

CHAPTER 1: PURPOSE OF, AND NEED FOR, THE PROPOSED ACTION

BACKGROUND

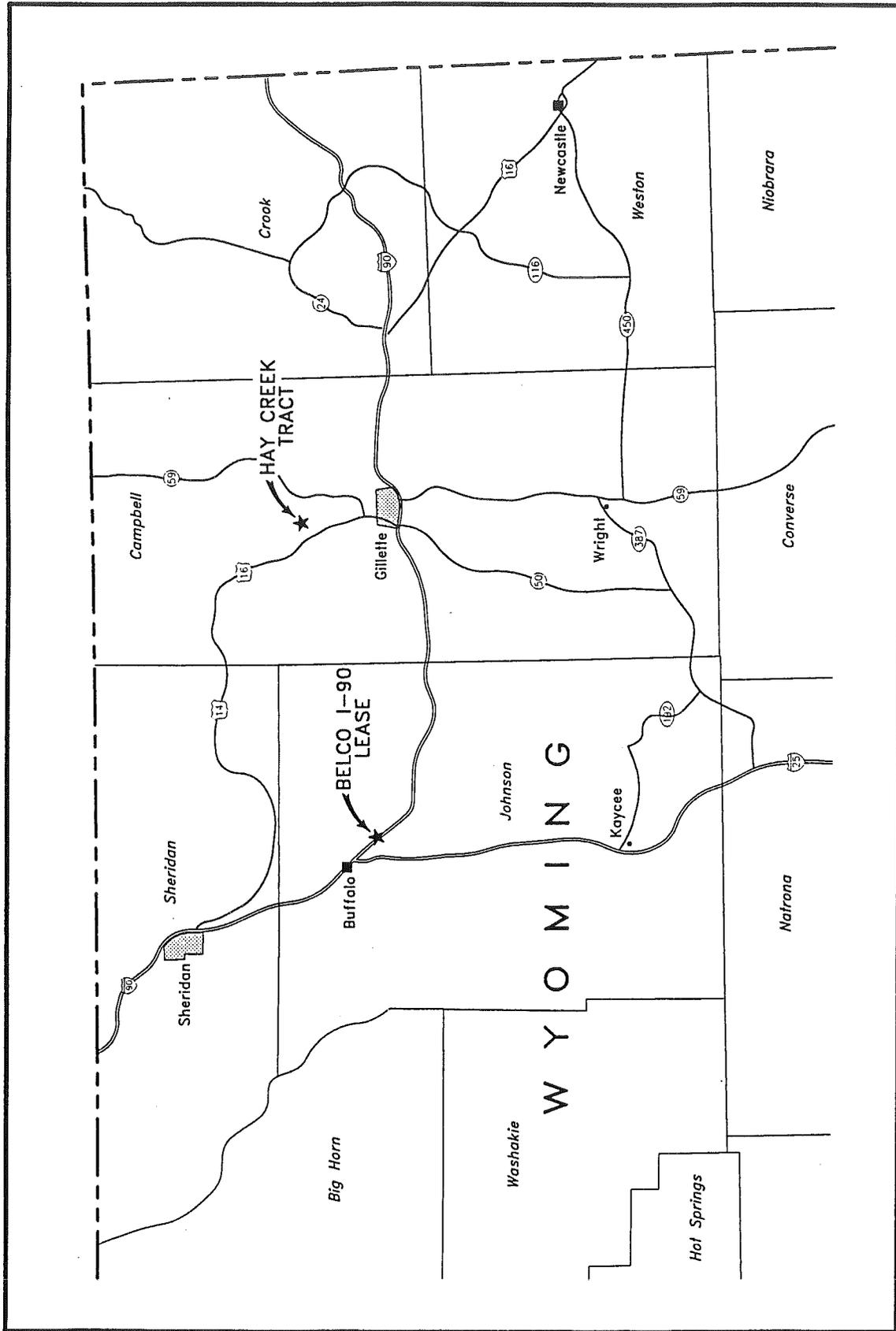
The Belco exchange is the final exchange remaining under PL 95-554, commonly known as the I-90 Exchange Act of 1978. The law authorized an exchange of specified federal coal leases encumbered by Interstate 90 (I-90) for federal coal leases elsewhere which will contain the same lease terms and conditions.

Belco held such a lease east of Buffalo, Wyoming on I-90. This lease was offered by Belco in exchange for a federal lease in an area of the eastern Powder River Basin (PRB) called the Hay Creek tract (map 1-1). The exchange has been twice rejected by the BLM, and BLM's decision has twice been reversed by the Interior Board of Land Appeals (IBLA). In its most recent decision (June 1, 1994), BLM rejected the exchange based on a finding that the exchange was not in the public interest. This was reversed: IBLA "conclude[d] that the public interest favors completing a coal [lease] exchange, and remands the case to BLM in order that it may complete, as expeditiously as possible, an exchange of the Belco tract for a redelineated Hay Creek tract or for all or a part of the two other tracts listed in the [1982] agreement." IBLA further noted that in 1983 Belco proposed redelineating 100 million tons of coal in Hay Creek for the estimated 170 million tons of coal in the Belco lease as a reasonable approach for consummating the exchange (IBLA 94-684, 141 IBLA 367).

The original Belco lease (W-0322794) embraced 4,551.46 acres in Johnson County, Wyoming, and was bisected by I-90. The lease was relinquished in 1986 by Belco who reserved its right to a coal lease exchange as provided for under the I-90 Exchange Act of 1978. Map 1-1 shows the general location of the original Belco lease.

