

# **RECORD OF DECISION**

**North Maysdorf Coal Lease Application  
(WYW154432)**

**and**

**South Maysdorf Coal Lease Application  
(WYW174407)**

Wyoming State Office - Casper Field Office



**June 2007**

**MISSION STATEMENT**

It is the mission of the Bureau of Land Management to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations.

**U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT**

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APPLICATION (WYW174407)**

**CAMPBELL COUNTY, WYOMING**

**U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
RECORD OF DECISION  
NORTH MAYSDORF LEASE BY APPLICATION  
WYW154432  
AND  
SOUTH MAYSDORF LEASE BY APPLICATION  
WYW174407  
CAMPBELL COUNTY, WYOMING**

**INTRODUCTION**

Cordero Mining Company, a directly held subsidiary of Rio Tinto Energy America (formerly Kennecott Energy and Coal Company), filed an application with the Bureau of Land Management (BLM) to lease a maintenance tract of Federal coal for the Cordero Rojo Mine on September 20, 2001. The application was made pursuant to the Leasing on Application regulations found in the Code of Federal Regulations (CFR) at 43 CFR Subpart 3425. In the application, the tract is referred to as the Maysdorf Lease By Application (LBA) Tract.

A maintenance tract is a tract of Federal coal that is adjacent to, and can be mined by, an existing active coal mine. The Maysdorf LBA Tract is adjacent to the Cordero Rojo Mine, which is located in northern Campbell County, approximately twelve miles north of Gillette, Wyoming (Appendix 1-Figure 1). The Cordero Rojo Mine is comprised of the former Cordero Mining Company (CMC) Mine and the contiguous former Caballo Rojo, Inc. (CRI) Mine.

As applied for, the Maysdorf coal lease application area consists of three non-contiguous parcels of Federal coal, which include a total of approximately 2,219.390 acres (Appendix 1 - Figure 2). The applicant currently estimates that, as applied for, the tract includes approximately 230.3 million tons of mineable Federal coal reserves in Campbell County, Wyoming. One alternative in the environmental impact statement (EIS) prepared to evaluate the impacts of leasing the Federal coal included in the application, Alternative 3, analyzes splitting the application area into two tracts and holding a separate competitive sealed-bid sale for each tract. Under Alternative 3, the North Maysdorf LBA Tract consists of the northernmost parcel of Federal coal, while the South Maysdorf LBA Tract consists of the two southern parcels of Federal Coal. The North Maysdorf LBA Tract was assigned case file number WYW154432 and the South Maysdorf LBA Tract was assigned case file number WYW174407.

The Proposed Action analyzed in the Maysdorf Coal Lease Application EIS is to hold a competitive sealed-bid lease sale and issue a lease for the tract as applied for. According to the applicant, the Cordero Rojo Mine needs the Federal coal included in the Maysdorf coal lease area in order to extend the life of the mine. The applicant would recover the Federal coal using the same methodology, machinery, and facilities that are currently being used to recover the coal in the existing Cordero Rojo Mine coal leases. Cordero Mining Company anticipates that, if they

acquire a lease for the Federal coal included in the Maysdorf coal lease application, the productive life of the Cordero Rojo Mine would be extended by about six years.

The Cordero Rojo Mine has a permit approved by the Wyoming Department of Environmental Quality Land Quality Division (WDEQ/LQD) and a Mineral Leasing Act (MLA) mining plan approved by the Secretary of the Interior to conduct surface coal mining operations on their existing coal leases. The mine also has an air quality permit approved by the Air Quality Division of the Wyoming Department of Environmental Quality (WDEQ/AQD) which allows mining of up to 65 million tons of coal per year through year 2008.

## BACKGROUND

### The Lease By Application Process

Under the LBA process in the Powder River Basin, maintenance tracts are nominated for leasing by companies with adjacent existing mines. To process an LBA the BLM must evaluate the quantity, quality, maximum economic recovery (MER) and fair market value (FMV) of the Federal coal. The BLM must also evaluate the environmental and socioeconomic impacts of leasing and mining the Federal coal in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA). BLM prepared the *Maysdorf Coal Lease Application Environmental Impact Statement* (EIS) to evaluate the impacts of leasing the Federal coal included in the Maysdorf coal lease application. The EIS evaluates the impacts of mining the Maysdorf LBA Tract because mining is a logical consequence of issuing a lease for a maintenance tract, but leasing the Maysdorf LBA Tract would not authorize the lessee to begin mining operations on the tract.

The Office of Surface Mining Reclamation and Enforcement (OSM) is a cooperating agency on the EIS because OSM is the Federal agency which administers programs that regulate surface coal mining in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Wyoming State Planning Office (WSPO) and the WDEQ/LQD are also cooperating agencies on this EIS. WSPO coordinates planning within state agencies and facilitates collaboration among the agencies, the Federal government, other states, the private sector, and the general public. WDEQ has entered into a cooperative agreement with the Secretary of the Interior to regulate surface coal mining operations on Federal and non-Federal lands within the State of Wyoming.

By law and regulation the LBA process is an open, public, and competitive leasing process; bidding is not restricted to the applicant. Cordero Mining Company filed the Maysdorf coal lease application because the area applied for is adjacent to their existing approved mining operations at the Cordero Rojo Mine and the coal can be mined using the existing mine facilities, equipment and employees. In the *Maysdorf Coal Lease Application EIS*, the alternatives analyzed in detail assume that the applicant will be the successful bidder if a competitive sale is held. As shown in

Appendix 1-Figure 1, the northernmost parcel included in the lease application area (the North Maysdorf LBA Tract) is adjacent to another existing surface coal mine (the Belle Ayr Mine) and could be mined as a maintenance tract by that mine.

### **Recent Coal Leasing Activity in the Wyoming Powder River Basin**

Since decertification of the Powder River Federal Coal Region in 1990, seventeen (17) Federal coal leases in Campbell and Converse counties, Wyoming, have been issued after competitive sealed-bid sales using the LBA process. These leases include approximately 44,400 acres and 5.184 billion tons of mineable coal (see Table 1-1, *Maysdorf Coal Lease Application EIS*). Sixteen of the new leases were issued to the following existing mines for the purpose of extending operations at those mines: Jacobs Ranch Mine (2), Black Thunder Mine (3), North Antelope Rochelle Mine (5), Eagle Butte Mine (1), Antelope Mine (3), Buckskin Mine (1) and the former North Rochelle Mine(1). The seventeenth lease, the West Rocky Butte lease, was issued to the Northwestern Resources Company in 1992. They planned to start a new mine to recover the coal included in the Rocky Butte and West Rocky Butte leases. Caballo Coal Company, a subsidiary of Peabody Holding Company, Inc. and operator of the adjacent Caballo Mine, is now the lessee for the Rocky Butte and West Rocky Butte leases.

### **Pending Coal Leasing Applications and Other Proposed Projects in the Wyoming Powder River Basin**

There are twelve pending maintenance lease applications in the Wyoming portion of the Powder River Basin including the Maysdorf LBA Tract (Appendix 1 – Figure 1). The pending lease applications include approximately 4.4 billion tons of Federal coal. In addition to the Maysdorf coal lease application, the pending applications and applicant mines are: Eagle Butte West (*Eagle Butte Mine*), Belle Ayr North (*Belle Ayr Mine*), West Antelope II (*Antelope Mine*), Hilight Field (*Black Thunder Mine*), West Hilight Field (*Black Thunder Mine*), West Coal Creek (*Coal Creek Mine*), Caballo West (*Caballo Mine*), Hay Creek II (*Buckskin Mine*), West Jacobs Ranch (*Jacobs Ranch Mine*), Maysdorf II (*Cordero Rojo Mine*), and Porcupine (*North Antelope Rochelle Mine*).

Oil and gas leasing and development have occurred and are occurring in this area in addition to the ongoing coal leasing and mining. Both conventional and coal bed natural gas (CBNG) wells have been drilled in and around the Cordero Rojo Mine and the Maysdorf coal lease application area. Conventional and CBNG resources are currently being recovered from Federal, State, and private oil and gas leases in this area. Federal oil and gas lease ownership in the Maysdorf coal lease application area is described in Figure 3-17 and Table 3-12 of the final EIS. Table 3-12 was updated between the preparation of the draft and final EIS documents to reflect changes in lease ownership. Federal oil and gas lessees and private interests identified by the applicant were included on the mailing list for the *Maysdorf Coal Lease Application EIS*. BLM received comment letters on the final EIS from one oil and gas operator and one law firm expressing

concerns about the impact that the proposal to lease the Federal coal in the Maysdorf coal lease application area would have on past and potential future conventional oil and gas operations on the tract. These letters and BLM's responses are included in Appendix 2.

The EIS discusses conventional oil and gas development in and around the Maysdorf lease application area, including a summary of the results of an analysis of the conventional oil and gas drilling that has occurred in the area prepared by the BLM Wyoming Reservoir Management Group (WSO-RMG). The EIS identifies the status and location of 18 permitted conventional oil and gas wells within the BLM study area for the Maysdorf coal lease application (Figure 3-17). At the time the draft EIS analysis was prepared, four of those wells were capable of producing. Review of the Wyoming Oil and Gas Conservation Commission well database as of May 2007 did not indicate the presence of additional producing conventional oil and gas wells.

The EIS also discusses CBNG development in and around the Maysdorf lease application area, including a summary of an analysis of CBNG resources in the Maysdorf LBA Tract prepared by the BLM WSO-RMG. The WSO-RMG estimated that, as of 2000, the coal in the Maysdorf coal lease application area had an average content of approximately about 8.3 standard cubic feet of CBNG per ton of coal and the estimated recoverable CBNG resource in the tract at that time was approximately 1.95 billion cubic feet. The EIS identifies the status and location of 28 CBNG wells within the BLM study area for the tract, of which five were producing when the draft EIS was prepared (Figure 3-17). Review of the Wyoming Oil and Gas Conservation Commission well database as of May 2007 did not indicate the presence of additional producing CBNG wells.

There are several mechanisms that can be used to facilitate recovery of the conventional oil and gas and CBNG resources prior to mining if the Federal coal in the tract is leased now:

- BLM will attach a Multiple Mineral Development stipulation to the Federal coal lease which states that BLM has the authority to withhold approval of coal mining operations that would interfere with the development of mineral leases issued prior to the coal lease [see Appendix 3].
- Conventional oil and gas wells must be abandoned while mining and reclamation operations are in progress but could be recompleted or redrilled following mining if the value of the remaining reserves would justify the expense of reestablishing production. The analysis prepared by WSO-RMG indicates that there has been little exploration and development in this area in recent years and that the producing wells within the lease application area have exhausted most of their reserves.
- BLM has a policy in place on CBNG-coal conflicts (BLM Instruction Memorandum No. 2006-153), which directs BLM decision-makers to optimize the recovery of both resources and ensure that the public receives a reasonable return. This memorandum

offers royalty incentives to CBNG operators to accelerate production in order to recover the natural gas while simultaneously allowing uninterrupted coal mining operations. In addition, this memorandum also states that it is the policy of the BLM to encourage oil and gas and coal companies to resolve conflicts between themselves; and when requested, the BLM will assist in facilitating agreements between the companies.

