Decision Record
and
Finding of No Significant Impact
For Spring Creek Coal Company
Lease Application
MTM 94378
EA# MT-020-2007-34

SUMMARY OF THE PROPOSAL

Spring Creek Coal Company (SCCC) submitted a Lease by Application request (LBA) for a maintenance tract of Federal coal adjacent to the company's Spring Creek Mine in Big Horn County, Montana. The application includes 1,207 acres, more or less, and approximately 151.3 million tons of in-place coal reserves.

BLM must determine whether to:

- approve the application as submitted by SCCC, or
- approve the application with modifications, or
- deny the application

BACKGROUND

On March 07, 2005, SCCC filed an application with the BLM to lease approximately 151.3 million tons of in-place Federal coal located in four different tracts within the approved permit boundary of the Spring Creek Coal Mine in Big Horn County, Montana. The tracts were applied for as a Lease by Application (LBA), pursuant to provisions of the Leasing on Application Regulations at 43 (CFR) 3425.1. The application was assigned case file number MTM 94378. The federal coal reserves were applied for as a maintenance tract for the Spring Creek Mine.

About 80 acres within the four tracts is Federal surface and the remainder is split estate where the surface is owned or controlled by the Spring Creek Coal Company and the coal is Federally owned. SCCC proposes to mine the tract as a part of the Spring Creek Mine. At the 2005 mining rate of 13 million tons per year, the coal included in the LBA Tract would extend the life of the Spring Creek Mine about nine years.

The Spring Creek Mine is operated by SCCC, a subsidiary of Rio Tinto Energy America Inc. (RTEA). The approved Spring Creek Mine permit includes 6,870 acres. On February 8, 2006 the Montana Department of Environmental Quality (MDEQ) approved Spring Creek Mine's current air quality permit to allow up to 20 million tons of coal per year to be mined.

DECISION

Based upon the analysis of potential environmental impacts described in the Environmental Assessment, it is my decision to select components of both the Proposed Action Alternative and Alternative 2, and to lease the Federal coal reserves under Tract 1 as modified below and the Federal coal reserves under Tracts 2, 3, and 4 as applied for by SCCC. This decision is effective immediately.

Tract 1 will be modified from the application submitted by SCCC by excluding an area that includes a sandstone outcrop that contains Native American inscriptions and art work, and a prairie falcon eyrie. This excluded area is shown on Figure 1 and is based on a study done by Matheson Mining Consultants,

Inc. (MMC) to determine an appropriate distance to minimize the effects of blasting on the cliff feature. That avoidance scenario was analyzed in Alternative 2 and avoids the prairie falcon and rock art sites using a smaller avoidance area than the one described in Alternative 1. Surface disturbance associated with the removal of the leased coal may not occur beyond the disturbance limit shown on Figure 1.

It is also my decision to require SCCC to conduct site recordation and site testing at the rock art site in accordance with Tasks 1 through 4 of the petroglyph mitigation plan found in Appendix D of the EA. The recordation will be a non-invasive technique that does not alter the rock surface, and can be digitally stored for future study and possibly to recreate the rock art figures. Site testing will include up to five, 1-meter by 1-meter shallow excavations. Testing will be coordinated with the Northern Cheyenne THPO and any findings will be shared with the THPO. Coordination will include prior notification of any field work, with sufficient time to allow the Northern Cheyenne to schedule their attendance during the field work, and will allow the Northern Cheyenne the opportunity to provide comments on the locations of each excavation.

It is also my decision to apply the exemption found in 43 CFR 3461.5(o)(2), and described in the Proposed Action Alternative, to the prairie falcon buffer zone in Tract 1 and to remove the "unsuitable for leasing without exception" designation from the buffer zone.

This decision results in minor acreage changes described in the EA as shown in the revised table 2-1 below.

Table 2-1. Summary Comparison of Coal Production, Surface Disturbance, Mine Life, and Employees for Spring Creek Mine and Spring Creek Mine Expansion LBA Tract

Item	**No Action Alternative (Existing Mine)**	**Added by LBA Tract as Proposed**	**Added by Alternative 1 (unsuitable areas in both tracts [113.9 Ac.] would not be *leased)***	**Added by Alternative 2 (portion of Tract 1 [89.8 Ac.] not *leased*)**
In-place Coal (as of 11/1/2006)	266.6 mmt	151.3 mmt	137.0 mmt	144.1 mmt
Mineable Coal (as of 11/1/2006)	234.4 mmt	121.3 mmt	109.9 mmt	115.3 mmt
Recoverable Coal (as of 11/1/2006)*	222.6 mmt	115.3 mmt	104.4 mmt	109.5 mmt
Lease Area - federal leases only (acres)	2646	1207.5	1093.6	******(1150.9) 1117.7***
Total Area to be Disturbed (acres)	4812	854	725	******(814) 799.4***
Permit Area (acres)	6870	0	0	0
Average Annual Post-2008 Coal Production**	15 mmt	15 mmt	15 mmt	15 mmt
Remaining Life of Mine (post-2008)	15 yrs	10 yrs	8 yrs	8 yrs
Average Number of Employees	175	0	0	0

