



September 21, 2009

Wyoming High Plains District Office  
 Bureau of Land Management  
 Attn: Teresa Johnson  
 2987 Prospector Drive  
 Casper, WY 82604

**Re: South Gillette Area FEIS Comments**

Dear Ms. Johnson:

WildEarth Guardians and the Sierra Club submits the following comments on the South Gillette Area Coal Final Environmental Impact Statement (“FEIS”), which was prepared pursuant to the National Environmental Policy Act (“NEPA”). The FEIS analyzes the impacts of the Bureau of Land Management’s (“BLM’s”) proposal to offer four lease-by-applications (“LBAs”) that collectively would allow corporations to strip mine more than 800,000,000 tons of coal from the Powder River Basin of northeastern Wyoming (hereafter “South Gillette LBAs”), leading to a number of environmental impacts, including the release of more than 1.5 billion tons of carbon dioxide (“CO2”) (based on an emission factor of 1.82922 tons of CO2/ton of coal), a heat trapping greenhouse gas that is fueling global warming, once the leased coal is mined and burned. *See* Table below.

**Proposed LBAs, Acreage, Tonnage, CO2 Emissions, and Mine Company Proponent.<sup>1</sup>**

Lease by Application	Acreage	Tons of Coal	Tons of Carbon Dioxide from Burning	Mine Company Proponent
Belle Ayr North	1,578.74	204,600,000	374,258,412	Foundation Coal
West Coal Creek	1151.26	57,000,000	104,265,540	Arch Coal Company
West Caballo	777.49	98,600,000	180,361,092	Peabody
Maysdorf II	4653.84	474,500,000	867,964,890	Rio Tinto Energy America
<b>TOTALS</b>	<b>8,161.33</b>	<b>834,700,000</b>	<b>1,526,849,934</b>	

This growing body of knowledge points to human-caused releases of greenhouse gases, like carbon dioxide, as key drivers of global warming. Global warming is dramatically changing the climate, threatening economic stability, national security, public health, and natural ecosystems. In recognition of the need to confront global warming, a number of states in the

<sup>1</sup> Acreage and tonnage figures based on FEIS; CO2 emissions based on Energy Information Administration factor of 212.7 lbs/mmBtu of coal; production ranking from Energy Information Administration.

American West, including Colorado and New Mexico, have adopted ambitious greenhouse gas reduction goals.<sup>2</sup> Even the U.S. Environmental Protection Agency has recognized:

[G]reenhouse gases in the atmosphere endanger the public health and welfare of current and future generations. Concentrations of greenhouse gases are at unprecedented levels compared to the recent and distant past. These high atmospheric levels are the unambiguous result of human emissions, and are very likely the cause of the observed increase in average temperatures and other climatic changes. The effects of climate change observed to date and projected to occur in the future—including but not limited to the increased likelihood of more frequent and intense heat waves, more wildfires, degraded air quality, more heavy downpours and flooding, increased drought, greater sea level rise, more intense storms, harm to water resources, harm to agriculture, and harm to wildlife and ecosystems—are effects on public health and welfare[.]

74 Fed. Reg. 18886-18910.<sup>3</sup>

Not only that, but the BLM is offering to lease such a large amount of coal in a day of age where clean, renewable energy is becoming more affordable and widely available. Even Secretary of the Interior Ken Salazar has recognized this and directed that, “Encouraging the production, development, and delivery of renewable energy is one of the [Interior] Department’s highest priorities.” Secretarial Order No. 3285 (March 11, 2009).<sup>4</sup> Most recently, Secretary Salazar followed up Secretarial Order No. 3285 by issuing Secretarial Order No. 3289, in which he stated, “The realities of climate change require us to change how we manage the land, water, fish and wildlife, and cultural heritage and tribal lands and resources we oversee.” Secretarial Order No. 3289 (September 14, 2009).<sup>5</sup> Secretary Salazar further called for a “unified greenhouse gas emission reduction program” within the Department of Interior. *Id.*

In the State of Wyoming, Secretary Salazar’s direction could not be more imperative. The wind energy potential in Wyoming alone is estimated to be 883 million megawatt-hours/year (“MWh/y”), enough to more than meet the energy demands of the entire American West. *See* Figure below. Given that much of Wyoming’s wind energy potential is located on public lands managed by the BLM, it is unbelievable that the BLM would propose lease more than 800 million tons of coal in the Powder River Basin. At the least, it is unclear how the agency is addressing the Interior Secretary’s directives in Secretarial Orders No. 3285 and No. 3289 by proposing the South Gillette LBAs.