- CBM has been produced in this area since the mid to late-1990s. The analysis prepared by WSO-RMG suggests that most of the economically recoverable CBNG resources in the vicinity of the tract have been recovered from the Wyodak-Anderson zone and that there are insufficient remaining reserves to support additional drilling. This conclusion is further supported by the lack of new CBNG drilling activity on the Maysdorf LBA tract since 1998. Mining of the North Maysdorf LBA Tract and/or the South Maysdorf LBA Tract would not be authorized until the coal lessee has a permit to mine that tract approved by the Wyoming Department of Environmental Quality and a MLA mining plan approved by the Secretary of the Interior. Before the MLA mining plan can be approved, BLM must approve a Resource Recovery and Protection Plan. Prior to approving the Resource Recovery and Protection Plan, BLM can review the status of CBNG and conventional oil and gas development on the tract and the mining sequence proposed by the coal lessee. The permit approval process generally takes the coal lessee several years, during which time CBNG resources can continue to be recovered.
- Prior to mining the Federal coal, the coal lessee can negotiate an agreement with owners and operators of existing oil and gas facilities on the tract, including owners and operators of oil and gas well and pipeline facilities, regarding removal of those facilities prior to mining.

Other proposed projects in the Wyoming Powder River Basin that have advanced to the planning, permitting, or construction stages and that would reasonably be expected to be completed in the foreseeable future include: the Wygen II coal-fired power plant at the Black Hills Corporation energy complex near the Wyodak Mine site in Gillette, Wyoming; the Dry Fork Station Power Plant proposed by Basin Electric Power Cooperative near the Dry Fork Mine, north of Gillette, the Two Elk coal-fired power plant proposed by the North American Power Group (NAPG), which would be located east of the Black Thunder Mine; and a railroad line from the Powder River Basin to Minnesota proposed by Dakota, Minnesota, and Eastern Railroad (DM&E).

The proposed power plants and the DM&E railroad line and the ongoing and proposed oil and gas operations (including CBNG) are separate projects being developed independently of the leasing the Maysdorf coal lease application area. If these other projects are developed as proposed and the Maysdorf lease application area is leased and mined as proposed, there would potentially be some overlap between the environmental and economic impacts of constructing and operating some of those projects and the environmental and economic impacts of mining the Maysdorf LBA Tract. The cumulative effects of all of these projects (the Wygen power plant,

the Two Elk power plant, the Dry Fork Station power plant, the DM&E railroad, the ongoing and proposed oil and gas development and production, and the coal mining that would follow the leasing of Maysdorf lease application area (and the other pending LBA tracts) are described in Chapter 4 of the *Maysdorf Coal Lease Application EIS*. The cumulative impact discussion in the EIS is based on the analyses done for the Powder River Basin Coal Review, which can be viewed on the BLM website at:

[http://www.blm.gov/wy/st/en/programs/energy/Coal\\_Resources/PRB\\_Coal/prbdocs.html](http://www.blm.gov/wy/st/en/programs/energy/Coal_Resources/PRB_Coal/prbdocs.html).

## DECISION

The decision is to select Alternative 3 as described in Chapter 2 of the *Maysdorf Coal Lease Application EIS*. Under Alternative 3, the Maysdorf coal lease application area, as modified by BLM, would be divided into two tracts, referred to as the North Maysdorf LBA Tract and the South Maysdorf LBA Tract. A separate competitive sealed-bid sale would be held for each tract and a lease would be issued to the successful qualified high bidder at each sale, if the highest bid received at each sale meets or exceeds the FMV as determined by the BLM and if all other leasing requirements are met. The competitive lease sales will be held under the regulations found at 43 CFR Subpart 3422, Lease Sales. As described under Alternative 3 in the EIS, the North Maysdorf LBA Tract (WYW154432), as modified by the BLM, includes 445.89 acres more or less and the BLM estimates that the tract contains approximately 54.7 million tons of mineable Federal coal resources in Campbell County, Wyoming. As described under Alternative 3, the South Maysdorf LBA Tract (WYW174407), as modified by the BLM, includes 2,900.24 acres and the BLM estimates that the tract contains approximately 288 million tons of mineable coal.

This decision is in conformance with the *Approved Resource Management Plan for Public Lands Administered by the BLM Buffalo Field Office* (2001, amended 2003). I have incorporated by reference in this decision standard coal lease stipulations addressing compliance with basic requirements of the environmental statutes and have attached BLM special stipulations (Appendix 3).

In the event that the bid or bids submitted at the competitive lease sale of the Maysdorf LBA Tract do not meet or exceed the FMV as determined by the BLM, the BLM may schedule a follow-up sale.

Under Alternative 3, it is assumed that the applicant will be the successful bidder on the both the North Maysdorf LBA Tract and the South Maysdorf LBA Tract and that the coal will be mined, processed and sold by the Cordero Rojo Mine. If the tract is mined, it would be environmentally preferable to mine and reclaim the Maysdorf LBA Tract as a maintenance lease in a logical sequence with the ongoing mining and reclamation operations at an adjacent existing mine. This would be consistent with the analysis of the impacts described in the EIS.

## REASONS FOR THE DECISION

The BLM decision to hold a lease sale for the Federal coal lands included in the Maysdorf coal lease application area is based on careful consideration of a number of factors, including:

- The decision to offer the North Maysdorf LBA Tract (445.89 acres containing approximately 54.7 million tons of mineable Federal coal reserves) and the South Maysdorf LBA Tract (2,900.24 acres containing approximately 288 million tons of mineable Federal coal reserves), in response to the coal lease application received September 20, 2001, is in conformance with the BLM land use plan covering this area.
- The *Maysdorf Coal Lease Application EIS* was prepared in response to an application BLM received to lease a tract of Federal coal to an existing mine in Wyoming. The environmental impacts of this decision were fully disclosed in that EIS. Public comment was addressed in the Final EIS.
- The Cordero Rojo Mine applied for the Maysdorf LBA Tract in order to acquire access to a continuing supply of low sulphur compliance coal that would be sold to power plants for the purpose of generating power. Continued leasing of the low sulphur Powder River Basin coal enables coal-fired power plants to meet Clean Air Act requirements without constructing new power plants, revamping existing plants, or switching to other alternative fuels. Generally, the costs of constructing new power plants, retrofitting or revamping existing plants, or re-tooling and switching to other alternative fuels effect additional costs to energy customers.
- The LBA tract configuration under Alternative 3 provides for maximum economic recovery of the coal resource.
- When an application to lease Federal coal is submitted, the BLM must decide whether to process the application and hold a competitive sealed-bid lease sale for the coal or reject the application and not offer the coal for lease. Regardless of the decision, the BLM must notify the applicant in a timely fashion of its decision. The EIS provides the BLM with the information needed to meet its obligations to respond to an application in a timely fashion.
- A primary goal of the National Energy Policy is to add energy supplies from diverse sources including domestic oil, gas, and coal in addition to hydropower and nuclear power. The BLM recognizes that the continued extraction of coal is essential to meet the nation's future energy needs. As a result, private development of Federal coal reserves is integral to the BLM coal leasing programs under the authorities of the Mineral Leasing Act of 1920, the Federal Land Policy and Management Act of 1976 and the Federal Coal Leasing Amendments Act of 1976.

- The BLM coal leasing program encourages the development of domestic oil, gas, and coal reserves and reduction of the United States' dependence on foreign sources of energy. The leasing and subsequent mining of Federal coal reserves provide the United States, the State of Wyoming, and affected local counties with income in the form of lease bonus payments, lease royalty payments, and tax payments; production of Federal coal also provides the public with a supply of cost-efficient, low sulphur coal for power generation. The alternative selected meets the goals of the National Energy Policy and achieves the objectives of the Federal coal leasing programs managed by the BLM. Federal coal leasing is supported by the Wyoming Governor, the Wyoming legislature, and other State and local officials.
- The U.S. Fish and Wildlife Service has provided written concurrence for leasing the Maysdorf LBA Tract pursuant to section 7(a)(2) of the Endangered Species Act of 1973, as amended (Appendix 4).
- Consultation with the appropriate Native American tribes was initiated in the fall of 2006. Two tribes indicated concerns with disturbance of cultural sites in this area, but no specific sites have been identified as traditional cultural properties by either tribe. BLM is continuing to correspond with these tribes regarding their concerns. National Historic Preservation Act consultation with the Wyoming State Historic Preservation Office will be completed as required during the permitting process, prior to any disturbance of the tract.

## PUBLIC INVOLVEMENT

BLM received the Maysdorf coal lease application on September 20, 2001. On April 29, 2002, the BLM published notice of the receipt of this lease application in the *Federal Register*. Copies of this notice were sent to voting and non-voting members of the Powder River Regional Coal Team (PRRCT), including the governors of Wyoming and Montana, the Northern Cheyenne Tribe, the Crow Tribe, Forest Service, OSM, U.S. Fish & Wildlife Service, U.S. National Park Service, U.S. Geological Survey, and others.

On May 30, 2002 and April 27, 2005, the PRRCT reviewed the Maysdorf coal lease application at public meetings held in Casper and Gillette, Wyoming, respectively. The PRRCT recommended that the BLM process the application. The BLM published a Notice of Intent to Prepare an EIS and a Notice of Scoping in the *Federal Register* on February 1, 2005. Public notices were published in the Gillette News Record on January 25 and February 1, 2005. Scoping notices were mailed to Federal, State and Local government agencies, conservation groups, commodity groups, and individuals who could be impacted by this lease application in January 2005. The mailing list was jointly developed by BLM and the applicant. On February

15, 2005, a public scoping meeting was held in Gillette, Wyoming. The scoping period extended through April 8, 2005.

The *Draft Maysdorf Coal Lease Application EIS* was mailed to the public and other interested parties in May of 2006. On May 26, 2005, the Environmental Protection Agency (EPA) published its Notice of Availability of the Draft EIS in the *Federal Register*. BLM's Notice of Availability and Notice of Public Hearing were also published in the *Federal Register* on May 26, 2006. With the publication of the EPA's Notice of Availability in the *Federal Register*, the 60-day review and comment period on the Draft EIS started on May 26, 2005, and ended on July 25, 2006. A formal public hearing was held on June 13, 2006, in Gillette, Wyoming, to solicit public comment on the Draft EIS, the proposed lease sale, and the FMV and MER of the Federal coal included in the tract. The Final EIS was mailed to the public and other interested parties in April 2007. The EPA published a Notice of Availability of the Final EIS in the *Federal Register* on April 13, 2007; the BLM published a Notice of Availability of the Final EIS in the *Federal Register* April 12, 2007. The availability period for the final EIS ended May 14, 2007.

During the EIS scoping period the BLM received written comments from three entities. The BLM received written comments from five entities on the Draft EIS; they are included, with responses, as Appendix H of the Final EIS. Only the applicant made a formal statement at the April 16, 2003, public hearing. Three written comments were received on the Final EIS; they are included, with BLM responses, in Appendix 2. The written comments and the transcript of the formal hearing are on file at the BLM Casper Field Office and BLM Wyoming State Office, Cheyenne, Wyoming. All comments that were received during the EIS process were considered in the preparation of the Draft and Final EIS documents and in this Record of Decision.