* Assumes 95% recovery factor

** Production 2006-2009 would be 13 mmt. Following 2009 production would increase to approximately 15 mmt per year.

*** New figs in Italics, Old fig shown in parenthesis

The exclusion area (not leased) in Tract 1 includes approximately 89.8 acres. Approximately 33 acres of the exclusion could be disturbed from adjacent mining activities in Tract 1 which would leave approximately 56.8 acres, including the sandstone outcrop, undisturbed by adjacent mining activities. Under this decision, approximately 799.4 acres within the four tracts could be disturbed by future mining activities which would be about 54.6 acres less disturbance than the Proposed Action. The tons of coal not mined in the exclusion area and its value would remain the same as were calculated in the EA.

Approximately 55 percent (about 631 acres) of the LBA tracts as defined by Alternative 2 would be disturbed regardless of the action taken on the application due to mine level disturbances authorized by MDEQ and BLM land use lease MTM 74913. These disturbances include such things as acquiring additional borrow material, overstripping to allow coal to be removed from the adjacent existing leases, and to tie the reclamation into native ground. Current disturbance limits are based on a revised disturbance limit that is under review at this time by the MDEQ. It is anticipated that the disturbance boundary revision will be approved prior to a decision on this EA.

The anticipated benefit of maintaining this cliff site is to preserve the petroglyphs and continue to provide preferred nesting substrate for prairie falcons and other raptor species after mining activities have ceased in this area. A mitigation plan has been formulated by SCCC, through consultation with USFWS, BLM, MDFWP, and MDEQ, to reduce impacts due to the elimination of the unsuitable area and the reduction of the buffer around the cliff nest in Tract 1 (Appendix C of the EA). Therefore, it is my decision that the mitigation plan will be attached to the coal lease as a stipulation. Implementation of the mitigation plan will ensure that nesting habitat is created on reclaimed lands and/or on nearby undisturbed cliffs.

Site evaluations for sage grouse suggest that the portion of Tract 3 that is designated as Unsuitable Without Exceptions due to sage grouse wintering area (criterion 15) is not critical to the survival of grouse. Also, that this portion of Tract 3 has a steep, north-facing aspect with an abundance of ponderosa pine/juniper vegetation type. Based on these observations, this 12.5-acre site was determined to be poor grouse winter habitat and was originally placed into the unsuitable area by drawing the wintering area boundary along section lines and aliquot parts of sections. Therefore, it is also my decision to apply, the exemption found in 43 CFR 3461.5(o)(2) and described under Alternative 2, and to remove the "unsuitable for leasing without exception" designation on 12.5 acres on Tract 3.

