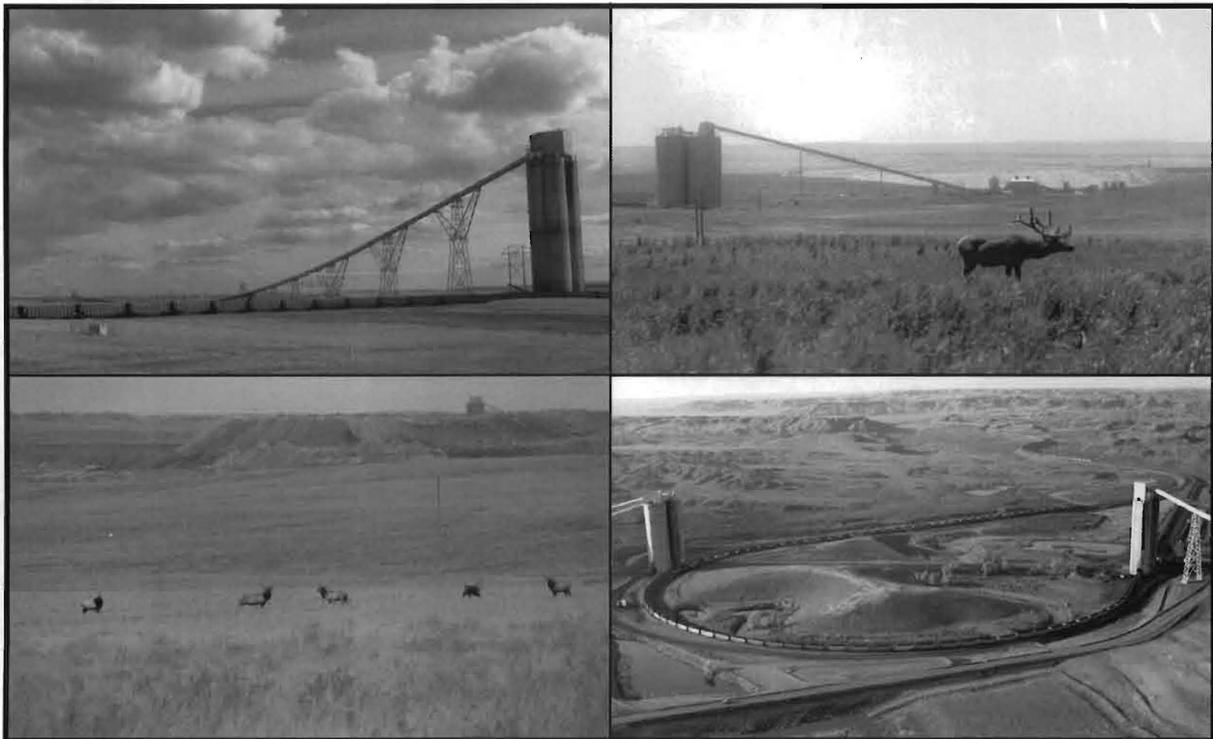


RECORD OF DECISION

Environmental Impact Statement for the

South Porcupine Coal Lease Application

WYW176095



Wyoming State Office - High Plains District Office

August 2011



The BLM's multiple-use mission is to sustain the health and productivity of the public lands for the use and enjoyment of present and future generations. The Bureau accomplishes this by managing such activities as outdoor recreation, livestock grazing, mineral development, and energy production, and by conserving natural, historical, cultural, and other resources on public lands.

BLM/WY/PL-11/039+1320

**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
RECORD OF DECISION
SOUTH PORCUPINE LEASE BY APPLICATION
WYW176095
CAMPBELL COUNTY, WYOMING**

INTRODUCTION

On September 29, 2006, BTU Western Resources, Inc. (BTU), a subsidiary of Peabody Energy Corporation (PEC), filed an application with the Bureau of Land Management (BLM) for Federal coal reserves in three maintenance tracts encompassing approximately 5,116.65 acres and 598 million tons of coal as estimated by the applicant. The tracts are located west, northwest, and north of and immediately adjacent to the North Antelope Rochelle Mine in Campbell County, Wyoming (Appendix 1, Figure 1). The mine is operated by Powder River Coal, LLC (PRC), a subsidiary of PEC. The application was made pursuant to the Leasing on Application regulations found in the Code of Federal Regulations at 43 CFR Subpart 3425.1.

On October 12, 2007, BTU filed a request with the BLM to modify its application and increase the lease area and coal volume to approximately 8,981.74 acres and 1,179.1 million tons of coal. BLM reviewed the modified tract configuration and notified the company that their application had been modified. BLM determined that the application would be processed as two separate maintenance tracts and, if decisions were made to lease the tracts, a separate competitive lease sale would be held for each tract. Located approximately 12 miles southeast of Wright, the two nominated tracts on the north side of the mine were combined and are referred to as the North Porcupine Lease By Application (LBA) tract with assigned case file number WYW173408. Located approximately 14 miles southeast of Wright, the remaining nominated tract on the west side of the mine is referred to as the South Porcupine LBA tract with assigned case file number WYW176095.

BTU has applied to lease Federal coal reserves in order to extend the life of the North Antelope Rochelle Mine. The BLM refers to these types of applications as maintenance tracts. A maintenance tract is a tract of Federal coal that is adjacent to, and can be mined by, an existing active coal mine. As applied for, the South Porcupine LBA tract includes a total of approximately 3,185.96 acres (Appendix 1, Figure 2). BTU estimates that, as applied for, the tract includes approximately 309.7 million tons of recoverable coal reserves in Campbell County, Wyoming.

The South Porcupine LBA tract was evaluated in the *Wright Area Coal Lease Applications Environmental Impact Statement* (EIS). The EIS analyzed the proposed leasing of six Federal coal tracts located in the Wright Area of the Wyoming portion of the Powder River Basin. The Proposed Action analyzed in the EIS is to hold one competitive sealed-bid lease sale and issue a lease for the Federal coal lands included in the South Porcupine LBA tract as applied for by BTU. The Proposed Action assumes that the applicant would be the successful bidder on the tract, and that the tract would be mined as a maintenance lease for the existing mine. According

to the applicant, the North Antelope Rochelle Mine needs the Federal coal included in the South Porcupine 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 North Antelope Rochelle Mine coal leases. If the lease for the South Porcupine LBA tract is acquired as it was applied for, PRC anticipates that it would extend the life of the North Antelope Rochelle Mine by approximately 3.3 years.

The North Antelope Rochelle Mine has a permit to conduct mining operations approved by the Wyoming Department of Environmental Quality Land Quality Division (WDEQ/LQD) and a Mineral Leasing Act (MLA) of 1920, as amended, mining plan approved by the Secretary of the Interior to conduct surface coal mining operations on their existing coal leases. The mine complies with the requirements of the Clean Air Act (CAA) through an air quality permit approved by the Air Quality Division of the Wyoming Department of Environmental Quality (WDEQ/AQD) which currently allows mining of up to 140 million tons of coal per year.

