

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

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**Record of Decision for  
Land Use Analysis and Environmental Impact Statement  
East Lynn Lake Coal Lease by Applications**

WVES-50556 (Argus)  
WVES-50560 (Rockspring)

**NEPA #: EIS-ES-030-2008-0004**

**Northeastern States Field Office  
LLES003420**

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**March, 2013**

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## SUMMARY

This Record of Decision (ROD) documents the Bureau of Land Management's (BLM) Eastern States' State Director's decision to approve the Preferred Action (preferred alternative) as described in the Final Land Use Analysis and Final Environmental Impact Statement (FLUA/FEIS) for the East Lynn Lake Coal Lease Applications, WVES-50556 and WVES-50560, Wayne County, West Virginia. The BLM prepared the FLUA/FEIS in consultation with cooperating agencies, taking into account public comments received throughout this planning effort. This FLUA/FEIS analyzed the potential impacts of making BLM-administered minerals available for commercial coal leasing in the Coalburg/Winifrede seam.

The FLUA/FEIS was prepared in response to two lease-by-applications (LBAs) received by the BLM. The decision emphasizes BLM's coal leasing capabilities under the BLM coal leasing program, which encourages private development of federal coal reserves.

The ROD provides the plan for future management of the federal subsurface mineral estate in the Coalburg/Winifrede seam. The nine proposed tracts associated with the decision are located within the United States Army Corps of Engineers' (USACE) East Lynn Lake Project, adjacent to the man-made reservoir within the East Fork of the Twelvepole Creek watershed in southeastern Wayne County. This ROD incorporates the terms of the March 2012 Memorandum of Understanding between BLM and the U.S. Army Corps of Engineers (USACE).

The findings in the East Lynn Lake Coal Lease FLUA/FEIS and decisions of this ROD are based upon an open and collaborative public process. Public involvement was solicited, and the BLM's analysis of major issues from public comments can be found in the FLUA/FEIS. This Approved LUA and ROD additionally describes the mitigation measures, monitoring, and conditions associated with leasing of the subject lands, as specified.

## BACKGROUND

On July 14, 2005, a Notice of Intent (NOI) was published in the *Federal Register*, entitled Notice of Intent to Prepare a Land Use Analysis/Environmental Impact Statement for Coal Lease Applications WVES-50556 and WVES-50560, Wayne County, West Virginia. The Applicants, Argus Energy WV, LLC (Argus) and Rockspring Development, Inc. (Rockspring) have submitted lease-by-applications (LBAs) to lease federal coal in the Coalburg/Winifrede seam that underlies nine tracts of land in Wayne County, West Virginia.

As defined in the *Mineral Leasing Act* (MLA) (30 USC 181 et seq.), and the *Water Resources Development Act of 1999* (WRDA) (approved August 17, 1999), the BLM is the decision-making authority regarding the leasing of the federal coal that underlies the proposed lease tracts.

The BLM has overseen the completion of the land use analysis (LUA) and environmental impact statement (EIS) as required by the National Environmental Policy Act of 1969 (NEPA). The U.S. Environmental Protection Agency (USEPA) and the Council on Environmental Quality (CEQ) provide oversight and review of the FLUA/FEIS. In August 2005 the BLM and the Applicants signed a memorandum of understanding (MOU) to outline the NEPA process and responsibilities.

This Approved FLUA/FEIS was developed in accordance with the NEPA and the Federal Land Policy and Management Act of 1976 (FLPMA). The Preferred Alternative in the FLUA/FEIS is the Proposed Action and is the same Preferred Alternative/Proposed Action as identified in the Draft LUA/Draft EIS, which was released on June 16, 2008. The FLUA/FEIS was released on June 8, 2012.

### **Lease by Application Process**

Under the LBA process, tracts are nominated for leasing by companies with adjacent existing mines. Both Applicants (Argus and Rockspring) conduct active mining operations adjacent to the proposed federal lease tracts. To process an LBA the BLM evaluates the quantity, quality, maximum economic recovery 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 conveys the mining rights to the lessee 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 BLM prepared the East Lynn Lake Coal Lease FLUA/FEIS to evaluate the impacts of leasing the East Lynn Lake Project LBA tracts. The Office of Surface Mining Reclamation and Enforcement (OSM) is a cooperating agency on the EIS because the OSM is the federal agency which administers programs that regulate surface coal mining in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

By law and regulation the LBA process is an open, public, and competitive leasing process; bidding is not restricted to the applicant(s). A competitive lease sale for the federal coal tracts will be held and lease(s) will be issued to the highest bidder. At least 30 days prior to the lease sale a notice of sale will be published in the *Federal Register* in accordance with 43 CFR 3422.2.

In accordance with 43 CFR 3422.1, the BLM presented the fair market value (FMV) and maximum economic recovery (MER) of the lease tracts in the Reasonably Foreseeable Development Scenario (RFDS). The public was solicited to provide comments on the FMV and the MER during the public comment period on the Draft LUA/Draft EIS and at the public hearing held on July 31, 2008 in Wayne, West Virginia. No substantive comments on the FMV or MER were received.

The BLM is not authorized to accept any bid that is less than the FMV. Minimum bids shall be set on a regional basis and may be expressed in either dollars-per-acre or cents-per-ton. In no case shall the minimum bid be less than \$100 per acre or its equivalent in cents-per-ton (34 CFR 3422.1). The lessee or lessees will have to submit a mine plan to the OSM for approval prior to mining. This mine permit application would undergo detailed review by state and federal agencies as part of the approval process. The OSM, the BLM, and other federal and state

agencies review the permit application package to ensure it complies with the terms of the coal lease, the MLA, the NEPA, and other federal and state laws and their attendant regulations. Regulatory compliance and monitoring requirements are described in the FLUA/FEIS in Table 2.1-1.

## **Current Mining Activities under Private Lands**

Both Applicants conduct active mining operations adjacent to the proposed federal lease tracts. Rockspring's Camp Creek Mine is located to the northeast of the East Lynn Lake Reservoir, and consists of underground mine workings, a coal preparation plant, and a coal refuse disposal facility. The Camp Creek Mine produces approximately 3 million clean tons of coal per year by means of room-and-pillar extraction. Production occurs principally from the Coalburg/Winifrede coal seam. The Coalburg/Winifrede reserves typically are low in sulfur, and high in British Thermal Units (BTU), used principally for clean electric generation. The Camp Creek Mine operates at an average depth of roughly 250 feet below the surface, and employs approximately three hundred people.