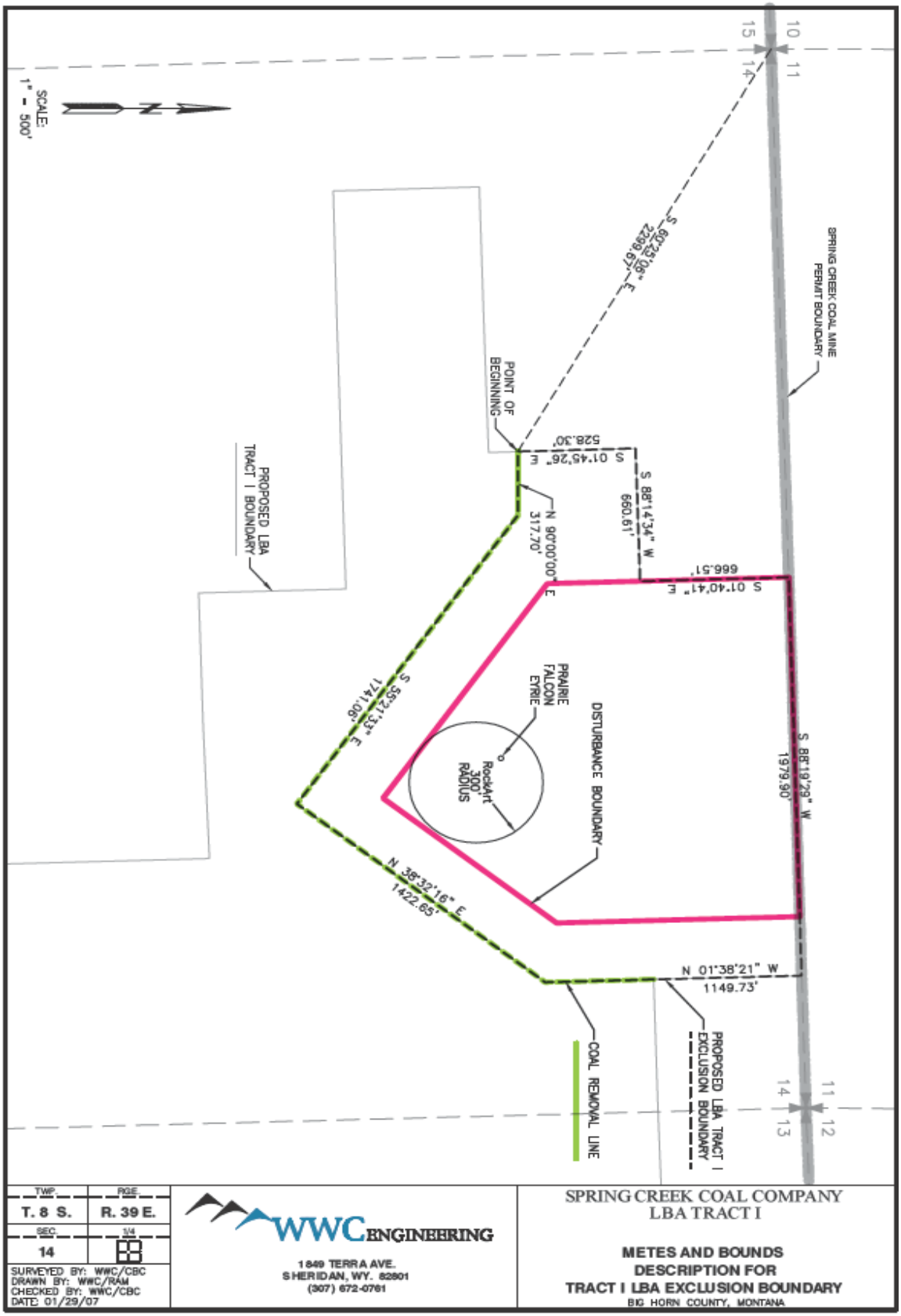
SCALE: 1" = 500'
N
10
11
15
14
SPRING CREEK COAL MINE PERMIT BOUNDARY
S 60°29'09" E 2299.67'
POINT OF BEGINNING
S 01°45'26" E 528.30'
S 88°14'34" W 660.61'
N 90°00'00" E 317.70'
S 01°40'41" E 666.51'
PROPOSED LBA TRACT I BOUNDARY
S 55°21'33" E 1741.06'
PRAIRIE FALCON EYRIE
RockArt 300' RADIUS
DISTURBANCE BOUNDARY
S 88°19'29" W 1979.90'
N 38°32'16" E 1422.65'
N 01°38'21" W 1149.73'
COAL REMOVAL LINE
PROPOSED LBA TRACT I EXCLUSION BOUNDARY
11
12
14
13
TWP. T. 8 S.
RGE. R. 39 E.
SEC. 14
1/4 BB
SURVEYED BY: WWC/CBC
DRAWN BY: WWC/RAM
CHECKED BY: WWC/CBC
DATE: 01/29/07
WWC ENGINEERING
1849 TERRA AVE.
SHERIDAN, WY. 82801
(307) 672-0761
SPRING CREEK COAL COMPANY
LBA TRACT I
METES AND BOUNDS
DESCRIPTION FOR
TRACT I LBA EXCLUSION BOUNDARY
BIG HORN COUNTY, MONTANA

Figure 1

Approved project components include:

- Issuing a new coal lease for approximately 1117.7 acres containing about 144.1 million tons of Federal coal in four separate tracts located within the Spring Creek Mine boundary.

- Providing the opportunity to mine Federal coal within the four tracts of the LBA and reclaiming mined lands in accordance with approved Federal and State mining permits and the special mitigation measures developed in this EA.

- Removing the exemption as provided for in 43 CFR 3461.5(m)(3) from approximately 101.4 acres of Federal coal within Tract 1 that have been designated as unsuitable for leasing without exception under criterion 13 as a buffer zone around a prairie falcon nesting site. Therefore, this area would be exempt from the requirements of unsuitability criterion 13 because it is within the mine permit boundary.

