

**DECISION RECORD**  
**BLM DETERMINATION OF NEPA ADEQUACY (DNA), WY-070-DNA12-161**  
**Powder River Construction, Inc. (Powder River), S-Bar Scoria Mine, WYW-168366**  
**Bureau of Land Management, Buffalo Field Office, Wyoming**

**DECISION.** I approve the Sales Contract, WYW-168366, submitted by Powder River Construction, Inc. (Powder River) to mine 83,000 cubic yards (CY) of scoria (clinker, or porcellanite) from the existing S-Bar Scoria Mine over a 5-year period. BLM described and analyzed the sales contract in DNA worksheet, WY-070-DNA12-161, which tiers to environmental assessment (EA), WY-070-03-EA-021. I find that the conditions and environmental effects found in the EA remain valid.

**Compliance.** This decision complies with:

- Federal Land Policy and Management Act of 1976 (FLPMA) (43 USC 1701); DOI Order 3310; 2010.
- The Materials Act of 1947 (30 USC 601, et seq.), as amended; 43 CFR 3600 et seq.
- National Environmental Policy Act of 1969 (NEPA) (42 USC 4321).
- Buffalo and Powder River Basin (PRB) Oil and Gas Project Final Environmental Impact Statements (FEISs), 1985, 2001, 2003.
- Buffalo Resource Management Plan (RMP) and Record of Decision (ROD) 1985, 2001, 2003, 2011.
- Supplement to Memorandum of Understanding No. WY 19 Between the DOI BLM and the WY DEQ Land Quality Division for Management of Surface Mining and Exploration for Mineral Materials (Saleable [sic] Minerals) on Public Lands; 2003.

**SUMMARY OF THE PROJECT:** The Bureau of Land Management (BLM), Buffalo Field Office (BFO) approves the continued scoria mining in Powder River Construction’s S-Bar Scoria Mine, which is located in the following area:

County	Feature	TWN	RNG	Sec	Subdivision	Acres
Campbell	S-Bar Scoria Mine	50	73	30	E2SESW	
TOTAL						6.5

**THE FINDING OF NO SIGNIFICANT IMPACT (FONSI).** Analysis of Alternative A of EA WY-070-03-EA-021, and its FONSI for the proposed continued mining of scoria from an existing mine, incorporated here by reference, found no significant impact on the human environment beyond those of the Buffalo FEISs, thus an EIS is not required. Further, since the proposal in this DNA is within the selected alternative in the EA there is no need for another FONSI.

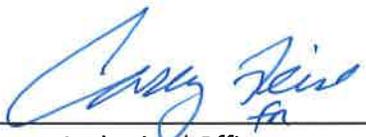
**COMMENT OR NEW INFORMATION SUMMARY.** BLM internally scoped this application. BLM experience in the Powder River Basin (PRB) (outside of the Fortification Creek Planning Area) revealed virtually no public input or discovery of new issues other than those revealed after rigorous public scoping during development of the Buffalo RMP, its amendments, and PRB Oil and Gas Project. There are insubstantial impacts to sage-grouse or wilderness.

**DECISION RATIONALE.** BLM approves Sales Contract, WYW-168366, for the following reasons:

1. This contract will execute at the site of a recently fulfilled sales contract for an existing open-pit scoria mine within that pit’s boundaries.
  - a. It is an open-pit surface mine with associated infrastructure and mining operations built and conducted with essentially the same materials and in the same or similar manners as those which BLM approved in 2002 and 2007, and is using the same terms and conditions (stipulations) and

- reclamation as those used with the 2002 EA; and,
- b. There is nothing in the approved Sales Contract that substantively changed the scoria mine or required additional NEPA analysis; and,
  - c. This proposed action complies with 43 CFR 3602.30, Noncompetitive Mineral Materials Sales.
2. Monitoring of the mineral materials Sales Contract stipulations and mine area will be conducted by personnel representing the Wyoming Department of Environmental Quality (WDEQ) and the BLM BFO.
  3. The mitigation measures described in the standard stipulations attached to the approved Sales Contract will be adequate.
  4. The terms and conditions (stipulations) issued under the Decision Record for WY-070-03-EA-021 are incorporated here by reference, remain in effect, and apply to Sales Contract, WYW-168366 for the surface disturbances summarized in the above table.
  5. The selected alternative will not result in any undue or unnecessary environmental degradation. Reclamation of this mine site will be accordance with the reclamation guidelines in the DNA worksheet's Appendix 1.
  6. The selected alternative will help meet the nation's mineral needs, and help stimulate local economies by maintaining workforce stability.
  7. The Operator committed to comply with all applicable federal, state, and local laws and regulations.
  8. The project is clearly lacking in wilderness characteristics as there are no BLM surface acres.