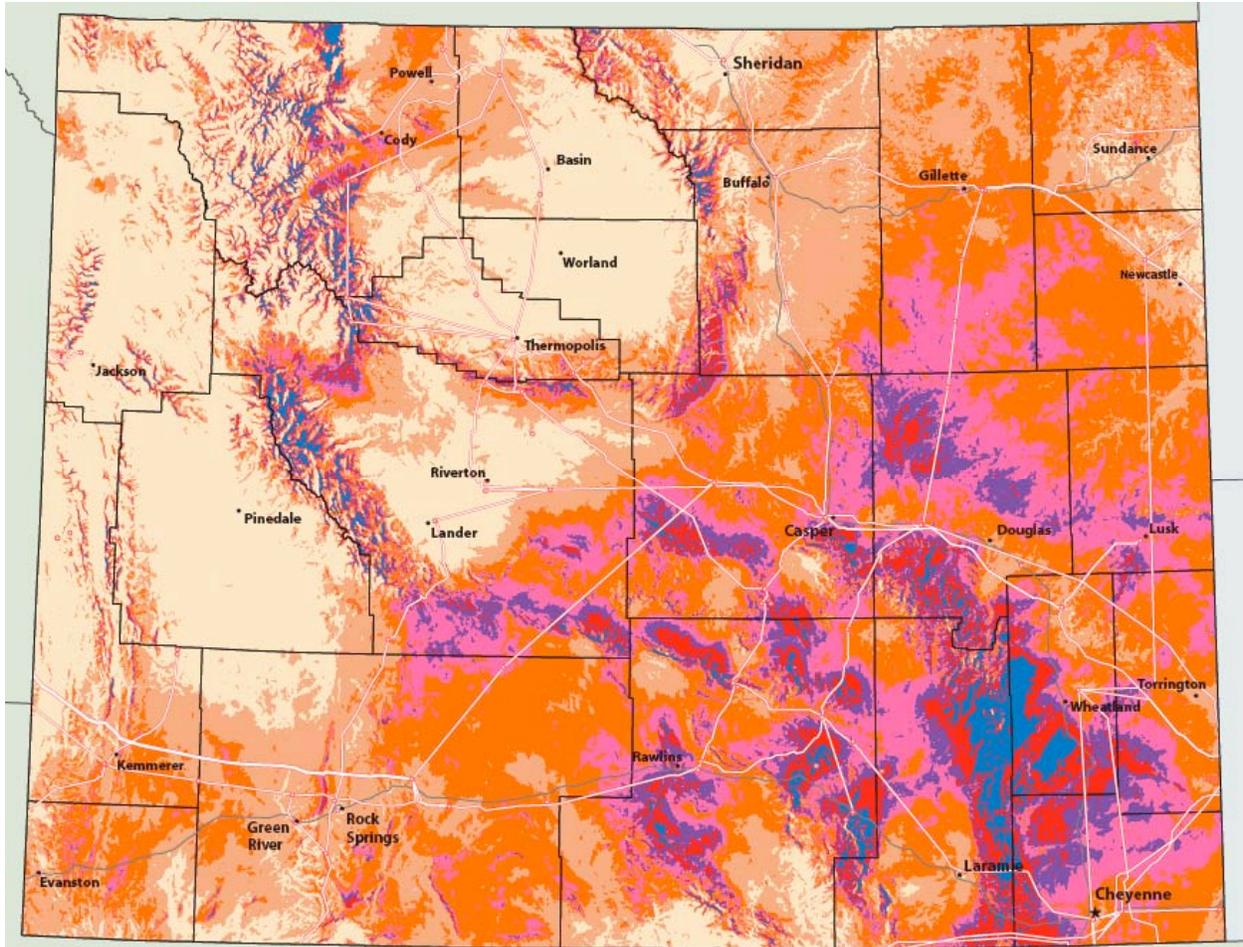
---

<sup>2</sup> *See* **Exhibit 1**, greenhouse gas reduction Executive Order signed by Colorado Governor Bill Ritter and **Exhibit 2**, greenhouse gas reduction Executive Order signed by New Mexico Governor Bill Richardson.

<sup>3</sup> *See* **Exhibit 3**.

<sup>4</sup> *See* **Exhibit 4**.

<sup>5</sup> *See* **Exhibit 5**.



**Wind Energy Potential in Wyoming. Blue is “Superb,” red is “Outstanding,” purple is “Excellent,” pink is “Good,” and orange is “Fair.”<sup>6</sup>**

The BLM’s proposal appears wholly out-of-touch with the current state of science, the range of energy alternatives available, and with Interior Department policy. As such we do not support the proposed South Gillette LBAs and urge the BLM to reject offering the proposed leases. We are very concerned that the agency is not fully addressing the global warming impacts of the proposed South Gillette LBAs, nor is the agency addressing the need for renewable energy. Further, we have serious concerns that the BLM is illegally leasing coal under the LBA process, thereby preventing the agency from fully analyzing and assessing the environmental impacts of regional coal leasing in the Powder River Basin and from providing the public a full opportunity to comment on regional leasing levels. We are further concerned that the BLM has not addressed serious air quality impacts, has not analyzed a range of reasonable alternatives, and has failed to address other impacts associated with the South Gillette LBAs in the FEIS. These comments are timely submitted within 60 days of June 26, 2009, the date the notice of availability for the FEIS was published in the Federal Register. *See* 74 Fed. Reg. 42092.

---

<sup>6</sup> Map from Renewable Energy Atlas of the Western States. *See* **Exhibit 6**.

## **1. The Purpose and Need for the FEIS is Unclear and Appears too Narrow**

An EIS is required to “briefly specify the underlying purpose and need to which the agency is responding in *proposing the alternatives including the proposed action.*” 40 CFR § 1502.13 (emphasis added). Thus, the purpose and need drives the development of alternatives in an EIS. Consequently, it is imperative under NEPA that a stated purpose and need in an EIS be clear, not be so narrow as to preclude reasonable alternatives, and above all ensure well-informed decisionmaking that ensures compliance with applicable laws and regulations and full consideration of environmental impacts. Unfortunately, in the case of the FEIS for the South Gillette LBAs, the purpose and need appears flawed in several regards.

### **a. The Purpose and Need is not Stated**

The “Purpose and Need” section in the DEIS at pages 1-18—1-20 appears to fail to state the underlying purpose and need to which the BLM is responding in proposing the alternatives in the FEIS. The section is nearly two pages long and simply does not identify the actual purpose and need to which the BLM is responding the alternatives in the FEIS.

### **b. The BLM Appears to Have Inappropriately Limited the Scope of its Decisionmaking Authority**

Notwithstanding the lack of a clearly defined “Purpose and Need” section, it appears the BLM may believe the purpose and need is to respond to the LBAs “for the purpose of electric power generation.” DEIS at 1-19. If this is the case, then the “Purpose and Need” is wholly inappropriate and illegally constrains the agency’s decisionmaking authority.

Indeed, under BLM’s coal leasing regulations dealing with LBAs, the agency first and foremost has a nondiscretionary duty to ensure that any LBA “is consistent with the applicable regulations,” would not “compromise the regional leasing process defined in [43 CFR § 3420.3],” and, above all, “would not be contrary to the public interest” on the basis of environmental or other sufficient reasons. *See* 43 CFR §§ 3425.1-8(a)(1)—(3). Nowhere in the purpose and need are these overriding duties addressed. This raises serious concerns that the BLM has constrained its ability to reject the proposed LBAs in accordance with 43 CFR § 3425.1-8, or at least failed to retain the ability to develop alternatives in order to fulfill the agency’s legal obligations.