The legal description for the approved coal lease Tracts are as follows:

Tract 1
Township 8 South, Range 39 East, Big Horn County, Montana

Section 13: NE1/4SW1/4 40.0 acres
NW1/4SW1/4 40.0 acres
SE1/4SW1/4 40.0 acres
N1/2SW1/4SW1/4 20.0 acres
N1/2SE1/4SW1/4SW1/4 5.0 acres
SE1/4SE1/4SW1/4SW1/4 2.5 acres
SW1/4NW1/4NW1/4 10.0 acres
SW1/4NW1/4 40.0 acres
SW1/4SE1/4NW1/4 10.0 acres
NW1/4NW1/4SE1/4 10.0 acres
S1/2NW1/4SE1/4 20.0 acres
N1/2SW1/4SE1/4 20.0 acres
SW1/4SW1/4SE1/4 10.0 acres

Section 14: Beginning at a point bearing S. 60º 25' 06" E., 2299.67 feet from the sec. cor. of secs. 10, 11, 14, and 15 and on the N-S center line of the NE1/4NW1/4 of sec. 14 and at 528.30 feet southerly from the NE-NW 1/64 sec. cor. of sec. 14; thence on the exclusion boundary line, S. 90º 00' 00" E., 317.70 feet; thence S. 55º 21' 33" E., 1741.06 feet; thence N. 38º 32' 16" E., 1422.65 feet, to a point on the N-S center line of the NE1/4NE1/4 of said section; thence northerly on the N-S center line of the NE1/4NE1/4 of said section to the NE-NE 1/64 sec. cor. of said section; thence easterly on the E-W center line of the NE1/4NE1/4 of said section to the N-N 1/64 sec. cor. of secs. 13 and 14; thence southerly on the section line between secs. 13 and 14 to the N-S-S 1/256 sec. cor. of secs. 13 and 14; thence westerly on the E-W center line of the NE1/4SE1/4SE1/4 of sec. 14 to the NE-SE-SE 1/256 sec. cor. of said section; thence northerly on the N-S center line of the NE1/4SE1/4SE1/4 of said section to the C-E-E-SE 1/256 sec. cor. of said section, on the E-W center line of the SE 1/4 of said section; thence westerly

on the E-W center line of the SE 1/4 of said section to the C-E-SE 1/64 sec. cor. of said section; thence northerly on the N-S center line of the NE1/4SE1/4 of said section to the C-S-NE-SE 1/256 sec. cor. of said section; thence westerly on the E-W center line of the SE1/4NE1/4SE1/4 of said section to the C-S-N-SE 1/256 sec. cor. of said section; thence northerly on the N-S center line of the SE 1/4 of said section to the C-E 1/16 sec. cor. of said section; thence westerly on the E-W center line of said section to the C 1/4 sec. cor. of said section; thence northerly on the N-S center line of said section to the C-S-N 1/64 sec. cor. of said section; thence westerly on the E-W center line of the S 1/2 of the NW 1/4 of said section to the SW-NW 1/64 sec. cor. of said section; thence northerly on the N-S center line of the SW1/4NW1/4 of said section to the C-W-NW 1/64 sec. cor. of said section; thence easterly on the E-W center line of the NW 1/4 of said section to the C-E-NW 1/64 sec. cor. of said section; thence northerly on the N-S center line of the NE1/4NW1/4 of said section to the point of beginning, containing 137.70 acres, more or less.

Section 24: N1/2NE1/4NW1/4 20.0 acres

Tract 2
Township 8 South, Range 39 East, Big Horn County, Montana

Section 15: W1/2SW1/4SE1/4 20.0 acres
SE1/4SW1/4SE1/4 10.0 acres

Section 22: NE1/4NE1/4 40.0 acres
N1/2NW1/4NE1/4 20.0 acres
SE1/4NW1/4NE1/4 10.0 acres
NE1/4NE1/4NW1/4 10.0 acres
NE1/4SE1/4NE1/4 10.0 acres

Section 23: SE1/4NW1/4 40.0 acres
SW1/4NW1/4 40.0 acres
S1/2NE1/4NW1/4 20.0 acres
S1/2NW1/4NW1/4 20.0 acres
SW1/4SW1/4NW1/4NE1/4 2.5 acres

Tract 3
Township 8 South, Range 39 East, Big Horn County, Montana

Section 25: SW1/4SW1/4 40.0 acres

Section 26: SE1/4SE1/4 40.0 acres
SW1/4SE1/4 40.0 acres
S1/2NW1/4SE1/4 20.0 acres
N1/2SE1/4SW1/4 20.0 acres
NW1/4NW1/4NE1/4SW1/4 2.5 acres
SW1/4NE1/4NE1/4SW1/4 2.5 acres
S1/2NW1/4NE1/4SW1/4 5.0 acres

S1/2NE1/4SW1/4 20.0 acres
NW1/4SW1/4 40.0 acres

Section 27: SE1/4NE1/4SE1/4 10.0 acres
N1/2NE1/4SE1/4 20.0 acres
NE1/4NW1/4SE1/4 10.0 acres
E1/2SE1/4NW1/4 20.0 acres
NW1/4NE1/4SW1/4NE1/4 2.5 acres
S1/2NE1/4SW1/4NE1/4 5.0 acres
NW1/4SW1/4NE1/4 10.0 acres
S1/2SW1/4NE1/4 20.0 acres
SW1/4NW1/4SE1/4NE1/4 2.5 acres
S1/2SE1/4NE1/4 20.0 acres

Tract 4
Township 8 South, Range 40 East, Big Horn County, Montana

Section 30: SW1/4SE1/4 40.0 acres
SE1/4SE1/4 40.0 acres
S1/2NW1/4SE1/4 20.0 acres

- Removing the exemption as provided for in 43 CFR 3461.5(o)(2) from approximately 12.5 acres of federal coal within Tract 3 that have been designated as unsuitable for leasing without exception under criterion 15. The unsuitability designation is for sage grouse wintering areas and sharp-tailed grouse and sage grouse leks. Therefore, this area would be exempt from the requirements of unsuitability criterion 15 because it is within the mine permit boundary.