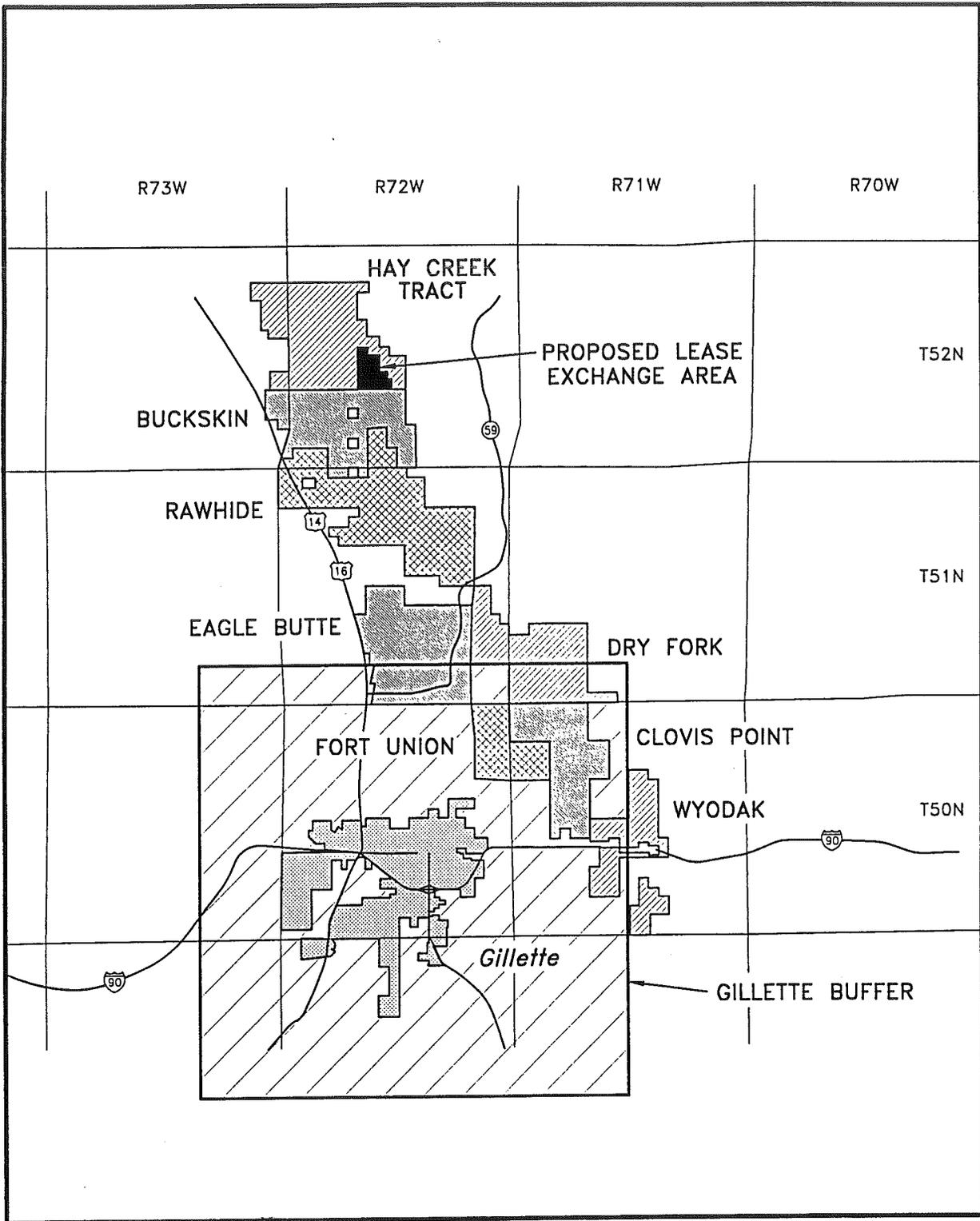
The Hay Creek tract was a potential coal leasing tract identified by BLM and the coal industry during the regional leasing process leading to the federal coal lease sale in 1982. The tract was never offered for competitive leasing at the 1982 lease sale or any subsequent coal lease sales. The Hay Creek tract is about 12 miles north of Gillette in Campbell County, Wyoming. The tract is immediately north of and contiguous with the Triton Buckskin Mine, the northernmost of the producing coal mines in the Wyoming PRB (maps 1-1 and 1-2).

The purpose of this action is to exchange Belco coal rights in lease W-0322794 for a federal lease lying within the Hay Creek tract. After evaluating Hay Creek's coal geology and reserves in response to Enron's proposal, BLM proposes to exchange a coal lease on the following 599.172-acre tract of land contained in the Buffalo lease W-0322794 for Enron's coal lease rights (map 1-2).



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MAP 1-1
GENERAL LOCATION



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MAP 1-2
EXCHANGE TRACTS IN RELATION TO PRODUCING COAL MINES IN THE AREA

T. 52 N., R. 72 W., Sixth Principal Meridian, Campbell County, Wyoming

sec. 17: Lot 16;

sec. 20: Lot 1, E $\frac{1}{2}$ E $\frac{1}{2}$ Lot 2, E $\frac{1}{2}$ E $\frac{1}{2}$ Lot 7, Lot 8, Lot 9, E $\frac{1}{2}$ E $\frac{1}{2}$ Lot 10, E $\frac{1}{2}$ E $\frac{1}{2}$ Lot 15, Lot 16; and,

sec. 21: W $\frac{1}{2}$ Lot 3, Lot 4, Lot 5, W $\frac{1}{2}$ Lot 6, W $\frac{1}{2}$ Lot 10, Lot 11, Lot 12, Lot 13, Lot 14, Lot 15.

Under the statute and exchange agreement, Enron would receive a federal coal lease on the above tract containing the same terms and conditions contained in the Buffalo lease W-0322794. The government would receive a royalty when the lease is mined; the new lease would be subject to due diligence requirements of the Federal Coal Leasing Act of 1977 or it would terminate in accordance with the diligent development requirement found in 43 CFR 3483.