**ADMINISTRATIVE APPEAL.** This decision is subject to administrative review in accordance with 43 CFR 3601.80. Request for administrative review of this decision must include information required under 43 CFR 4 and is appealed to the Interior Board of Land Appeals, as provided in 43 CFR 3601.80 and 43 CFR 4. A party adversely affected by a decision of the authorized officer or State Director made pursuant to subpart 43 CFR 3600, et. al., has the right of appeal to the Interior Board of Land Appeals, Office of Hearings and Appeals, pursuant to 43 CFR 4 and 43 CFR 1840.

  
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Authorized Officer

  
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Date

**BLM DETERMINATION OF NEPA ADEQUACY (DNA), WY-070-DNA12-161  
Powder River Construction, Inc. (Powder River), S-Bar Scoria Mine, WYW-168366  
Bureau of Land Management, Buffalo Field Office, Wyoming**

**OFFICE:** BLM, Buffalo Field Office (BFO), 1425 Fort St., Buffalo, WY 82834.

**TRACKING NUMBERS:** WY-070-DNA12-161.  
WY-070-03-EA-021, Environmental Assessment (EA), approved October 31, 2002, for Hettinger Welding, Inc. (company now defunct), S-Bar Scoria Mine; see BLM Casefiles WYW-156474 and WYW-161614.  
DNA (unnumbered), approved March 19, 2007, for Hettinger Welding, Inc., S-Bar Scoria Mine; see BLM Casefile WYW-169758.

**BLM CASEFILE NO.:** WYW-168366.

**TITLE OF PROPOSED ACTION:** New Sales Contract for existing S-Bar Scoria Mine.

**PROPOSED ACTION:** Remove 83,000 cubic yards (CY) scoria (clinker, or porcellanite) from stockpile within existing 6.5 acre mine, over 5 years' time.

**LEGAL DESCRIPTION:**

County	Feature	TWN	RNG	Sec	Subdivision	Acres
Campbell	S-Bar Scoria Mine	50	73	30	E2SESW	
TOTAL						6.5

**APPLICANT:** Powder River Construction, Inc. (Powder River), P.O. Box 2020, 4001 East Collins Rd., Gillette, WY, 82717.

**A. Description of the Proposed Action and Any Applicable Mitigation Measures:**

Powder River Construction, Inc. (Powder River), submitted a new Sales Contract for the existing S-Bar Scoria Mine to remove 83,000 cubic yards (CY) of scoria (clinker, or porcellanite) from an existing stockpile of prepared material (see Figures 2 through 4) within the mine over a 5-year period, per 43 CFR 3602.30. Mining may resume under a future authorization, but no additional surface disturbance is proposed at this time. The Mine can be accessed via an access road off Montgomery Road (Campbell County Road 77; see Figure 1). This new contract was assigned the BLM casefile serial number WYW-168366. This sale is for federally-administered minerals; the surface estate is privately-owned.

DNA WY-070-DNA12-161 tiers to BLM's 2002 NEPA analysis and Environmental Assessment (EA) WY-070-03-EA-021, which concluded that no significant impacts would result to other resources should that proposed action occur. BLM treats this proposed action as a new contract, as the terms of the former Sales Contract (WYW-169758, under Hettinger Welding, Inc.) were filled, per 43 CFR 3602.22(a). This proposed action is consistent with regulations (43 CFR 3602.31(a) and 3602.33(a)), the terms of the former approved Sales Contract, and does not involve a substantive change requiring additional NEPA analysis.

Previously reviewed and accepted Class III cultural resource inventories (BFO #70040109, and

unnumbered Casper District Office document) adequately covered the project area. Previous ground disturbance associated with the existing mine has modified the surface so extensively that the probability of finding intact cultural properties is negligible. On July 9, 2012, Doug Tingwall, BLM Archaeologist, electronically notified the Wyoming State Historic Preservation Office (SHPO) following section IV(D) of the Wyoming State Protocol, of the action and proceeding with the undertaking. In addition, following section IV(A)(3) and Appendix B(23) of the Wyoming State Protocol, the undertaking is exempt from review.

BLM Biologist Scott Jawors conducted an on-site inspection on March 7, 2013. The affected environment is unchanged and consistent with the habitat assessment conducted by Wildlife Resources, LLC, between April 15 and June 15, 2004, for the Kitty coalbed natural gas (CBNG) Plan of Development (POD) (WY-070-04-EA-262). Nine active raptor nests were identified in 2004. Wildlife resources described in the Environmental Assessment WY-070-03-EA-021 (2002) remain unchanged, and the mitigation measures incorporated into the current sales contract will suffice to protect nesting raptors.

**Mitigation Measures and Monitoring:**

1. The Standard Stipulations attached to the former Sales Contract (WYW-169758) for this Mine approved for Hettinger Welding, Inc., are replaced by those attached to this new Sales Contract (WYW-168366) for this Mine approved for Powder River Construction, Inc. (Powder River).
2. Reclamation will be accordance with the reclamation guidelines in Appendix 1.