- Approving LBA Tracts 2 and 4 for leasing in accordance with the provisions of Alternative 2.

The approval of the lease application is subject to mitigation measures identified in the EA, as well as standard and special lease stipulations, the existing mine permits, and all other permit requirements. Those measures specifically designated in the EA are as follows:

- The approved Spring Creek Mine permit includes monitoring and reclamation measures required by SMCRA and Montana State Law. If the coal lease is acquired by SCC, these monitoring and reclamation measures would be extended to cover operations on the tracts when SCC's mining permit is amended to include the tracts. This amended permit would have to be approved before mining operations could take place on the tracts.
- SCCC will be required to release the affected portions of Land Use Lease MTM 74913 if the lease modification is issued.
- SCCC will be required to reclaim disturbed habitats within the area designated as Unsuitable for Lease with Exceptions and Suitable with Stipulations back to wildlife habitat as outlined in the reclamation requirements of State and Federal mine permits.
- SCCC will be required to implement the mitigation plan found in Appendix C of the EA that has been formulated by SCCC, through consultation with USFWS, BLM, MDFWP, and MDEQ, to reduce potential impacts related to the prairie falcon nesting area in Tract 1.

- SCCC will be required to comply with the modified cultural resource protection stipulation. The stipulation which appears in Appendix B of the EA has been modified to reflect the site testing and recordation requirements for Cultural Resource Site 24BH404 (Petroglyph Site) and is attached to this decision document as Attachment 1.
- SCCC will be required via the mine permit to observe modified blasting techniques to help reduce ground vibrations at the site.

These mitigation measures contain all practicable means to avoid or minimize environmental harm.

FINDING OF NO SIGNIFICANT IMPACT (FONSI)

Based on the information contained in the Environmental Assessment and all other information available to me, I have determined that the Preferred Alternative, with components from the Proposed Action Alternative and Alternative 2 in the EA including mitigation identified in the attached EA and existing permits, will not have significant effects on the human environment. Therefore, an environmental impact statement is unnecessary and will not be prepared.

MANAGEMENT CONSIDERATIONS/RATIONALE FOR THE DECISION

My FONSI determination on Spring Creek Coal Company's Lease Application is based upon a number of factors, including careful consideration of the relevant issues analyzed in the EA.

Disturbance

It is important to note that approximately 52 percent of the LBA tracts (about 631 acres) could be disturbed regardless of the action taken on the application due to mine level disturbances authorized by MDEQ and BLM land use lease MTM 74913. These disturbances include such things as acquiring additional borrow material, overstripping to allow coal to be removed from the adjacent existing leases, and to tie the reclamation into native ground.

Public Involvement

BLM received the Spring Creek Mine Expansion LBA coal lease application on March 7, 2005. The BLM, Montana State Office, Branch of Solid Minerals initially reviewed the application. The BLM ruled that the application and lands involved met the requirements of regulations governing coal leasing by application (43 CFR 3425).

The BLM Montana State Director notified the Governor of Montana on March 16, 2005, that SCCC had filed a lease application with BLM for the Spring Creek Mine Expansion LBA Tracts. A notice announcing the receipt of the Spring Creek Mine Expansion LBA coal lease application published in the *Federal Register* on March 30, 2005 served as public notice that this coal lease application had been received. Copies of the notice were sent to voting and nonvoting members of the Powder River Regional Coal Team (PRRCT), including the governors of Wyoming and Montana, the Northern Cheyenne Tribe, the Crow Tribal Council, OSMRE, U.S. Fish and Wildlife Service (USFW), National Park Service (NPS), and U.S. Geological Survey (USGS).

The PRRCT reviewed this lease application at a public meeting held on April 27, 2005, in Gillette, Wyoming. SCCC presented information about their existing mine and the pending lease application to the PRRCT at that meeting. The PRRCT recommended that the BLM continue to process this application.

Public scoping was conducted from March 15, 2006 through April 15, 2006. Scoping meetings were held in Lame Deer, Montana and in Sheridan, Wyoming on March 22, 2006.