## ALTERNATIVES ANALYZED IN DETAIL

The EIS analyzes four alternatives for the Maysdorf LBA Tract in detail: the Proposed Action, Alternative 1 (the No Action Alternative), and Alternatives 2 and 3. These alternatives are summarized below. A full description of each of the alternatives analyzed in detail may be found in Chapter 2 of the EIS.

### **Proposed Action: Hold a Competitive Sale of Federal Coal Lands as Applied For**

Under the Proposed Action, the lands that were applied for in the Maysdorf LBA Tract would be offered for lease at a competitive sealed-bid sale. As applied for, the tract includes approximately 2,219.39 acres, more or less (see Appendix 1-Figure 2). The applicant estimates that it includes approximately 230.3 million tons of mineable Federal coal. This alternative assumes that the applicant would be the successful bidder on the Maysdorf LBA Tract and that the coal would be mined, processed and sold by the Cordero Rojo Mine.

### **Alternative 1: No Action Alternative**

Under the No Action Alternative, the application to lease the Federal coal included in the Maysdorf LBA Tract would be rejected and the tract would not be offered for lease at this time. Currently permitted mining activity at the adjacent Cordero Rojo Mine will continue, with or without leasing the Maysdorf LBA Tract, and portions of the LBA tract that are adjacent to the existing mine will be disturbed to recover all of the coal in the existing leases. Assuming that this tract will never be leased and coal removal and the associated disturbance will never occur, this alternative would be the environmentally preferable alternative. However, selection of this alternative would not preclude future applications to lease all or part of the Federal coal included in this tract.

### **Alternative 2: Hold a Competitive Sale for a Tract As Modified by BLM to Allow for More Efficient Recovery of the Federal Coal in This Area**

In reviewing the Maysdorf coal lease application, BLM identified a study area, which includes that tract as applied for and approximately 1,368 acres of unleased federal coal adjacent to the western and southern edges of the tract as applied for (Appendix 1-Figure 3a). In delineating the study area, BLM wanted to evaluate whether adding additional unleased federal coal to the tract as applied-for would potentially increase competitive interest in the tract, allow for more efficient recovery of the Federal coal in this area, or reduce the likelihood that some of the remaining unleased Federal coal in this area would be bypassed in the future.

The Final EIS identifies BLM's preferred tract configuration for the Maysdorf coal lease application. Under the preferred tract configuration, BLM determined that adding 1,126.74 acres to the Maysdorf LBA Tract as applied for would allow more efficient recovery of the Federal coal. Under Alternative 2, the coal included in the Maysdorf LBA Tract under BLM's preferred tract configuration would be offered for lease at one competitive sealed-bid coal lease sale.

The total surface included in the tract under BLM's preferred tract configuration under Alternative 2 is 3,346.13 acres more or less. The applicant estimates that the reconfigured tract includes approximately 337.9 million tons of mineable coal.

### **Alternative 3 (Selected Alternative): Hold Two Competitive Sales for Two Tracts As Modified by BLM to Increase Competitive Interest in the Federal Coal and Allow for More Efficient Recovery of the Federal Coal in This Area**

As discussed above, BLM identified a study area in reviewing the Maysdorf coal lease application. BLM's study area includes the tract as applied for and approximately 1,368 acres of unleased federal coal adjacent to the western and southern edges of the tract as applied for, which is shown in Appendix 1-Figure 3a. In delineating the study area, BLM wanted to evaluate whether adding additional unleased federal coal to the tract as applied-for would potentially

increase competitive interest in the tract, allow for more efficient recovery of the Federal coal in this area, or reduce the likelihood that some of the remaining unleased Federal coal in this area would be bypassed in the future.

The Final EIS identifies BLM's preferred alternative for the Maysdorf coal lease application. Under the preferred alternative, BLM is adding 1,126.74 acres to the Maysdorf lease application area and dividing it into two tracts in order to increase potential competitive interest and to allow more efficient recovery of the Federal coal (Appendix 1 – Figure 3b). Under Alternative 3 (the Selected Alternative), the coal included in the Maysdorf LBA Tract under BLM's preferred tract configuration will be offered for lease at two separate competitive sealed-bid coal lease sales.

Under the Selected Alternative, the North Maysdorf LBA Tract would include approximately 445.89 acres containing approximately 54.7 million tons of mineable coal and the South Maysdorf LBA Tract would include 2,900.24 acres containing approximately 288 million tons of mineable coal. Not all of the coal included in the South Maysdorf LBA Tract would be recoverable due to the presence of the BNSF & UP railroad right-of-way (ROW) and associated buffer zone. In addition, a no-coal zone is present within the South Maysdorf LBA Tract. Although coal would not be recovered from the railroad ROW and associated buffer zone or the no-coal zone, those areas are included in the South Maysdorf LBA Tract in order to:

- allow maximum recovery of all the mineable coal that is adjacent to but outside of the ROW and associated buffer zone;
- allow maximum recovery of all the mineable coal that surrounds the "no-coal" zone; and
- comply with the coal leasing regulations, which do not allow leasing of less than 10-acre aliquot parts.

Table 1: Description of lands to be offered for competitive sale under Alternative 2

The legal description of the **North Maysdorf LBA Tract** under the BLM's Selected Alternative is:

T.47N., R.71W., 6<sup>th</sup> P.M., Campbell County, Wyoming

Section 7: Lots 5, 12, 13, and 20	167.53 acres
Section 8: Lots 3 through 6 and 11 through 13	278.36 acres

Containing 445.89 acres, more or less

The legal description of the **South Maysdorf LBA Tract** under the BLM's Selected Alternative is:

T.46N., R.71W., 6<sup>th</sup> P.M., Campbell County, Wyoming

Section 4: Lots 5 through 7, 10 through 15, and 18 through 20;	491.04 acres
Section 9: Lots 1 through 5	204.50 acres
Section 10: Lots 1 through 6	243.98 acres
Section 11: Lots 1 through 12	487.28 acres

T.47N., R.71W., 6<sup>th</sup> P.M., Campbell County, Wyoming

Section 21: Lots 1 through 3, 6 through 11, and 14 through 16;	484.39 acres
Section 28: Lots 1 through 3, 6 through 11, and 14 through 16;	493.87 acres
Section 33: Lots 1 through 3, 6 through 11, and 14 through 16;	495.18 acres

Containing 2,900.24 acres, more or less

The Selected Alternative for the Maysdorf LBA Tract assumes that the applicant would be the successful bidder on the tract if a lease sale is held and that the tract would be mined as a maintenance lease for the Cordero Rojo Mine. There are no other active coal mines adjacent to the South Maysdorf LBA Tract. As shown in Appendix 1-Figure 1, the North Maysdorf LBA Tract is also contiguous with the Belle Ayr Mine, which could potentially also mine the tract as a maintenance lease.

#### **ALTERNATIVES CONSIDERED BUT NOT ANALYZED IN DETAIL**

Further descriptions of these alternatives may be found in Chapter 2 of the Final EIS.

#### **Alternative 4**

As under the Proposed Action, BLM would hold a competitive coal lease sale for the tract as applied for and then issue a lease to the successful bidder. This alternative assumes that the applicant would not be the successful bidder, and that the Federal coal would be developed as a new stand-alone mine. BLM estimates that 500 to 600 million tons of coal would be needed to attract a buyer interested in constructing a new mine in the Wyoming Powder River Basin. This alternative was considered and eliminated from detailed study because the current economics of mining in the Powder River Federal Coal Region appear to make construction of a new mine economically unfeasible on the Maysdorf coal lease application area, which includes approximately 342.7 million tons of coal under BLM's preferred tract configuration.

## **Alternative 5**

The BLM would postpone a sale of the Maysdorf LBA Tract to potentially increase the benefits to the public if coal prices increase within the Powder River Basin or to allow recovery of additional CBNG resources in the tract prior to mining.

This alternative was not analyzed in detail because it would not produce significantly different impacts than other alternatives analyzed in detail. Royalty and tax payments are collected at the time the coal is sold. They increase as coal prices increase, which allows the United States to benefit if coal prices have increased by the time of mining. Conventional oil and gas production and distribution facilities on the tract would have to be removed prior to mining, but mining would not disturb any conventional oil and gas resources that are located within the tract. Economically recoverable conventional oil and gas resources in reservoirs below the coal could be recovered after the coal is mined and the tract is reclaimed. Recovery of CBNG resources on the tract is occurring and, as discussed in the Background section above, the analysis prepared by WSO-RMG suggests that most of the economically recoverable CBNG resources in the vicinity of the tract have been recovered from the Wyodak-Anderson zone and that there are insufficient remaining reserves to support additional drilling. The environmental impacts of mining the Federal coal at a later time as part of an existing mine would be expected to be similar and about equal to the Proposed Action. If a new mine start is required to recover the coal in this tract, the environmental impacts would be expected to be greater than if the tract is mined as an extension of an existing mine.

## **MITIGATION, COMPLIANCE AND MONITORING**

If the Maysdorf LBA Tract is leased, the lease will contain the standard coal lease stipulations. The attached BLM Special Stipulations (Appendix 3) regarding cultural resources, paleontological resources, threatened and endangered species, multiple mineral development of oil and gas or coal resources or both, resource recovery and protection, and public land survey will be added to the lease.

After a Federal coal lease is issued, SMCRA gives the OSM authority to administer programs that regulate surface coal mining operations. The WDEQ regulates surface coal mining activities in Wyoming. If the Cordero Rojo Mine is the successful, qualified high bidder for the Federal coal included in the North Maysdorf LBA Tract (WYW154432) and the South Maysdorf LBA Tract (WYW174407), a permit revision must be approved by the WDEQ/LQD and a MLA mining plan revision must be approved by the Secretary of the Interior before the coal in either tract can be mined. The existing mitigation measures specific to the currently approved mine plan for the adjacent mine will be revised to include mitigation measures specific to mining WYW 154432 and WYW 174407 when the mining permit is amended.

If the successful, qualified high bidder for the Federal coal included in the North Maysdorf LBA

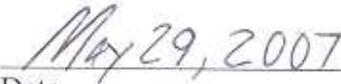
Tract or South Maysdorf LBA Tract does not operate an adjacent mine and proposes to construct and operate a new mine in order to recover the Federal coal reserves, then a new permit and a new mining plan must be submitted to WDEQ/LQD and approved before WYW154432 or WYW174407 can be mined. The permit and mining plan would include mitigation measures and monitoring plans specific to mining the newly leased tract or tracts.

Prior to mining of the areas subject to the coal lease all practicable means to avoid or minimize environmental harm will be adopted as leasing stipulations or, as consistent with normal practices, can be expected to be adopted as conditions of the mining permit. To ensure that the revised plan is in compliance with the leasing stipulations, BLM has a responsibility to review the Resource Recovery and Protection Plan prior to approval of the mining plan. Before any mining operations can begin on the North Maysdorf LBA Tract and/or the South Maysdorf LBA Tract, a Resource Recovery and Protection Plan applicable to each tract must be approved by the BLM, a permit or permit revision must be approved by WDEQ/LQD, and a MLA mining plan or plan revision must be approved by the Assistant Secretary of the Interior.