We do understand that there is a general need to generate electric power for the public. However, there are a number of ways to generate electric power for the public, including through renewable energy development, through natural gas, through greater efficiencies, and through conservation of energy. By narrowing its focus on coal, the BLM has, limited its ability to consider these other energy alternatives. Furthermore, by narrowing its focus on coal, the BLM has constrained its ability to adequately analyze and assess more cost-effective alternatives for generating electricity. As will be explained further in these comments, the cost of the CO<sub>2</sub> associated with burning the coal proposed to be leased through the South Gillette LBAs could be

more than \$30 billion.<sup>7</sup> These potential costs indicate that if energy affordability is going to be a component of the BLM’s purpose and need, the agency cannot limit itself solely to considering coal as a source of electricity.

Overall, if the BLM is going to develop a purpose and need that revolves around providing affordable and reliable electric power for the public, the agency cannot limit its consideration only to coal. Not does such a narrow purpose and need prevent the BLM from fulfilling its legal obligations under 43 CFR § 3425, but it constrains the ability of the agency to develop a range of reasonable alternatives. Particularly in the context of the impacts of the environmental impacts of the proposed South Gillette LBAs—including global warming, air quality, and other impacts—the agency must broaden the scope of its purpose and need and FEIS to ensure a range of alternatives is rigorously explored. As it stands, the only action alternatives proposed so far involve mining coal, a clear indication that the purpose and need is far too narrow.

## **2. The FEIS Fails to Adequately Analyze and Assess the Global Warming Impacts of the South Gillette LBAs in Accordance with NEPA**

Although we are pleased to see the BLM disclose the greenhouse gas (“GHG”) emissions associated with burning the coal that may be leased through the South Gillette LBAs, we are concerned that the BLM is not adequately analyzing all direct, indirect, and cumulative GHG emissions, nor analyzing and assessing the global warming impacts associated with these emissions.

### **a. The FEIS Fails to Assess the Significance of the Direct, Indirect, and Cumulative GHG Emissions Associated with the South Gillette LBAs**

GHG emissions from burning the coal authorized by the South Gillette LBAs are a reasonably foreseeable consequence of this federal action, as the BLM has recognized. We appreciate the discussion of climate change in the EIS and the BLM’s effort to disclose direct, indirect, and cumulative GHG emissions. However, the analysis is incomplete under NEPA and CEQ regulations because the BLM failed to assess the significance of the direct, indirect, and cumulative GHG emissions associated with the South Gillette LBAs.

The FEIS does disclose the GHGs expected to be released as a result of burning the coal leased under the South Gillette LBAs and also briefly discloses that global warming caused by human-released GHG emissions is contributing to a number of negative consequences, particularly in the American West. Unfortunately, the FEIS ends there. Indeed, while the FEIS discloses the GHG emissions associated with burning the coal proposed to be leased through the South Gillette LBAs, the FEIS entirely fails to assess the significance of these emissions, or make any effort to analyze how such emissions are likely to contribute to the negative consequences of global warming. CEQ regulations clearly require that an EIS discuss “[d]irect

---

<sup>7</sup> This dollar figure is based on the current price of carbon as established by the European Union (in U.S. dollars). As of August 6, 2009, the trading price of CO<sub>2</sub> in the European Union was 14.39 euros per ton, equivalent to US \$20.66 per ton. See POINT CARBON EUA OTC ASSESSMENT, <http://www.pointcarbon.com/>.

effects and their significance,” “[i]ndirect effects and their significance,” as well as analyze and assess cumulative impacts. 40 CFR §§ 1502.16(a), (b) and (d).

In this case, it appears as if the GHG emissions associated with the South Gillette LBAs will be more than significant. The proposal will make available 4.370 billion tons of coal.<sup>8</sup> Over the life of the leases, some of which will extend mine operations for as long as 28.6 years, the coal, once burned, will emit nearly 8,000,000,000 tons of carbon dioxide.<sup>9</sup> This amount of GHGs is greater than the amount of total GHG emissions released in the United States in 2007.<sup>10</sup> If the BLM decided to withhold the South Gillette LBAs from leasing, the GHG reductions caused by that decision would be equivalent to stopping all GHG-emitting activity in the United States for an entire year, resulting in a global GHG emissions reduction of 18%.

Not only that, but the GHG emissions associated with the South Gillette LBAs appears significant just in terms of the magnitude of contribution to the United States’ GHG emissions from this single BLM decision. Consider this:

- CO2 emissions make up more than 85% of the United State’s total greenhouse gas emissions;<sup>11</sup>
- Coal-fired power plants release 32% of total CO2 emissions, more than any other source in the nation;<sup>12</sup>
- The Powder River Basin produces 42% of all coal burned in coal-fired power plants in the United States, more than any other region of the country (*see* DEIS at 4-115);
- When burned, coal from the Powder River Basin produce 13.9% of all CO2 emissions in the United States, more than any other region of the country (*Id.*); and
- The South Gillette LBAs, in proposing to mine upwards of 1 billion tons of coal from the Powder River Basin, would release nearly 1.5 billion tons of GHGs.

To sum it all up, the South Gillette LBAs would open the door for a large coal mining proposal in the biggest coal production region, which is responsible for the largest amount of coal-fired power plant CO2 emissions, which are the largest source of carbon dioxide emissions in the United States, within which CO2 comprises the vast majority of all GHGs released. In all likelihood, the BLM’s decision regarding the South Gillette LBAs will represent one of the single largest impact to GHG emissions in the United States.

In accordance with NEPA, the BLM must assess the significance of the direct, indirect,

---

<sup>8</sup> This is the amount of recoverable coal from all 6 tracts under a high development scenario.

<sup>9</sup> Based on the BLM’s emission factor of 212.7 lbs of CO<sub>2</sub>/MMBtu and BLM’s estimated Btu content of 8,600/pound of coal. *See* FEIS at 4-117.

<sup>10</sup> In 2007, the United States emitted 7,150.1 million metric tons of CO<sub>2</sub> equivalent, which made up 18.7 percent of the world’s GHG emissions. *See Exhibit 6*, EPA, 2009 U.S. GREENHOUSE GAS INVENTORY REPORT.