**B. Conformance with the Land Use Plan (LUP) and Consistency with Related Subordinate Implementation Plans:**

LUP Name: Buffalo Resource Management Plan (RMP), 1985; amended 2001, 2003, and 2011. Supplement to Memorandum of Understanding No. WY 19 Between the USDI BLM and the Wyoming Department of Land Quality (WDEQ) Land Quality Division (LQD) for Management of Surface Mining and Exploration for Mineral Materials (Saleable [sic] Minerals) on Public Lands; 2003. See also: Interior Department Order 3310; 2010.

The proposed action conforms to the applicable LUPs because it is specifically provided for in the following LUP decisions:

The Buffalo RMP Record of Decision (ROD), 1985, provides for development of salable minerals (mineral materials), such as scoria, p. 16. BLM-administered locatable minerals will remain subject to the provisions of the General Mining Law of 1872, as amended. The 1985 ROD provided for surface protections:

The ROD prohibited surface disturbance or occupancy within a biological buffer zone area around active raptor nests unless the authorized officer waives the prohibition, p. 19.

The 2001 Buffalo RMP Amendment has a management objective of maintaining or enhancing opportunities for mineral exploration and development while maintaining other resource values, p. 8. The RMP specifically addressed scoria in its management decision for salable minerals, p. 13:

The majority of lands in the resource area, including federally administered surface/minerals and split estate, are available for mineral material exploration and development.

In order to explore and/or develop federally-administered salable minerals for commercial use (to sell) or for free-use (for use by other governmental entities and non-profit organizations), BLM must authorize the activity (per 43 CFR 3601.30, 3601.71(a), and 3604.12).

All salable minerals actions are reviewed to ensure compliance with the bonding policy for surface-disturbing activities. The 2001 Amendment also addressed protections from surface disturbances. The Amendment addressed cultural surveys prior to surface disturbances, pp. 4 to 5 and Appendix A. The Amendment re-addressed raptor protections similar to those in the 1985 RMP, p. 38 and Appendix A. The scope of the 2003 Amendment is generally limited to fluid mineral (oil and gas) development, though the analysis concluded that salable minerals in the region were stratified above the oil and gas minerals, pp. 4-129. This Amendment has valuable sections on soil and water conservation and reclamation.

The 2011 Amendment focused on the Fortification Creek Planning Area and has no bearing here.

### **C. Identify Applicable National Environmental Policy Act (NEPA) Documents and Other Related Documents that Cover the Proposed Action:**

List by name and date all applicable NEPA documents that cover the proposed action:

- Final Environmental Impact Statement (FEIS)...for the Powder River Basin (PRB) Oil and Gas Project, BFO, 2003.
- Buffalo FEIS, 2001.
- Buffalo FEIS, 1985.
- WY-070-03-EA-021 (2002), for Hettinger's (former owner) S-Bar Scoria Mine.
- WY-070-04-EA-262 (2004), Kitty CBNG POD.
- WY-070-EA10-274 (2010), for Caballo Coal's Caballo Scoria Mine.
- WY-070-EA10-308 (2010), Alpha Coal West's Belle Ayr Scoria Mine.
- WY-070-EA10-309 (2011), Magna Energy's Brubaker Sand/Gravel Mine.
- WY-070-EA10-116 (2010), Alpha Coal West's Eagle Butte Scoria Mine.

List by name and date other documentation relevant to the proposed action (e.g., biological assessment, biological opinion, watershed assessment, allotment evaluation, monitoring report, etc.):

- Final Biological Opinion – or – Reinitiation of Formal Consultation with US Fish & Wildlife Service for the Powder River Oil and Gas Project, Campbell, Converse, Johnson, and Sheridan Counties, Wyoming (Formal Consultation No. ES-6-WY-07-F012). 2007.
- Kitty Plan of Development Wildlife Report. Prepared for Williams Production RMT Company by Wildlife Resources, LLC, Bighorn Wyoming, 82833. 2004.

### **D. NEPA Adequacy Criteria:**

**1. Is the new proposed activity a feature of, or essentially similar to, an alternative analyzed in the existing NEPA document(s)? Is the project within the same analysis area, or if the project location is different, are the geographic and resource conditions sufficiently similar to those analyzed in the existing NEPA document(s)? If there are differences, can you explain why they are not substantial?**

Yes. The proposed action is the reinstatement of former operations, and therefore consistent with those actions. The resource conditions are similar to those in existing NEPA documents, with essentially no or insubstantial changes to other resources having occurred in the intervening period. The BLM finds that the conditions and environmental effects found in the EA remain valid. The proposed action is a feature of, and is essentially similar to, the selected alternative in EA# WY-070-03-EA-021, New Sales Contract for Hettinger Welding's (company now defunct) S-Bar Scoria Mine, pp. 1 to 2; Buffalo ROD 1985, p. 16; and

Buffalo RMP Amendment 2001, p. 4.