Argus owns and operates two active mines and one inactive underground mine; three active mines and one inactive surface mine; and one preparation plant, all located south of the East Lynn Lake Reservoir. The surface operation produces from the No. 5 Block coal seam while the underground operations extract from the Coalburg/Winifrede and the No. 5 Block seams. Argus' underground workings operate at an average depth of 200-250 feet. Current operations produce about 2 million tons of clean coal per year. If Argus were selected as a successful bidder, the federal coal reserves within the Coalburg/Winifrede coal seam would be accessed from Argus' currently inactive No. 3 mine and the active No. 8 mine. Presently, there are 277 people employed by Argus with an additional 175 contract workers at their mining complex

## **Proposed Lease Tracts and Adjacent Mining Operations Applicants**

In the event that Rockspring and Argus are selected as the successful bidders for the federal coal leases through the competitive bid process, neither Applicant anticipates the need for additional hiring or surface construction. The federal coal reserves would be mined using the existing staff and infrastructure at each mine.

If Rockspring were selected as a successful bidder for applicable lease(s), the federal coal would be extracted over a period of about 10 years. If Argus were selected as a successful bidder for applicable lease(s), the addition of the federal coal reserves would extend Argus' mine life by an anticipated 15 years.

Both Applicants are proposing only primary mining. Coal extraction would occur by underground mining using modern, continuous-miner, room-and-pillar methods. No secondary or pillar recovery mining is proposed by either Applicant. All future production from the proposed federal leases would be processed and shipped from permitted facilities already present on private ground. Each Applicant justifies the issuance of proposed federal leases on the basis that the federal coal resources would be lost if not developed from their adjacent operations.

## AUTHORITY

The BLM does not manage the surface of the USACE East Lynn Lake Project. As a result, the BLM has no planning documents for the proposed lease area. Since there are no planning documents that address federal coal leasing in the USACE East Lynn Lake Project area, the BLM developed and released the East Lynn Lake Coal Lease FLUA/FEIS in compliance with NEPA requirements and as directed by 43 CFR 3420.

Between 1977 and 1991, the USACE strove to acquire the coal estate lying under the USACE East Lynn Lake Project to protect public safety and the integrity of the dam and reservoir from potential threats posed by mining. The acquisition process involved litigation. The total cost of acquisition, including interest accrued during litigation, was \$57 million in 1991 dollars.

The USACE's purchase of the coal estate lying under the USACE East Lynn Lake Project established federal ownership of the coal. Thus, leasing of federal coal is a federal action and decision, which triggered NEPA compliance. Prior to 1999 proposed lease tracts containing land where the surface is under the jurisdiction of another federal surface management agency (SMA), the BLM was to request that agency's consent to lease. With that consent, the SMA prescribes the stipulations to be imposed to protect non-mineral interests and land uses. These stipulations are derived from the LUA and environmental analysis conducted for the lease. The BLM may prescribe additional terms and conditions that are consistent with those of the SMA. However, the *Water Resources Development Act of 1999* removed the consent authority from the USACE (the SMA), while the decision-making authority regarding federal coal leasing remained with the BLM.

The OSM has regulatory authority for the surface aspects of mining (e.g. roads, ponds, facilities) and underground mining on federal lands. Under SMCRA regulations at 30 CFR 740.4(b)(1), the OSM is responsible for recommending to the Secretary of Interior whether to approve, disapprove, or conditionally approve the mining plans. The successful bidder(s) for the tracts approved for leasing under the FLUA/FEIS's Proposed Action would be required to submit mining plans to the OSM for approval. The successful bidder(s) are additionally required to obtain an operations permit from OSM prior to mining the federal coal (refer to 30 CFR 740.13(b)3(iii)).

## COOPERATING AGENCIES

A Cooperating Agency is any agency that has jurisdiction by law or special expertise for proposals covered by NEPA. A Cooperating Agency can be any federal, state, local, or tribal government agency. The USACE administers the land surface that lies over the federal coal and manages the area for flood control, recreation, and wildlife management. The OSM and the USACE have agreed to participate as Cooperating Agencies in the NEPA process as provided by

40 CFR 1501.6, and MOUs have been completed to document those agreements. The West Virginia Division of Natural Resources (WVDNR) is also a Cooperating Agency.

#### U.S. Army Corps of Engineers

The land tracts that lie over the federal coal proposed for leasing are situated within the boundaries of the USACE East Lynn Lake Project. The USACE manages these lands for flood control, recreation, and wildlife habitat. According to the USACE's *Real Estate Handbook* (ER 405-1-12), the procedure of the USACE in acquiring the necessary land or interests to accommodate projects is to permit the reservation of the minerals in the land, unless the reservation is adverse or hostile to the operation of the project (USACE 2005). The USACE determined it necessary to acquire the coal rights in order to ensure realization of "optimum values for all [USACE East Lynn Lake Project] purposes."

As the surface management agency (SMA) for those land tracts, the USACE is a stakeholder group, and is serving as a Cooperating Agency in the East Lynn Lake Coal Lease FLUA/FEIS preparation process. In March 2012, the USACE and BLM signed a second MOU to guide ongoing coordination efforts. The agencies have agreed that the ultimate width of the buffer zone of un-mined lands around the East Lynn Lake project be based upon site-specific geologic study/risk assessment. Also, the lessee funds and/or performs the site-specific geologic study/risk assessment, mitigation, monitoring, and other adaptive management measures as a condition of the lease and a conditional approval of the mine plan. The purpose of these measures will be to protect project purposes and ensure public safety for the life of the project.