<sup>11</sup> *See Exhibit 7*, U.S. Greenhouse Gas Emissions and Sinks Fast Facts, 2007. EPA.

<sup>12</sup> *Supra*. Note 9.

and cumulative GHG emissions associated with the South Gillette LBAs and fully discuss climate change impacts to a degree commensurate with the very significant impact of these leases.

### **b. The FEIS Fails to Quantify the Cost of GHG Emissions**

The NEPA requires that the BLM “identify and develop methods and procedures . . . which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations.” 42 USC § 4332(2)(B). The FEIS does not quantify the environmental effects of climate change, and in particular the cost of GHG emissions.

The Ninth Circuit held that it was arbitrary and capricious for a federal agency to not include a cost or benefit of carbon emissions in a NEPA document for car gas mileage standards. *Center for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1203 (9<sup>th</sup> Cir. 2008). The Court ordered the agency to include a monetized value of carbon emissions in the NEPA document, reasoning in part that “the value of carbon emissions reduction is certainly not zero.” *Id.* at 1200, 1203. Here, the BLM has made the same error: it has omitted any monetization of the costs of carbon emissions that will result from the burning of coal to be mined under the South Gillette LBAs. This omission is even worse here than the omission in *National Highway Traffic Safety Administration*, because the burning of South Gillette LBAs’ coal will result in emissions greater than total U.S. GHG emissions from all sources in 2007. Therefore, the BLM must monetize carbon emissions associated with the South Gillette LBAs and include those numbers in any EIS.

In *National Highway Traffic Safety Administration*, the court listed a number of possible values in dollars per ton of CO<sub>2</sub> emissions that are mitigated (i.e., not emitted). The dollar amounts ranged from a low of \$3 per ton to a high of \$50 per ton CO<sub>2</sub>. *See* 538 F.3d at 1199. As of August 6, 2009, the trading price of CO<sub>2</sub> in the European Union was 14.39 euros per ton, equivalent to US \$20.66 per ton.<sup>13</sup> The BLM could easily use these per ton prices as a starting point for calculating the present-day cost of CO<sub>2</sub> emissions that it will cause by leasing the South Gillette LBAs. Using the above European Union carbon market price, the emissions from burnt WALBA coal have a mitigation value of more than \$30 billion.<sup>14</sup> In other words, if a carbon market were set up in the United States, carbon polluters would pay \$30 billion to keep the South Gillette LBAs’ coal in the ground. This is a significant cost that the EIS must at least attempt to disclose.

### **c. The FEIS Fails to Adequately Analyze and Assess Global Warming Impacts**

Also of concern is that the FEIS fails to analyze and assess how the direct, indirect, and cumulative GHG emissions will influence global warming. As the BLM indicates in the FEIS, it can be assumed that the release of GHGs associated with the South Gillette LBAs will contribute

---

<sup>13</sup> *Supra.* Note 6.

<sup>14</sup> \$20.66 per ton x 1.5 billion tons = \$30,990,000,000.

to global warming. Yet the BLM makes no attempt to analyze and assess such impacts and the magnitude of contribution to global warming.

The BLM asserts that “Tools necessary to quantify incremental climatic changes...for the projected development activities in the PRB [Powder River Basin] are presently unavailable. As a consequence, impact assessments of specific anthropogenic activities cannot be performed.” FEIS at 4-109. We are skeptical of this assertion, but nevertheless, even if the BLM is correct, the FEIS fails to comply with NEPA.

The CEQ regulations require that an agency “evaluate reasonably foreseeable significant environmental effects on the human environment,” even where information relevant to making this evaluation is “incomplete or unavailable.” 40 CFR § 1502.22. If this is the case, the agency must clearly show that the information is “lacking” by providing what credible scientific information it does have on these reasonably foreseeable impacts and making an effort to analyze these impacts based on this information. *Id.* What information the agency must provide depends upon the costs of obtaining the information. *Id.*

For example, the agency must include “information relevant to reasonably foreseeable adverse impacts” even if it is “incomplete,” if it is “essential to a reasoned choice among alternatives and the overall costs of obtaining it aren’t exorbitant.” 40 CFR § 1502.22(a). Even where the costs are exorbitant, or the means of obtaining the information are unknown, the agency must still provide information on reasonably foreseeable adverse impacts. This information includes:

- (1) A statement that such information is incomplete or unavailable;
- (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;
- (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and
- (4) the agency’s evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.

40 CFR § 1502.22(b). Under this section, reasonably foreseeable “includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.” *Id.*

Despite the BLM’s claim that tools are unavailable to analyze and assess the global warming impacts associated with the South Gillette LBAs, nowhere in the FEIS is it apparent that the requirements of 40 CFR § 1502.22 have been met. This is particularly troublesome given the apparent significance of the direct, indirect, and cumulative GHG emissions associated with the South Gillette LBAs, as well as the BLM’s general disclosure regarding the catastrophic impacts of global warming. As it stands, the FEIS fails to comply with NEPA with regards to the analysis and assessment of the global warming impacts of the South Gillette LBAs.

**d. The FEIS Fails to Adequately Analyze and Assess the Cumulative Impacts of Department of Interior-authorized Activities**

The FEIS fails to analyze and assess the cumulative impacts of other actions undertaken by the Department of Interior on global warming. We are especially concerned that the Department of Interior is not programmatically analyzing its GHG emissions and global warming impacts of its operations and activities. Because the BLM is an agency within the Department of Interior, it is imperative that the FEIS fully analyze and assess the cumulative impacts of other Interior Department activities.