The I-90 Exchange Act and coal exchange regulations require that the coal to be leased be equal to the estimated fair market value of the lease to be relinquished. The actual size, coal tonnage, and coal quality contained in former Belco lease W-0322794 and the Hay Creek tract are different in order to account for less heating content and an additional overburden in the Buffalo lease. BLM and Enron have independently determined that the old Belco lease had between 137 and 185 million tons of minable coal with a stripping ratio of 5:1 or less¹. The coal averaged 7,100 Btus. In a letter to BLM dated April 28, 1998, Enron (formerly Belco) proposed an exchange based on an estimated average of 170 million tons of minable coal at the old Belco lease for 100 million tons of coal in sections 20 and 21 in the southeastern portion of the Hay Creek tract. This exchange proposal was initially made by Belco in a letter to BLM dated August 22, 1983 and again in a letter dated November 22, 1989.

BLM's proposed 599.172-acre tract delineated from acreage in the southeast portion of the Hay Creek tract contains approximately 106 million tons of minable coal. The tract boundaries are straight to promote maximum economic coal recovery and follow no less than 10-acre subdivisions. The tract is also extended slightly into section 17 along the outcrop to avoid isolating coal in state school section 16 as well as in section 17 that, if unleased, would be isolated between the top of the tract and the Hay Creek drainage. The coal in this portion of the Hay Creek tract, as delineated by BLM, generally has a coal to overburden ratio of 2:1 or less and averages 8,000 Btus. Therefore, lesser tonnage is being offered at Hay Creek due to higher heat content and lower stripping ratios.

BLM completed an economic evaluation of the Belco and Hay Creek tracts in 1994 which concluded that neither tract would have attracted a bonus bid in 1994. That

¹Belco estimated that the Buffalo lease contained three coal seams: Healy, Timar, and U-Cross, with a total in-place reserve of about 512 million tons. In the interest of providing comparisons for exchange purposes this number was pared to a five to one stripping ratio.

report stated that the Belco lease would not attract a bonus bid in the foreseeable future, while the Hay Creek tract could potentially attract a competitive bid in 2014. Under BLM's appraisal, neither tract would attract a bonus bid at this time, and for lease exchange purposes are considered of equal value.

The proposed exchange area lies within the decertified Powder River Federal Coal Production Region (PRFCPR). Although the PRFCPR was decertified as a federal coal production region in January 1990, the Regional Coal Team (RCT) has remained active and has reviewed proposed coal leasing in the region. The Powder River RCT was briefed of the exchange proposal at its February 23, 1999 meeting in Billings, Montana.

This EA satisfies the planning and environmental review portion of the federal coal leasing process. It has been prepared to assist the BLM manager in making a decision on the proposed lease exchange, to provide a basis for public review, to comply with the requirements of the National Environmental Policy Act of 1969 (NEPA; 42 USC §§4321, et seq. [1970]), and to address the findings relating to the established criteria for determining public interest. The Office of Surface Mining Reclamation and Enforcement (OSM) is a cooperating agency in this EA. They will use appropriate portions of this analysis in meeting their NEPA responsibilities if this exchange tract is ultimately leased and a mining and reclamation plan is submitted for approval by the Secretary of the Interior.

PURPOSE AND NEED

The purpose and need for the exchange is threefold: to comply with the 1978 statute; to comply with the United States Department of the Interior (USDI), United States Geological Survey (USGS) and Belco Petroleum Corporation (Belco) agreement concluded on March 1, 1982; and, to respond to the remand by the IBLA dated December 5, 1997 (IBLA 94-684). The 1982 agreement calls for the BLM to prepare an environmental assessment (EA) on the exchange of federal coal for Belco (now Enron) lease W-0322794 encumbered by Interstate Highway 90 (I-90). Enron Oil and Gas Company, a Delaware corporation (Enron), acquired all of Belco Petroleum Corporation's interests.

The authority for the Bureau of Land Management (BLM) to enter into and consummate this coal lease exchange is Public Law (PL) 95-554, commonly called the I-90 Exchange Act of 1978. BLM is conducting this coal lease exchange under the regulations at 43 Code of Federal Regulations (CFR) 3435. BLM's proposal is to exchange a federal coal lease on a portion of the Hay Creek tract for lease exchange rights that Enron was entitled to retain by court order by US District Judge Alan Johnson when lease W-0322794 terminated in 1986.

This EA addresses environmental consequences of the proposed exchange of federal coal lease rights between Enron and BLM. It identifies and addresses environmental

consequences that would be expected to occur if a lease exchange is completed. This assessment also addresses the findings relating to the established criteria for determining public interest.

FEDERAL COAL LEASING ACTIVITY

Nine leases-by-application (LBAs) have been issued in the Wyoming portion of the PRFCPR since the region was decertified (table 1-1). There are currently four pending and one rejected coal LBAs in the PRFCPR. The pending and rejected LBAs in the region are summarized in table 1-2.

