a revised draft EIS that addresses Earth Justice's comments	The FEIS issued by USFS and adopted by BLM addresses the comments received during the public comment period. A supplemental DEIS was not necessary because there were no issues raised during public comment that presented significant new information or necessitated analysis outside the range of alternatives of the DEIS.
9	Support	Delta County Commissioners	Support for the West Elk Mine expansion	Thank you for your comment

10	Coal Resource	Mountain Coal Company (Drysdale)	The Need statement in the EIS should be updated to stress the potential bypass of federal coal	The purpose and need statement in section 1.3 of the FEIS was revised to reflect this comment.
11	2001 Roadless Rule	Mountain Coal Company (Drysdale)	Approving the modifications under the 2001 Roadless Rule would be an effective prohibition on coal mining and should be analyzed as such	Because USFS consent and BLM leasing would be allowed under the 2001 Roadless Rule, although there would be a prohibition on road construction, this alternative was analyzed as an action alternative.
12	Geology	Mountain Coal Company (Drysdale)	Chapter 1 of the BLM's EA is misleading because it states that the mining of coal could result in the loss of methane gas and potential future recovery when this gas is not of sufficient quantity or quality to be economically developed	This statement is not included in the USFS FEIS and thus is not adopted in the BLM ROD.
13	NEPA	Mountain Coal Company (Drysdale)	BLM's EA eliminates from detailed consideration an alternative that would approve one lease modification and deny the other without giving this elimination a thorough justification	In the FEIS this alternative was brought forward for consideration and was thoroughly analyzed.
14	Air Quality	Mountain Coal Company (Drysdale)	It would be reasonable to carry forward additional steps to the carbon to carbon dioxide calculation referenced on page 41 of the EA	The relevant carbon to carbon dioxide calculation is addressed on p. 73 of the USFS FEIS.
15	Socioeconomics	Mountain Coal Company (Drysdale)	BLM's benefit-cost analysis includes a problematic value for methane emission costs and in general the benefit-cost analysis is cursory and misleading	In response to public comment and further agency analysis, the benefit-cost analysis was removed from the FEIS because it was determined not to provide accurate analysis to inform USFS and BLM decisions. The economic impacts of all alternatives were instead addressed without the benefit-cost analysis.
16	NEPA	Mountain Coal Company (Drysdale)	BLM's FONSI needs to be expanded upon to justify the decision and FONSI	The BLM did not finalize its FONSI.
17	Support	Montrose County Commissioners	Support for the West Elk Mine expansion	Thank you for your comment
18	Support	NFRIA-WSERC Conservation Center (NWCC)	Support for the West Elk Mine expansion	Thank you for your comment
19	Methane	NFRIA-WSERC Conservation Center (NWCC)	BLM, USFS, EPA, MSHA, the Colorado Governor's Energy Office, and all North Fork coal mines should work together to make sure that the methane released by coal mining is captured, used to produce energy, and oxidized to carbon dioxide	The issue of methane release is under ongoing analysis by multiple agencies. As such, pursuant to the lease addenda on parent leases COC-1362 and COC-67232, the USFS and BLM have addressed this in the FEIS and the BLM ROD.
20	Support	Mountain Coal Company	Support for the West Elk Mine expansion	Thank you for your comment

21	Geology	Ark Land Company	The statement in Chapter 1 of the BLM's EA incorrectly states that mining of coal could result in methane loss and recoverability of the gas resource is misleading because there has been no oil or gas resource identified in the modification areas	This statement is not included in the USFS FEIS and thus is not adopted in the BLM ROD.
22	NEPA	N. Lindsey	Do not approve the lease modifications, they are not an appropriate use of public lands	The BLM considered the No Action alternative (which would not approve the lease modifications) analyzed in the USFS FEIS for which BLM was a cooperating agency. BLM determined that this alternative is not in the best interest of the public and it would not be consistent with the BLM's multiple use mandate under FLPMA because it would result in a bypass of federal coal that is available for lease under BLM and USFS coal screening.
23	Support	A. Etter	Support for the West Elk Mine expansion	Thank you for your comment
24	Economic Benefits	Earth Justice et al (10/24/2012)	BLM cannot rely on the FEIS because the FEIS fails to account for reduced economic benefits given BLM approved a Royalty Rate Reduction for the coal within the area.	The Royalty Rate Reduction issued for certain areas of the parent leases COC-1362 and COC-67232 does not apply to the lease modification areas analyzed in the FEIS. The BLM does not issue Royalty Rate Reductions until it has been established that the conditions in a specified area meet the conditions for a reduction -- this determination cannot be made until mining has occurred. See BLM Manual 3485.
25	Economic Benefits	Earth Justice et al (11/13/2012)	The BLM cannot use the economic benefit analysis from the FEIS because it assumed an 8% royalty rate which has since been adjusted to a 5% royalty rate. The FS excuse for not addressing the lower royalty rate is that at the time the acting supervisor made her decision it was appropriate to use the 8% royalty rate in existence at that time. The BLM cannot use this rationale because the BLM decision comes after the royalty rate reduction.	The BLM policy on Royalty Rate Reductions does not allow for preemptive reductions on areas that have not been proven to meet the geologic or financial requirements for such a reduction. See BLM Manual 3485. The FEIS properly used an 8% royalty rate; this is what will be required in the modification areas unless conditions are encountered that warrant a Royalty Rate Reduction. If such conditions are encountered in future mining, an application for a Royalty Rate Reduction in any specific area will be required, which the BLM will then decide whether to grant or deny.