In fact, there are a number of projects that release GHGs and cumulatively contribute to global warming, that are under control by the Department of Interior, and that therefore must be addressed pursuant to NEPA *See e.g.*, 40 CFR § 1502.16 (an EIS “will include the environmental impacts of the alternatives including the proposed action”); 40 CFR § 1508.8 (effects include “ecological (such as the effects on natural resources and on the components of, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative”); and 40 CFR § 1508.7 (cumulative effects are defined as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions”). The projects authorized or proposed to be authorized by the Department of Interior and its agencies include:<sup>15</sup>

- Numerous other coal leases proposed in the Rocky Mountain West, including the Dakota Westmoreland coal lease modification proposed in March of 2009 by the BLM in North Dakota;<sup>16</sup>
- The Greens Hollow coal lease proposed in 2008 by the BLM in the Price Field Office of Utah;<sup>17</sup>
- The Peabody Twentymile Coal Company Application for Coal Lease approved in 2008 by the BLM in the Little Snake Field Office of Colorado;<sup>18</sup>
- The Absaloka Mine South Extension Coal Lease approved in 2008 by the Bureau of Indian Affairs on the Crow Indian Reservation in Montana;<sup>19</sup>
- The Red Cliff coal mine proposed in 2009 for authorization by the BLM in the Grand Junction Field Office of western Colorado;<sup>20</sup>

---

<sup>15</sup> Due to the large size of the following documents, we are unable to submit the following documents as electronic attachments. We provide the weblinks for the BLM to reference and will submit hard copies as follow up via U.S. Mail to ensure the agency has full access to this data in order to adequately analyze and assess cumulative impacts.

<sup>16</sup> *See* Environmental Assessment available at [http://www.blm.gov/pgdata/etc/medialib/blm/mt/field\\_offices/north\\_dakota.Par.96662.File.dat/DWCea.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/mt/field_offices/north_dakota.Par.96662.File.dat/DWCea.pdf).

<sup>17</sup> *See* EIS available at [http://www.blm.gov/pgdata/etc/medialib/blm/ut/price\\_fo/Coal.Par.48515.File.dat/Greens%20Hollow%20DEIS.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/ut/price_fo/Coal.Par.48515.File.dat/Greens%20Hollow%20DEIS.pdf).

<sup>18</sup> *See* Environmental Assessment available at [http://www.blm.gov/pgdata/etc/medialib/blm/co/information/nepa/little\\_snake\\_field/2008\\_documents.Par.4735.File.dat/CO-100-2008-058EA.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/co/information/nepa/little_snake_field/2008_documents.Par.4735.File.dat/CO-100-2008-058EA.pdf).

<sup>19</sup> *See* Record of Decision available at [www.deq.state.mt.us/eis/Absaloka/ROD.pdf](http://www.deq.state.mt.us/eis/Absaloka/ROD.pdf).

<sup>20</sup> *See* DEIS available at [http://www.blm.gov/co/st/en/BLM\\_Programs/land\\_use\\_planning/rmp/red\\_cliff\\_mine/documents.html](http://www.blm.gov/co/st/en/BLM_Programs/land_use_planning/rmp/red_cliff_mine/documents.html).

- Tar sands and oil shale development proposed in 2008 by the BLM for Colorado, Utah, and Wyoming.<sup>21</sup>
- The Toquop coal-fired power plant in Nevada, which is proposed to be authorized by the BLM;<sup>22</sup> and
- The Desert Rock coal-fired power plant in New Mexico, which is proposed to be authorized by the Bureau of Indian Affairs.<sup>23</sup>

The BLM must consider the impacts of its proposal to authorize the South Gillette LBAs cumulatively with other Department of Interior authorized activities that also contribute to global warming. Until such time as BLM analyzes the cumulative impacts of greenhouse gas emissions from other Department of Interior authorized activities, BLM cannot move forward with the South Gillette LBAs in compliance with NEPA.

**e. The FEIS Fails to Consider Reasonable Alternatives to Address the Global Warming Impacts of the South Gillette LBAs**

The range of alternatives “is the heart of the environmental impact statement.” 40 CFR § 1502.14. It is well understood that “NEPA requires that an agency ‘rigorously explore and objectively evaluate all reasonable alternatives.’” *Utahns for Better Transp. v. Dept. of Transp.*, 305 F.3d 1152,1168 (10<sup>th</sup> Cir. 2002) *quoting* 40 C.F.R. § 1502.14(a), *modified on rehearing Utahns for Better Transp. v. Dept. of Transp.*, 319 F.3d 1207 (2003). The alternatives discussed should provide different choices from which decisionmakers and the public can make an informed choice after considering the environmental effects of the alternatives. *See Westlands Water Dist. v. U.S. Dep’t of Interior*, 376 F.3d 853 (9<sup>th</sup> Cir. 2004). The range of alternatives should also “include reasonable alternatives not within the jurisdiction of the lead agency,” and “include appropriate mitigation measures not already included in the proposed action or alternatives.” 40 CFR § 1502.14. The alternatives discussed in the FEIS do not meet these requirements in the context of addressing GHG emissions and global warming impacts.

The FEIS must consider a wider range of reasonable alternatives. Alternative 3 is practically identical to Alternative 2. Because of this similarity, the EIS effectively considers two alternatives that differ from the Proposed Action, hardly a “range” under NEPA. What’s more, all of the alternatives are assumed to have practically identical environmental effects on global warming. *See* FEIS 4-121—4-122. Because identical effects are incorrectly assumed, the FEIS fails to discuss the specific environmental effects of each alternative as required by 40 CFR § 1502.16.

We strongly urge the BLM to rigorously explore and objectively evaluate the following alternatives in order to ensure to sharply define the issues and ensure a well-informed decision that mitigates significant environmental impacts:

---

<sup>21</sup> See EIS available at <http://ostseis.anl.gov/eis/guide/index.cfm>.

<sup>22</sup> See DEIS available at [http://www.blm.gov/nv/st/en/fo/ely\\_field\\_office/blm\\_programs/energy/toquop\\_energy/toquop\\_draft\\_eis.html](http://www.blm.gov/nv/st/en/fo/ely_field_office/blm_programs/energy/toquop_energy/toquop_draft_eis.html).

<sup>23</sup> See DEIS available at <http://www.desertrockenergyeis.com/>.