#### RECOMMENDATION

I recommend that, after two competitive lease sales, Federal coal tract WYW154432, with its associated 445.89 acres more or less, and Federal coal tract WYW174407, with its associated 2,900.34 acres more or less, be issued to the successful, qualified high bidder at each sale, provided it is determined that the highest bid at each sale meets or exceeds the FMV of each tract as determined by the BLM and that all other leasing requirements are met. This is Alternative 3, offering two tracts as modified by BLM, as described in this record of decision. The competitive lease sales will be held in accordance with the requirements at 43 CFR Subpart 3422. The lease will be subject to the attached BLM special lease stipulations (Appendix 3).

  
Assistant Field Manager for Solid Minerals  
Casper Field Office

  
Date

## APPROVAL

I agree with the recommendation of the Assistant Field Manager for Solid Minerals and I approve the decision to offer Federal coal tracts WYW154432 and WYW174407 for competitive lease sale.

  
\_\_\_\_\_  
BLM Wyoming State Director  
**ACTING**

Date June 6, 2007

### APPEAL OF STATE DIRECTOR DECISION

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 Subpart 4 and the enclosed form 1842-1 (Appendix 5). If an appeal is filed, your notice of appeal must be filed in this office (BLM, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003) within thirty (30) days from the date BLM published the Notice of Availability (NOA) of this Record of Decision in the *Federal Register*. BLM expects that the NOA will be published (*insert date when known*). The appellant has the burden of showing that the decision appealed is in error.

If you wish to file a petition (request) pursuant to regulation 43 CFR 4.21(a)(2) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the board, the petition for a 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 also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (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.

#### Standard for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for stay of a decision pending appeal shall show sufficient justification based on the following standards:

- 1) The relative harm to the parties if a 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 a stay.

## APPENDICES

- Appendix 1. Figures 1, 2, and 3
- Appendix 2. Public Comments on the Final EIS BLM Responses
- Appendix 3. BLM Special Coal Lease Stipulations for the North Maysdorf Federal Coal Lease Tract (WYW154432) and South Maysdorf Federal Coal Lease Tract (WYW174407)
- Appendix 4. Concurrence letter from the U.S. Fish and Wildlife Service
- Appendix 5: Appeal Procedures

**APPENDIX 1**

**FIGURES**

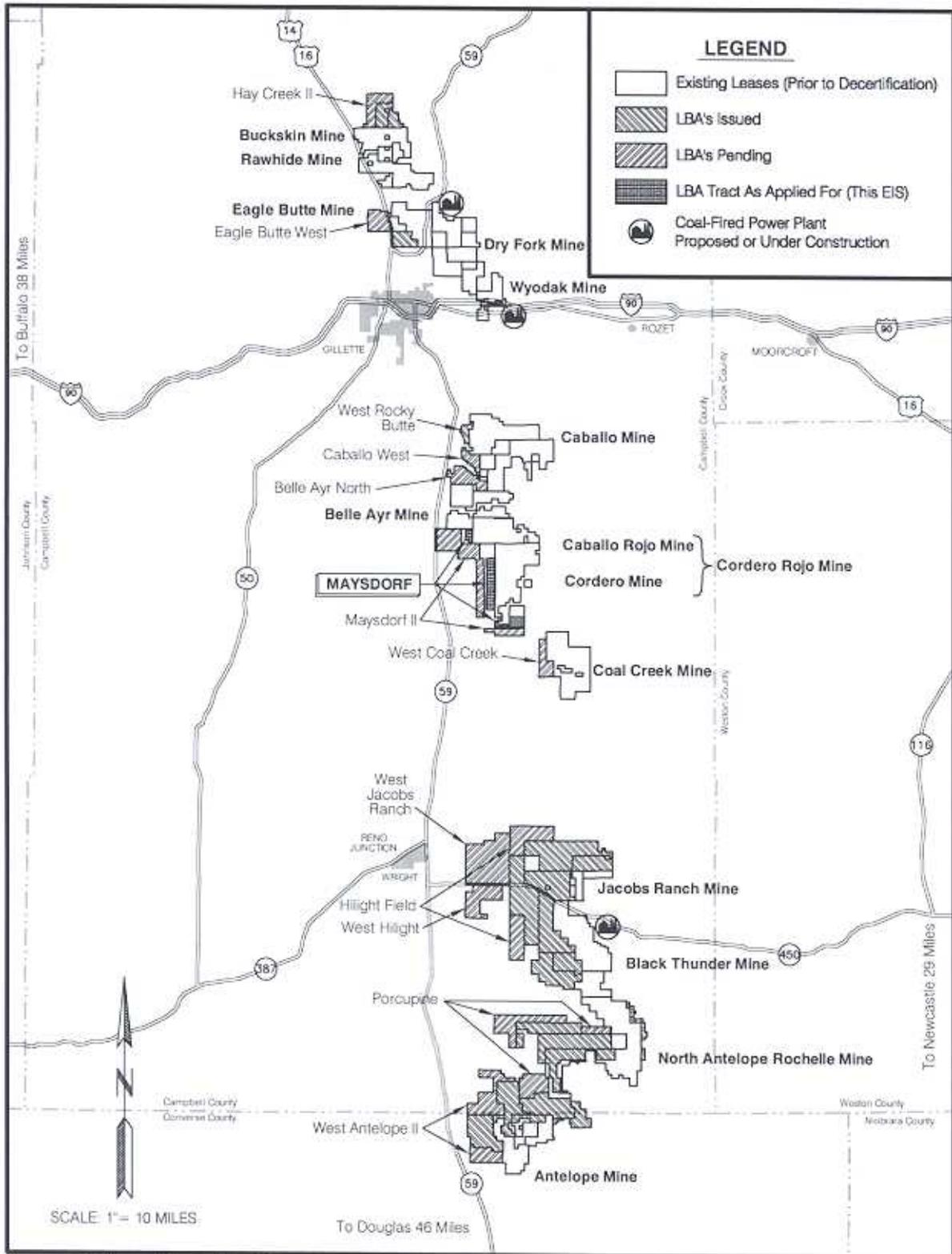


Figure 1. General Location Map with Federal Coal Leases and LBA Tracts.

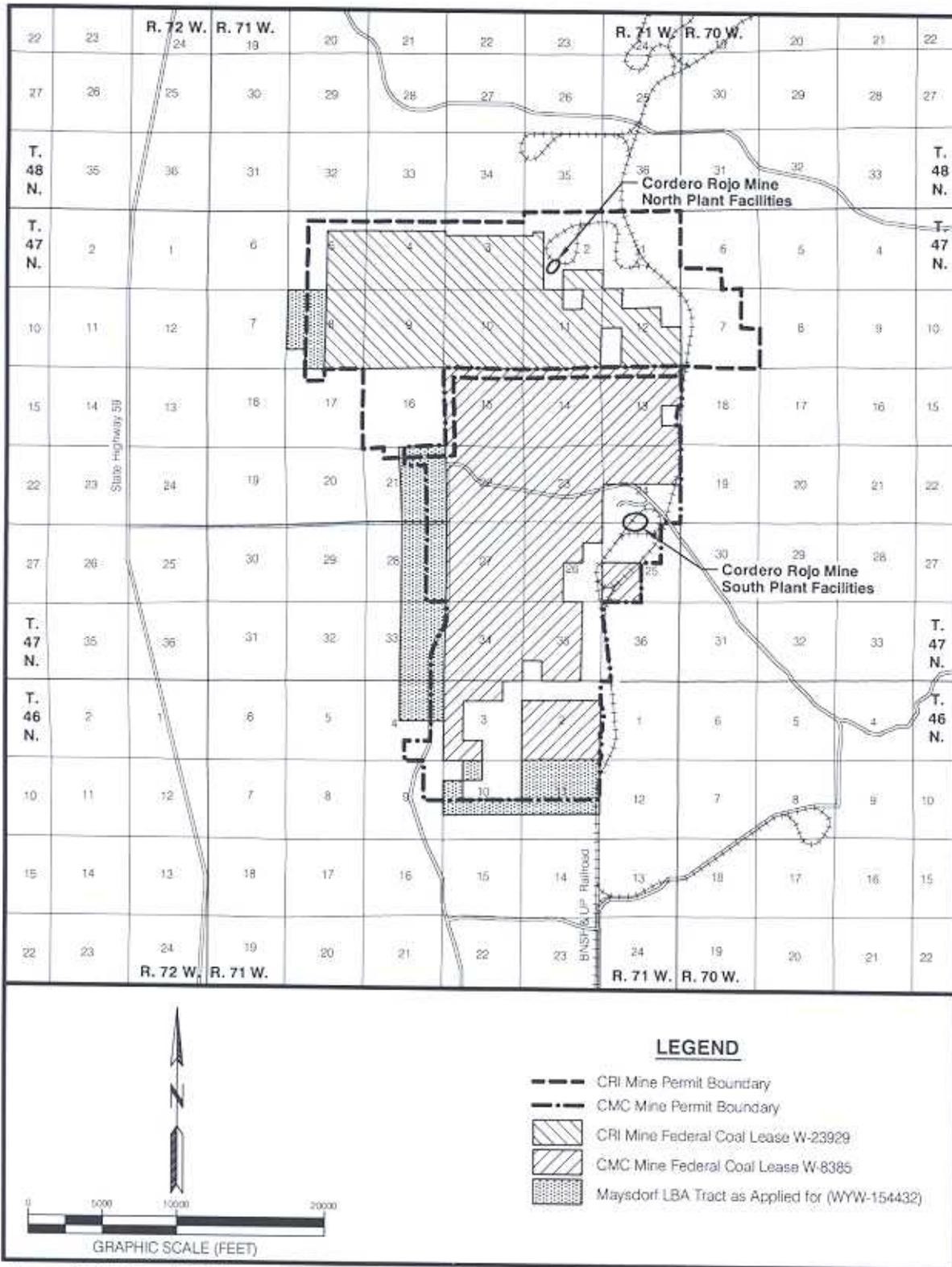


Figure 2. CMC and CRI Mines' Federal Coal Leases and Maysdorf LBA Tract as Applied for.