#### U.S. Office of Surface Mining, Reclamation, and Enforcement

If the Proposed Action is selected, the BLM will initiate the competitive bidding process. The successful bidder(s) will be required to submit application(s) for operations permits to the OSM in accordance with the *West Virginia Surface Coal Mining Reclamation Act* (WVSCMRA). The OSM follows the approved West Virginia regulatory program and as part of the permitting process, OSM in coordination with the West Virginia Department of Environmental Protection (WVDEP) and the USACE will conduct a cumulative hydrologic impact assessment for each application to determine whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

#### West Virginia Division of Natural Resources

The WVDNR maintains licenses for wildlife management areas (WMA) throughout West Virginia. On these WMAs, the WVDNR is able to practice more intensive wildlife management than is possible on privately owned lands. Proper techniques for the conservation and management of these habitats benefit both game and nongame wildlife species. At the USACE East Lynn Lake Project, the WVDNR manages the East Lynn Lake WMA, operating under a 25-year license. The license was initially issued by the USACE on November 1, 1983, and renewed to 2033 in January 2009. The WMA, shown on Figure 1.1-4, covers 22,928 acres of the 24,833-acre USACE East Lynn Lake Project area. The East Lynn Lake WMA does not include the USACE dam and operational facilities, recreation facilities, or the "no hunting area" between the dam and marina. The WVDNR requested to participate as a Cooperating Agency, and completed an MOU with the BLM in July 2007.

## PUBLIC INVOLVEMENT

The BLM has undertaken numerous efforts to provide opportunities for public involvement throughout the East Lynn Lake Coal Lease FLUA/FEIS process. On July 14, 2005, the BLM published a Notice of Intent to Prepare an FLUA/FEIS to Analyze Coal Lease Applications WVES-50556 and WVES-50560 (NOI) in the Federal Register (70 FR 40723-40725). The federal notice opened the scoping process, notified the public of the BLM's intent to begin the FLUA/FEIS process, provided project information, announced the intention to hold public meetings, and solicited public comments. Public involvement took place during the scoping period, the socio-economic workshop, and the review period after the Draft LUA/Draft EIS (DLUA/DEIS) was issued. Comments and data were also solicited from federal, state, and local agencies.

Since January 2007, the BLM has posted information about the East Lynn Lake FLUA/FEIS at the following website: [http://www.blm.gov/es/st/en/prog/east\\_lynn\\_lake\\_coal.html](http://www.blm.gov/es/st/en/prog/east_lynn_lake_coal.html), to provide the public with project materials and create an awareness of the process. Four public meetings were held during development of the East Lynn Lake Coal Lease FLUA/FEIS:

- A public scoping meeting was held in the evening on November 6, 2006 in Wayne, West Virginia at the Wayne County Community Services building.
- A second, unplanned public scoping meeting was held in the evening on November 7, 2006 at the Ramada Inn Limited in Huntington, West Virginia as a result of local media misprinting the date, time, and location of the official public scoping meeting. This second scoping meeting was held at the date, time, and location that were misprinted to ensure that everyone who was misinformed had an opportunity to participate.
- A public socioeconomic workshop was held in the evening on March 27, 2007 in Wayne, West Virginia at the Wayne County Courthouse.

Calls for participation in each of these meetings were announced in the local papers, as well as the *Federal Register*, and details provided to allow the public to participate in the FLUA/FEIS process. A public hearing was held on July 31, 2008, allowing the public to verbally comment on the DLUA/DEIS, in Wayne, West Virginia at the Wayne Town Hall.

The 90-day public review period of the DLUA/DEIS was extended another 45 days, providing a total of 135 days for public review of the document. Comments were collected during the public hearing, and via e-mail and U.S. postal mail. Responses to these comments are presented in the FLUA/FEIS, Appendix J. Additionally, Section 5.1 of the FLUA/FEIS more fully describes the public involvement concerning this effort.

Any person who participated in the East Lynn Lake Coal Lease planning process and has an interest which is or may be adversely affected by the planning decisions had the opportunity to

protest approval of the planning decisions within 30 days from the date that the EPA published the Notice of Availability for the FLUA/FEIS in the *Federal Register*. The BLM did not receive any protests of the issuance of the FLUA/FEIS.

## COORDINATION

As defined in the MLA and the WRDA of 1999, the BLM is the decision-making authority regarding the leasing of the federal coal that lies under the proposed lease tracts. The USACE is the SMA for the proposed lease tracts. Consequently, the BLM, in cooperation with the USACE, the OSM, and the WVDNR, has prepared a FLUA/ FEIS to address proposed leasing of the federal coal in the Coalburg/Winifrede seam that lies under these tracts. The BLM is the lead federal agency, and the USACE, the OSM, and the WVDNR are Cooperating Agencies. The BLM used the information presented in this FLUA/ FEIS to determine where extended coal production may occur without unduly damaging wildlife, recreation, or other resources and resource uses and whether to consent to leasing of the federal coal.

The BLM has the regulatory authority to address coal lease applications (coal lease sales) on federal mineral reserves. The BLM served as the lead federal agency in the preparation of this FLUA/ FEIS. As part of the land use analysis process [43 CFR 3425.4(a)(1)], the BLM held a hearing on the East Lynn Lake Coal Lease DLUA/DEIS. Comments received during the BLM hearing, along with the official minutes of the BLM hearing are presented in Appendix J of the FLUA/ FEIS. In response to an application for leasing the federal coal resource in the Coalburg/Winifrede seam that lies under the nine proposed lease tracts, the BLM determines the maximum economic recovery (MER) and fair market value (FMV) of the coal resource that underlies the proposed lease tracts.

In consultation with the USACE, the responsible official for the BLM reviewed the FLUA/FEIS for the East Lynn Lake Coal Lease, along with the results of the MER/FMV. Subsequent to that review, the responsible official has issued this Approved LUA and ROD: to allow opportunities to explore and develop coal resources within the planning area; to offer the federal coal lying under the nine USACE tracts for competitive leasing; and to identify any necessary terms, conditions, and stipulations.

Once the leases for the proposed lease tracts are issued through the competitive bid process, then in accordance with SMCRA, the OSM will provide recommendations to the Secretary of the Interior regarding approval, disapproval, or conditional approval of mine plans on lands contained within federal lease areas. The responsible official for the OSM will review the proposed mine plan associated with the FLUA and FEIS for the East Lynn Lake Coal Lease, and would receive input from the BLM.

If it is determined that there may be surface impacts resulting from mining beneath the proposed lease tracts, then the OSM, with input from the USACE, would be responsible for providing recommendations to the Secretary of the Interior concerning the issuance of findings as to whether or not the proposed lease and mining areas contain significant recreational, timber,

economic or other values that may be incompatible with the proposed mining activities. These decisions and processes will be made in a cooperative, coordinated effort between agencies, utilizing the NEPA documents and processes as the primary decision making instruments, for each decision.