**TABLE 1-2
PENDING OR REJECTED LBAs, POWDER RIVER BASIN, WYOMING**

LBA/Lease Number/ Applicant Mine	Application Date	Acreage	Minable Coal (tons)	Status
<i>PENDING</i>				
Horse Creek WYW141435 Antelope	02/14/97	2,837.91	356,500,000	Environmental impact statement (EIS) in preparation
Belle Ayr WYW141568 Belle Ayr	03/20/97	1,579.00	200,000,000	PRRCT reviewed on 04/23/97
North Jacobs Ranch WYW146744 Jacobs Ranch	10.02.98	4,821.00	519,000,000	PRRCT reviewed on 02/23/99
Total Pending		9,237.91	1,075,500,000	
<i>REJECTED</i>				
New Keeline WYW138975 New start mine	05/13/96	7,841.00	675,000,000	
Total Rejected		7,841.00	675,000,000	

CONFORMANCE WITH LAND USE PLAN

The BLM's principal authority to manage public lands is established by the Federal Land Policy and Management Act of 1976 (FLPMA; PL 94-579, 43 USCA §§ 1701-1782 [Supp. 1977]). Under this act, the BLM is responsible for managing resources on public lands in a manner that maintains or improves them. The BLM planning regulations are set forth in 43 CFR 1600. The Buffalo Field Office's resource management plan (RMP) and its associated EIS is the plan which governs the

**TABLE 1-1
LBAs SOLD IN THE POWDER RIVER BASIN, WYOMING**

LBA/Lease Number/ Applicant Mine	Applicant Date/ Effective Date	Acreage	Minable Coal (tons)	Successful Bid Amount	Successful Bidder (mine)
Jacobs Ranch/WYW117924 Jacobs Ranch	10/10/89 / 10/01/92	1,708.620	147,423,560	\$ 20,114,930.00	Jacobs Ranch
West Black Thunder/WYW118907 Black Thunder	12/22/89 / 10/01/92	3,492.495	429,048,216	\$ 71,909,282.69	Black Thunder
North Antelope-Rochelle WYW119554	03/02/90 / 10/01/92	3,064.040	403,500,000	\$ 86,987,765.00	North Antelope-Rochelle
West Rocky Butte/WYW122586 Rocky Butte	12/04/90 / 01/01/93	463.205	56,70,000	\$ 16,500,000.00	Rocky Butte
Eagle Butte/WYW124783 Eagle Butte	07/25/91 / 08/01/95	1,059.175	166,400,000	\$ 18,470,400.00	Eagle Butte
Antelope/WYW128322 Antelope	01/29/92 / 02/01/97	617.200	60,364,000	\$ 9,054,600.00	Antelope
North Rochelle/WYW127221 North Rochelle	07/22/92 / 01/01/98	1,481.930	157,610,000	\$ 30,576,340.00	North Rochelle
Powder River/WYW136142 North Antelope-Rochelle	03/23/95 / 09/01/98	4,244.225	532,000,000	\$109,596,500.00	North Antelope-Rochelle
Thundercloud/WYW136458 Jacobs Ranch	04/14/95 / 01/01/99	3,545.503	412,000,000	\$158,000,008.50	Black Thunder
TOTALS		19,656.393	2,365,045,776	\$521,209,829.19	

management of lands and minerals in Campbell County (USDI, BLM 1985). The planning area consists of Campbell, Johnson, and Sheridan counties. The Proposed Action complies with the current land use plan.

A buffer zone around Gillette where coal leasing is not allowed was established at the request of the city in 1979, when the Buffalo Management Framework Plan was first amended. The Gillette buffer zone was carried forward into the Buffalo RMP (USDI, BLM 1985). The purpose of the buffer zone, which extends 3 miles beyond the Gillette Planning District, is to allow for community expansion and open space (map 1-2). The Buffalo RMP states that new leasing is not allowed within the 3-mile buffer zone, although there are pre-existing leases within it along the north and east boundaries. The Buffalo RMP was amended in 1988 to allow limited coal leasing within the buffer zone where coal adjacent to existing mines would be bypassed if leasing was not allowed within the buffer zone and where coal leasing would not conflict with city planning. The Hay Creek lease exchange tract is about 7 miles north of the buffer zone around Gillette; therefore, it is not affected by this planning decision.

The coal leasing unsuitability criteria are listed in 43 CFR 3461. In the Buffalo RMP, these criteria were applied to an area identified as having high to moderate coal development potential (USDI, BLM 1985, map 9). The Hay Creek Tract was included within the area identified as having high to moderate coal development potential. Table 1-3 summarizes the unsuitability findings for the Hay Creek Tract; column 1 summarizes the unsuitability criteria, column 2 describes the findings for the area of high to moderate coal potential, and column 3 summarizes the findings for the Hay Creek lease exchange tract. The application of the unsuitability criteria was reviewed jointly by the BLM and the US Department of Agriculture (USDA), Forest Service (FS) in 1996. Those results are being added to the Buffalo RMP in order to keep that plan current, but they have not yet been approved. Those findings were also reviewed for the Hay Creek lease exchange tract. None of the lands located on the tract have been found unsuitable for leasing; therefore, the tract is available for further consideration for leasing.

PUBLIC INTEREST DETERMINATION

BLM's policy requires coal lease exchanges to be in the public interest. Seven public interest factors, listed in BLM Manual 3435, are analyzed. A coal lease exchange is considered to be in the public interest if the cumulative effect of the factors are positive. The IBLA dealt with these issues in depth in IBLA 94-684. The Board provided detailed instructions to the BLM for determining whether the Belco lease exchange is in the public interest. *On December 5, 1997, the IBLA issued a decision concluding that the public interest favors completing Belco's coal lease exchange.*