Native American consultation and coordination was conducted as required by the Archaeological Resources Protection Act and the American Indian Religious Freedom Act. The BLM sent letters to the Crow and Northern Cheyenne and 11 other tribes requesting comments on SCCC's proposed action and the findings of the recent cultural resource survey of the tracts, with a 15-day request for response. Response letters were received from the Blackfeet, Cheyenne River Sioux, and the Northern Cheyenne Tribes. Representatives of the Northern Cheyenne Tribal Historic Preservation Office requested additional information and participated in a discussion of the cultural resource issues related to the LBA tracts and accompanied mine personnel on tour of several of the sites on February 14, 2006. As a result of the discussions, it was agreed that the Northern Cheyenne Tribe would conduct a tribal cultural survey for SCCC. The Tribe would survey the area to determine whether or not there were any indicators that might suggest cultural tribal properties exist within the LBA tracts. Initial survey work was conducted on Tract 1 during the period of August 22 to September 13, 2006. Results of this initial survey are included in Appendix G. Additional surveys will be completed on the remaining tracts within the near future. Cultural resources that have been discovered on Tract 1 and on the remaining tracts will be addressed by the Montana DEQ via the mine permitting process.

Consistency with Land Use Plan

The Powder River RMP Record of Decision of 1985, states the following on page 2;

> "Future Development will come from current leases covering 39,391 acres (3.43 billion tons), those unleased areas determined acceptable for further lease consideration in the1979 MFP Update and 1982 Amendment covering 91,700 acres (7.83 billion tons) and unleased areas determined acceptable for further consideration from new planning covering 869,600 acres (54.37 billion tons). The combined total is 1,000,691 acres (65.63 billion tons). Emergency leases will be issued to maintain production or avoid a bypass situation on a case-by-case basis."

The decisions stated earlier in this document, along with the required mitigation, are in conformance with the planning decisions for the area as extensively discussed in the EA.

Grazing Resources

There will be no impact to grazing resources resulting from this decision. The parcels are internal to the existing mine permit and grazing is currently not allowed within the mine.

Surface Water

BLM's approval of the lease application will not significantly impact water quality. The EA, mine plan, state, and federal regulations contain sufficient mitigative measures, regulatory requirements and enforcement authority to ensure that water quality will not be significantly impaired. Sedimentation prevention and erosion control best management practices, such as culverts, sediment traps, ditches, berms, sediment fences, and concurrent reclamation are all employed at the mine. In addition, the mine is inspected on a regular and routine basis by both federal and state mine inspection officials who are responsible for ensuring appropriate sediment and erosion control practices are followed.

Based on the implementation of regulatory and permit requirements, I conclude that impacts from the selected alternative to surface water resources will not be significant.

Wildlife Resources

Under the Proposed Action, big game would be displaced from portions of the tracts to adjacent ranges during mining. Mule deer would be most affected as the tracts contains good quality habitat. Pronghorn would not be substantially impacted, given that they are scattered throughout the site and there is suitable habitat available in adjacent areas. White-tailed deer would not be affected, as they have not been observed on the tracts. Big game displacement would be incremental, occurring over several years and allowing for gradual changes in distribution patterns. Big game residing in the adjacent areas could be impacted by increased competition with displaced animals.

Big game animals are highly mobile and can move to undisturbed areas. There may be more restrictions on big game movement on or through the tracts, however, due to additional fences, spoil piles, and pits related to mining. During winter storms, pronghorn may not be able to negotiate these barriers.

Mining the tracts is not anticipated to significantly impact regional raptor populations. Local populations including individual birds or pairs may be impacted. Based on 1989 data when seven active territories were documented within 12 miles of prairie falcon nest PF1b, a 14% decline in the regional reproductive capacity of prairie falcons could result from the proposed action if falcons utilizing territory PF1 abandon the territory as a result of the loss of nest PF1b. This percentage could be higher if there are fewer occupied territories within the area. There is evidence to suggest that falcons using territory PF1 would use PF1a if PF1b were removed (falcons were successful at PF1a in 2003 when great horned owls nested in PF1b). SCCC would be required to mitigate the loss of the prairie falcon eyrie (Site PF1b) according the mitigation plan outlined in Appendix C.

Sage grouse are yearlong residents and may be found on the tracts and adjacent lands. Four historic sage-grouse strutting grounds were located within one mile of the tracts. Only one of these grounds was active in 2005. Wildlife monitoring studies concluded that it is unlikely that habitat alterations from mining account for the substantial sage grouse population decreases observed at the Spring Creek Coal Mine. The impacts of mining the tracts on sage grouse would be the temporary loss of nesting habitat, disturbance to breeding activities when the mining operations approach to within close proximity of the birds' strutting ground and temporary loss of wintering habitat. Impacts from this mining activity to the overall grouse population in Montana are expected to be minimal. SCCC will be required to reclaim disturbed habitats within the area currently designated as Unsuitable for Lease without Exceptions and Suitable with Stipulations back to wildlife habitat as outlined in the reclamation requirements of revised state and federal mine permits resulting from approval of the lease by application. During reclamation, shrubs, including big sagebrush, would be reestablished on reclaimed lands; reclaimed lands would be graded to create swales and depressions; and monitoring of sage grouse activity would continue in the area before, during, and after mining.