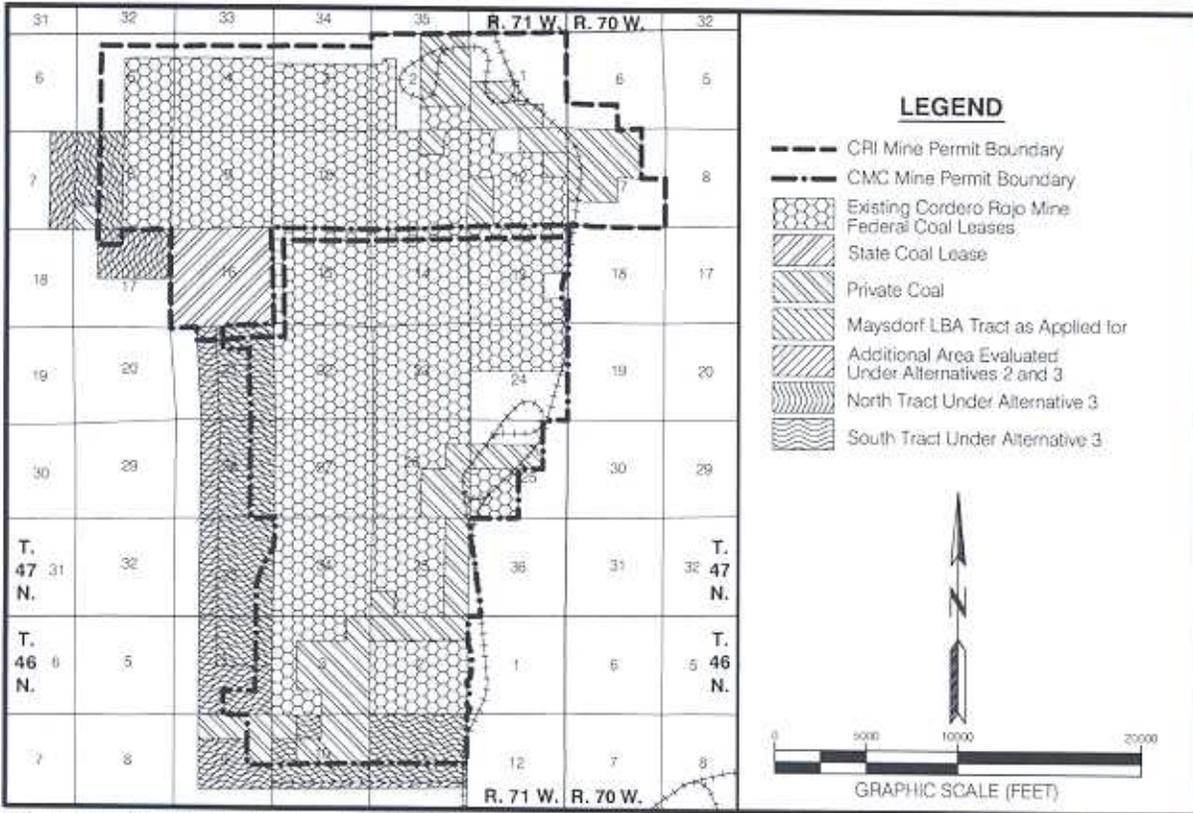


Figure 3a. Maysdorf LBA Alternative Tract Configurations.

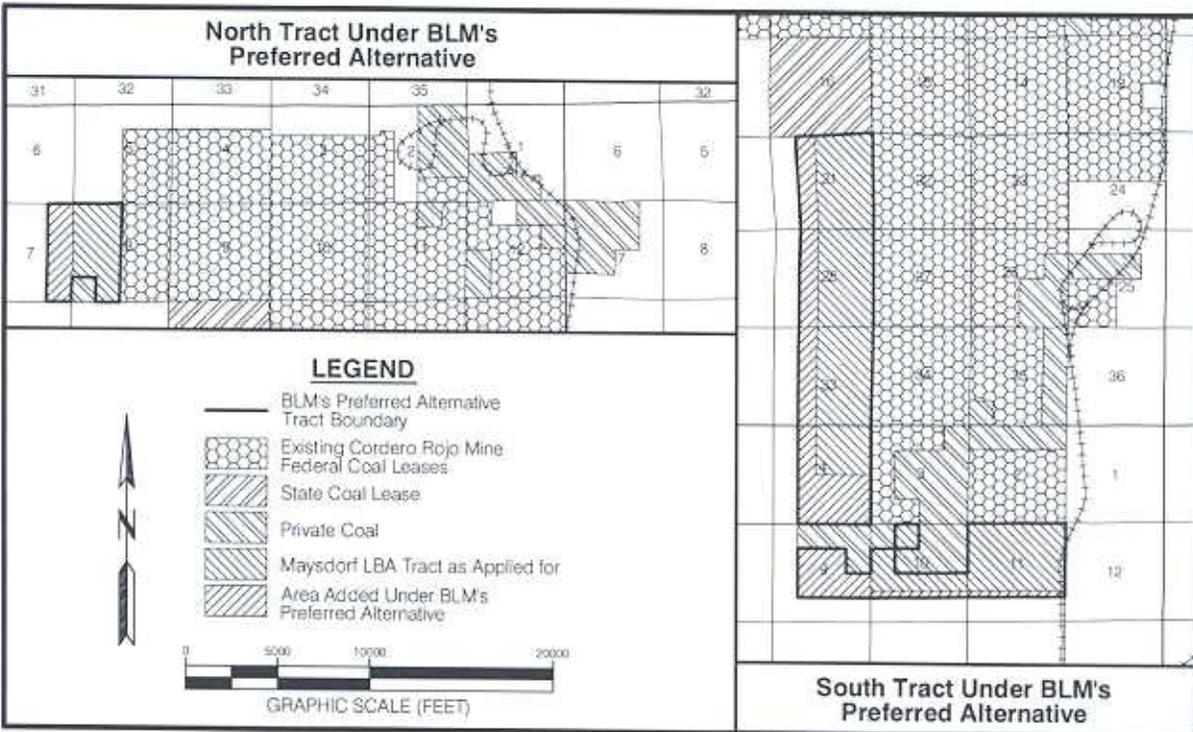


Figure 3b. Maysdorf LBA Preferred Alternative Tract Configuration.

**APPENDIX 2**

**PUBLIC COMMENTS ON THE FEIS AND  
BLM RESPONSES**

## **Appendix 2: Public Comments on the Final Maysdorf Coal Lease Application Environmental Impact Statement and BLM Responses**

The availability period for the Final Maysdorf Coal Lease Application Environmental Impact Statement (EIS) began when the EPA published the Notice of Availability of the final EIS on April 13, 2007, and ended 30 days later on May 14, 2007. BLM received four comment statements during that time. The comments received from the public are reprinted here in a **bold** font and the responses are in a regular font.

### **Comment Letter 1: B. Sachau**

**please extend time to comment. 30 days is certainly far too small a period of time and totally inadequate for the public to be aware of this destruction of the land they own. [sic]**

The 30-day availability period for the Final Maysdorf Coal Lease Application EIS ended on May 14, 2007. There were opportunities provided for the public to comment on this project throughout the EIS process. Comments were previously formally requested from the public through mailings, newspaper notices and federal register notices during the scoping period (February 1 through April 8, 2005, 66 days) and the comment period on the draft EIS (May 26 through July 25, 2006, 60 days). A public scoping meeting was held on February 15, 2005 and a public hearing was held on June 13, 2006.

For clarification, the coal estate and approximately 408 acres of the surface estate in the tract area federally owned. The remaining 3,180 acres of the surface estate are privately owned and are not accessible to the public.

**es16 – certainly \$48 million from this land destruction hardly covers the retirement packages for the corporate execs these days with their \$400 million, \$300 million, etc. packages. [sic]**

The final EIS (pages ES-16 and 3-151) estimates that, assuming a coal sales price of \$5.80 per ton, the potential revenues to the federal government would range from \$210 to \$408 million and the potential revenues to the state would range from \$279 to \$523 million.

**es17 – the regional technical study BLM is doing will no doubt be conveniently completed in the year after all of the coal in the area is gone. [sic]**

Eight of the nine reports that comprise the regional technical study have been completed, as discussed on page 4-2 of the final EIS. Those reports are summarized in Chapter 4 of the EIS. The complete reports may be accessed on the internet at: [http://www.blm.gov/wy/st/en/programs/energy/Coal\\_Resources/PRB\\_Coal/prbdocs.html](http://www.blm.gov/wy/st/en/programs/energy/Coal_Resources/PRB_Coal/prbdocs.html)

## **Appendix 2: Public Comments on the Final Maysdorf Coal Lease Application Environmental Impact Statement and BLM Responses**

**2-25 - there has been far too much fraud, negligence, and sloppiness exposed by investigators about our washington corrupt government and that makes one skeptical of these kinds of contract. [sic]**

The contracts referred to on page 2-25 of the final EIS are the price contracts that are negotiated between the mines and the power plants where the coal is used.

**3-102 – big game animals are highly mobile – BUT THEY NEED FOOD, WATER, AND COVER AND THIS DESTRUCTIVE PLAN TAKES ALL 3 THINGS FROM THEM. [sic]**

The Wyoming Game and Fish Department reviewed monitoring data on big game species in and around the mine sites in the Powder River Basin in 1999, after more than 20 years of monitoring at some mines. They concluded that the monitoring indicated a lack of impacts to big game on existing mine sites. No severe mine-caused mortalities had occurred and no long-lasting impact to big game had been noted on existing mine sites.

As discussed in Section 3.11 of the EIS, the Maysdorf LBA Tract does not include critical habitat for big game and big game herd units in this are generally at or above Wyoming Game and Fish Department population objectives.

**4-38 the impact of benzene, formaldehyde, xylene and tuolene all kill Americans and all living things. the levels are too high and will kill fellow americans. [sic]**

The final EIS indicates that the levels projected by the modeling for the year 2010, assuming the upper production scenario occurs, are below the Reference Exposure and Reference Concentration for Chronic Inhalation levels for benzene, ethyl benzene, n-hexane, toluene, and xylene at all modeling receptors in Montana and Wyoming. For formaldehyde, the levels are projected to be below all Reference Exposure levels and Reference Concentration for Chronic Inhalation levels at all modeling receptors in Montana and all but two near-field modeling receptors in Wyoming.

More detailed information about the results of the air modeling study are is included in the Powder River Basin Coal Review Task 3A Cumulative Air Quality Effects Report, which can be accessed at the website listed above. The air quality modeling analysis indicated that all projected impacts for 2010 would be well below the non-carcinogenic Reference Concentration for Chronic Inhalation levels, with the maximum comparative impact for formaldehyde at the Wyoming near-field receptors, where the impacts would be approximately 66 percent of the established Reference Concentration for Chronic Inhalation level.

**Appendix 2: Public Comments on the Final Maysdorf Coal Lease Application  
Environmental Impact Statement and BLM Responses**

**4-69 noxious and invasive weed species will be disbursed forever from this assault, harming all native plants and animals. [sic]**

As discussed in the EIS (pages 3-96, 3-97, and 4-57) the reclamation plan for the existing Cordero Rojo Mine includes steps to control invasion by weedy (invasive nonnative) plant species because the regulations governing coal mining in the State of Wyoming require surface coal mine operators to control and minimize the introduction of noxious weeds until bond release. At the Cordero Rojo Mine and other surface coal mines in this area, there are measures in place to control weeds in reclaimed areas by means of agriculturally accepted techniques and, as a result, there are few occurrences of noxious weeds in the mine areas. Also, in order to reduce the likelihood of the occurrence of noxious weeds, the Cordero Rojo Mine buys "blue tag certified" seed mixes for the reclamation area. The seed mixtures are dominated by species mandated in the reclamation seed mixtures, which are approved by the Wyoming Department of Environmental Quality. The majority of the approved species are native to the area.

**4-92 the huge amount of payment by these financial profiteer developers range up to almost \$1.00 per ton range. Certainly that does not compare with executive retirement packages of \$400 million dollars, does it? These companies are lowballing and taking every penny they can get away with, in my opinion. [sic]**

The bonus bids that have ranged up to almost \$1.00 per ton are paid at the time that a tract is leased. When the coal is mined, the coal lessee must also pay a royalty of 12.5 percent of the money they receive for each ton of federal coal, as well as sales and use taxes, severance taxes, ad valorem taxes, and required contributions to the Abandoned Mine Land program and the Black Lung disability Trust Fund.