## LOCATION

The nine tracts are located within the USACE’s East Lynn Lake Project southeast of the town of Wayne, in Wayne County, West Virginia. The proposed lease tracts comprise slightly more than 13,000 acres of land and are situated within the USACE East Lynn Lake Project boundary. Legal descriptions of the lease tracts are provided in the FLUA/FEIS. The Applicants’ respective proposed lease tract numbers are listed in the table below.

Tract Name	Mineral Tract Numbers
<b>ARGUS Energy WV, LLC</b>	<b>WVES 50556</b>
Proposed lease tract A	177M-1, 177M-14, 177M-11, 1717M, 1813M, 2321M
Proposed lease tract B	177M-1, 745M, 746M, 808, 840M, 843M, 846M, 1140M, 1140, 1301, 1313M, 1330M, 1718M, 1810M, 1811M, 1813M, 2020M, 2737
Proposed lease tract C	177M-12, 177M-1, 2321M, 2430M, 2431M
<b>Rockspring Development Inc.</b>	<b>WVES 50560</b>
Proposed lease tract A	174M, 184M, 177M-1, 375M, 377M, 376ME-1, 376ME-2, 382M, 545M, 554M, 390ME-1, 395M, 378M, 380M, 381M, 384M, 386M, 177M-2, 430M, 556M
Proposed lease tract B	177M-1
Proposed lease tract C	430M, 177M-1, 177M-2, 382M, 545M, 553M, 554M, 550M, 547M, 548M, 745M, 1450M, 1451M, 1452M, 1453M, 517A, 517B
Proposed lease tract D	177M-1
Proposed lease tract E	177M-1, 1718M, 1717M-1
Proposed lease tract F	177M-1

## LAND USE ANALYSIS

A coal lease sale may not be held unless the lands have been included in a comprehensive land use plan or LUA and unless the sale is compatible with, and subject to, any stipulations resulting from the land use plan or LUA in association with the environmental analysis. Neither a comprehensive land use plan nor a LUA exists for the nine tracts’ planning area.

Two options are provided for land use planning for coal: 1) comprehensive land use planning, and 2) planning for an LBA through an LUA. A comprehensive plan is prepared for a large area of federal coal. An LUA is prepared where there is no federal interest in the surface, or the coal deposits are insufficient to justify the costs of a comprehensive land use plan. Additionally, the filing of an LBA by an entity needing federal coal to maintain an existing mining operation is appropriately considered through the LUA process. The LUA was selected as the appropriate planning option for addressing the proposed leasing of the federal coal due to the coal resource size, land status, and the lack of a planning document that addresses the federal coal mineral estate (as directed in 43 CFR 3420).

## DECISION

The decision is to select the Proposed Alternative (Preferred Alternative) as described in Chapter 2 of the East Lynn Lake Coal Lease FLUA/FEIS. Under the Proposed Alternative, leases for the nine lease tracts, Coal Lease Applications WVES-50556 and WVES-50560, would be issued to the successful qualified high bidder, if the highest bid received at a competitive lease sale meets or exceeds the 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 Alternative in the FLUA/ FEIS, approximately 41 million in-place tons of coal underlies the proposed WVES-50560 (Rockspring) lease tracts. The lessee would process that coal to obtain about 11 million tons of marketable, "clean recoverable" coal. Approximately 35 million in-place tons of coal lie under the WVES-50556 (Argus) lease tracts, and the lessee would process that coal to obtain about 15 million tons of clean recoverable coal. Extraction of coal will be subject to the terms of the March 2012 MOU between BLM and USACE.

## WHAT THE LUA/DECISION PROVIDES

The FLUA/FEIS and this ROD provides decisions only for the subsurface mineral estate located in the planning area which is administered by the BLM through the Northeastern States Field Office. This ROD serves as the final decision establishing the land use plan and implementation decisions as outlined in the FLUA/FEIS. This ROD is issued in full force and effect, effective on the date it is signed. No further administrative remedies are available for these land use plan decisions. The implementation decision(s) however are subject to an administrative review process through appeals to the Office of Hearings and Appeals (OHA), Interior Board of Land Appeals (IBLA) pursuant to 43 CFR, Part 4 Subpart E.

## **Land Use Plan Decisions**

Land use plan decisions may include goals, objectives (Desired Future Conditions), land use allocations, and/or management actions. Goals are the broad statements of desired outcomes, and are usually not quantifiable. Objectives are specific desired conditions, usually quantifiable and measurable, and may have timeframes for achievement. Land use allocations specify locations within the planning area that are available or not for certain uses. These include decisions such as what lands are available for locatable mineral development (i.e. coal). Management actions include those provisions that help in meeting the established goals and objectives and include measures that will be applied to guide day-to-day activities on public lands, including but not limited to stipulations, guidelines, best management practices (BMPs), and design features.

This Approved LUA and ROD includes the following land use planning decisions:

### Goals/ Objectives/ Land Use Allocation:

- Allow extended coal production to occur in the planning area (nine tracts located in Wayne County, WV) without unduly damaging wildlife, recreation, or other resources and resource uses.

### Management Actions/Decisions:

- The lands within the planning area boundaries are open to leasing through the lease-by-application (LBA) process.
- The nine tracts with identified coal development potential, all BLM-administered subsurface land, will be considered for coal leasing. The coal-screening process was implemented for all nine tracts identified as having coal development potential.

## **Implementation Decisions**

While the designation of areas as suitable for leasing or unsuitable for all or certain types of coal mining operations under Section 522(b) of the Surface Mining Control Reclamation Act is a land use plan decision, the FLUA/FEIS and this subsequent Approved LUA and ROD also contains an implementation decision.

This Approved LUA and ROD includes the following implementation decision:

- The offering of coal lease by application(s) for coal mining operations in the planning area is the implementation decision.

Unlike land use planning decisions, implementation decisions are not subject to protest under the BLM planning regulations, but are subject to an administrative review process, through appeals to the Office of Hearings and Appeals (OHA), Interior Board of Land Appeals (IBLA) pursuant to 43 CFR, Part 4 Subpart E. Implementation decisions generally constitute the BLM's final

approval allowing on-the ground actions to proceed. The implementation decision made in this Approved LUA and ROD may be appealed to the OHA.

## WHAT THE LUA/DECISION DOES NOT PROVIDE

The FLUA/FEIS does not contain decisions for the surface estate located in the planning area, for lands under the jurisdiction of other federal agencies, or for private or state-owned lands and minerals. The LUA and decisions for subsurface estate only apply to BLM managed lands, even where these private or state lands are shown on maps included in the FLUA/FEIS.