**2. Is the range of alternatives analyzed in the existing NEPA document(s) appropriate with respect to the new proposed action, given current environmental concerns, interests, and resource values?**

Yes. The EA for the former Sales Contract for the S-Bar Scoria Mine, under Hettinger Welding, Inc. (EA # WY-070-03-EA-021, 2002) analyzed 3 alternatives: 1) the continued mining of scoria in that location, 2) the no-action alternative (not approving the continued mining of scoria in that location), and 3) the mining of scoria elsewhere; see the Finding of No Significant Impact (FONSI), p. 1 and the EA, pp. 1 to 2. This EA also analyzed the proposed action in the light of current environmental concerns and resource values, noting that surface and groundwater will not be affected (p. 2), and that wetlands and riparian areas do not exist in the project area (p. 2). This EA also noted that there were no soil, erosion, or major reclamation concerns (pp. 1, 2, and 3), in addition to no concerns for vegetation and invasive species (pp. 2 and 3). This EA's range of alternatives also addressed the environmental concerns to wildlife and raptors (p. 2). The EA noted that there would be little to no impact on grazing (p. 2). The NEPA documents' analysis did not include discussion of the biological buffers for raptors; however the topography within the area provides an adequate biological buffer from noise and sight, as observed by BLM Biologist during site visit on March 7, 2013. The known nests are out of line-of-sight of the pit. Buffalo ROD 1985, p. 19; the 2001 Amendment, p. 38 and Appendix A, are incorporated here by reference.

**3. Is the existing analysis valid in light of any new information or circumstances (such as, rangeland health standard assessment, recent endangered species listings, updated lists of BLM-sensitive species)? Can you reasonably conclude that new information and new circumstances would not substantially change the analysis of the new proposed action?**

Yes. The existing analysis remains valid in light of new information or circumstances given the need for the project. The new information provided in an order from the Interior Department concerned land use plans' consideration of wilderness characteristics in those plans. New information concerning Greater Sage-Grouse (GSG) conservation also post-dates EA WY-070-03-EA-021. A new Wyoming executive order (Order 2011-5) was issued in June 2011, and a new BLM Instruction Memorandum (WY IM 2012-019) was issued in on February 10, 2012. BLM IMs-2012-043 and -044 also provide GSG policy guidance. These guidelines addressed administrative changes in implementation of projects within GSG core areas. While considered by BFO, neither is relevant in this project proposal as the area has no wilderness characteristics, and habitat conditions for GSGs have not changed.

No new circumstances occur since the 2002 EA. The BFO's experience shows the design features and mitigation in existing NEPA documents is both substantially similar to, and therefore does not substantially change, an analysis of best management practices, design features, and mitigation necessary to provide for the proposed project and to minimize the project's impact on other resources.

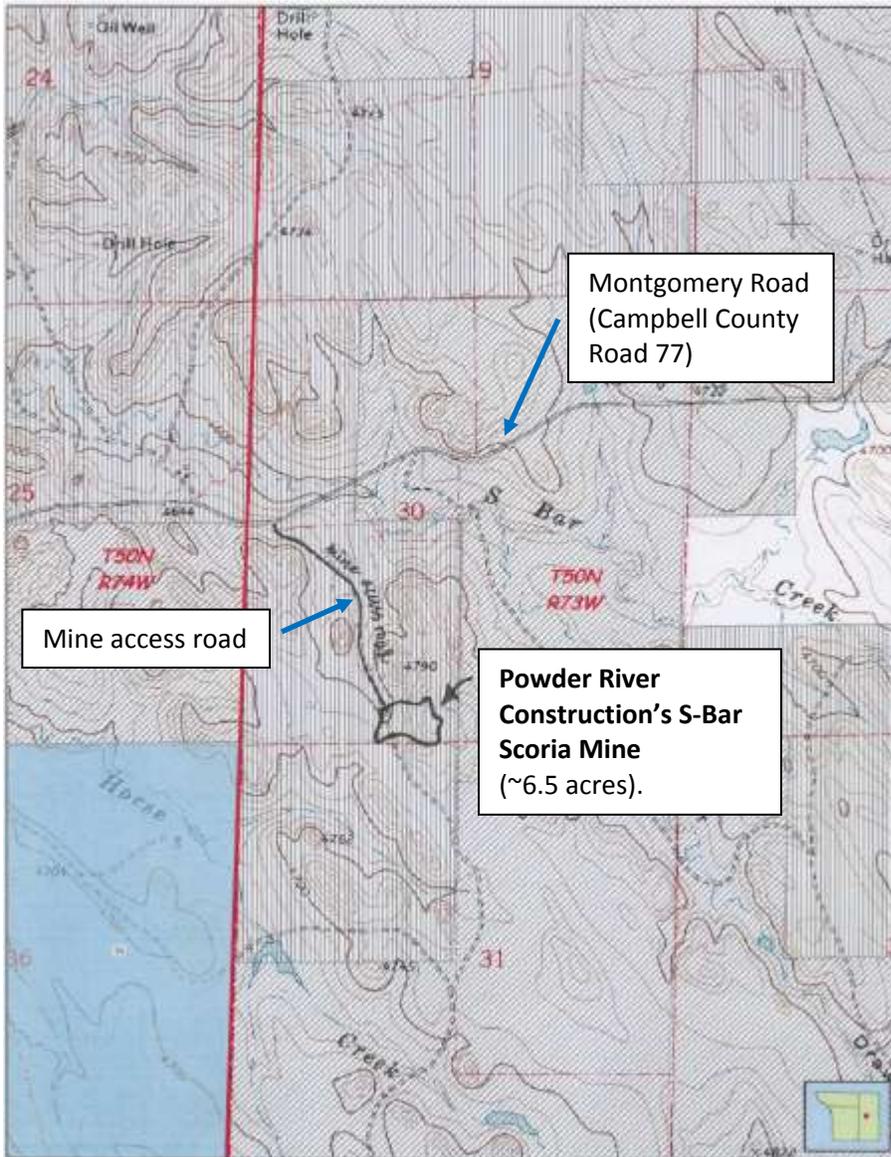
The circumstance of allowing and mitigating a surface disturbance within the biological buffer of nesting raptors is addressed in the land use plans and amendments (cited above), and is further discussed in item #4 (below) in the context of direct and indirect effects.