- **The range of alternatives should include tonnage and acreage limits to leases so that changes can be made in the future to respond to GHG emissions regulation.** The FEIS discusses the relevance of potential GHG regulation under new legislation that may be enacted later this year. Given the likelihood that some form of carbon regulation will be put in place before the coal from South Gillette LBAs is mined, it would be prudent for the BLM to include upper limits in the lease agreements. These limits will create flexibility for the BLM in the future to change or modify leases in response to shifts in national energy policy towards lower-carbon, renewable sources. While BLM cannot predict what legislation will be enacted, flexibility would leave the door open for unpredictable changes without compromising current coal production. Rather than writing-in tonnage or acreage limits to the leases, the same alternative could be achieved by presenting an alternative that contains a coal quantity *less than* the quantity in the Proposed Action. This alternative is especially reasonable in light of the fact that the FEIS discloses that all three mines seeking leases have a remaining life of more than 10 years.
- **The range of alternatives should include the establishment of a renewable energy fund to spur solar and wind development in Wyoming to mitigate carbon emissions and to create long-term jobs.** To mitigate climate change impacts without compromising the national power supply, a renewable energy fund should be established based on a per-ton tax on coal from the South Gillette LBAs. This fund should be used to spur development of wind and solar resources in the Powder River Basin and in Wyoming. It is a fact that Wyoming contains significant wind resources; significant solar potential exists, as well.<sup>24</sup> These resources have not been adequately developed, especially solar. Federal funding for wind and solar could help to diversify the local economies and create jobs that last indefinitely, because sun and wind will last forever. In contrast, coal mining jobs will disappear as soon as the coal runs out.

This mitigation strategy may not be within the BLM's jurisdiction. However, NEPA regulations require consideration of alternatives that lie outside the lead agency's jurisdiction. *See* 40 CFR § 1502.14. Moreover, wind turbines could be sited on reclaimed mine sites; under this scenario the BLM would have jurisdiction over projects on BLM land.

- **The range of alternatives should include a requirement that the coal lessees purchase carbon offsets.** Carbon offsets are stocks or shares that represent a certain amount of CO<sub>2</sub> emissions that have been prevented or mitigated. The mining companies are not currently paying the price for externalities caused by CO<sub>2</sub> emissions from burning coal. A 2008 report estimated those externalities cost society \$515 billion per year.<sup>25</sup> These externalities include all of the effects of climate change, as well as regional air and water pollution, and mining accidents. Mine companies can start to begin paying for the

---

<sup>24</sup> *Supra*. Note 5.

<sup>25</sup> GREENPEACE INTERNATIONAL, THE TRUE COST OF COAL (2008), <http://www.greenpeace.org/raw/content/international/press/reports/true-cost-coal.pdf>. The report presents the cost as 360 billion euros. Converted to dollars as of August 14, 2009, that cost is \$515 billion.

full cost of using coal for power generation by purchasing offsets to mitigate some of the damage that is being caused by emissions from coal.

- **The range of alternatives should include a requirement that all carbon emissions from South Gillette Area coal used for electricity generation be captured and sequestered geologically.** The vast majority of the coal to be mined as a result of the South Gillette LBAs will be burned for power generation and carbon emissions will be released into the atmosphere. To mitigate this very significant amount of emissions, the range of alternatives should include a plan to require carbon capture and sequestration (“CCS”) of emissions equivalent to the amount produced by burning the South Gillette LBAs’ coal. CCS could be required as a contract condition for all coal sold from the South Gillette Area mines. In the alternative, the BLM could set a per-ton tax on the coal and use the revenue to develop and implement a CCS project that captures an equivalent amount of carbon emissions as would be generated by burning the South Gillette LBAs’ coal. BLM could site the CCS facility on BLM land, thus keeping the project within BLM jurisdiction. Even if the CCS project falls entirely outside BLM jurisdiction, that fact does not excuse the BLM from considering it as an alternative. *See* 40 CFR § 1502.14.
- **The range of alternatives should include a Renewable Energy Standard (“RES”) for coal mine operators.** To reduce direct emissions from operations, the leases should include an RES that requires operators to rely on a certain percentage of renewable energy to power vehicles, machinery, and buildings. Many states will require that as much as 25 percent of all electricity is generated by renewable sources by 2025.<sup>26</sup> Taking some of this renewable power and using it to power the mines is a realistic and reasonable way to mitigate emissions without placing a large burden on the coal extraction industry. According to the FEIS, **GHG emissions associated with electricity use at the three mines will amount to 296,166 tons of CO<sub>2</sub>e.** *See* FEIS at 3-307. If renewable energy was used, these GHG emissions could be significantly mitigated. Additionally, employing renewable energy would improve local air quality.
- **The range of alternatives should include a requirement that all mine vehicles be run on alternative fuels.** Alternative fuels include hydrogen, biodiesel, natural gas, and electricity. Similar to the RES alternative above, an alternative fuels requirement for vehicles would reduce direct GHG emissions associated with mining activities, and simultaneously improve local air quality.

### 3. The FEIS Fails to Adequately Analyze and Assess Ozone Impacts

The FEIS fails to adequately analyze and assess ozone impacts to ensure compliance with the NAAQS.

---

<sup>26</sup> *See* PEW CENTER ON GLOBAL CLIMATE CHANGE, RENEWABLE AND ALTERNATIVE ENERGY STANDARDS, [http://www.pewclimate.org/what\\_s\\_being\\_done/in\\_the\\_states/rps.cfm](http://www.pewclimate.org/what_s_being_done/in_the_states/rps.cfm).