In addition, many decisions are not appropriate at this level of planning and are not included in the ROD. Examples of these types of decisions include:

- *Statutory requirements:* The Approved LUA and decision will not change the BLM's responsibility to comply with applicable laws, rules, and regulations.
- *National policy:* The Approved LUA will not change BLM's obligation to conform to current or future national policy.

## GOVERNOR'S CONSISTENCY REVIEW

In addition to a 30-day protest period for land use plan decisions, the BLM Northeastern States Field Office also provided a 60-day review period of the FLUA/FEIS to the State of West Virginia's Governor's Office, initiated on June 8, 2012. The Governor of the state in which the LUA is being proposed is provided this period of review for FLUA/FEIS documents to ensure consistency with state and local plans, policies, and programs. The protest period and the Governor's review period occurred simultaneously, with the Governor's 60 day review period ending on August 7, 2012.

The BLM did receive a response from Governor Tomblin dated July 26, 2012. The Governor indicated that the FLUA/FEIS is consistent with the plans, policies and programs of the State of West Virginia. The Governor concurs with the competitive leasing of the federal coal.

## ALTERNATIVES

### Proposed Action (Preferred Alternative)

The USACE and the WVDNR manage activities that occur on the land surface at the USACE East Lynn Lake Project. Portions of this land lie over federally-owned coal, managed by the BLM. The Applicants submitted applications to lease federal coal that underlies nine tracts of USACE East Lynn Lake Project land in May, 1999. Rockspring filed a revision to its applications in 2004, and again in 2007. The applications and revisions were submitted in accordance with the lease-by-application (LBA) process contained in 43 CFR 3425.

The nine tracts include approximately 13,093 acres of land and are located next to East Lynn Lake. The nine tracts are also located next to existing, active, permitted underground coal mines that lie under private land. The WRDA removed the consent authority from the USACE (the SMA), while the decision-making authority regarding federal coal leasing remained with the BLM.

The Proposed Action in the FLUA/FEIS is for the BLM to respond to these applications by offering the federal coal for competitive leasing. Under the Proposed Action, the federal coal that underlies the lease tracts would be leased for mining. The RFDS associated with that Proposed Action is described below (FLUA/FEIS, Appendix B). The analysis predicts a low probability of limited surface impacts associated with:

- surface subsidence and subsequent reclamation,
- groundwater impacts that could affect surface water, wells, or springs,
- surface disturbance that would result from any necessary emergency rescue operations,
- future need for ventilation shafts,
- exploration drilling, or
- cumulative impacts.

For the purpose of the impact analysis, a maximum of 20 acres of surface disturbance over a 10-year period has been estimated. Any potential disturbance would be widely distributed over the approximately 13,000-acre lease tracts, with very small areas of disturbance of a few acres in any specific location. The need for any site-specific analysis will be determined in the future if any of the potential impacts identified above actually occurs.

Because the coal underlying the nine lease tracts is managed by the BLM, the leases would be offered under the BLM's standard terms and conditions contained on Lease Form 3400-12. In addition, any special coal lease stipulations identified by the BLM, USACE, OSM, and the WVDNR for the protection of natural resources, consistent with applicable laws, regulations, policies and plans, would be included in the leases. The successful bidder(s) would receive leases. Prior to mining, the lessee would need to obtain the appropriate federal and state permits.

The adjacent, existing permitted underground coal mines and associated processing and waste storage facilities will be active regardless of the decisions made concerning this FLUA/FEIS process. Because the mines are located on private land and/or are already permitted, these facilities would not require NEPA analysis for continued operation. Therefore, the existing mine facilities are not considered "connected actions" as defined under the CEQ *Regulations for Implementing NEPA* (40 CFR 1500). These existing facilities are included in the analysis of cumulative effects in chapter 4.

A mining and reclamation plan for mining operations on the East Lynn Lake LBA tracts would have to be approved before mining operations could be conducted on the tracts, regardless of who acquires the lease. More specific information about some of these mitigation and monitoring measures and their results at the Argus and Rockspring mines are described for the affected resources in Chapter 3 of the FLUA/FEIS.

If impacts are identified during the leasing process that are not addressed by the existing required mitigation measures, the BLM can require additional mitigation measures, in the form of stipulations on the new lease, within the limits of its regulatory authority. Additionally, conditions may be added to the mine plan by OSM or to the permit itself by OSM or the state regulatory authority during the permitting and approval process.

### Reasonably Foreseeable Development Scenario

Federal actions, such as issuing a lease to mine federal coal, and any associated actions that may impact environmental and socioeconomic resources must be evaluated. If the Proposed Action is approved, the BLM would hold a competitive leasing process, and the winning bidder(s) would receive leases to mine the federal coal. The proposed coal mining may impact environmental and socioeconomic resources.

This FLUA/FEIS analyzes the potential impacts of mining the federal coal. In order to assess potential impacts, a generic mining plan, or “reasonably foreseeable development scenario” (RFDS) must be defined. The BLM developed the RFDS to describe the proposed coal mining activities that can reasonably be expected to occur associated with the proposed lease tracts. The RFDS, included in this document as appendix B, is summarized in the following paragraphs.

The proposed mining would involve only “primary” or “first” mining methods (FLUA/FEIS, Figures 2.1-1 and 2.1-2), where approximately 50 percent of the coal would be removed. No secondary mining would occur.

Continuous mining machines (*see* Photograph C-7 in FLUA/FEIS, Appendix C), conveyor systems (*see* Photograph C-9 in FLUA/FEIS, Appendix C), and preparation plants would be used to mine, transport and process the coal. The coal would be transported on existing conveyors to existing, permitted processing facilities. Waste would be transported and stored in existing, permitted facilities. The processed coal would be transported using rail cars on existing rail lines and trucks on existing roads.

Approximately 41 million in-place tons of coal lie under the proposed Rockspring lease tracts. Rockspring would process that coal to obtain about 11 million tons of marketable, “clean recoverable” coal. Approximately 35 million in-place tons of coal underlie the Argus lease tracts, and Argus would process that coal to obtain about 15 million tons of clean recoverable coal. The disparity in recovery factors is due to the relative fragmentation of the Rockspring holding's mining units, resulting in more inaccessible coal. Approximately 53 million tons of waste rock would be disposed of in existing permitted facilities located on private land. The Applicants operate underground room-and-pillar mines using existing facilities, equipment, and a 500- to 600-person work force of employees and contractors on private lands next to the

proposed federal lease tracts. Both Applicants propose to mine the federal coal using the same room-and-pillar mining methods they currently use under adjoining private lands.