**e-22 I doubt the statement that endangered ladies tresses will survive this coal mining assault. [sic]**

As indicated in Appendix E of the EIS, Ute ladies'-tresses have not been found in Campbell County, Wyoming, where the mine is located. Surveys of suitable habitat must be conducted on each tract of federal coal proposed for leasing by qualified biologists in accordance with the requirements of the U.S. Fish and Wildlife Service before leasing. Surveys for Ute ladies'-tresses that the Cordero Rojo Mine conducted in 2005 and 2006 located no individuals of the orchid in suitable habitat on the tract.

**e-25 I do not agree with "may affect for eagle, ferret and tresses" should read will definitely affect. [sic]**

As indicated in Appendix E of the EIS, wildlife surveys have been conducted in the area of the Cordero Rojo Mine for more than 25 years. Those surveys have located no nest sites for eagles, no occurrences of black-footed ferrets, and no occurrences of Ute ladies'-tresses on the existing mine or the Maysdorf LBA Tract. Bald eagles do

## **Appendix 2: Public Comments on the Final Maysdorf Coal Lease Application Environmental Impact Statement and BLM Responses**

winter in the area and have been roosting in a group of trees on the existing mine during the last few winters. The BLM is attaching a stipulation to the lease that will prohibit coal-lease related disturbance within the portion of the Maysdorf tract that is located within a buffer zone for the trees where the eagles roost. Consultation with the U.S. Fish and Wildlife Department must take place again before the mining permit is approved.

### **Appendix - \$60,000 per acre payments is miniscule payment for an acre's desecration and destruction. [sic]**

As discussed above (in the response to comment 4-92), the \$60,000 per acre only refers to the bonus bid that is paid at the time a lease sale is held. When the coal is mined, the lessee must also pay a royalty of 12.5 percent of the money they receive for each ton of coal as well as sales and use taxes, severance taxes, ad valorem taxes, and required contributions to the Abandoned Mine Land program and the Black Lung disability Trust Fund.

### **what qualifications does ensr have to do "studies" in this matter? is this an independent agency or a friend of some politician? [sic]**

ENSR was one of several consulting companies that applied to the BLM to prepare the Powder River Basin Coal Review. ENSR was selected as the contractor for the job because of the technical qualifications of their staff, particularly in the areas of hydrology, air resources and socioeconomics. The following information was provided by ENSR in response to your comment:

"ENSR is an interdisciplinary environmental consulting firm with offices throughout the United States and worldwide. ENSR has been conducting environmental studies in the western United States since 1971, including the preparation of over 100 environmental impact statements and environmental assessments for industrial developments including coal and hard-rock mine operations, oil and gas development and transportation projects, and power plants."

### **the mitigation of wetlands is a sop to the public. it never works. it much ado about nothing. Mitigation does not work. [sic]**

The mitigation discussed in the document is a regulatory requirement. Several of the mines, including the Cordero Rojo Mine, have successfully reclaimed wetlands. The picture on the front of the Draft and Final Maysdorf Coal Lease Application EIS documents shows a wetland that was reclaimed after being disturbed by mining operations at the Cordero Rojo Mine.

**Appendix 2: Public Comments on the Final Maysdorf Coal Lease Application  
Environmental Impact Statement and BLM Responses**

**Comment Letters 2 and 3: EOG Resources & Bjork Lindley Little PC**

**EOG Comment:** In particular, EOG appreciates the BLM's analysis regarding the potential impacts coal mining operations on the Maysdorf tracts may have upon oil and natural gas development. EOG is, however, concerned that BLM's analysis of potential impacts to oil and gas development were inappropriately limited to the potential impacts to coal bed natural gas development and potential impacts to past or on-going oil and gas operations.

**Bjork, et al. Comment:** We are concerned, however, that BLM's analysis of potential impacts to oil and gas development were inappropriately limited to the potential impacts to coal bed methane natural gas development.

Sections 3.3.2.1 and 3.11 of the draft and final EIS documents discuss impacts to coal bed natural gas (CBNG) and conventional oil and gas development in the Maysdorf Coal Lease Application area. The discussion in Section 3.3.2.1 of the EIS summarizes a report prepared by the BLM Wyoming State Office Reservoir Management Group (WSO-RMG); the report, which is available for review, provides more detailed information about the analysis that WSO-RMG prepared to evaluate the oil and gas resources (both CBNG and conventional oil and gas) in this area. The discussion in Section 3.11 of the EIS identifies that one of the major adverse consequences of leasing and mining the Maysdorf LBA Tract would be curtailment of oil and gas development while the coal is being mined and during reclamation. The WSO-RMG study identifies that the Cretaceous-age Muddy Formation and the Pennsylvanian-Permian-age Minnelusa have both produced oil and gas within or in proximity to the Maysdorf tract. When the WSO-RMG analysis was prepared in 2005, the most recent completion in the Minnelusa in this area was in 1993 and the most recent non-Minnelusa wells were completed for production in 1981. During scoping for this project and during preparation of the draft and final EIS documents, BLM received no comments about or information identifying proposed or potential future projects. As a result, the EIS analysis focuses on past and on-going development.

**EOG Comment:** EOG asks the BLM to carefully construct conditions of approval on the proposed coal leasing, and to include similar obligations in the eventual coal license, to insure that both past and potential future oil and gas operations can be maximized.

**Bjork, et al. comment:** We ask the BLM to carefully construct conditions of approval on the proposed coal leasing, and to include similar obligations in the eventual coal license, to insure that both past and potential future oil and gas operations can be maximized.

BLM currently attaches the following two stipulations to federal coal leases when they are issued.

**Appendix 2: Public Comments on the Final Maysdorf Coal Lease Application  
Environmental Impact Statement and BLM Responses**

(d) MULTIPLE MINERAL DEVELOPMENT

Operations will not be approved which, in the opinion of the Authorized Officer, would unreasonably interfere with the orderly development and/or production from a valid existing mineral lease issued prior to this one for the same lands.

(e) OIL AND GAS/COAL RESOURCES

The BLM realizes that coal mining operations conducted on Federal coal leases issued within producing oil and gas fields may interfere with the economic recovery of oil and gas; just as Federal oil and gas leases issued in a Federal coal lease area may inhibit coal recovery. BLM retains the authority to alter and/or modify the resource recovery and protection plans for coal operations and/or oil and gas operations on those lands covered by Federal mineral leases so as to obtain maximum resource recovery.

These stipulations are also included in Appendix D of the draft and final EIS documents and in Appendix 3 of the Record of Decision.

With regard to the "eventual coal license," mining operations on federal coal leases in Wyoming are authorized and regulated by the Wyoming Department of Environmental Quality, not BLM. The federal agency with oversight of surface coal mining operations is the Office of Surface Mining Reclamation and Enforcement (OSM). BLM must approve a resource recovery and protection plan as part of the Mineral Leasing Act mining plan, which is prepared by OSM and signed by the Assistant Secretary of the Interior. The resource recovery and protection plan addresses how the coal lessee will achieve maximum economic recovery of the federal coal resource, but not how mining or reclamation activities will be conducted.

**EOG and Bjork, et al. Comment: The BLM should ensure that no one resource is developed to the detriment of others and thereby insure the maximum production of domestic energy.**

BLM Washington Office Instruction Memorandum (IM) No. 2006-153 specifically addresses BLM policy and guidance between CBNG and surface coal mine development in the Powder River Basin, however, the stated policy in that IM reflects the position that BLM has adopted in the past when conflicts developed between coal lessees and oil and gas lessees interested in conventional oil and gas resources. Specifically, BLM's policy has generally been to optimize recovery of multiple mineral resources, honor the rights of each lessee, and encourage oil and gas and coal companies to resolve conflicts between themselves. Stipulation (e), above, reflects BLM's intent to exercise the authority that is provided in leases, statutes and regulations to manage federal mineral development in the public's best interest.

**Appendix 2: Public Comments on the Final Maysdorf Coal Lease Application  
Environmental Impact Statement and BLM Responses**

**Comment Letter 4: National Park Service**

**NPS has no comment on FES 07/0008, Maysdorf Coal Lease Application  
(WYW154432)**

**APPENDIX 3**

BUREAU OF LAND MANAGEMENT  
SPECIAL COAL LEASE STIPULATIONS  
AND COAL LEASE FORM 3400-12

## 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 special 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 or of the surface managing agency, if different, on portions of the mine plan area and adjacent areas, 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. The inventory shall be conducted by a qualified professional cultural resource specialist (i.e., archeologist, historian, historical architect, as appropriate), approved by the Authorized Officer of the surface managing agency (BLM, if the surface is privately owned), and a report of the inventory and recommendations for protecting any cultural resources identified shall be submitted to the Regional Director of the Western Region of the Office of Surface Mining (the Western Regional Director), the Authorized Officer of the BLM, if activities are associated with coal exploration outside an approved mining permit area (hereinafter called Authorized Officer), and the Authorized Officer of the surface managing agency, if different. The lessee shall undertake measures, in accordance with instructions from the Western Regional Director, or Authorized Officer, 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 Western Regional Director or Authorized Officer.

(2) The lessee shall protect all cultural resource properties that have been determined eligible to the National Register of Historic Places 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 or exploration plan unless modified by mutual agreement in consultation with the State Historic Preservation Officer.

(3) The cost of conducting the inventory, preparing reports, and carrying out 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 Western Regional Director or Authorized Officer, or the Authorized Officer of the surface managing agency, if the Western Regional Director is not available. The lessee shall not disturb such resources except as may be subsequently authorized by the Western Regional Director or Authorized Officer.

Within two (2) working days of notification, the Western Regional Director or Authorized Officer 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 lessee unless otherwise specified by the Authorized Officer of the BLM or of the surface managing agency, if different.

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

(b) ***PALEONTOLOGICAL RESOURCES***

If paleontological resources, either large and conspicuous, and/or of significant scientific value are discovered during mining operations, the find will be reported to the Authorized Officer immediately. Mining operations will be suspended within 250 feet of said find. An evaluation of the paleontological discovery will be made by a BLM-approved professional paleontologist within five (5) working days, weather permitting, to determine the appropriate action(s) to prevent the potential loss of any significant paleontological value. Operations within 250 feet of such discovery will not be resumed until written authorization to proceed is issued by the Authorized Officer. The lessee will bear the cost of any required paleontological appraisals, surface collection of fossils, or salvage of any large conspicuous fossils of significant scientific interest discovered during the operations.

(c) ***THREATENED, ENDANGERED, CANDIDATE, or OTHER SPECIAL STATUS PLANT and ANIMAL SPECIES***

The lease area may now or hereafter contain plants, animals, or their habitats determined to be threatened or endangered under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*, or that have other special status. The Authorized Officer may recommend modifications to exploration and development proposals to further conservation and management objectives or to avoid activity that will contribute to a need to list such species or their habitat or to comply with any biological opinion issued by the Fish and Wildlife Service for the Proposed Action. The Authorized Officer will not approve any ground-disturbing activity that may affect any such species or critical habitat until it completes its obligations under applicable requirements of the Endangered Species Act. The Authorized Officer may require modifications to, or disapprove a proposed activity that is likely to result in jeopardy to the continued existence of a proposed or listed threatened or endangered species, or result in the destruction or adverse modification of designated or proposed critical habitat. The authorized officer will not approve any coal lease activities that would disturb bald eagles within a one mile buffer of the communal winter roost (T. 47 N., R.71W., Section 21, Lots 1 through 16 and Section 28, Lots 1, 2, 3, 7, and 8) from November 1 through April 1. The authorized officer will not permit any ground-disturbing activities within 0.5 miles (T. 47 N., R.71W., Section 21, Lots 1, 2, 7, 8, 9, 10, 15, and 16) of the communal winter roost year-round. These stipulations will apply as long as the winter communal roost exists and/or as long as the bald eagle remains listed as threatened under the ESA.