BLM administers the Federal Coal Leasing Program under the MLA as amended by the Federal Coal Leasing Amendments Act of 1976. If any proposed lease tract contains surface lands which are under the jurisdiction of any Federal agency other than the Department of Interior (USDI) or are occupied by a qualified surface owner, that agency or individual must consent to the issuance of the lease, and in the case of a Federal agency, may prescribe terms and conditions to be imposed on that lease (43 CFR 3400.3-1 and 3420.4-2). Within the selected configuration for the South Porcupine LBA tract, the private lands are currently owned by the following entities: Powder River Coal, LLC, West Roundup Resources, Inc., Bridle Bit Ranch Company, Jerry J. Dilts Family LP II, Barbara H. Dilts Living Trust, and Western Railroad Properties, Inc. Qualified surface owners include the Jerry J. Dilts Family LP II and Bridle Bit Ranch Company. For the lands described in the selected configuration for the South Porcupine tract, the BLM has received consent from the qualified surface owners.

The selected configuration for the South Porcupine tract (Appendix 1, Figure 3) also includes approximately 1,638 acres of National Forest System lands in the Thunder Basin National Grassland (TBNG) administered by the USDA-Forest Service (FS). As required by 43 CFR 3420.4-2, the FS has provided consent to BLM to lease the FS-administered lands that were included in the South Porcupine tract. The FS signed their Record of Decision on July 14, 2011. Their prescribed terms and conditions for the South Porcupine coal tract are included in Appendix 2. The FS ROD is subject to appeal under FS administrative procedures. In the event of a FS ROD appeal, BLM's decision would not be implemented until the FS appeal process is completed.

BACKGROUND

Lease by Application Process

In the Powder River Basin (PRB), maintenance tracts are generally nominated for leasing by companies operating 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 Wright Area Coal EIS to evaluate and disclose potential impacts of leasing the Federal coal in six Wright Area coal tracts, including the South Porcupine tract. Although leasing the South Porcupine would not authorize mining operations on the tract, the EIS evaluates the potential impacts of mining the South Porcupine tract because mining is a logical consequence of issuing a lease for a maintenance tract of coal.

The Office of Surface Mining Reclamation and Enforcement (OSM) is a cooperating agency on the Wright Area EIS. OSM is the Federal agency with the primary responsibility to administer programs that regulate surface coal mining in accordance with Section 503 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM also recommends approval, approval with conditions, or disapproval of the MLA mining plan to the Assistant Secretary of the Interior, Lands and Minerals Management. The FS is a cooperating agency since a portion of the Wright Area proposed lands for leasing lie within the TBNG.

The WDEQ/LQD, WDEQ/AQD, Wyoming Department of Transportation (WYDOT), and the Converse County Board of Commissioners are also cooperating agencies on this EIS. WDEQ/LQD has 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. WDEQ/AQD regulates air borne emissions in Wyoming and administers the air quality standards developed by the Environmental Protection Agency (EPA). WYDOT's responsibilities include maintaining state roads and highways, planning and supervising road improvement work, and supporting airports and aviation in the state. The responsibilities of the Converse County Board of Commissioners include but are not limited to the management and oversight of county roads, facilities, and planning and zoning rules in the county.

By law and regulation, the LBA process is an open, public, competitive sealed-bid process. Bidding at any potential sale is not restricted to the applicant. In order for BLM to award and issue a coal lease, the highest bid received must meet or exceed fair market value of the coal as determined by BLM's economic evaluation.

BTU filed the LBA because the South Porcupine, as applied for, is adjacent to their existing approved mining operations at the North Antelope Rochelle Mine and the Federal coal can be mined using their existing mine facilities, equipment, and employees (Appendix 1, Figure 1). In the Wright Area Coal EIS, the alternatives that are analyzed in detail assume that the applicant would be the successful bidder if a competitive coal lease sale is held.

History of Coal Leasing Activity in the Wyoming Portion of the Decertified Powder River Coal Region

Since decertification of the Powder River Federal Coal Region in 1990, 20 Federal coal leases in Campbell and Converse counties, Wyoming, have been issued under the LBA process with competitive sealed-bid sales. These leases include approximately 49,172 acres and 5.793 billion

tons of mineable coal. Eighteen of these leases were issued to the following producing mines for the purpose of extending operations at those mines: Jacobs Ranch (2), Black Thunder (3), North Antelope Rochelle (4), Eagle Butte (2), Antelope (3), Buckskin (1), Cordero/Rojo (2), and the former North Rochelle (1).

The remaining two leases, the West Rocky Butte and the West Roundup, were issued to companies intending to open new mines. The West Rocky Butte lease was issued to 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 but the new mine was never developed. The Rocky Butte and West Rocky Butte leases are now held by Caballo Coal Company, a subsidiary of PEC, and are included in the Caballo Mine. The West Roundup lease was issued to West Roundup Resources, Inc., a subsidiary of PEC, and has been incorporated into the recently permitted School Creek Mine.

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

There are currently 12 Wyoming PRB maintenance coal lease applications being processed by BLM including the South Porcupine LBA tract and the recently completed West Antelope II, Caballo West, Belle Ayr North, South Hilight Field, and West Coal Creek LBA Records of Decision. As applied for, the pending coal lease applications comprise of approximately 34,571 acres and 3.722 billion tons of Federal coal (Appendix 1, Figure 1). The coal lease applications and applicant mines include the following: Belle Ayr North (*Belle Ayr Mine*), North Hilight Field (*Black Thunder Mine*), South 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*), South Porcupine (*North Antelope Rochelle Mine*), North Porcupine (*North Antelope Rochelle Mine*), and the West Antelope II (*Antelope Mine*).

In addition to coal leasing and mining, oil and gas leasing and development have also occurred in the area. Both conventional and coalbed natural gas (CBNG) wells have been drilled in and around the North Antelope Rochelle Mine and the South Porcupine LBA. Conventional and CBNG resources are currently being recovered from Federal and private oil and gas leases in the application area. Federal oil and gas lease ownership in the South Porcupine LBA area is described in detail in the Final EIS. Federal oil and gas lessees and private interests identified by the applicant were included on the mailing list for the Wright Area Coal EIS.

The EIS discusses energy development in and around the South Porcupine LBA. The discussion includes 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 analysis found that three conventional oil and gas wells were permitted and drilled on lands included in the South Porcupine BLM study area. The conventional gas well is still producing and the two oil wells were plugged and abandoned.