**TABLE 1-3
VALIDATION OF UNSUITABILITY CRITERIA FOR THE HAY CREEK TRACT**

Unsuitability Criteria	Findings from the BRA RMP ^a	Validation for the Hay Creek Tract
<p>1. <i>Federal Land Systems.</i> All federal lands included in the following systems are unsuitable for leasing: National parks, National wildlife refuges, National Systems of trails, National wilderness preservation system, National wild and scenic rivers, National recreation lands, lands acquired through the Land and Water Conservation Fund, National forests, and federal lands in incorporated cities and towns.</p>	<p>None of the listed federal land categories are present within the Buffalo coal development review area.</p>	<p>Not applicable to the tract.</p>
<p>2. <i>Rights-of-way (ROW) and Easements.</i> Federal lands that are within ROWs or easements or within surface leases for residential, commercial, industrial, or other public purposes, on federally owned surface are unsuitable for leasing.</p>	<p>ROWs and buffers for mainline railroads, I-25 and I-90 were declared unsuitable.</p>	<p>None of these ROWs are on the tract; the area is available for further consideration.</p>
<p>3. <i>Dwellings, Roads, Cemeteries, and Public Buildings.</i> Federal lands within 100 feet of a right-of-way of a public road or a cemetery or within 300 feet of any public building, school, church, community, or institutional building, public park, or an occupied dwelling.</p>	<p>Within the proposed lease exchange area there were 390 acres around dwellings that were considered unsuitable.</p>	<p>There are no buildings, road, or cemeteries that would make the Hay Creek tract unavailable for further consideration.</p>
<p>4. <i>Wilderness Study Areas (WSA).</i> Federal lands designated as wilderness study areas are unsuitable while under review for possible wilderness designation.</p>	<p>A portion of the Fortification Creek WSA is within the review area but not near the Hay Creek tract.</p>	<p>There are no unsuitable findings; the tract is available for further consideration.</p>
<p>5. <i>Lands with Outstanding Scenic Quality.</i> Scenic federal lands designated by visual resource management analysis Class I (outstanding visual quality or high visual sensitivity) but not currently on the National Register of Natural Landmarks are unsuitable.</p>	<p>No lands in the review area meet the scenic criteria as outlined.</p>	<p>There are no unsuitable findings; the tract is available for further consideration.</p>
<p>6. <i>Land Used for Scientific Study.</i> Federal lands under permit by the surface management agency and being used for scientific studies involving food or fiber production, natural resources, or technology demonstrations are unsuitable for the duration of the study except where mining would not jeopardize the purpose of the study.</p>	<p>No lands in the review area are under permit.</p>	<p>There are no unsuitable findings; the tract is available for further consideration.</p>

Unsuitability Criteria	Findings from the BRA RMP ^a	Validation for the Hay Creek Tract
<p>7. <i>Historic Lands and Sites</i>. All publicly or privately owned places which are included in or eligible for inclusion in the National Register of Historic Places (NRHP) and an appropriate buffer zone are unsuitable. Sites with potential for listing on the NRHP will be reviewed with the State Historic Preservation Office (SHPO) for acceptability for mining if they are under consideration for leasing.</p>	<p>On the basis of consultation with the SHPO there were no unsuitable findings under this criteria in the review area. No sites in the area are listed on the NRHP.</p>	<p>There are no unsuitable findings; the tract is available for further consideration.</p>
<p>8. <i>Natural Areas</i>. Federal lands designated as natural areas or National Natural Landmarks are unsuitable.</p>	<p>No lands in the Hay Creek tract are designated as natural areas or as National Natural Landmarks.</p>	<p>There are no unsuitable findings, and the Hay Creek tract is not unsuitable for mining.</p>
<p>9. <i>Critical Habitat for Threatened or Endangered (T&E) Plant and Animal Species</i>. Federally designated critical habitat for T&E plant and animal species and scientifically documented essential habitat for T or E species are unsuitable.</p>	<p>There is no habitat meeting federally designated criterion for T&E plant or animal species within the Hay Creek tract.</p>	<p>There are no unsuitable findings, and the Hay Creek tract is not unsuitable for mining.</p>
<p>10. <i>State Listed Species</i>. Federal lands containing habitat determined to be critical or essential for plant or animal species listed by a state pursuant to state law as T&E shall be considered unsuitable.</p>	<p>Wyoming does not maintain a state list of T&E species of plants or animals. Therefore, this criterion does not apply.</p>	<p>There are no unsuitable findings, and the Hay Creek tract is not unsuitable for mining.</p>
<p>11. <i>Bald or Golden Eagle Nests</i>. An active bald or golden eagle nest and appropriate buffer zone are unsuitable unless the lease can be conditioned so that eagles will not be disturbed during breeding season or unless golden eagle nests will be moved.</p>	<p>There are no eagle nests or buffer zones in the Hay Creek tract.</p>	<p>There are no unsuitable findings, and the Hay Creek tract is not unsuitable for mining.</p>
<p>12. <i>Bald and Golden Eagle Roost and Concentration Areas</i>. Bald and golden eagle roost and concentration areas on federal lands used during migration and wintering are unsuitable unless mining can be conducted in such a way as to ensure that eagles shall not be adversely disturbed.</p>	<p>No golden eagle roost or concentration areas occur on the Hay Creek tract. Mining planned in the review area is not likely to jeopardize the continued existence of the bald eagle. Coal leasing can occur and adequate protection can be provided.</p>	<p>There are no unsuitable findings, and the Hay Creek tract is not unsuitable for mining.</p>
<p>13. Federal lands containing active falcon (excluding kestrel) cliff nesting sites and a suitable buffer zone shall be considered unsuitable unless mining can be conducted in such a way as to ensure the falcons will not be adversely affected.</p>	<p>No cliff nesting sites or buffer zones occur in the Hay Creek tract.</p>	<p>There are no unsuitable findings, and the Hay Creek tract is not unsuitable for mining.</p>
<p>14. <i>Habitat for Migratory Bird Species</i>. Federal lands which are high priority habitat for migratory bird species of high federal interest shall be considered unsuitable unless mining can be conducted in such a way as to ensure that migratory bird habitat will not be adversely affected during the period it is in use.</p>	<p>No high priority habitat for migratory bird species of high federal interest occurs on the Hay Creek tract.</p>	<p>There are no unsuitable findings, and the Hay Creek tract is not unsuitable for mining.</p>