Sharp-tailed grouse are yearlong residents and may be found on the tracts and adjacent lands. Five historic sharp-tailed grouse dancing grounds were located within one mile of the tracts. Only one of these grounds was active in 2005. The impacts of mining the tracts on sharp-tailed grouse would be the temporary loss of nesting habitat and disturbance to breeding activities when the mining operations approach to within close proximity of the birds' strutting ground. Monitoring of sharp-tailed grouse activities indicates that the birds frequently change breeding sites. It is likely that if mining activities disturb a dancing ground, sharp-tailed grouse would use an alternate dancing ground site for breeding activities. Since these dancing grounds were not active over the past several years, impacts from this

mining activity to the overall population in Montana are expected to be minimal. SCCC will be required to reclaim disturbed back to wildlife habitat as described above

T&E species that could potentially occur in the area include the bald eagle, least tern, and black-footed ferret. The bald eagle is the only species observed in the area. Eagles are commonly observed along the Tongue River corridor where the habitat provided suitable foraging and roosting habitat. Other than occasionally flying over the area, bald eagles would not be associated with the proposed tracts.

Based on the above inventory results, I conclude that impacts from the selected alternative to wildlife resources will not be significant.

Air Quality

The air quality impact analysis did not identify any pollutant concentrations that will be in violation of the applicable air quality standards from the existing or proposed mining operations. In addition, dust suppression on haul roads will continue to be employed to reduce fugitive dust sources.

Based on the air quality impact analysis results, I conclude that impacts from the selected alternative to the quality of air will not be significant.

Cultural Resources

Mining the proposed tracts under the proposed action would destroy 42 cultural sites associated with these four tracts, however, 10 of these cultural sites would be disturbed under the current mine plan. Twenty-three of the 42 sites are not regarded as significant as they are not considered eligible for the national Register (Table 3-15 of the EA). Eight are eligible for NRHP and 11 are currently listed as unknown.

Site 24BH404 is the most culturally significant site within the LBA tracts. The site consists of 46 panels of petroglyphs including modern, historic, and prehistoric glyphs and is one of the NRHP eligible sites. Under this decision, the area containing petroglyphs would not be leased and thus would not be disturbed. In addition, the mine will be required via the mine permit to observe modified blasting techniques to help reduce ground vibrations at the site.

If buried cultural sites are discovered, the operator is required to cease operations and notify the BLM so the site can be evaluated and/or protected.

Based on the above inventory results, I conclude that impacts from the selected alternative to cultural resources will not be significant.

Native American Consultation

There would be impacts and affect to sites and issues of Native American concern and there have been comments received as a result of the consultations conducted with the various tribes consulted during this analysis. The primary concerns expressed by the Northern Cheyenne were those dealing with the petroglyph site. Those issues are resolved by this decision, which avoids leasing and impacting the site.

The Northern Cheyenne Tribal Historic Preservation Officer requested and was given permission by SCCC to conduct a cultural resource surveys on the four tracts. The Tribe has completed a survey of Tract 1 and the results of this evaluation are presented in Appendix G of the EA.

Lease and permit condition requirements will provide assurance that these issues are resolved and that any unrecorded sites encountered during mining shall cause mining to stop until corrective measures are taken.

Based on the above inventory results, I conclude that impacts from the selected alternative to Tribal resources will not be significant.

Social and Economic Conditions

The analysis of the alternatives did not identify any appreciable effects or issues specific to any minority or low-income population or community. The agency has considered all input from persons or groups regardless of age, race, income status, or other social or economic characteristics. Therefore, no adverse human health or environmental effects would be expected to fall disproportionately on minority or low income populations from the selected alternative.

Therefore, I conclude that impacts to social or economic resources will not be significant from the selected alternative.

Cumulative Impacts

The analysis in the attached EA did not identify any significant impacts that will result from approval of this decision. Resources for which cumulative impacts are most likely to extend outside the project area include air and water quality. The impact analysis in the EA considered these cumulative actions and I have determined that they are not significant.

APPEAL PROCESS

This Decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4.400, and the enclosed Form 1842.1. If an appeal is taken, your notice of appeal must be filed in the Montana State Office at the above address within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board pursuant to Part 4, Subpart B, § 4.21 of Title 43, Code of Federal Regulations, the petition for stay must accompany your notice of appeal. 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*** 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 (see 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 regulation, 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.