There is no new information that would substantially or moderately change the analysis.

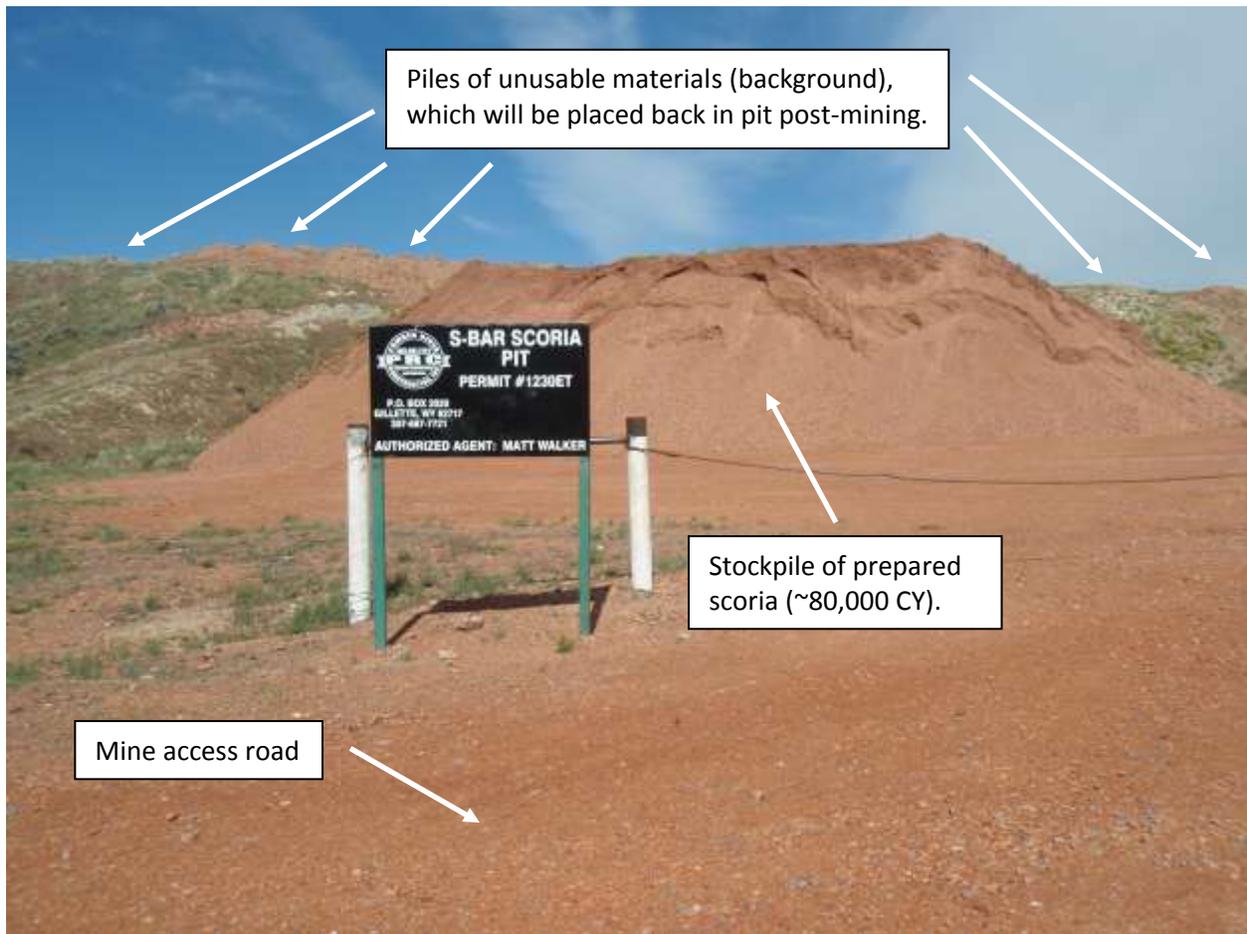
**4. Are the direct, indirect, and cumulative effects that would result from implementation of the new proposed action similar (both quantitatively and qualitatively) to those analyzed in the existing NEPA document(s)?**