The Wright Area Coal EIS includes a summary of the results of the BLM WSO-RMG analysis of the CBNG resources in the area. Most of the CBNG production in the area has occurred from the upper Fort Union Formation (Paleocene) Wyodak-Anderson coal seam, the same coal beds being mined by the surface coal operators. In the Wyoming portion of the PRB, CBNG has been produced from the Wyodak-Anderson zone since the late 1980s. According to data analyzed by the BLM WSO-RMG and the U.S. Geological Survey, measured gas content was minimal in all of the Wyodak-Anderson coal cores that were collected in the year 2000 at locations near the surface coal mines, indicating that the coal seams were already substantially depleted of CBNG in the vicinity of the mines. The EIS identifies 12 CBNG wells that have been drilled over time within the South Porcupine BLM study area. Ten of those wells have been producing, though at reduced levels as the original reserves have been depleted over the years. CBNG wells that continue to produce in advance of coal mining assist in removing any remaining methane in the coal seams.

Several mechanisms 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:

- BLM will attach a Multiple Mineral Development stipulation in 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 that were issued prior to the South Porcupine coal tract being leased (Appendix 2).
- Conventional oil and gas wells must be abandoned while mining and reclamation operations are in progress. If the value of the remaining oil and gas reserves justifies the expense of reestablishing production, the wells could be recompleted or redrilled following mining.
- BLM has a policy in place regarding CBNG-coal development conflicts (BLM Washington Office Instruction Memorandum (IM) No. 2006-153). The IM directs BLM decision-makers to optimize the recovery of both CBNG and conventional resources and to ensure that the public receives a reasonable return. This policy offers royalty incentives to CBNG operators to accelerate production in order to recover the natural gas while simultaneously allowing uninterrupted coal mining operations. The IM 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, BLM will assist in facilitating agreements between the companies.
- Mining of the South Porcupine LBA tract would not be authorized until: 1) the coal lessee obtains a permit approved by the WDEQ/LQD to mine the tract, and 2) the MLA mining plan is approved by the Secretary of the Interior. Before the MLA mining plan can be approved, BLM must approve a Resource Recovery and Protection Plan (R2P2). Prior to approving the R2P2, 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. Because the permit approval process generally takes the coal lessee several years to complete, CBNG resources on the tract could continue to be recovered during that time.

- Prior to mining the Federal coal, the coal lessee can negotiate an agreement with the oil, gas, and pipeline owners and operators regarding the removal of their existing facilities on the South Porcupine tract.

Other proposed projects in the Wyoming PRB 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 III coal-fired power plant at the Black Hills Corporation energy complex near the Wyodak Mine site in Gillette, Wyoming (being constructed); the Dry Fork Station coal-fired power plant constructed by Basin Electric Power Cooperative near the Dry Fork Mine north of Gillette (being tested); the Two Elk coal-fired Unit 1 and Unit 2 power plants proposed by the North American Power Group (NAPG) which would be located east of the Black Thunder Mine; and a railroad line from the PRB to Minnesota proposed by the Dakota, Minnesota, and Eastern Railroad Corporation (DM&E). In September, 2007, Canadian Pacific Railway Ltd. announced acquisition of the DM&E and its subsidiaries. The transaction was reviewed and approved by the Surface Transportation Board in October, 2008.

In addition, several coal conversion projects have been proposed. Based on status and available information, only one, the KFx Coal Beneficiation Project, was considered to have a high enough likelihood of proceeding to include it in the PRB Coal Review. The KFx (now Evergreen Energy) coal beneficiation plant produced commercially viable product in 2007 until the plant was idled down in 2008. Since then, Evergreen Energy Inc. and its strategic partner, Bechtel Power Cooperation, decided to relocate operations to a different location.

The proposed power plants, the DM&E railroad line, coal conversion projects, and the ongoing and proposed oil, gas, and CBNG operations are separate projects being developed independently of leasing the South Porcupine tract. If these projects are developed as proposed and the South Porcupine area is leased and mined as proposed, there would potentially be some overlap between the environmental and socioeconomic impacts of constructing and operating some of the projects and the environmental and socioeconomic impacts of mining the South Porcupine tract. The cumulative effects of these projects are described in Chapter 4 of the *Wright Area Coal Lease Applications EIS*. The cumulative impact discussion in the EIS is based on analyses completed for the PRB Coal Review. The PRB Coal Review can be accessed at the following BLM website:

http://www.blm.gov/wy/st/en/programs/energy/Coal_Resources/PRB_Coal/prbdocs.html.

DECISION

As the BLM Wyoming High Plains District Manager, my decision is that it is in the public interest to offer the South Porcupine LBA tract as described below for competitive sale so that these reserves are available to compete for sale in the open coal market to meet the national coal demand that is expected to exist until at least 2035. The public interest is served by leasing the South Porcupine LBA tract because doing so provides a reliable, continuous supply of stable and affordable energy for consumers throughout the country. Developing this coal also helps reduce our nation's dependence on foreign energy supplies and provides significant socioeconomic benefits for the United States, Wyoming, and local communities.

Under this decision, Alternative 2 for the South Porcupine LBA tract has been selected from the *Wright Area Coal Lease Applications EIS*. Under Alternative 2, the Federal coal included in the South Porcupine LBA tract, as modified by BLM, will be offered for lease at a competitive sealed-bid sale. Under Alternative 2, the South Porcupine tract has been modified by BLM to include additional lands from the BLM study area. The tract includes 3,243.015 acres, more or less, and the BLM estimates that the tract contains approximately 401,830,508 tons of mineable Federal coal resources in Campbell County, Wyoming.

If the highest bid received at the sale meets or exceeds the FMV as determined by the BLM and if all other leasing requirements are met, a lease will be issued to the successful qualified high bidder. The competitive lease sale will be held as described in Federal regulations found at 43 CFR Subpart 3422, Lease Sales. In the event that the highest bid submitted at the competitive lease sale of the South Porcupine LBA tract does not meet or exceed the FMV as determined by BLM, the BLM may, but is not obligated to, re-offer the coal tract for leasing at a later date.

Under Alternative 2, it is assumed that the applicant would be the successful bidder on the South Porcupine LBA tract and that the Federal coal would be mined to extend the life of the adjacent North Antelope Rochelle Mine. The tract would be mined and reclaimed in a logical sequence in concert with ongoing mining and reclamation operations at the adjacent existing mine. This would be consistent with the analysis of the impacts described in the EIS.

This decision incorporates by reference the standard coal lease stipulations which address compliance with the basic requirements of the environmental statutes and additional BLM special stipulations (Appendix 2).

This decision is in conformance with the *Approved Resource Management Plan for Public Lands Administered by the BLM Buffalo Field Office (RMP)*, which was completed in 2001 and amended in 2003. This decision is also in conformance with the *USDA-FS Land and Resource Management Plan for the Thunder Basin National Grassland* which was completed in 2001.