26	Economic Benefits	Earth Justice et al (11/13/2012)	BLM cannot rely on portions of the FEIS that contain conflicting assumptions for the price per ton of coal	The discrepancies in the \$40/ton and \$55/ton assumptions are due to typographical errors as explained in the USFS Appeal Recommendation. Furthermore, the discrepancies are based on the incorrect lack of transportation costs in the \$40/ton assumption, and an effort by USFS and BLM to correct this error and accurately disclose the true economic benefits to the public.
27	NEPA	Earth Justice et al (11/21/2012)	BLM cannot rely on the FEIS's cumulative effects analysis because it appears to contradict an environmental assessment published by the BLM for the UFO February 2013 Oil and Gas lease sale.	The cumulative effects analysis in the FEIS and UFO February 2013 Lease Sale EA are not contradictory, rather, they each analyze the cumulative effects in the respective areas of impact for each project.
28	NEPA	Earth Justice et al (11/21/2012)	The FEIS fails to identify the location and extent of the cumulative effects in a similar manner as the UFO February 2013 Oil and Gas lease sale EA and the FEIS does not provide a map of the cumulative effects location.	There is no requirement to provide a map of the cumulative effect area and no requirement to present cumulative effects analysis in an identical manner in each NEPA document prepared by a BLM field office. See 40 CFR 1508.7 and BLM Handbook 1790-1.
29	NEPA	Earth Justice et al (11/21/2012)	The cumulative effects analysis in the UFO February 2013 lease sale EA contradicts such analysis in the FEIS because the lease sale EA anticipates the development of Oil and Gas leases sold in the February 2013 lease sale could have impacts on numerous resources when analyzed in conjunction with the coal lease applications and other present and reasonably foreseeable actions, while the FEIS dismisses all potential cumulative impacts from the February 2013 Oil and Gas lease sale EA as only speculation.	The potential cumulative impacts from the February 2013 Oil and Gas Lease Sale EA are speculative until the leases are offered for sale, sold, issued, and the BLM receives applications to develop the resource. When the FEIS was issued in August 2012, the parcels analyzed in the UFO February 2013 lease sale EA had been deferred for additional analysis. The description in the FEIS that cumulative effects from the August 2012 (now February 2013) lease sale are speculative is accurate because the cumulative effects are as speculative now as at the release of the FEIS.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

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- 1. NOTICE OF APPEAL**..... A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the *Notice of Appeal* in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a *Notice of Appeal* in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).
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- 2. WHERE TO FILE**..... Bureau of Land Management
Colorado State Office
2850 Youngfield Street
Lakewood, Colorado 80215
- NOTICE OF APPEAL**.....
- WITH COPY TO SOLICITOR**..... Office of the Solicitor
Rocky Mountain Region
755 Parfet Street, Suite 151
Lakewood, Colorado 80215
-
- 3. STATEMENT OF REASONS**..... Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).
- WITH COPY TO SOLICITOR**..... Office of the Solicitor
Rocky Mountain Region
755 Parfet Street, Suite 151
Lakewood, Colorado 80215
-
- 4. ADVERSE PARTIES**..... Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).
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- 5. PROOF OF SERVICE**..... Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).
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- 6. REQUEST FOR STAY**..... Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a *Notice of Appeal* (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your *Notice of Appeal* (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the *Notice of Appeal* and Petition for a Stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.
- Standards for Obtaining a Stay.** Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that all communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

43 CFR SUBPART 1821--GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office ----- Alaska
Arizona State Office ----- Arizona
California State Office ----- California
Colorado State Office ----- Colorado
Eastern States Office ----- Arkansas, Iowa, Louisiana, Minnesota, Missouri
and, all States east of the Mississippi River
Idaho State Office ----- Idaho
Montana State Office ----- Montana, North Dakota and South Dakota
Nevada State Office ----- Nevada
New Mexico State Office ---- New Mexico, Kansas, Oklahoma and Texas
Oregon State Office ----- Oregon and Washington
Utah State Office ----- Utah
Wyoming State Office ----- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

(Form 1842-1, September 2006)