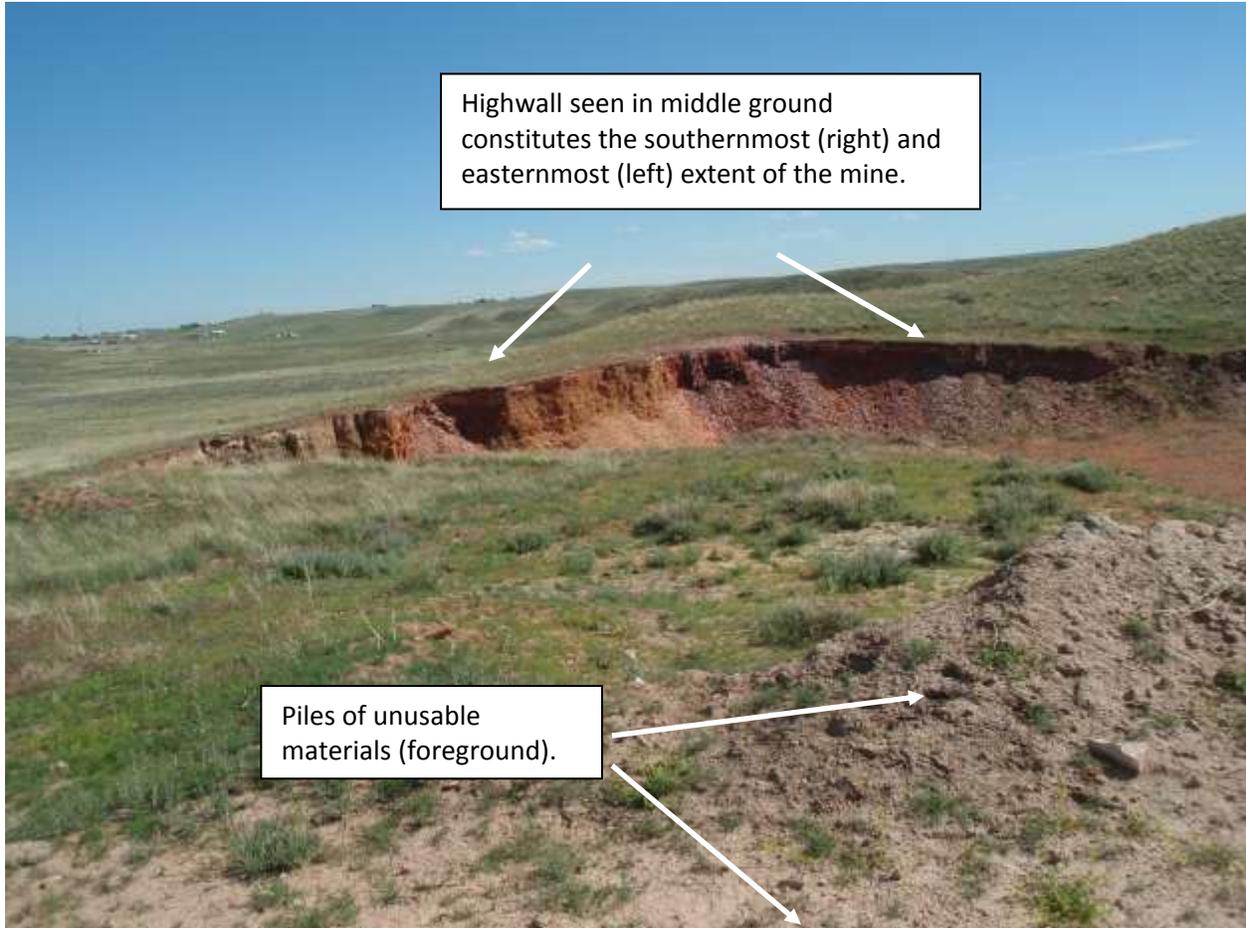
Figure 1. Map showing location of, and access to, Powder River Construction's S-Bar Scoria Mine.



**Figure 2. Photograph of Powder River Construction’s S-Bar Scoria Mine.** The large stockpile of previously prepared scoria (~80,000 CY) can be seen in middle-foreground. In background, along eastern edges of mine and portions of the eastern highwall, can be seen piles of low quality scoria (unusable material) mixed with overburden. This material will be placed back into pit after mining is complete, prior to recontouring the disturbed areas and seeding them. Highwalls cannot be seen in this photo, as they are off to the right (southeast), and behind the stockpile (east). Taken looking east into the northern part of the mine from the access road by Kerry L. Aggen on June 14, 2012.