For FS-administered lands, consent decision authority has been delegated to the Forest Supervisor level on the Medicine Bow-Routt National Forests and Thunder Basin National Grassland. The South Porcupine LBA tract includes Federal coal lands located within the TBNG administered by FS. Therefore, FS must consent and prescribe terms and conditions in order for the tract to be leased. The FS provided BLM their consent to lease the lands in the South Porcupine LBA tract in the FS Record of Decision signed on July 14, 2011. The FS consent decision is conditioned on application of the Notice for Lands of the National Forest System under Jurisdiction of the Department of Agriculture (FS Notice) on the South Porcupine Federal coal lease tract (WYW176095), when and if the tract is leased (Appendix 2).

REASONS FOR DECISION

Denying this proposed coal leasing is not likely to affect current or future domestic coal consumption used for electric generation. Not offering the South Porcupine Federal coal tract

for lease is unlikely to affect changes in the national electric generation portfolio. The rationale for this conclusion is summarized below.

Various commenters on the Wright Area Coal EIS asserted that by not leasing this LBA, and, in a cumulative sense, by denying proposed coal leasing in the Wyoming portion of the PRB, BLM would slow global climate change and would push the national electric generation portfolio to contain only non-carbon fuel alternatives. BLM has thoroughly considered this comment in our decision.

BLM agrees that movement toward electric generation capacity not reliant on carbon fuels is positive. Carbon fuels are a finite resource and will likely become more costly and rare. Having more non-carbon instead of carbon-based electric generation would assist in decreasing human-caused greenhouse gas (GHG) emissions. Reducing human-caused GHG emissions would help to lessen any harmful effects that they may be causing to global climate.

BLM reviewed two independent studies that determined the ability of the domestic electric generation industry to alter the present portfolio (mix of electric generation technologies) corresponding to the time period that the South Porcupine reserves would be leased and produced. The first study was done by the Department of Energy (Annual Energy Outlook 2008 Report, Energy Information Administration, April 2008) and the second was by the domestic electric generation industry's research arm, the Electric Power Research Institute (Electricity Technology in a Carbon Constrained Future, authored by R. James, Carnegie-Mellon University, November 2007).

Both studies projected the electric generation portfolio to 2030 and both studies recognized the likelihood of carbon regulation. While there were differences in each study related to the mix of renewable sources, nuclear, and energy conservation, both studies were consistent in finding that coal-fired electric generation would represent 52-58 percent of the electric generation portfolio by 2030, as compared to the current 51 percent.

The Annual Energy Outlook 2010 Report (Energy Information Administration, December 2009) represents a forecast to the year 2035. This most recent report incorporates the 2009 downturn in electric demand which resulted from lower electric demand for manufacturing in the depressed domestic economy of 2009. This forecast lowered the percentage of coal-fired electric generation in the domestic electric generation portfolio to 44 percent by 2035, based on a slowing in electric demand through 2035, and a doubling, to 17 percent, of renewable electric generation in the domestic electric generation portfolio by 2035.

Based on these studies, even with a considerably more optimistic projection for renewable sources, coal use continues to be projected as the largest portion of the domestic electric fuel mix. As described in the Final EIS, the key determinant of energy consumption is population. As human population and activities have increased over time, coal and other carbon-based fuels have been utilized to provide for these additional energy demands. As directly stated by the Department of Interior Secretary Salazar, "The fact remains that oil and gas and coal are a very important part of our energy portfolio now and they will continue to be an important part of our

energy portfolio in the future . . . Fossil fuels and clean technology coal will have to be part of the mix if the U.S. is able to have enough energy in the future” (Great Plains Energy address, November 9, 2009).

Further, BLM disagrees with the comment that denying the proposed Federal coal leasing application would consequentially reduce the overall rate of national coal consumption by electric generators. Numerous mines located outside of the PRB extract and produce coal in the United States. In order to supply reliable power for the country’s electrical demands, many mines outside of the PRB have the capacity to replace the coal production generated by the North Antelope Rochelle Mine.

The South Porcupine coal reserves, if leased and approved for mining, would allow the coal mining operator to continue to compete for coal sales in a diverse open supply and demand market. Denying this lease offer would not cease currently approved mining operations. Rather, a denial would require the mine to cease operations only after the current lease reserves were depleted. This would deny the mine operator the ability to compete with other operators in an open market for a future coal demand that is projected to continue until at least 2035. The inability of the North Antelope Rochelle Mine, or any other existing PRB producer, to offer reserves in the coal market would not cause electric generators to stop burning coal. Utility companies will likely operate existing coal-burning facilities until either cost or regulatory requirements render them ineffective or they are replaced by other reliable large scale capacity electric generation technologies capable of consistently supporting the bulk electrical demands of the United States’ people.

The effect of rejecting the South Porcupine LBA would be that the existing mine would cease operations after the current reserves are depleted (approximately 9.9 years), and the North Antelope Rochelle Mine would not be competitive in the national coal market to meet the future coal demand in the U.S. that is expected to last until at least 2035. Other national coal producers have the capacity to produce coal and replace the production from this existing mine.

Lastly, PRB coal has competed for an increasing share of coal sales in the market primarily because it is lower cost, environmentally compliant, and successful post-mining reclamation has been thoroughly demonstrated. For these reasons, over the past several decades, PRB coal has been replacing other domestic coals in the open market, and would be expected to compete similarly in the future.

Cumulatively, the effect of rejecting the coal leasing proposed throughout the PRB would be that many of the existing mines would cease operations once current reserves are depleted (ranging from 7 to 15 years). Those mines would then not be able to compete with other mines to meet the future coal demand that is expected to last until at least 2035. When current reserves are depleted at these mines, their production would likely be replaced by other domestic and, potentially, international coal producers with coal that is more costly, less environmentally compliant, and has greater residual environmental impact.

Many other factors including but not limited to those listed below were considered in the decision to lease the South Porcupine LBA tract:

- The Federal Coal Program encourages the development of domestic coal reserves and the reduction of the United States' dependence on foreign sources of energy. BLM recognizes that coal extraction is currently necessary in order to meet the nation's energy needs. A primary goal of the National Energy Policy is to add energy supplies from diverse sources including domestic oil, gas, and coal. Private development of Federal coal reserves is integral to the BLM Coal Leasing Program under the authorities of the Mineral Leasing Act of 1920, the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Coal Leasing Amendments Act of 1976 (FCLAA).
- BTU Western Resources, Inc. applied for the South Porcupine LBA coal tract in order to extend the life of the North Antelope Rochelle Mine. The tract, if leased and sold, would allow the mine to acquire access to a continuing supply of low sulfur compliance coal that would be sold to power plants for generating electricity. Continued leasing of low sulfur PRB coal assists coal-fired power plants in meeting the Clean Air Act requirements without constructing new power plants or revamping existing plants. Generally, the expenses associated with constructing new power plants, retrofitting or revamping existing plants, or substituting alternative fuels would increase overall energy costs to customers and consumers.
- The leasing and subsequent mining of Federal coal reserves provides the United States, the State of Wyoming, and its affected 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 sulfur coal for power generation. The Governor of Wyoming and other state and local officials support Federal coal leasing.
- The BLM is the lead agency responsible for leasing Federal coal lands under the MLA as amended. When an application to lease Federal coal is submitted, the BLM is obligated to respond to the application in a timely manner. In order to process an LBA, BLM must fulfill the requirements of NEPA by preparing environmental analyses. In this case, an EIS was prepared to provide agency decision-makers and the public with a complete and objective evaluation of the environmental impacts of leasing and mining the Federal coal. BLM then makes a decision on whether or not to offer the Federal coal for lease. In either case, BLM must notify the applicant in a timely fashion of its decision.
- Offering the South Porcupine LBA tract (totaling 3,243.015 acres containing approximately 401,830,508 tons of mineable Federal coal reserves as estimated by the BLM) is responsive to the coal lease application received on September 29, 2006.
- The decision to offer the South Porcupine coal tract for leasing is in conformance with the BLM land use plan decisions covering this area (see section entitled "Conformance with Existing Land Use Plans").