The coal seam proposed to be mined is the Coalburg/Winifrede seam. This seam is about 72 inches thick. Rock that lies over coal is known as “cover” or “overburden.” The overburden on the proposed lease tracts ranges from zero feet at the surface, where the coal outcrops, to a thickness of about 300 feet. The overburden consists of layers or “beds” of sandstone and shale, including one to three thick, massive sandstone layers. These factors indicate surface subsidence would be unlikely with sufficient depth of overburden. Sometimes when coal is mined, the overburden can collapse, or subside. When coal is mined using primary room-and-pillar methods, subsidence is usually very limited.

Protective barriers of coal would be maintained in sensitive areas. A minimum of a 200-foot protective barrier (established at the higher of the Spillway Design Flood Elevation of 716.9 feet or the Probable Maximum Flood Elevation) would be maintained around the lake. The width of this protective barrier, or buffer, will be verified based on site-specific study as provided for in the March 2012 MOU between BLM and USACE but at a minimum would be 200 feet based on U.S. Bureau of Mines (USBM) guidance provided in USBM Information Circular 8741 (Babcock and Hooker 1977).

The East Lynn Lake dam is 1,585 feet from the closest point on the proposed lease tracts, and actual mining activities would be even farther away to avoid USACE structures located near the dam (FLUA/FEIS, Figure 3.1-17). No mining would be performed in areas where the overburden is equal to or less than 100 feet thick. The buffers and avoidance areas would be based on site specific study, existing state and federal regulations and guidance from the U.S. Mine Safety and Health Administration (MSHA) and the USBM Information Circular 8741 (Babcock and Hooker 1977).

Gas wells would be avoided by establishing a proposed buffer of a roughly 200 foot radius, though different agencies have different requirements. However, for each gas well, establishing a 200-foot buffer would render inaccessible approximately 7,800 tons of coal. More than 140 oil and gas wells are located on the proposed lease tracts, and additional oil and gas wells are proposed. The RFDS for oil and gas well development, an attachment to the coal mining RFDS, is provided in the FLUA/FEIS, Appendix B.

The WVDNR would continue to manage the surface for timber, recreation and wildlife. If the demand is sufficient and resources are available to harvest forest products, the USACE and WVDNR could offer the timber for sale.

Groundwater occurs in both the unconsolidated alluvial materials and consolidated bedrock in the vicinity of the proposed lease tracts. These unconsolidated aquifers are associated with several small stream channels.

Acid mine drainage (AMD) is the discharge of water from a mine that has high acidity, or low pH. The acidity is caused by the presence of pyritic sulfur. As stated in the RFDS (FLUA/FEIS, Appendix B), the Coalburg/Winifrede coal seam contains a total sulfuric content of about 0.56

percent within the proposed lease area. Pyritic sulfur content for the Coalburg/Winifrede seam shows an overall weighted average of 0.05 percent, which is the limit of detection. In mining of the private coal adjacent to the federal lands, alkaline waters have been measured. Appendix G presents an analysis of the potential for AMD generation if the Proposed Action is approved and the RFDS is implemented.

If the Proposed Action is approved, and if the Applicants win the competitive bidding process for the federal coal leases, they would use the existing facilities and personnel to mine the federal coal lying under the proposed lease tracts. No need for additional facilities or personnel is expected. If the Proposed Action is selected, and if the Applicants win the competitive bidding process, mining of the federal coal would effectively extend the life of Rockspring's Camp Creek Mine by about 10 years, and Argus's currently inactive No. 3 Mine and currently active No. 8 Mine life by about 15 years (BLM 2009).

The current royalty rate for federal coal is 8 percent of the coal sales, which would generate approximately \$90.4 million in royalties. Of that amount, 75 percent would be transferred to the State of West Virginia according to federal law. According to state statute, the state would then distribute 50 percent of its receipts to the county road commission and 50 percent to the county board of education (Rollyson 2008). The Wayne County Board of Education and the Wayne County Roads Department would each receive about \$33.9 million over a period of about 15 years. Mineable coal reserves are being depleted in the vicinity of the proposed lease tracts (Saunders 2008).

Selection of the Proposed Action and implementation of the RFDS is unlikely to result in, or provide access to, other new, reasonably foreseeable mining on private lands.

#### Hazardous and Solid Waste

Under the Proposed Action, the procedures and requirements for handling of hazardous and solid wastes would be the same as the procedures and requirements for the existing mining operations. Solid waste that is produced at the existing Applicant mines consists of floor sweepings, shop rags, lubricant containers, welding rod ends, metal shavings, worn tires, packing material, used filters, and office and food wastes. Current practices would not change if the Applicants acquire the LBA tracts.

The Applicants have reviewed the EPA's Consolidated List of Chemicals Subject to Reporting Under Title III of the *Superfund Amendments and Re-authorization Act* (SARA) of 1986 (as amended) and USEPA's List of Extremely Hazardous Substances as defined in 40 CFR 355 (as amended) for hazardous substances used at their current operating mines. Each Applicant maintains files containing Material Safety Data Sheets for all chemicals, compounds, and/or substances that are or would be used during the course of mining.

The Applicants are responsible for ensuring that all production, use, storage, transport, and disposal of hazardous and extremely hazardous materials as a result of mining are in accordance with all applicable existing or hereafter promulgated federal, state, and local government rules, regulations, and guidelines. All mining activities involving the production, use, and/or disposal

of hazardous or extremely hazardous materials are and would continue to be conducted so as to minimize potential environmental impacts.

As part of the permits currently in force, the Applicants must comply with emergency reporting requirements for releases of hazardous materials. Any release of hazardous or extremely hazardous substances in excess of the reportable quantity, as established in 40 CFR 117, is reported as required by the *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA), as amended. The materials for which such notification must be given are the extremely hazardous substances listed in Section 302 of the Emergency Planning and Community Right to Know Act and the hazardous substances designated under Section 102 of CERCLA, as amended. If a reportable quantity of a hazardous or extremely hazardous substance is released, immediate notice must be given to the WVDEP Division of Water and Waste Management and all other appropriate federal and state agencies.