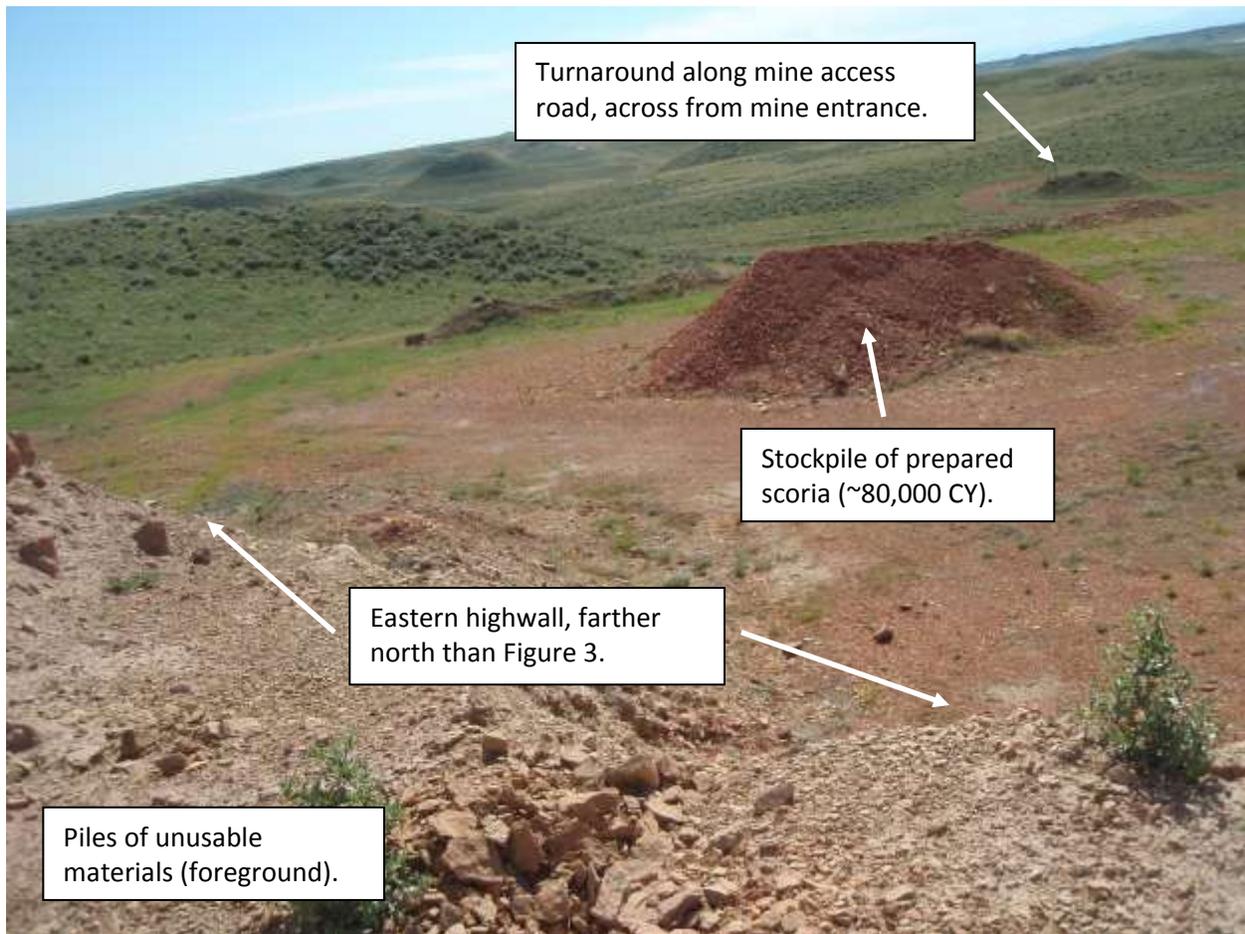
**Figure 3. Photograph of Powder River Construction’s S-Bar Scoria Mine.** The southeastern corner of the mine is outlined by the highwall in middle ground. If mining restarts in the future, it will likely occur along this portion of the highwall, and another section of the eastern highwall further north. Higher quality scoria with relatively little overburden occurs in these areas. Further mining along this highwall would push it outward further south and east. The large stockpile of previously prepared scoria is out of photo, to right (west). Atop a section of highwall with lower quality scoria that will likely not be mined (foreground), can be seen piles of unusable materials (low quality scoria and overburden). This material will be placed back into pit after mining is complete, prior to recontouring the disturbed areas and seeding them. Taken looking south from eastern edge of mine by Kerry L. Aggen on June 14, 2012.



Highwall seen in middle ground constitutes the southernmost (right) and easternmost (left) extent of the mine.

Piles of unusable materials (foreground).

**Figure 4. Photograph of Powder River Construction's S-Bar Scoria Mine.** The southeastern corner of the mine is to left, out of photo. Future mining will not likely occur in this section of the eastern highwall (foreground), as scoria here of lower quality and overburden is relatively thick. Piles of unusable materials sit atop this stretch of the highwall. The large stockpile of previously prepared scoria (~80,000 CY) can be seen in middle ground. The mine access road can be seen in far middle ground, as well as the turnaround along it just across the road from the mine entrance. Taken looking south-southwest from along eastern edge of mine by Kerry L. Aggen on June 14, 2012.