The lessee shall comply with instructions from the Authorized Officer of the surface managing agency (BLM, if the surface is private) for ground disturbing activities associated with coal exploration on federal coal leases prior to approval of a mining and reclamation permit or outside an approved mining and reclamation permit area. The lessee shall comply with instructions from the Authorized Officer of the Office of Surface Mining Reclamation and Enforcement, or his designated representative, for all ground disturbing activities taking place within an approved mining and reclamation permit area or associated with such a permit.

(d) ***MULTIPLE MINERAL DEVELOPMENT***

Operations will not be approved which, in the opinion of the Authorized Officer, would unreasonably interfere with the orderly development and/or production from a valid existing mineral lease issued prior to this one for the same lands.

(e) *OIL AND GAS/COAL RESOURCES*

The BLM realizes that coal mining operations conducted on Federal coal leases issued within producing oil and gas fields may interfere with the economic recovery of oil and gas; just as Federal oil and gas leases issued in a Federal coal lease area may inhibit coal recovery. BLM retains the authority to alter and/or modify the resource recovery and protection plans for coal operations and/or oil and gas operations on those lands covered by Federal mineral leases so as to obtain maximum resource recovery.

(f) *RESOURCE RECOVERY AND PROTECTION*

Notwithstanding the approval of a resource recovery and protection plan (R2P2) by the BLM, lessor reserves the right to seek damages against the operator/lessee in the event (i) the operator/lessee fails to achieve maximum economic recovery (MER) (as defined at 43 CFR 3480.0-5(21)) of the recoverable coal reserves or (ii) the operator/lessee is determined to have caused a wasting of recoverable coal reserves. Damages shall be measured on the basis of the royalty that would have been payable on the wasted or unrecovered coal.

The parties recognize that under an approved R2P2, conditions may require a modification by the operator/lessee of that plan. In the event a coal bed or portion thereof is not to be mined or is rendered unmineable by the operation, the operator/lessee shall submit appropriate justification to obtain approval by the Authorized Officer to leave such reserves unmined. Upon approval by the Authorized Officer, such coal beds or portions thereof shall not be subject to damages as described above. Further, nothing in this section shall prevent the operator/lessee from exercising its right to relinquish all or portion of the lease as authorized by statute and regulation.

In the event the Authorized Officer determines that the R2P2, as approved, will not attain MER as the result of changed conditions, the Authorized Officer will give proper notice to the operator/lessee as required under applicable regulations. The Authorized Officer will order a modification if necessary, identifying additional reserves to be mined in order to attain MER. Upon a final administrative or judicial ruling upholding such an ordered modification, any reserves left unmined (wasted) under that plan will be subject to damages as described in the first paragraph under this section.

Subject to the right to appeal hereinafter set forth, payment of the value of the royalty on such unmined recoverable coal reserves shall become due and payable upon determination by the Authorized Officer that the coal reserves have been rendered unmineable or at such time that the operator/lessee has demonstrated an unwillingness to extract the coal.

The BLM may enforce this provision either by issuing a written decision requiring payment of the Mineral Management Service demand for such royalties, or by issuing a notice of non-compliance. A decision or notice of non-compliance issued by the lessor that payment is due under this stipulation is appealable as allowed by law.

(g) *PUBLIC LAND SURVEY PROTECTION*

The lessee will protect all survey monuments, witness corners, reference monuments, and bearing trees against destruction, obliteration, or damage during operations on the lease areas. If any monuments, corners or accessories are destroyed, obliterated, or damaged by this operation, the lessee will hire an appropriate county surveyor or registered land surveyor to reestablish or restore the monuments, corners, or accessories at the same location, using surveying procedures in accordance with the "Manual of Surveying Instructions for the Survey of the Public Lands of the United States." The survey will be recorded in the appropriate county records, with a copy sent to the Authorized Officer.

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

FORM APPROVED  
OMB NO. 1004-0073  
Expires: March 31, 2010

Serial Number

**COAL LEASE**

**PART 1. LEASE RIGHTS GRANTED**

This lease, entered into by and between the UNITED STATES OF AMERICA, hereinafter called lessor, through the Bureau of Land Management (BLM), and  
(Name and Address)

hereinafter called lessee, is effective (date) / / , for a period of 20 years and for so long thereafter as coal is produced in commercial quantities from the leased lands, subject to readjustment of lease terms at the end of the 20th lease year and each 10-year period thereafter.

Sec. 1. This lease is issued pursuant and subject to the terms and provisions of the:

- Mineral Lands Leasing Act of 1920, Act of February 25, 1920, as amended, 41 Stat. 437, 30 U.S.C. 181-287, hereinafter referred to as the Act;
- Mineral Leasing Act for Acquired Lands, Act of August 7, 1947, 61 Stat. 913; 30 U.S.C. 351-359;

and to the regulations and formal orders of the Secretary of the Interior which are now or hereafter in force, when not inconsistent with the express and specific provisions herein.

Sec. 2. Lessor, in consideration of any bonuses, rents, and royalties to be paid, and the conditions and covenants to be observed as herein set forth, hereby grants and leases to lessee the exclusive right and privilege to drill for, mine, extract, remove, or otherwise process and dispose of the coal deposits in, upon, or under the following described lands:

containing \_\_\_\_\_ acres, more or less, together with the right to construct such works, buildings, plants, structures, equipment and appliances and the right to use such on-lease rights-of-way which may be necessary and convenient in the exercise of the rights and privileges granted, subject to the conditions herein provided.

**PART II. TERMS AND CONDITIONS**

Sec. 1. (a) RENTAL RATE - Lessee must pay lessor rental annually and in advance for each acre or fraction thereof during the continuance of the lease at the rate of \$ \_\_\_\_\_ for each lease year.

(b) RENTAL CREDITS - Rental will not be credited against either production or advance royalties for any year.

Sec. 2. (a) PRODUCTION ROYALTIES - The royalty will be \_\_\_\_\_ percent of the value of the coal as set forth in the regulations. Royalties are due to lessor the final day of the month succeeding the calendar month in which the royalty obligation accrues.

(b) ADVANCE ROYALTIES - Upon request by the lessee, the BLM may accept, for a total of not more than 10 years, the payment of advance royalties in lieu of continued operation, consistent with the regulations. The advance royalty will be based on a percent of the value of a minimum number of tons determined in the manner established by the advance royalty regulations in effect at the time the lessee requests approval to pay advance royalties in lieu of continued operation.

Sec. 3. BONDS - Lessee must maintain in the proper office a lease bond in the amount of \$ \_\_\_\_\_. The BLM may require an increase in this amount when additional coverage is determined appropriate.

Sec. 4. DILIGENCE - This lease is subject to the conditions of diligent development and continued operation, except that these conditions are excused

when operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee. The lessor, in the public interest, may suspend the condition of continued operation upon payment of advance royalties in accordance with the regulations in existence at the time of the suspension. Lessee's failure to produce coal in commercial quantities at the end of 10 years will terminate the lease. Lessee must submit an operation and reclamation plan pursuant to Section 7 of the Act not later than 3 years after lease issuance.

The lessor reserves the power to assent to or order the suspension of the terms and conditions of this lease in accordance with, inter alia, Section 39 of the Mineral Leasing Act, 30 U.S.C. 209.

5. LOGICAL MINING UNIT (LMU) - Either upon approval by the lessor of the lessee's application or at the direction of the lessor, this lease will become an LMU or part of an LMU, subject to the provisions set forth in the regulations.

The stipulations established in an LMU approval in effect at the time of LMU approval will supersede the relevant inconsistent terms of this lease so long as the lease remains committed to the LMU. If the LMU of which this lease is a part is dissolved, the lease will then be subject to the lease terms which would have been applied if the lease had not been included in an LMU.

Sec. 6. DOCUMENTS, EVIDENCE AND INSPECTION - At such times and in such form as lessor may prescribe, lessee must furnish detailed statements showing the amounts and quality of all products removed and sold from the lease, the proceeds therefrom, and the amount used for production purposes or unavoidably lost.

Lessee must keep open at all reasonable times for the inspection by BLM the leased premises and all surface and underground improvements, works, machinery, ore stockpiles, equipment, and all books, accounts, maps, and records relative to operations, surveys, or investigations on or under the leased lands.

Lessee must allow lessor access to and copying of documents reasonably necessary to verify lessee compliance with terms and conditions of the lease.

While this lease remains in effect, information obtained under this section will be closed to inspection by the public in accordance with the Freedom of Information Act (5 U.S.C. 552).

Sec. 7. DAMAGES TO PROPERTY AND CONDUCT OF OPERATIONS - Lessee must comply at its own expense with all reasonable orders of the Secretary, respecting diligent operations, prevention of waste, and protection of other resources.

Lessee must not conduct exploration operations, other than casual use, without an approved exploration plan. All exploration plans prior to the commencement of mining operations within an approved mining permit area must be submitted to the BLM.

Lessee must carry on all operations in accordance with approved methods and practices as provided in the operating regulations, having due regard for the prevention of injury to life, health, or property, and prevention of waste, damage or degradation to any land, air, water, cultural, biological, visual, and other resources, including mineral deposits and formations of mineral deposits not leased hereunder, and to other land uses or users. Lessee must take measures deemed necessary by lessor to accomplish the intent of this lease term. Such measures may include, but are not limited to, modification to proposed siting or design of facilities, timing of operations, and specification of interim and final reclamation procedures. Lessor reserves to itself the right to lease, sell, or otherwise dispose of the surface or other mineral deposits in the lands and the right to continue existing uses and to authorize future uses upon or in the leased lands, including issuing leases for mineral deposits not covered hereunder and approving easements or rights-of-way. Lessor must condition such uses to prevent unnecessary or unreasonable interference with rights of lessee as may be consistent with concepts of multiple use and multiple mineral development.

Sec. 8. PROTECTION OF DIVERSE INTERESTS, AND EQUAL OPPORTUNITY - Lessee must: pay when due all taxes legally assessed and levied under the laws of the State or the United States; accord all employees complete freedom of purchase; pay all wages at least twice each month in lawful money of the United States; maintain a safe working environment in accordance with standard industry practices; restrict the workday to not more than 8 hours in any one day for underground workers, except in emergencies; and take measures necessary to protect the health and safety of the public. No person under the age of 16 years should be employed in any mine below the surface. To the extent that laws of the State in which the lands are situated are more restrictive than the provisions in this paragraph, then the State laws apply.

Lessee will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor. Neither lessee nor lessee's subcontractors should maintain segregated facilities.