This Decision will become effective at the expiration of the time allowed for filing a Notice of Appeal unless a petition for a Stay of Decision is timely filed together with a Notice of Appeal.

Signed: James A. Albano	February 3, 2007
Acting Field Manager	**Date**

Attachment 1

APPENDIX B

STANDARD AND SPECIAL LEASE STIPULATIONS

DEVELOPED FOR LEASE BY APPLICATION TRACTS

SPECIAL STIPULATIONS - In addition to observing the general obligations and standards of performance set out in the current regulations, the lessee shall comply with and be bound by the following stipulations. These stipulations are also imposed upon the lessee's agents and employees. The failure or refusal of any of these persons to comply with these stipulations shall be deemed a failure of the lessee to comply with the terms of the lease. The lessee shall require his agents, contractors, and subcontractors involved in activities concerning this lease to include these stipulations in the contracts between and among them. These stipulations may be revised or amended, in writing, by the mutual consent of the lessor and the lessee at any time to adjust to changed conditions or to correct an oversight.

(a) CULTURAL RESOURCES

(1) Before undertaking any activities that may disturb the surface of the leased lands, the lessee shall conduct a cultural resource intensive field inventory in a manner specified by the Authorized Officer of the BLM (hereinafter referred to as the Authorized Officer) on portions of the mine plan area, or exploration plan area, that may be adversely affected by lease-related activities and which were not previously inventoried at such a level of intensity. Cultural resources are defined as a broad, general term meaning any cultural property or any traditional lifeway value, as defined below:

> Cultural property: A definite location of past human activity, occupation, or use identifiable through field inventory (survey), historical documentation, or oral evidence. The term includes archaeological, historic, or architectural sites, structure, or places with important public and scientific uses, and may include traditional cultural or religious importance to specified social and/or cultural groups. Cultural properties are concrete, material places, and things that are classified, ranked, and managed through the system of inventory, evaluation, planning, protection, and utilization.
>
> Traditional lifeway value: The quality of being useful in or important to the maintenance of a specified social and/or cultural group's traditional systems of (a) religious belief, (b) cultural practice, or (c) social interaction, not closely identified with definite locations. Another group's shared values are abstract, nonmaterial, ascribed ideas that one cannot know about without being told. Traditional lifeway values are taken into account through public participation during planning and environmental analysis.

The cultural resources inventory shall be conducted by a qualified professional cultural resource specialist; i.e., archaeologist, anthropologist, historian, or historical architect, as appropriate and necessary, and approved by the Authorized Officer (BLM if the surface is privately owned). A report of the inventory and recommendations for protection of any cultural resources identified shall be submitted to the Western Regional Director of the Office of Surface Mining (hereinafter referred to as the Assistant Director) by the Authorized Officer. Prior to any on-the-ground cultural resource inventory, the selected professional cultural resource specialist shall consult with the BLM, the Northern Cheyenne Tribal Historic Preservation Officer (THPO), and the Crow Historic and Cultural Committee. The purpose of this consultation will be to guide the work to be performed and to identify cultural properties or traditional lifeway values within the immediate and surrounding mine plan area. The lessee shall undertake measures, in accordance with instructions from the Assistant Director to protect cultural resources on the leased lands. The lessee shall not commence the

surface-disturbing activities until permission to proceed is given by the Assistant Director in consultation with the Authorized Officer.

(2) The lessee shall protect all cultural resource properties within the lease area from lease related activities until the cultural resource mitigation measures can be implemented as part of an approved mining and reclamation plan or exploration plan.

(3) The cost of carrying out the approved site mitigation measures shall be borne by the lessee.

(4) If cultural resources are discovered during operations under this lease, the lessee shall immediately bring them to the attention of the Assistant Director, or the Authorized Officer if the Assistant Director is not available. The lessee shall not disturb such resources except as may be subsequently authorized by the Assistant Director. Within two (2) working days of notification, the Assistant Director will evaluate or have evaluated any cultural resources discovered and will determine if any action may be required to protect or preserve such discoveries. The cost of data recovery for cultural resources discovered during lease operations shall be borne by the surface managing agency unless otherwise specified by the Authorized Officer.

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

(6) Spring Creek Coal Company shall conduct site recordation and site testing at Cultural Resource Site 24BH404 in accordance with Tasks 1 through 4 of the petroglyph mitigation plan found in Appendix D of the EA and as modified below. The recordation will be a non-invasive technique that does not alter the rock surface, and can be digitally stored for future study and possibly to recreate the rock art figures. Site testing will include up to five, 1-meter by 1-meter shallow excavations. Testing will be coordinated with the Northern Cheyenne THPO and any findings will be shared with the THPO. Coordination will include prior notification of any field work, with sufficient time to allow the Northern Cheyenne to schedule their attendance during the field work, and will allow the Northern Cheyenne the opportunity to provide comments on the locations of each excavation.