### Regulatory Compliance, Mitigation and Monitoring

SMCRA, along with other federal laws and West Virginia state law require coal mines to collect extensive baseline information and implement extensive monitoring programs and mitigation measures. The currently approved mine permits for Rockspring and Argus include these requirements. Monitoring programs and mitigation measures that are required by regulation are considered to be part of the Proposed Action for the East Lynn Lake LBA Tracts. These data collection requirements, mitigation plans, and monitoring commitments would be extended to include mining operations on the East Lynn Lake LBA tracts, if leased, and permitted for mining by the appropriate agencies. A mining and reclamation plan for mining operations on the East Lynn Lake LBA tracts would have to be approved before mining operations could be conducted on the tracts, regardless of who acquires it. The major mitigation and monitoring measures that are required by state or federal regulation are summarized in the FLUA/FEIS, Table 2.1-1. More specific information about some of these mitigation and monitoring measures and their results at the Argus and Rockspring Mine are described in Chapter 3 of the FLUA/FEIS.

If impacts are identified during the leasing process that are not addressed by the existing required mitigation measures, the BLM can require additional mitigation measures, in the form of stipulations on the new lease, within the limits of its regulatory authority. Conditions may be added to the mine plan by OSM or to the permit itself by OSM or the State Regulatory authority during permitting and approval processes. Additional monitoring and mitigation is contemplated by the March 2012 MOU between BLM and USACE.

### **No Action Alternative**

The No Action Alternative is to deny the Applicants' pending LBAs to lease the federal coal. Under the No Action Alternative, the resources on and under the proposed lease tracts would be managed in the same way they are managed now. The USACE would continue to manage activities on the surface of the proposed lease tracts for flood control, recreation, and fisheries. The WVDNR would continue to manage the surface for timber, recreation and wildlife. If the demand is sufficient and resources are available to harvest forest products, the USACE and WVDNR could offer the timber for sale. The federal coal would remain in-place and not be mined.

The owners of the oil and gas estate would continue to produce from existing wells and continue to drill additional wells to increase production. The opportunity would exist to lease and mine the coal in the future, although physical and legal access to the coal would probably be limited as a result of the continued mining of the private coal at the existing mining operations. The existing operating mines would continue to mine private coal using their existing facilities.

Under the No Action Alternative, it is assumed that continued oil and gas drilling would open up additional avenues of access into the USACE East Lynn Lake Project lands. This increased access could lead to additional timber harvesting and unauthorized ORV use.

## **Comparison of Alternatives**

The direction, decisions and guidance contained in the existing plans mentioned in Section 1.5 are common to both the Proposed Action and No Action Alternative. Both alternatives assume on-going activities on the surface of the proposed lease tracts, namely continued oil and gas development and increased recreational use of the USACE East Lynn Lake Project area including legal and illegal ORV use, and hiking. Some interaction may occur between the potential coal development described in the RFDS and the gas development described in the attachment to the RFDS (both provided in the FLUA/FEIS, Appendix B), depending on which occurs first and how the coal and oil and gas activities are coordinated.

Environmental impacts associated with these activities and other past, present, and reasonably foreseeable future actions are analyzed in the Cumulative Effects section (4.0) of the FLUA/FEIS. Impacts of the Proposed Action and the No Action Alternative are compared in the FLUA/FEIS on Table 2.2-1. For most environmental resources the Proposed Action, which would extend the life of the adjacent private mines for 10-15 years, will continue the current impacts, not add new ones. Voluntary and required protective measures are proposed to minimize potential environmental impacts. Voluntary measures include barriers, leaving the coal in place under the lake, and minimal mining under perennial streams. Required measures include state and federal permitting processes, state and federal monitoring plans (see the FLUA/FEIS, Table 2.1-1), and any stipulations resulting from this NEPA process.

Implementation of the Proposed Action and associated RFDS (provided in the FLUA/FEIS, Appendix B) is expected to provide positive social and economic benefits. These positive benefits include extending jobs, a continued tax base, severance taxes and royalties returned to the local economy, and providing a stable social environment. Limited and temporary impacts to land tenure are expected under the Proposed Action as well.

Implementation of the No Action Alternative would continue the baseline conditions for most resources, except for air and socioeconomics. Air resources would improve slightly if the mine processing operations were to close, due to reduced unpaved road traffic. Negative socioeconomic impacts would include the loss of roughly 500-600 jobs; loss of direct, indirect and induced economic benefits; loss of severance tax and federal royalty revenues; loss of tax base for schools and social services; and a decline in demand for housing along with possible diminished property values.

## ALTERNATIVES CONSIDERED BUT ELIMINATED FROM DETAILED ANALYSIS

Alternatives to the Proposed Action are usually developed when another reasonable or practicable approach would:

- achieve the purpose and need,
- more thoroughly address an issue or minimize an impact, or
- provide possible beneficial mitigation measures.

The BLM considered available information in identifying alternatives. Based on the available information, the mineral and geologic resources, and water resources are the resources of concern, if the Proposed Action were to be selected, and proposed mining were to be performed. To gain some insight on the extent of those potential impacts, mineral and geology specialists prepared a preliminary subsidence analysis (PSA) (BLM 2007d) based on the mining plan described in the RFDS and using available data and information. The specialists concluded that the probability of the occurrence of subsidence under the RFDS would be very low, and if subsidence were to occur, very limited surface effects would be observed, and/or very limited impact to surface water and groundwater would occur (BLM 2007d). Conclusions of the PSA (BLM 2007d) are summarized in the FLUA/FEIS, Appendix E.

The BLM considered the conclusions of the PSA and MSHA regulations in identifying other possible alternatives. Several alternatives were considered but have been eliminated from further analysis. These alternatives and their respective reasons for exclusion are described in section 2.3 of the FLUA/FEIS.

- Different Recovery Rate or Mining Method Alternative
- Non-adjacent Access to Proposed Lease Tracts Alternative
- Inclusion of Application for Exploratory Drilling Alternative
- Reduced Acreage, Modified Buffer, and Minor Surface Disturbance Alternative
- Coordinated Oil and Gas Development and Mining Alternative
- Adaptive Management Alternative

## REGULATORY COMPLIANCE

Regulatory compliance and monitoring requirements are shown on the FLUA/FEIS, Table 2.1-1, Regulatory Compliance for Coal Mining Operations Required by Federal and State Laws and Policies.