- The *Wright Area Coal Lease Applications EIS* was prepared in response to applications BLM received to lease tracts of Federal coal adjacent to existing mines in Wyoming. The environmental impacts of this decision were fully disclosed in the EIS. Public comments were addressed throughout the NEPA process.
- The BLM's selected tract configuration under Alternative 2, as modified and described in this decision, provides for maximum economic recovery of the coal resource.
- The U.S. Fish and Wildlife Service has provided written concurrence for leasing the South Porcupine coal tract pursuant to Section 7(a)(2) of the Endangered Species Act of 1973, as amended (Appendix 3). Multiple surveys have been conducted for Ute ladies'-tresses during the known flowering periods. No sage-grouse leks have been documented within the South Porcupine's general analysis area. The South Porcupine tract is located outside of the Governor of Wyoming's statewide designated greater sage-grouse core area. No prairie dog colonies are located within the South Porcupine tract. Two nests located within the South Porcupine tract have been utilized by multiple raptor species with intermittent use by golden eagles. Twenty-three bird species on the "Coal Mine List of 40 Migratory Bird Species of Management Concern in Wyoming" have historically been observed at least once in the Wright EIS general analysis area. Wildlife mitigation measures will be prescribed in concert with USFWS during the permit for mining process of the South Porcupine LBA.
- Consultation with the appropriate Native American tribes was initiated by the BLM Wyoming State Office on May 29, 2008. No tribes indicated concerns with the disturbance of cultural sites in the South Porcupine general analysis area.
- Twenty-two archaeological sites have been identified within the South Porcupine general analysis area. One site has previously been determined NRHP eligible (48CA132). The other 21 sites have been determined to be not eligible to the NRHP (48CA694, 48CA949, 48CA1276, 48CA1623, 48CA2867, 48CA2789, 48CA2790, 48CA2793, 48CA2868, 48CA2869, 48CA3100, 48CA3101, 48CA3582, 48CA3583, 48CA3585, 48CA3586, 48CA4785, 48CA5011, 48CA5012, 48CA5013, and 48CA5014).
- The BLM consulted SHPO in relation to determinations of eligibility and impacts for these sites and has determined that leasing the coal would result in an adverse effect to site 48CA132. However, adverse impacts to 48CA132 have been mitigated by a previously approved adjoining lease action. Therefore, no further consultation or resolution of adverse effects is required. On March 1, 2011, BLM notified SHPO that the undertaking will result in an adverse effect to historic properties. Any further National Historic Preservation Act mitigation consultation with the Wyoming State Historic Preservation Office will be completed as required during the mine permitting process by OSM and WDEQ prior to any surface disturbance of the tract.
- Issuing a Federal coal lease for the South Porcupine tract would not result in the creation of new sources of human-caused GHG or mercury emissions. The North Antelope

Rochelle Mine would produce the South Porcupine coal at currently permitted levels using existing production and transportation facilities. If the South Porcupine tract is leased and mined, site-specific GHG emission rates from the North Antelope Rochelle Mine are anticipated to increase slightly compared to current emission rates due to increased strip ratios and added hauling distances.

- If the coal reserves contained within the South Porcupine tract are leased and mined at the currently permitted levels and the coal is used to generate electricity by coal-fired power plants, the emissions of GHG and mercury attributable to the coal produced at the North Antelope Rochelle Mine would be extended for approximately 3.6 years. The rate of human-caused CO₂ and mercury emissions would depend upon the permitted levels at the coal combustion facilities where the coal is burned and the potential emission limits that may be applied to those facilities in the future by regulation or legislation.
- The potential for regulation of GHG emissions as an air pollutant is recognized in this decision. Should such regulation be put in place, there may be an effect on coal demand, depending on how the regulatory actions affect the demand for electric power and the mix of methods used to produce electricity. Effects to coal demand would be reflected through the coal market, coal pricing, and supply. If demand decreases, it is expected that less efficient coal producers, or those with reserves having less desirable coal characteristics, may lose customers. Based on review of past performance, North Antelope Rochelle Mine has competed very well in the national coal market.

PUBLIC INVOLVEMENT

BLM received the Porcupine coal lease application on September 29, 2006. BLM announced the receipt of the LBA and published a Notice of Public Meeting in the Federal Register on December 12, 2006. At the public meeting held in Casper, Wyoming on January 18, 2007, the Powder River Regional Coal Team (PRRCT) reviewed the Porcupine coal lease application and BTU presented information about their existing mine and the pending lease application. The PRRCT recommended that BLM process the application. On March 14, 2007, BLM notified the Governor of Wyoming that BTU had made application for the North and South Porcupine Federal coal lands.

BLM published a Notice of Intent to Prepare an EIS and Notice of Public Meeting in the Federal Register on July 3, 2007, in the Gillette News-Record on July 6, 2007, and in the Douglas Budget on July 11, 2007. Scoping notices were also mailed to Federal, state, and local government agencies, conservation groups, commodity groups, and individuals who could be impacted by this LBA. BLM and the applicant jointly developed the distribution list. On July 24, 2007, a public scoping meeting was held in Gillette, Wyoming. The scoping period extended from July 3 through September 3, 2007, during which time BLM received nine comment letters.