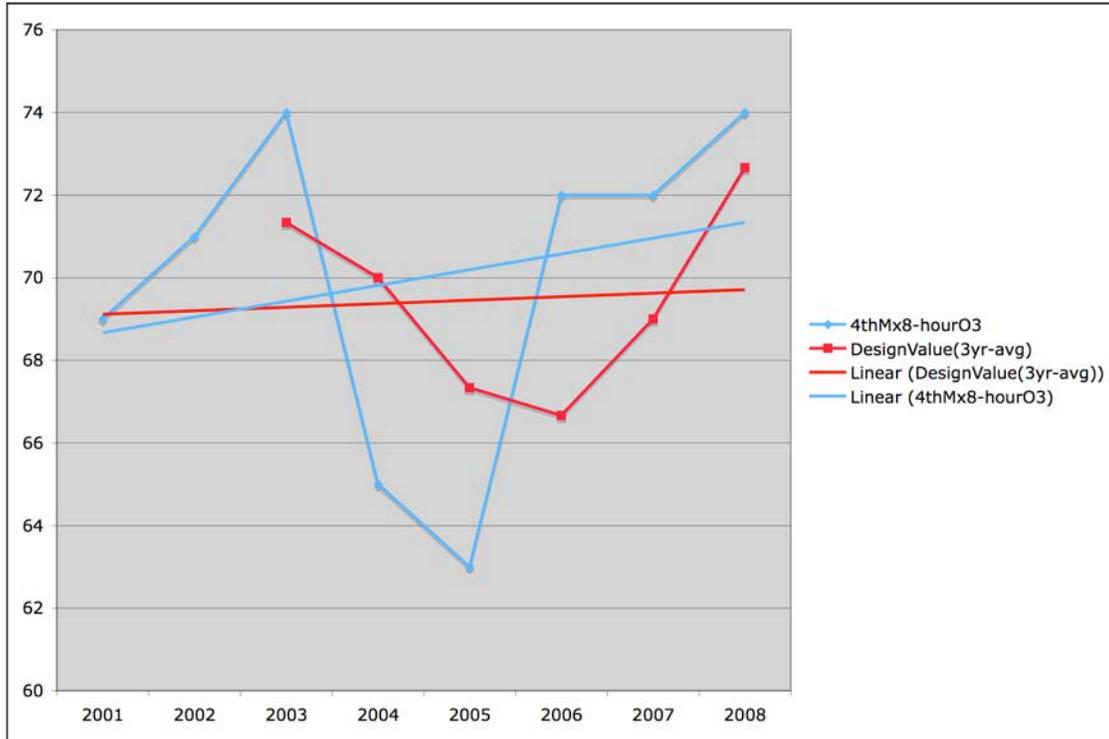
**a. The BLM is Inappropriately Assessing Impacts to the Ambient Air Quality Standards**

The BLM mistakenly asserting that the new ozone NAAQS of 0.075 ppm is not applied retroactively. *See* FEIS at 3-62—3-63. In other words, the agency is asserting that prior to May 2008, when the new ozone NAAQS was promulgated, impacts and compliance are assessed in the context of the old ozone NAAQS of 0.080 ppm. As a result, BLM does not seem to be addressing exceedances of the current NAAQS that occurred prior to 2008 in the context of analyzing and assessing impacts.

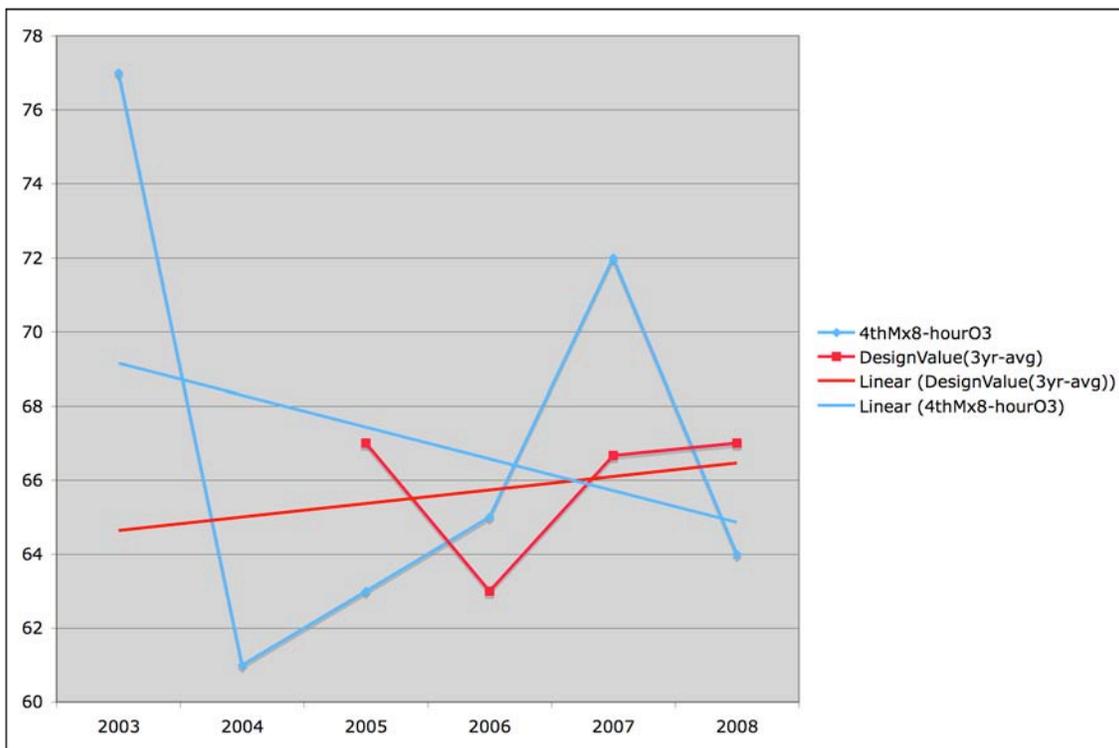
To begin with, this is not only contrary to how the NAAQS are applied, but troublesome in light of what monitoring data is showing in the Powder River Basin. Since 2001, ozone levels have exceeded the 0.075 ppm standard on 16 days in Campbell County.<sup>27</sup> Not only that, but the three-year average of the 4<sup>th</sup> highest annual 8-hour readings, or the design value, at both Campbell County ozone monitors is trending upward. Although the Campbell County ozone monitors obviously have not been operating for very long, a trend seems to be emerging. Notwithstanding this, the BLM asserts that “no exceedances” of the current ozone NAAQS have occurred in the Powder River Basin. *See* FEIS at 3-63.

---

<sup>27</sup> *See* **Exhibit 9**. Contrary to BLM’s assertion, an exceedance of the ozone NAAQS occurs anytime 8-hour concentrations exceed 0.075 parts per million. This is why the EPA monitoring data identifies 16 ozone exceedances at the Campbell County ozone monitors since 2001.