Unsuitability Criteria	Findings from the BRA RMP ^a	Validation for the Hay Creek Tract
<p>15. <i>Fish and Wildlife Habitat for Resident Species.</i> Federal lands which the surface management agency and state jointly agree are fish and wildlife habitat of resident species of high interest to the state, and which are essential for maintaining these priority wildlife species, shall be considered unsuitable.</p>	<p>Sage grouse leks were found near the Hay Creek tract. However, methods of mining can be developed which will not have a significant long-term impact on the grouse or their habitat. Therefore, the areas involved in leks and buffer zones are not unsuitable.</p>	<p>There are no unsuitable findings, and the Hay Creek tract is not unsuitable for mining.</p>
<p>16. <i>Floodplains.</i> Federal lands in riverine, coastal, and special floodplains shall be considered unsuitable unless stipulated methods of mining can be undertaken without substantial threat of loss of life or property.</p>	<p>After consultation with the USGS, it was determined that floodplains can be mined with site-specific stipulations and resource protection safeguards to be developed during mining and reclamation planning. Therefore, all lands within the review area are available for further consideration.</p>	<p>There are no unsuitable findings; the tract is available for further consideration.</p>
<p>17. <i>Municipal Watersheds.</i> Federal lands which have been committed by the surface management agency to use as municipal watersheds shall be considered unsuitable.</p>	<p>There are no municipal watersheds within the review area.</p>	<p>There are no unsuitable findings; the tract is available for further consideration.</p>
<p>18. <i>National Resource Waters.</i> Federal lands with national resource waters, as identified by the states in their water quality management plans, and 1/4-mile buffer zones shall be considered unsuitable.</p>	<p>There are no national resource waters within the review area.</p>	<p>There are no unsuitable findings; the tract is available for further consideration.</p>
<p>19. <i>Alluvial Valley Floors.</i> All lands identified by the surface management agency, in consultation with the state, as AVFs where mining would interrupt, discontinue or preclude farming, are unsuitable. Additionally, when mining federal lands outside an AVF would damage the quality or quantity of water in surface or underground systems that would supply AVFs, the land shall be considered unsuitable.</p>	<p>Lands along prominent drainages were considered potential AVFs pending a final determination by the state. These lands are placed in an "available pending further study" category and are not considered unsuitable.</p>	<p>Potential AVFs on the Hay Creek tract are available pending further study and are not considered unsuitable.</p>
<p>20. <i>State or Indian Tribe Criteria.</i> Federal lands to which is applicable a criterion proposed by the state or Indian tribe located in the planning area and adopted by rulemaking by the Secretary are unsuitable.</p>	<p>The state has no applicable criteria and there is no Indian tribe located in or near the planning area. Therefore, there is no unsuitability finding.</p>	<p>Various tribal entities were notified during the scoping process. None expressed concerns; thus, tract is available for further consideration</p>

^aUSDI, BLM 1985.

The specific public interest factors are listed below followed by BLM's public interest determination.

Public Interest Factor 1. The offered lease tract and the existing lease tract are of equal value.

BLM Determination. The IBLA determined that the exchange was equal value. Their December 5, 1997, decision stated at 141 IBLA 363, “. . . under BLM's bonus evaluation, both tracts are equal in value. . . .” An economic evaluation of the Hay Creek tract and the Belco lease (W-0322974) was conducted by BLM in 1994. This evaluation concluded that neither tract would have attracted a competitive bid at that time. Market conditions and competition for coal of the quality at either Hay Creek or the original Belco lease have not changed appreciably since 1994. The tract offered for this proposed exchange is the southeast portion of Hay Creek and has not been evaluated individually. It is situated favorably to be mined as part of the existing Buckskin Mine but is not needed to maintain planned production at that mine in the next ten years. **This factor is positive based on available information.**

Public Interest Factor 2. The exchange serves a national resource management or protection need.

BLM Determination. BLM's 1994 decision determined that the exchange would not serve any national resource management or protection needs. The IBLA, at 141 IBLA 363, found that determination in error. The I-90 Exchange Act was enacted, quoting from the legislative history of the Act, to “eliminate a dispute, possible litigation, and a costly rerouting of the existing roads which might occur if the existing lease is developed.” The Board stated, “In addition, its purpose was described as authorizing the exchange of existing coal rights for Federal leases in areas where social, economic and environmental aspects of development will be more acceptable. . . .” The Board went on, “. . . the Department was conceding that national resource management favored locating coal mining operations in the area near Gillette, Wyoming rather than around Buffalo, Wyoming.” **The IBLA's finding for this factor indicates the public interest is positive for the Belco exchange.**

Public Interest Factor 3. The exchange would not result in the acquisition by the federal government of a coal lease tract of no present value.

BLM Determination. Technically, the federal government already acquired the original Belco lease when it was relinquished in 1986. However, exchange rights were retained by Belco at that time. This exchange will clear that encumbrance from the original lease. Since the government has already

acquired this lease, this factor was deemed neutral by the IBLA (see 141 IBLA 363) in determining the public interest.

Public Interest Factor 4. The offered lease tract does not have significant competitive coal leasing potential.

BLM Determination. The Board concluded that BLM did not properly apply this criterion in its 1994 decision. The IBLA found, “. . . under the criterion properly applied, it is a positive element in favor of an exchange if the offered tract does not have significant competitive coal leasing potential. . . . This criterion is a positive because the Hay Creek tract does not have significant competitive coal lease potential.” The 1994 evaluation of the Hay Creek tract showed that there are some projections which indicate some slight possibility that the Hay Creek tract might be competitive after 2014. The offered lease exchange tract is positioned to be mined by the Buckskin Mine, but it is not needed to maintain planned production at that mine in the next ten years. Some competitive potential could be speculated, but there is no evidence to show a competitive demand for this reserve during the ten-year diligent development term of the proposed federal coal lease. **The Board’s conclusion indicates the public interest is positively impacted by exchange.**

Public Interest Factor 5. Comments received from the state, RCT, local government, and the public generally support the exchange as filling a public need, such as environmental protection or local economic development (this criterion was updated and deemed positive with all oral and written comments tending to favor the exchange with an exception of two ranchers not opposed to the exchange but concerned over water issues);

and,

Public Interest Factor 6. The exchange conforms to the policies, goals and objectives of NEPA as determined through the environmental analysis process, including an examination of all available alternatives to the exchange.