## **Appendix 1: RECLAMATION REQUIREMENTS, WYOMING BLM.**

*The following Reclamation Requirements apply to all surface disturbing activities, including BLM initiated activities, and must be addressed in each reclamation plan. These requirements also must be met prior to release of the bond and/or the reclamation liability. Where these Reclamation Requirements differ from other applicable federal, laws, rules, and regulations, those requirements supersede this policy. State and/or local statutes or regulations may also apply.*

### **1. Manage all waste materials:**

- a. Segregate, treat, and/or bio-remediate contaminated soil material.
- b. Bury only authorized waste materials on site. Buried material must be covered with a minimum of three feet of suitable material or meet other program standards.
- c. Ensure all waste materials moved off-site are transported to an authorized disposal facility.

### **2. Ensure subsurface integrity, and eliminate sources of ground and surface water contamination:**

- a. Properly plug all drill holes and other subsurface openings (mine shafts, adits etc.).
- b. Stabilize, properly back fill, cap, and/or restrict from entry all open shafts, underground workings, and other openings.
- c. Control sources of contamination and implement best management practices to protect surface and ground water quality.

### **3. Re-establish slope stability, surface stability, and desired topographic diversity:**

- a. Reconstruct the landscape to the approximate original contour or consistent with the land use plan.
- b. Maximize geomorphic stability and topographic diversity of the reclaimed topography.
- c. Eliminate highwalls, cut slopes, and/or topographic depressions on site, unless otherwise approved.
- d. Minimize sheet and rill erosion on/or adjacent to the reclaimed area. There shall be no evidence of mass wasting, head cutting, large rills or gullies, down cutting in drainages, or overall slope instability on/or adjacent to the reclaimed area.

### **4. Reconstruct and stabilize water courses and drainage features:**

- a. Reconstruct drainage basins and reclaim impoundments to maintain the drainage pattern, profile, and dimension to approximate the natural features found in nearby naturally functioning basins.
- b. Reconstruct and stabilize stream channels, drainages, and impoundments to exhibit similar hydrologic characteristics found in stable naturally functioning systems.

### **5. Maintain the biological, chemical, and physical integrity of the topsoil and subsoil (where appropriate):**

- a. Identify, delineate, and segregate all salvaged topsoil and subsoil based on a site specific soil evaluation, including depth, chemical, and physical characteristics.
- b. Protect all stored soil material from erosion, degradation, and contamination.
- c. Incorporate stored soil material into the disturbed landscape.
- d. Seed soils to be stored beyond one growing season, with desired vegetation.
- e. Identify stockpiles with appropriate signage.

### **6. Prepare site for revegetation:**

- a. Redistribute soil materials in a manner similar to the original vertical profile.

- b.Reduce compaction to an appropriate depth (generally below the root zone) prior to redistribution of topsoil, to accommodate desired plant species.
- c.Provide suitable surface and subsurface physical, chemical, and biological properties to support the long term establishment and viability of the desired plant community.
- d.Protect seed and seedling establishment (e.g. erosion control matting, mulching, hydro-seeding, surface roughening, fencing, etc.)

**7. Establish a desired self-perpetuating native plant community:**

- a. Establish species composition, diversity, structure, and total ground cover appropriate for the desired plant community.
- b. Enhance critical resource values (e.g. wildlife, range, recreation, etc.), where appropriate, by augmenting plant community composition, diversity, and/or structure.
- c. Select genetically appropriate and locally adapted native plant materials based on the site characteristics and ecological setting.
- d. Select non-native plants only as an approved short term and non-persistent alternative to native plant materials. Ensure the non-natives will not hybridize, displace, or offer long-term competition to the endemic plants, and are designed to aid in the re-establishment of native plant communities.

**8. Reestablish complementary visual composition:**

- a. Ensure the reclaimed landscape features blend into the adjacent area and conform to the land use plan decisions.
- b. Ensure the reclaimed landscape does not result in a long term change to the scenic quality of the area.

**9. Manage Invasive Plants:**

- a. Assess for invasive plants before initiating surface disturbing activities.
- b. Develop an invasive plant management plan.
- c. Control invasive plants utilizing an integrated pest management approach.
- d. Monitor invasive plant treatments.

**10. Develop and implement a reclamation monitoring and reporting strategy:**

- a. Conduct compliance and effectiveness monitoring in accordance with a BLM (or other surface management agency) approved monitoring protocol.
- b. Evaluate monitoring data for compliance with the reclamation plan.
- c. Document and report monitoring data and recommend revised reclamation strategies.
- d. Implement revised reclamation strategies as needed.
- e. Repeat the process of monitoring, evaluating, documenting/reporting, and implementing, until reclamation goals are achieved.