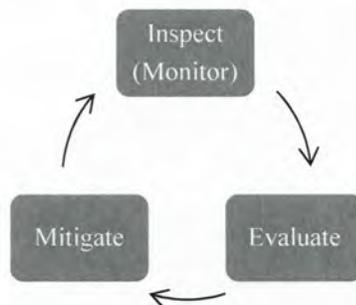
SMCRA, along with other federal laws and West Virginia state law require coal mines to collect extensive baseline information and implement extensive monitoring programs and mitigation

measures. The currently approved mine permits for Rockspring and Argus include these requirements. Monitoring programs and mitigation measures that are required by regulation are considered to be part of the Proposed Action for the East Lynn Lake LBA Tracts. These data collection requirements, mitigation plans, and monitoring commitments would be extended to include mining operations on the East Lynn Lake LBA tracts, if leased, and permitted for mining by the appropriate agencies. A mining and reclamation plan for mining operations on the East Lynn Lake LBA tracts would have to be approved before mining operations could be conducted on the tracts, regardless of who acquires them. The major mitigation and monitoring measures that are required by state or federal regulation are summarized in the FLUA/FEIS, Table 2.1-1. More specific information about some of these mitigation and monitoring measures and their results at the Argus and Rockspring Mine are described in Chapter 3 of the FLUA/FEIS.

If impacts are identified during the leasing process that are not addressed by the existing required mitigation measures, the BLM can require additional mitigation measures, in the form of stipulations on the new lease, within the limits of its regulatory authority. Additionally, conditions may be added to the mine plan by OSM or to the permit itself by OSM or the State Regulatory authority during permitting and approval processes.

## ADAPTIVE MANAGEMENT/MONITORING

This Approved LUA and ROD implements an adaptive management approach. The adaptive management process can be illustrated as below. It is defined as the concept that adjustments are made to improve effectiveness and reduce impacts, as the decisions and actions are implemented, based on continuous monitoring. This approach is especially useful where there is uncertainty about impacts, either due to lack of knowledge, changing technology, or changing conditions.



While significant impacts are not anticipated, monitoring is required by permits/regulations and is also conducted through the mine inspection process. If problems or issues are identified, mitigation is required and monitored. In addition, outside the formal inspection process, any problems or issues that are identified can be addressed at the annual coordination meeting.

The lessee will organize and hold an annual coordination meeting with the BLM, USACE, OSM, WVDNR and any other appropriate agency. The purpose of the meeting is threefold: 1) to discuss the status of mining operations and any proposed or anticipated changes in surface facilities or subsurface conditions that may affect the USACE East Lynn Lake project, 2) to update all the parties on results of the mine inspections and any monitoring required by permits/regulations, and 3) to address any conditions or occurrences, noted by any of the parties, that would require additional mitigation and/or monitoring.

## MITIGATION MEASURES

This Approved LUA and ROD defines *mitigation* as collective actions taken to avoid, minimize, or rectify the negative impact of a land management practice.

The Approved LUA and ROD contains the following mitigation measures:

- 200-foot (minimum) protective barrier would be maintained around the lake
- The ultimate width of the protective barrier around the lake would be based upon site-specific geologic study/risk assessment in accordance with the March 2012 MOU between BLM and USACE.
- The protective buffer will be established at the higher of the Spillway Design Flood Elevation of 716.9 feet or the Probable Maximum Flood Elevation
- Lessee funds and/or performs the site-specific geologic study/risk assessment, mitigation, monitoring, and other adaptive management measures as a condition of the lease and a conditional approval of the mine plan in accordance with the March 2012 MOU between BLM and USACE
- Lessee organizes and holds an annual coordination meeting with the BLM, USACE, OSM, WVDNR and any other appropriate agency. The purpose of the meeting is threefold: 1) to discuss the status of mining operations and any proposed or anticipated changes in surface facilities or subsurface conditions that may affect the USACE East Lynn Lake project, 2) update all the parties on results of the mine inspections and any monitoring required by permits/regulations and 3) to address any conditions or occurrences, noted by any of the parties, that would require additional mitigation and/or monitoring.
- The surface structures, including all buildings, cemeteries, and streams, also would be avoided
- No mining would be performed in areas where the overburden is equal to or less than 100 feet thick

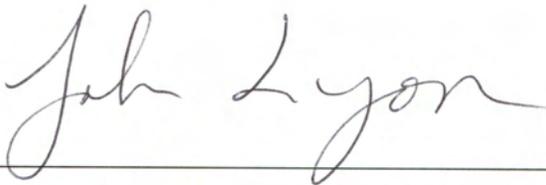
## **CONDITIONS**

Conditions may be added to the mine by OSM or to the permit itself by OSM or the state regulatory authority during permitting and approval processes

## **MINING RECLAMATION PLAN**

A mining and reclamation plan for mining operations on the East Lynn Lake LBA tracts would have to be approved before mining operations could be conducted on the tracts, regardless of who acquires the lease.

**SIGNATURE PAGE**



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Responsible (Authorized) Officer  
Dr. John G. Lyon, State Director, Eastern States

MAR 15 2013

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Date

**Attachment(s):** References (From FLUA/FEIS)

## REFERENCES (FROM FLUA/FEIS)

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- BLM. 2009. *Reasonably Foreseeable Development Scenario (RFDS)*, dated April 19, 2007 and revised September 12, 2007. February 14, 2008, and March 18, 2009. Milwaukee, WI: BLM Eastern States.
- Rollyson, G. Russell. 2008. Personal Communication (letter) from Russ Rollyson (Deputy State Auditor, West Virginia State Auditor's Office) to Mr. Joseph Stanley (citizen, Pritchard, WV), regarding: state statutes governing distribution of royalties from federal coal, dated September 19, 2008.
- Saunders, Philip. 2008. Personal communication (telephone) between Philip Saunders (Vice President Engineering, Rockspring) and Elizabeth Duvall (Project Manager, Golder), regarding: life of existing mining operation; other reserves in area and reasonably foreseeable future mining as a result of proposed mining; stream buffers; collection and discharge of groundwater from underground mines. January 22, 2008.
- U.S. Army Corps of Engineers (USACE). 2005. *Real Estate Handbook*, as amended through change 34. (Engineering Regulation 405-1-12). Washington, DC: U.S. Army Corps of Engineers.