A notice announcing the availability of the *Wright Area Coal Lease Applications Draft EIS* was published in the Federal Register by the EPA on June 26, 2009. Parties on the distribution list were sent copies of the Draft EIS at that time. A 60-day comment period on the Draft EIS

commenced with publication of the EPA's Notice of Availability and ended on August 25, 2009. The BLM published a Notice of Availability/Notice of Public Hearing for the Draft EIS in the Federal Register on July 8, 2009. The BLM's Federal Register notice announced the date and time of the formal public hearing, which was held on July 29, 2009, in Gillette, Wyoming. The purpose of the public hearing was to solicit public comment on the Draft EIS, fair market value, maximum economic recovery, and the proposed competitive sale of Federal coal from the Wright Area LBAs. BLM also published a Notice of Public Hearing in both the Douglas Budget and Gillette News-Record newspapers on July 8, 2009. Two individuals presented statements on the Draft EIS during the hearing. BLM received written comments from 17 individuals, agencies, businesses, and organizations as well as over 500 comment e-mails from other interested parties. Comments that BLM received on the Draft EIS and how BLM considered these comments during the preparation of the Final EIS were included in Appendix I of the Final EIS. Written comments and the transcript of the formal public hearing are also available for review at the BLM Wyoming High Plains District Office in Casper.

A notice announcing the availability of the *Wright Area Coal Lease Applications Final EIS* was published in the Federal Register by the EPA on July 30, 2010. Parties on the distribution list were sent copies of the Final EIS at that time. The comment period for the Final EIS ended on August 30, 2010. As explained on the first page of the Final EIS, the public review period was open for 30 days after EPA's Notice of Availability published in the Federal Register.

BLM received written comments on the Final EIS from Michael J. Strawn, Powder River Basin Resource Council/Sierra Club/Center for Biological Diversity, Leslie Glustrom, WildEarth Guardians/Sierra Club/Defenders of Wildlife, Dorsey & Whitney LLP/Ark Land Company, and the Campbell County Board of Commissioners. BLM has reviewed, evaluated, and considered these comments. The comment letters and BLM's responses are available at <http://www.blm.gov/wy/st/en/info/NEPA/HighPlains/Wright-Coal.html>. All comments that were received in a timely manner were considered in the preparation of this Record of Decision (ROD).

SUMMARY OF THE PROPOSED ACTION AND ALTERNATIVES

The EIS analyzed the proposed action and two alternatives in detail for the South Porcupine LBA tract. Chapter 2 of the EIS contains a full description of each. Summarized descriptions are presented below.

Proposed Action: Hold a competitive lease sale for the Federal coal lands as applied for and issue a maintenance lease to the successful bidder.

Under the Proposed Action, the as applied for lands in the South Porcupine application as submitted by BTU, would have been offered for lease at a competitive sealed-bid sale. As applied for, the tract included approximately 3,185.96 acres (Appendix 1, Figure 2). The applicant estimated that the lands contained approximately 422.2 million tons of in-place Federal coal. This alternative assumed that the applicant would be the successful bidder and that the coal would be mined, processed, and sold by the North Antelope Rochelle Mine.

Alternative 1 (Environmentally Preferable Alternative): Reject the application.

Under this alternative, BTU's application to lease the Federal coal lands included in the South Porcupine LBA tract would be rejected and the tract would not be offered for competitive sale at this time. This is the No Action Alternative.

The applicant is presently mining existing leases that were previously acquired. Previously approved and permitted mining activity at the adjacent North Antelope Rochelle Mine would continue with or without leasing the South Porcupine LBA tract. Assuming that the South Porcupine LBA tract would never be leased and coal removal and the associated disturbance would 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 the South Porcupine LBA tract.

Rejection of the application would not cause mining operations to immediately cease at the North Antelope Rochelle Mine, nor would it immediately reduce production from this mine. Coal is mined in 27 states and is mostly used for generating electricity to support the country's demand for energy. If the South Porcupine application was rejected and, in the long term, the North Antelope Rochelle Mine was to close, other regional and national mining companies would replace the coal production that would have been lost due to the North Antelope Rochelle Mine's closure.

Alternative 2 (Selected Alternative): Reconfigure the tract and hold one competitive sale for Federal coal lands in the tract as modified by BLM and issue a lease to the successful bidder.

Along with the Federal coal lands that were applied for by BTU, BLM identified and evaluated an additional area comprised of approximately 382.07 acres of unleased Federal coal adjacent to the western edge of the application lands (Appendix 1, Figure 2). These additional lands and the as applied for tract were referred to as the BLM study area. The study area enabled BLM to evaluate and explore the potential of increasing competitive interest in the tract, allowing for more efficient recovery of Federal coal in the area, and reducing the likelihood of bypassed Federal coal.

After analyzing the additional lands included in the BLM study area for the South Porcupine, BLM selected the tract configuration as described below. BLM's selected tract configuration includes approximately 57.065 acres of additional lands from the BLM study area. The final configuration (Appendix 1, Figure 3) was selected because it allows for more efficient recovery of the Federal coal and increases competitive interest in the tract. Under the selected configuration, the South Porcupine tract includes approximately 3,243.015 acres and BLM estimates that it contains approximately 401,830,508 tons of mineable Federal coal resources.

The legal description of the lands to be offered for competitive lease sale under Alternative 2, BLM's selected tract configuration, for the South Porcupine tract is as follows:

South Porcupine Tract (WYW176095):

T.41N., R.70W., 6th P.M., Campbell County, Wyoming

| | |
|---|--------------|
| Section 7: Lots 7 through 10, 15 through 18; | 320.94 acres |
| Section 18: Lots 6 through 11, 14 through 19; | 479.71 acres |

T.41N., R.71W., 6th P.M., Campbell County, Wyoming

| | |
|--|---------------|
| Section 1: Lots 5 through 20; | 638.15 acres |
| Section 12: Lots 1 through 16; | 678.52 acres |
| Section 13: Lots 1 through 16; | 668.93 acres |
| Section 14: Lots 1, 2, 7 (E ^{1/2}), 8, 9, 16; | 211.685 acres |
| Section 23: Lots 1, 8 (N ^{1/2}); | 59.805 acres |
| Section 24: Lots 2 through 4, 5 (N ^{1/2}), 6 (N ^{1/2}), 7 (N ^{1/2}). | 185.275 acres |

South Porcupine Tract Total: 3,243.015 acres

The land descriptions and acreages are based on the BLM Status of Public Domain Land and Mineral Titles Approved Master Title Plats as of September 6, 2007 and Coal Plats as of September 6, 2007. The coal estate in the tract described above is Federally-owned. Surface ownership consists of privately owned lands and Federal lands administered by the USDA-Forest Service (FS). The selected configuration for the South Porcupine tract (Appendix 1, Figure 3) includes approximately 1,638 acres of National Forest System lands in the Thunder Basin National Grassland (TBNG) administered by the FS.

ALTERNATIVES CONSIDERED BUT NOT ANALYZED IN DETAIL

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

New Mine Start

Under this alternative, as under the Proposed Action, Alternative 1, and Alternative 2, BLM would have held a competitive coal lease sale and issued a lease for the lands included in the South Porcupine tract. This alternative assumed, however, that the successful qualified bidder would have been someone other than the applicant and that this bidder would have planned to open a new mine to develop the Federal coal resources. In BLM's current estimation, for a new mine to open in the Wyoming PRB, the first lease would need to contain approximately 500 to 600 million tons of coal.