Sec. 15. SPECIAL STIPULATIONS

Sec. 9. (a) TRANSFERS

- This lease may be transferred in whole or in part to any person, association or corporation qualified to hold such lease interest.
- This lease may be transferred in whole or in part to another public body or to a person who will mine coal on behalf of, and for the use of, the public body or to a person who for the limited purpose of creating a security interest in favor of a lender agrees to be obligated to mine the coal on behalf of the public body.
- This lease may only be transferred in whole or in part to another small business qualified under 13 CFR 121.

Transfers of record title, working or royalty interest must be approved in accordance with the regulations.

(b) RELINQUISHMENT - The lessee may relinquish in writing at any time all rights under this lease or any portion thereof as provided in the regulations. Upon lessor's acceptance of the relinquishment, lessee will be relieved of all future obligations under the lease or the relinquished portion thereof, whichever is applicable.

Sec. 10. DELIVERY OF PREMISES, REMOVAL OF MACHINERY, EQUIPMENT, ETC. - At such time as all portions of this lease are returned to lessor, lessee must deliver up to lessor the land leased, underground timbering, and such other supports and structures necessary for the preservation of the mine workings on the leased premises or deposits and place all workings in condition for suspension or abandonment. Within 180 days thereof, lessee must remove from the premises all other structures, machinery, equipment, tools, and materials that it elects to or as required by the BLM. Any such structures, machinery, equipment, tools, and materials remaining on the leased lands beyond 180 days, or approved extension thereof, will become the property of the lessor, but lessee may either remove any or all such property or continue to be liable for the cost of removal and disposal in the amount actually incurred by the lessor. If the surface is owned by third parties, lessor will waive the requirement for removal, provided the third parties do not object to such waiver. Lessee must, prior to the termination of bond liability or at any other time when required and in accordance with all applicable laws and regulations, reclaim all lands the surface of which has been disturbed, dispose of all debris or solid waste, repair the offsite and onsite damage caused by lessee's activity or activities incidental thereto, and reclaim access roads or trails.

Sec. 11. PROCEEDINGS IN CASE OF DEFAULT - If lessee fails to comply with applicable laws, existing regulations, or the terms, conditions and stipulations of this lease, and the noncompliance continues for 30 days after written notice thereof, this lease will be subject to cancellation by the lessor only by judicial proceedings. This provision will not be construed to prevent the exercise by lessor of any other legal and equitable remedy, including waiver of the default. Any such remedy or waiver will not prevent later cancellation for the same default occurring at any other time.

Sec. 12. HEIRS AND SUCCESSORS-IN-INTEREST - Each obligation of this lease will extend to and be binding upon, and every benefit hereof will inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

Sec. 13. INDEMNIFICATION - Lessee must indemnify and hold harmless the United States from any and all claims arising out of the lessee's activities and operations under this lease.

Sec. 14. SPECIAL STATUTES - This lease is subject to the Clean Water Act (33 U.S.C. 1252 et seq.), the Clean Air Act (42 U.S.C. 4274 et seq.), and to all other applicable laws pertaining to exploration activities, mining operations and reclamation, including the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.).

THE UNITED STATES OF AMERICA

\_\_\_\_\_  
(Company or Lessee Name)

By \_\_\_\_\_

\_\_\_\_\_  
(Signature of Lessee)

\_\_\_\_\_  
(BLM)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

Title 18 U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

**NOTICES**

The Privacy Act of 1974 and the regulation in 43 CFR 2.48(d) provide that you be furnished with the following information in connection with information required by this application.

**AUTHORITY:** 30 U.S.C. 181-287 and 30 U.S.C. 351-359.

**PRINCIPAL PURPOSE:** BLM will use the information you provide to process your application and determine if you are eligible to hold a lease on BLM Land.

**ROUTINE USES:** BLM will only disclose the information according to the regulations at 43 CFR 2.56(d).

**EFFECT OF NOT PROVIDING INFORMATION:** Disclosing the information is necessary to receive a benefit. Not disclosing the information may result in BLM's rejecting your request for a lease.

The Paperwork Reduction Act of 1995 requires us to inform you that:

The BLM collects this information to authorize and evaluate proposed exploration and mining operations on public lands.

Response to the provisions of this lease form is mandatory for the types of activities specified.

The BLM would like you to know that you do not have to respond to this or any other Federal agency-sponsored information collection unless it displays a currently valid OMB control number.

**BURDEN HOURS STATEMENT:** Public reporting burden for this form is estimated to average one hour per response including the time for reading the instructions and provisions, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to U.S. Department of the Interior, Bureau of Land Management (1004-0073), Bureau Information Collection Clearance Officer (WO-630), 1849 C Street, Mail Stop 401 LS, Washington, D.C. 20240.

**APPENDIX 4**

CONCURRENCE LETTER FROM THE  
U.S. FISH AND WILDLIFE SERVICE



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Ecological Services  
5353 Yellowstone Road, Suite 308A  
Cheyenne, Wyoming 82009

In Reply Refer To:  
ES-61411/W.02/WY0710284

### Memorandum

To: Joseph Meyer, Assistant Field Manager, Bureau of Land Management, Casper Field Office, Casper, Wyoming  
Attn: Nancy Doelger

From: Brian T. Kelly, Field Supervisor, U.S. Fish and Wildlife Service, Wyoming Field Office, Cheyenne, Wyoming *Patricia Seibert for*

Subject: Maysdorf Coal Lease by Application, Final Biological Assessment

Thank you for your letter, dated April 30, 2007, and the final biological assessment (BA) for the proposed Maysdorf Coal Lease by Application (LBA) submitted to our office via electronic mail on May 22, 2007. The Bureau of Land Management (BLM) is proposing to offer the Maysdorf tract, located west and immediately adjacent to the Cordero/Rojo Coal Mine, for lease. The Maysdorf tract is located in Sections 4, and 9-11 in T 46N/R71W and Sections 21, 28, and 33 in T 47N/R71W, Campbell County, Wyoming. The coal estate underlying the Maysdorf tract is owned by the federal government and administered by the BLM. The surface estate is privately and federally owned, and the federal surface estate is administered by the BLM. The tract encompasses approximately 2900 acres of surface land and contains approximately 290 million tons of coal.

The federally listed species addressed in the BA for the Maysdorf Coal LBA are the bald eagle (*Haliaeetus leucocephalus*), Ute ladies'-tresses (*Spiranthes diluvialis*) and the black-footed ferret (*Mustela nigripes*). As stated in the BA, the BLM has determined that the proposed Maysdorf Coal LBA will have 'no effect' on the black-footed ferret. The BLM has also determined that the Maysdorf LBA 'may affect, but is not likely to adversely affect' the bald eagle and Ute ladies'-tresses. Our office has reviewed the BA and the potential effects of the proposed Maysdorf Coal LBA on bald eagle and Ute ladies'-tresses in accordance with section 7(a)(2) of the Endangered Species Act (Act) of 1973, as amended (50 CFR §402.13), and this letter transmits the U.S. Fish and Wildlife Service's (Service) concurrence.

**Bald Eagle:** The Maysdorf tract is adjacent to the Cordero/Rojo Coal Mine and is within 0.25 miles of a bald eagle communal roost that became established in a cottonwood gallery on the mine permit area in 2004. Up to 29 eagles have been observed roosting overnight in these cottonwoods at one time. To protect eagles using this roost from activities associated with the proposed lease, BLM is applying the following protective measures.

Bald eagles will not be disturbed by coal lease activities on the Maysdorf LBA Tract, within a one mile buffer of the communal winter roost, from November 1 through April 1. No ground-disturbing activities will be permitted by BLM on the LBA tract within 0.5 miles of the communal winter roost year-round.

Based on this protective measure, and information in the BA that no bald eagle nests occur within one mile of the lease tract, the Service concurs with the BLM that leasing of the Maysdorf tract 'may affect, but is not likely to adversely affect' the bald eagle.

Ute ladies'-tresses: As documented in the BA for the Maysdorf Coal LBA no Ute ladies'-tresses orchids were found during surveys of its suitable habitat in the coal lease tract in late August of 2005 and 2006. As stated in the BA, surveys were conducted by a trained botanist in all areas of suitable habitat during the period of year when the orchid is expected to be in flower. Based on this information the Service concurs with the BLM that leasing of the Maysdorf tract 'may affect, but is not likely to adversely affect' Ute ladies'-tresses.

This concludes informal consultation pursuant to the regulations implementing the Act. This project should be re-analyzed if new information reveals effects of the action that may affect listed or proposed species or designated or proposed critical habitat in a manner or to an extent not considered in this consultation; if the action is subsequently modified in a manner that causes an effect to a listed or proposed species or designated or proposed critical habitat that was not considered in this consultation; and/or, if a new species is listed or critical habitat is designated that may be affected by this project.

We acknowledge that the BLM has determined that the Maysdorf LBA will have "no effect" on the black-footed ferret. When the BLM makes a "no effect" determination, concurrence from the Service is not required, although we appreciate receiving a copy of the information you used to make that determination for our records.

We thank the BLM for continued efforts to ensure the conservation of federally listed species. If you have any questions or comments regarding this letter, please contact Trish Sweanor at the letterhead address or phone (307) 772-2374, extension 239.

cc: BLM, Buffalo FO, Wildlife Biologist, Buffalo, WY (A. Kosic)  
BLM, Buffalo FO, Wildlife Biologist, Buffalo, WY (L. Gerard)  
WGFD, Statewide Habitat Protection Coordinator, Cheyenne, WY (V. Stelter)  
WGFD, Non-Game Coordinator, Lander, WY (B. Oakleaf)

**APPENDIX 5**

**APPEAL PROCEDURES**

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

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

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

- 1. NOTICE OF APPEAL**..... A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the *Notice of Appeal* in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a *Notice of Appeal* in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).
- 2. WHERE TO FILE**..... BUREAU OF LAND MANAGEMENT, 5353 YELLOWSTONE ROAD, CHEYENNE, WYOMING 82009 or BUREAU OF LAND MANAGEMENT, PO BOX 1828, CHEYENNE, WYOMING 82003
- NOTICE OF APPEAL.....
- WITH COPY TO SOLICITOR..... U.S. DEPARTMENT OF THE INTERIOR, OFFICE OF THE SOLICITOR, ROCKY MOUNTAIN REGION 755 PARFET STREET, SUITE 151, LAKEWOOD, CO 80215
- 3. STATEMENT OF REASONS**..... Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).
- WITH COPY TO SOLICITOR..... U.S. DEPARTMENT OF THE INTERIOR, OFFICE OF THE SOLICITOR, ROCKY MOUNTAIN REGION 755 PARFET STREET, SUITE 151, LAKEWOOD, CO 80215
- 4. ADVERSE PARTIES**..... Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).
- 5. PROOF OF SERVICE**..... Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).
- 6. REQUEST FOR STAY**..... Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a *Notice of Appeal* (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your *Notice of Appeal* (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the *Notice of Appeal* and Petition for a Stay **must** also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.
- Standards for Obtaining a Stay.** Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay.

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

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

### 43 CFR SUBPART 1821--GENERAL INFORMATION

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

#### STATE OFFICES AND AREAS OF JURISDICTION:

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

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

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(Form 1842-1, September 2006)