BLM’s Determination. The Board stated after reviewing BLM’s 1994 decision that, “It is impossible from the administrative record to identify any of the letters or comments to which the Acting State Director refers,” The Board further stated, “While it could easily be concluded that the public comment did not support a tract for tract exchange, since not even Belco advocated that position, the administrative record before the Board does show some support for an exchange for a redelineated Hay Creek Tract.” The current exchange proposal does involve a redelineated Hay Creek tract.

BLM has circulated a draft environmental document and received additional public comments on the redelineated Hay Creek tract coal lease exchange proposal through the environmental process. Scoping comments received indicate general support of coal mining in this area. Further comments on the draft EA support mining the exchange tract. Coal mining is important to the local and regional economy, and the Belco coal lease exchange may eventually help stabilize current mining operations after 2014.

Scoping comments and comments on the draft EA raised concerns over:

1. Impacts of water discharged from the mine on agricultural lands.
2. Sage grouse and threatened and endangered plant and animal species habitat.
3. The cumulative impacts of coal development on air quality.
4. The recognition of rights to coal bed methane;
5. The affects of this exchange on adjacent property rights;
6. The impact of this exchange on the future competitive value and future bonus bids on the entire Hay Creek tract;
7. The loss of bonus bid on the proposed exchange tract; and,
8. The authority of the federal government under the US Constitution to own or manage minerals.

The environmental analysis identified and examined all available alternatives to the exchange and has addressed the above scoping concerns and comments received on the draft environmental assessment. As determined through the environmental analysis process, the exchange conforms to the requirements, policies, goals, and objectives of NEPA. Therefore, these factors are deemed to be met.

Public Interest Factor 7. The offered lease tract and the existing lease tract are located in the same state.

BLM Determination. Both tracts are located in Wyoming, and the public's interest, as defined by Public Interest Factor 7, is served by the exchange.

Finding by BLM

In summary, the finding is that the cumulative effect of the seven public interest factors is positive. The IBLA concluded that the public interest favors completing an exchange as described in WYW0322794 referred to as the Belco/Hay Creek redelineated tract. On remand and after thorough analysis, BLM concurs with the Board's conclusion. This exchange will complete the exchanges authorized by the I-90 Exchange Act and will fulfill the obligations of BLM and Belco. If mining commences on the new lease within ten years, the state and federal governments will receive royalties. If not, the lease will terminate and will be available for competitive leasing after 2010. The state of Wyoming supports the exchange. The congressional delegation unanimously supports the exchange. The Regional Coal Team will be consulted before a final determination is made. No additional public comments were received as part of the NEPA analysis.

RELATIONSHIP TO STATUTES, REGULATIONS, OR OTHER PLANS

The Enron/BLM lease exchange has been initiated and is being processed and evaluated under the following authorities: Mineral Leasing Act of 1920 (MLA) as amended; Multiple-Use Sustained Yield Act of 1960; NEPA; Federal Coal Leasing Amendments Act of 1976 (FCLAA; PL 94-377, 90 Stat. 1013; 30 USC §§181-352 [1988]); the Act of October 30, 1978 (92 Stat. 2073-2075) to further amend the Mineral Leasing Act of 1920 (previously cited as PL 95-554, commonly called the I-90 Exchange Act); FLPMA; and, the Surface Mining Control and Reclamation Act of 1977 (SMCRA; 30 USC §§1201-1328, Supp. 1 1977).

Leasing federal coal is the responsibility of the BLM under FCLAA. This EA has been prepared to evaluate the potential impacts which could be expected to occur if the proposed lease is issued and mined. If the proposed Hay Creek lease exchange tract is leased, the lessee would be required to obtain a surface coal mining permit issued by the Wyoming Department of Environmental Quality (WDEQ) and the OSM before mining the coal. As a part of that process, a mining and reclamation plan must be developed. Specific impacts which would occur during the mining and reclamation of the tract would be addressed in that proposed mining and reclamation plan and specific mitigation for any anticipated impacts would be prescribed.

After a coal lease is issued, SMCRA and a cooperative agreement entered into gives OSM the primary responsibility to administer programs that regulate surface coal mining operations and the surface effects of underground coal mining operations. Pursuant to section 503 of SMCRA, the WDEQ developed, and in November 1980 the Secretary of the Interior approved, a permanent program authorizing WDEQ to regulate surface coal mining operations and surface effects of underground mining on nonfederal lands within Wyoming. In January 1987, pursuant to section 523(c) of SMCRA, WDEQ entered into a cooperative agreement with the Secretary of the

Interior authorizing WDEQ to regulate surface coal mining operations and surface effects of underground mining on federal lands within the state.

Pursuant to the cooperative agreement, a federal coal leaseholder in Wyoming must submit a permit application package (PAP) to OSM and WDEQ for any proposed coal mining and reclamation operations on federal lands in the state. WDEQ reviews the PAP to ensure that the permit application complies with the permitting requirements and that the coal mining operation will meet the performance standards of the approved Wyoming state permanent program. OSM, BLM, and other federal agencies review the PAP to ensure that it complies with the terms of the coal lease, the MLA, NEPA, and other federal laws and their attendant regulations. If the PAP does comply, WDEQ issues the applicant a permit to conduct coal mining operations. OSM recommends approval, approval with conditions, or disapproval of the MLA mining plan to the Assistant Secretary of the Interior, Land and Minerals Management. Before the mining plan can be approved, the BLM must concur with this recommendation.