This alternative was considered but was not analyzed in detail because it was unlikely that a new mine would start up solely using this lease tract. The total amount of coal included in this tract is not sufficient to consider opening a new mine. A new mine would also create a new source of air quality impacts. The potential difficulty in obtaining an air quality permit is another issue that could discourage new mine starts in the PRB.

Delaying the Sale

Under this alternative, the BLM would have delayed the sale of the South Porcupine tract as applied for. This alternative assumed that the tract could be developed later as either a maintenance tract or a new mine start, depending on how long the sale would have been delayed. The environmental impacts of mining this Federal coal at a later time as a maintenance tract would be expected to be similar to the Proposed Action and Alternative 2. If a new mine start was required to mine the coal in this tract, the environmental impacts would be expected to be greater than if it were mined as an extension of an existing mine.

In general, delaying the sale may have allowed CBNG resources in the Wright general analysis area to be more completely recovered prior to mining. If market prices increased in the future, bonus and royalty payments to the government would have been higher if the tract was offered for sale at a later date.

This alternative was considered but was not analyzed in detail because it would not produce substantially different impacts than other alternatives that were analyzed in detail. First, rental and royalty provisions in the proposed lease provide for the United States to benefit if coal prices increase by the time of mining. 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. Second, as described in Chapter 2 of the EIS, several mechanisms are already in place to facilitate continued CBNG recovery prior to mining the lands included in the Wright general analysis area.

CONFORMANCE WITH EXISTING LAND USE PLANS

Under the requirements of FCLAA, lands that are being considered for Federal coal leasing must be included in a comprehensive land use plan and leasing decisions must be compatible with that plan. The *Approved Resource Management Plan (RMP) for Public Lands Administered by the Bureau of Land Management Buffalo Field Office*, completed in 2001 and amended in 2003, governs and addresses the leasing of Federal coal in Campbell County. The USDA-FS *Land and Resource Management Plan for the Thunder Basin National Grassland (TBNG), Medicine Bow-Routt National Forest, Rocky Mountain Region*, completed in 2001, guides resource management activities on the TBNG.

The major land use planning decision that BLM must make concerning Federal coal resources is a determination of which Federal coal lands are acceptable for further consideration for leasing. There are four coal screening procedures that BLM uses to identify these coal lands. The screening procedures require BLM to: 1) estimate development potential of the coal lands, 2) apply the unsuitability criteria listed in the regulations at 43 CFR 3461, 3) make multiple land use decisions that eliminate Federal coal deposits from consideration for leasing to protect other resource values, and 4) consult with surface owners who meet the criteria defined in the regulations at 43 CFR 3400.0-5 (gg) (1) and (2). The coal screens were developed for Federal decision-making and are utilized in environmental analyses associated with BLM RMPs, EISs, USDA-FS TBNG planning documents, evaluations, and other resource management activities.

Under the first coal screening procedure, a coal tract must be located within an area that has been determined to have coal development potential in order to receive further consideration for leasing [43 CFR 3420.1-4(e)(1)]. The South Porcupine tract is within the area identified by BLM as having coal development potential.

The second coal screening procedure requires the application of the coal mining unsuitability criteria which are listed in the Federal coal management regulations at 43 CFR 3461. These criteria have been applied to high to moderate coal development potential lands in the Wyoming PRB, including the South Porcupine tract and surrounding lands.

Biological surveys have been conducted throughout the South Porcupine general analysis area. The USFWS has provided written concurrence for leasing the South Porcupine LBA tract pursuant to Section 7(a)(2) of the Endangered Species Act of 1973, as amended (Appendix 3). In coordination with WDEQ, the USFWS will develop and prescribe wildlife mitigation measures as a component of the mining permit authorization process.

A portion of the Burlington Northern Santa Fe & Union Pacific (BNSF & UP) railroad right-of-way (ROW) lies west of and adjacent to the South Porcupine tract. Lands within the rail line right-of-way (ROW) and associated 100-foot buffer zone were found to be unsuitable for mining under Unsuitability Criterion 2. Although the lands within the railroad ROW and buffer zone have been determined to be unsuitable for mining, they are included in the tract lease to allow for efficient recovery of all mineable coal adjacent to and outside of the ROW and its associated buffer zone. This determination also complies with coal leasing regulations which do not allow leasing in less than 10-acre aliquot parts. The lease will include a stipulation stating that no mining activity may be conducted in the portion of the lease within the railroad ROW or associated 100-foot buffer zone. This stipulation honors the finding of unsuitability for mining under Criterion 2.

Unsuitability Criterion Number 3 states that lands within 100 feet of the outside line of the ROW of a public road shall be considered unsuitable for surface coal mining. SMCRA Section 522(e)(4) and 30 CFR 761.11(d) prohibit surface mining operations on lands within 100 feet of the outside line of the ROW for a public road. A portion of the ROW of Antelope Road (Campbell County Road 4) is located within BLM's selected configuration for the South Porcupine tract (Appendix 1, Figure 3). BLM has determined that the portion of the South Porcupine tract that includes part of Antelope Road, its ROW, and the 100-foot buffer zone on both sides of the ROW must be considered unsuitable for mining at this time under Criterion Number 3.

There is an exception to the public road ROW prohibition in the regulations at SMCRA Section 522(e)(4) and 30 CFR 761.11(d) which can be applied if the appropriate road authority (Campbell County Board of Commissioners) allows the road to be relocated or closed. Surface coal mining could potentially occur within a public road ROW and buffer zone if the regulatory authority, or the appropriate public road authority designated by the regulatory authority, allows the public road to be relocated or closed after providing public notice and opportunity for a

public hearing. A finding must be reached, and stated in writing, that the interests of the affected public and landowners will be protected [30 CFR 761.11(d) and 43 CFR 3461.5(c)(iii)].

PRC obtained approval from the Campbell County Board of Commissioners to close and relocate approximately 1.25 miles of the northern portion of the Antelope Road that crosses the South Porcupine tract (T41N, R71W, between sections 1 and 2; 11 and 12). PRC plans to submit a request to the Campbell County Board of Commissioners for approval to close and relocate the remaining length of the southern portion of Antelope Road (approximately 2.25 miles) that crosses the South Porcupine tract in order to recover the coal reserves underlying the existing Antelope Road ROW.

If PRC obtains approval to close and relocate the portion of Antelope Road that crosses the South Porcupine tract, the exception to the prohibition on mining within the public road ROW and associated buffer zone could be applied and the unsuitability determination could be reconsidered. If the relocation or closure of the road is approved, PRC could recover the coal underlying the 2.25-mile section of the Antelope Road ROW and buffer zone as well as the northern 1.25-mile portion of Antelope Road that has already been approved for closure and relocation. If PRC does not obtain approval to relocate or close Antelope Road, the coal underlying the ROW and buffer zone would remain unsuitable for mining, without recovery.

Although a portion of the lands within the Antelope Road ROW and buffer zone have been determined to be unsuitable for mining, they are included in the tract lease to allow for efficient recovery of all mineable coal adjacent to and outside of the ROW and buffer zone. This determination also complies with coal leasing regulations which do not allow leasing in less than 10-acre aliquot parts. The lease will include a stipulation stating that no mining activity may be conducted in the Antelope Road ROW and its associated 100-foot buffer zone unless a permit to close or relocate the road is approved by the Campbell County Board of Commissioners. This stipulation honors the finding of unsuitability for mining under Criterion 3.

No other lands included in the South Porcupine tract were found to be unsuitable for mining during the application of the unsuitability criteria for BLM's 2001 Buffalo RMP update. Site-specific unsuitability determinations for some criteria were deferred until an application to lease was filed. These findings are included in Appendix B of the Wright Area Coal Final EIS.

The third coal screening procedure, a multiple land use conflict analysis, must be completed to identify and "eliminate additional coal deposits from further consideration for leasing to protect resource values of a locally important or unique nature not included in the unsuitability criteria," in accordance with 43 CFR 3420.1-4(e)(3). The 2001 Buffalo RMP update addresses two types of multiple land use conflicts: municipal/residential conflicts and multiple mineral development (coal versus oil and gas) conflicts.

The municipal/residential multiple land use conflict was addressed by applying buffers around the municipal planning boundaries for the major municipalities within the BLM Buffalo Field Office area including Gillette and Wright. BLM's selected South Porcupine tract configuration does not extend into any of the municipal buffer zones.

BLM's evaluation of the multiple mineral development conflicts related to issuing a lease for the South Porcupine tract is discussed above in the "Pending Coal Leasing Applications and Other Proposed Projects in the Wyoming Powder River Basin" section of this record of decision.

The fourth coal screening procedure requires consultation with surface owners who meet the criteria defined in the regulations at 43 CFR 3400.0-5(gg)(1) and (2). Under BLM's selected alternative, surface ownership consists of privately owned lands and Federal lands administered by the USDA-FS. If private surface owners are determined to be qualified under this CFR citation, then qualified surface owner consent is required before those lands can be included in a Federal coal lease. The Jerry J. Dilts Family LP II and Bridle Bit Ranch Company have been determined to be qualified surface owners. For the lands described in the selected configuration for the South Porcupine tract, the BLM has received consent from the qualified surface owners.

In summary, the lands in the South Porcupine coal tract have been subjected to the four coal planning screens and are determined to be acceptable for further consideration for leasing. Thus, a decision to lease the South Porcupine Federal coal lands is in conformance with the current BLM Buffalo RMP and the Thunder Basin National Grassland LRMP.

MITIGATION, COMPLIANCE, AND MONITORING

If the South Porcupine tract is leased, the lease will contain standard coal lease stipulations and also BLM Special Stipulations. BLM has applied special stipulations (Appendix 2) to avoid environmental damage or mitigate potential conflicts affiliated with cultural resources, paleontological resources, threatened and endangered species, multiple mineral development of oil and/or gas and coal resources, resource recovery and protection, and/or public land survey. Special coal lease stipulations were identified in Appendix D of the Final EIS. The final special stipulations are attached (Appendix 2) to this decision and will become part of the Federal coal lease records and pertain to all lands as described in the Federal coal lease tract.

After Federal coal leases are 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 BTU is the successful, qualified high bidder for the Federal coal included in the South Porcupine coal tract, a permit revision must then be approved by the WDEQ/LQD. An MLA mining plan revision must also be approved by the Assistant Secretary of the Interior before the coal in the tract could be mined. The existing mitigation measures specific to the currently approved mine plan for the adjacent mine would then be revised to include the new mitigation measures specific to the South Porcupine tract. The mining permit would be amended to include the new mitigation requirements.

If the successful bidder on the South Porcupine coal lease sale does not currently operate a mine that is adjacent to WYW176095, then the bidder would likely propose to construct a new mine in order to recover these Federal coal reserves. Because this would be a new mine start, the proponent would then submit a new permit application package to WDEQ/LQD for approval. A new MLA mining plan would also need to be submitted and approved by the Assistant Secretary

of the Interior before the tract could be mined. The approved permit would include mitigation measures and monitoring plans specific to mining the newly leased tract.

Prior to mining a coal lease area, the lease must be permitted for mining by OSM and WDEQ. If a lease is permitted for mining, additional conditions and stipulations may be assigned by OSM and WDEQ. Please see Section 1.3 of the Final EIS for additional information regarding regulatory authority and responsibility in relation to coal mining in Wyoming.

To ensure that the revised plan is in compliance with the leasing stipulations, BLM has a responsibility to review the R2P2 prior to approval of the mining plan. Before any mining operations can begin on the South Porcupine tract (WYW176095), the appropriate R2P2 must be approved by the BLM, a permit or permit revision must be approved by WDEQ/LQD, and an MLA mining plan or plan revision must be approved by the Assistant Secretary of the Interior.

RECOMMENDATION

I recommend that, after a competitive lease sale is held, Federal coal tract WYW176095, with its associated 3,243 acres more or less, be issued to the successful, qualified high bidder, provided it is determined that the highest bid at the sale meets or exceeds the FMV of the tract as determined by the BLM and that all other leasing requirements are met.

This is Alternative 2 for the South Porcupine LBA coal tract, as modified by BLM, and as described in this record of decision. The competitive lease sale 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 2).



Assistant District Manager for Solid Minerals
Wyoming High Plains District Office



Date

APPROVAL

I agree with the recommendation of the Assistant District Manager for Solid Minerals, and I approve the decision to offer Federal coal tract WYW176095 for competitive lease sale.


BLM Wyoming High Plains District Manager


Date

APPEAL OF DISTRICT MANAGER 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 4). If an appeal is filed, your notice of appeal must be filed in this office (BLM Wyoming High Plains District Office, 2987 Prospector Drive, Casper, WY 82604) within thirty (30) days from the date BLM published the Notice of Availability (NOA) of this Record of Decision in the Federal Register. The appellant has the burden of showing that the decision appealed is in error.

If you wish to file a petition (request) pursuant to regulations 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 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 a stay is granted or denied;
- 2) The likelihood of the appellant's success on the merits;
- 3) The likelihood of the immediate and irreparable harm if the stay is not granted; and,
- 4) Whether the public interest favors granting a stay.

- Appendix 1. Figures 1, 2, and 3
- Appendix 2. BLM Special Coal Lease Stipulations (WYW176095), Notice for Lands of the National Forest System under Jurisdiction of the Department of Agriculture (WYW176095), and BLM Coal Lease Form 3400-12
- Appendix 3. U.S. Fish and Wildlife Service Concurrence Letter
- Appendix 4. Appeal Procedures