WDEQ enforces the performance standards and permit requirements for reclamation during the mine's operation and has primary authority in environmental emergencies. OSM retains oversight responsibility for this enforcement. BLM has authority in those emergency situations where WDEQ or OSM cannot act before environmental harm or damage occurs.

There is a considerable amount of permitting in addition to the coal mining permit required before mining can begin. State and federal regulatory agencies which must be consulted before mining and the additional permits that may be needed are shown on table 1-4.

PUBLIC PARTICIPATION

The Governor of Wyoming was notified by letter on January 26, 1999 that the BLM was initiating a federal coal lease exchange with Enron. The Governor was provided an opportunity to object to the proposal. No objections were received.

The Enron/BLM lease exchange was presented to the Powder River RCT at their most recent annual public meeting (February 23, 1999 in Billings, Montana). The BLM presented a briefing on the status, history, and initiation of formal negotiation of this exchange proposal. The RCT acknowledged BLM's actions to date on this proposal at that meeting. The regulations at 3435.3-3 require that the authorized officer consult with the RCT before initiating formal negotiation of the exchange, and again before finalizing the exchange. The RCT will be consulted again before any final action on this proposal.

**TABLE 1-4
FEDERAL AND STATE AGENCIES AND PERMITTING REQUIREMENTS**

AGENCY	LEASE/PERMIT/ACTION
FEDERAL	
Bureau of Land Management	Coal lease Resource recovery and protection plan Scoria sales contract Exploration drilling permit
Office of Surface Mining Reclamation and Enforcement	Mining plan approval document preparation SMCRA oversight
Department of the Interior	Mining plan approval
Mine Safety and Health Administration	Explosive's manufacturer's license Explosive use and storage permit
Bureau of Alcohol, Tobacco, and Firearms	Explosive's manufacturer's license Explosive use and storage permit
Federal Communication Commission	Radio permit: ambulance Mobile relay system radio license
Nuclear Regulatory Commission	Radioactive byproducts material license
Army Corps of Engineers	Authorization of impacts to wetlands and other waters in the US
Federal Aviation Administration	Radio tower permits
Department of Transportation	Hazardous waste shipment notification
STATE	
State Land Commission	Coal lease Scoria lease
Department of Environmental Quality, Land Quality Division	Permit and license to mine
Department of Environmental Quality, Air Quality Division	Air quality permit to operate Air quality permit to construct
Department of Environmental Quality, Water Quality Division	National pollutant discharge elimination system water discharge permit Permit to construct sedimentation pond Authorization to construct septic tank and leach field Authorization to construct and install a public water supply and sewage treatment system
Department of Environmental Quality, Solid Waste Management Program	Solid waste disposal permit--permanent and construction
State Engineer's Office	Appropriation of surface water permits Appropriation of groundwater permits
Industrial Siting Council	Industrial siting certificate of nonjurisdiction
Department of Health	Radioactive material certificate of registration

On March 18, 1999, a press release announcing a call for issues, concerns, and information related to this proposal was issued to newspapers of general circulation in northeastern Wyoming. On March 19, 1999, more than 500 scoping notices requesting issues, concerns, and information related to this proposal were mailed to federal and state agencies, local governments, conservation groups, commodity groups, and individuals who may be impacted by this lease exchange proposal. This scoping period was open until April 23, 1999. Preliminary scoping for developing this EA was based on the issues considered in the previously prepared EAs, EISs, and detailed mine permits in the Powder River coal region.

Seven written comments were received during the scoping period for the exchange proposal. Those responding were John Dilts; Byron and Marge Oedekoven, B Bar M Ranches; US Fish and Wildlife Service; Jeffrey Jones, Lance Oil and Gas Company; Troy Mader, Common Man Institute; Tim McCann; and the Office of Federal Land Policy, State of Wyoming.

Some comments were supportive of the exchange, noting that coal development was good for the local and state economy, that this exchange would make good use of current mining labor and equipment, and that with current reclamation such as is occurring the land and wildlife would not be harmed and, in some cases, would be improved.

The need to look at impacts to threatened, endangered, and sensitive wildlife was emphasized. The conflict of coal development and coal bed methane (CBM) development was also pointed out. It was suggested that a new coal lease should address the existing CBM rights, and that impacts to air quality also need to be looked at closely.

It was suggested that the effect this exchange would have on private mineral and property rights needs to be addressed. The commentor requested a letter discussing the legal authority from the US Constitution for the federal government to own minerals.

A comment was received that the proposed lease exchange area may not be mined in the foreseeable future. The commentor said the economic impacts of this possibility needs to be addressed. The state of Wyoming would not receive the bonus bid on this lease that they would be entitled to if the lease were sold competitively. This exchange may also lower the value of the remaining Hay Creek tract if leased separately. On the other hand, if the exchange is not made and the lease not developed, no royalties, taxes, or rentals will accrue to the state of Wyoming. It should be noted that this author supported the exchange in a communication received on the draft EA (see comments of Lance Cook, State Geologist).

Issues identified and concerns expressed during the scoping period have been

addressed in this EA where possible.

The public comment period began July 26, 1999, when the draft EA was mailed to the public. The public hearing and availability of the EA were announced in the *Federal Register* on July 22, 1999. The hearing was held on August 17, 1999 in Gillette, Wyoming with 17 people attending; of those, five people provided testimony (chapter 5). In addition to the comments at the hearing, 15 comment letters were received. These comment letters and responses are also included in chapter 5. This final EA includes revisions made in response to the comments received on the draft document.