**4<sup>th</sup> Maximum 8-hour Ozone Readings and Ozone Design Values (three year average of 4<sup>th</sup> max.) from Thunder Basin Ozone Monitor (above) and S. Campbell County Ozone Monitor (below) (data from EPA).**



## **b. The FEIS Fails to Provide any Quantitative Assessment of Ozone Impacts**

The FEIS does not quantitatively analyze impacts to the current ozone standards. While the FEIS recognizes ozone as a harmful air pollutant, there is no actual analysis of impacts to ambient ozone concentrations. This is of particular concern given the state of air quality in the Powder River Basin. The current design value at the Thunder Basin monitor in Campbell County is 0.072 ppm—96% of the NAAQS. This is the highest the design value has been since the monitor went online in 2001.

Unfortunately, the BLM is claiming background ozone levels in the Powder River Basin are 70 micrograms/cubic meter, which appears highly inaccurate. 70 micrograms/cubic meter amounts to only around 0.030 ppm. Although the FEIS claims that the background concentration was established using data from 2002-2008 at the Thunder Basin monitor, this does not seem to be the case. In any case, the accurate design value for the region appears to be 0.072 ppm. This means that if the fourth highest maximum 8-hour reading in 2009 is 0.082 ppm or higher, there will be an actual violation of the NAAQS. This seems more than possible, particularly given that 8-hour ozone concentrations have climbed as high as 0.088 ppm in Campbell County. The BLM must provide a quantitative assessment of ozone impacts in order to comply with NEPA and in order to ensure compliance with FLPMA.

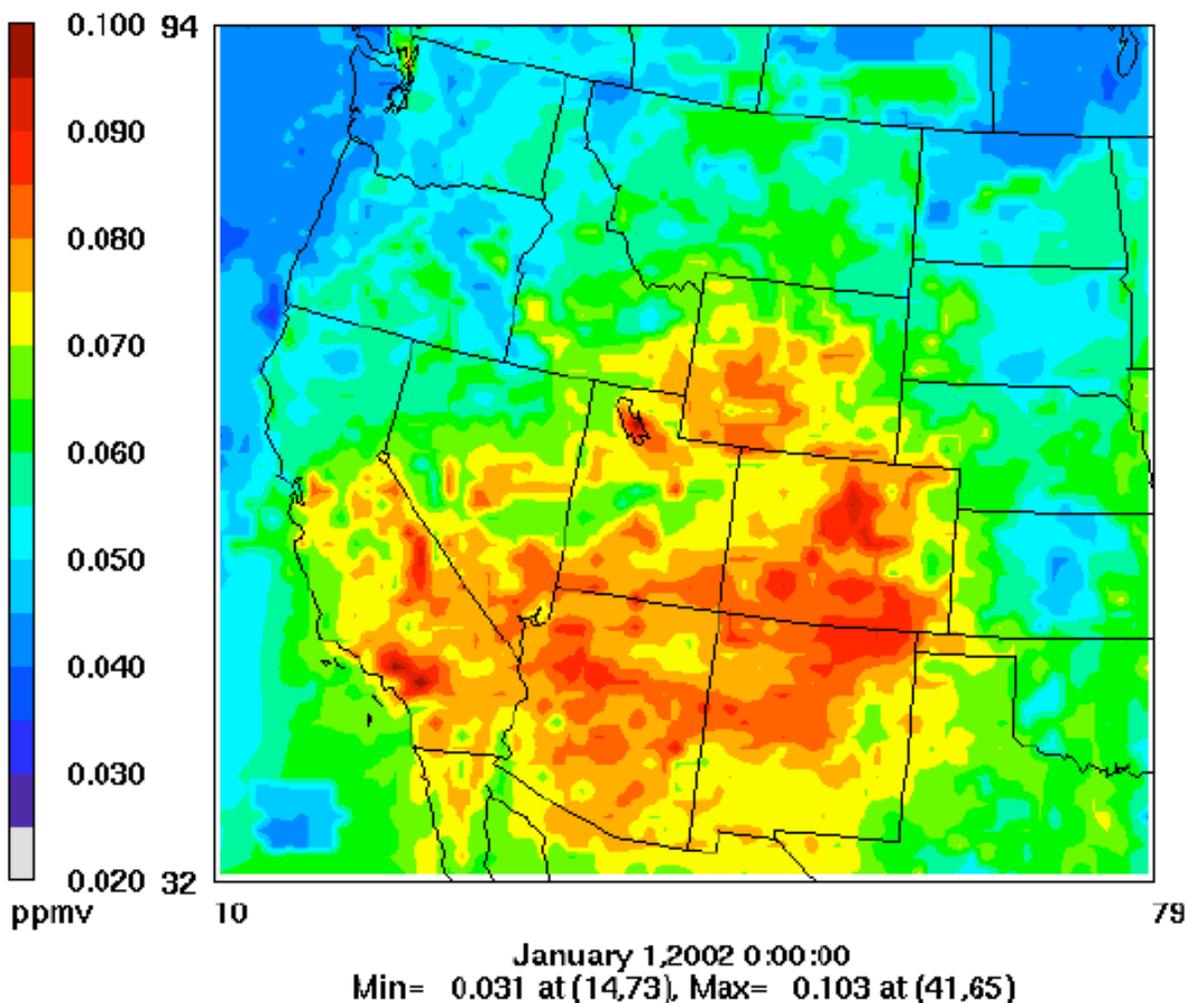
Also of concern is that the FEIS fails to address the results of modeling prepared for the Western Regional Air Partnership, which strongly indicate that attainment and maintenance of the 8-hour ozone NAAQS is at risk throughout the Western States, including in the Powder River Basin of Wyoming.<sup>28</sup> This modeling in fact shows that the annual fourth maximum 8-hour ozone concentration will exceed 0.075 ppm throughout much of Wyoming. *See* Figure below.

---

<sup>28</sup> *See* Exhibit 10.

# O3

WRAP prp18a  
4th 8-HR MAX



Projected 2018 annual fourth maximum ozone concentrations. Orange and red indicate exceedances and/or violations of the ozone NAAQS of 0.075 parts per million.

Clearly ozone is a serious problem in the Powder River Basin. Although a violation of the NAAQS has yet to occur, the BLM has an obligation to analyze and assess ozone impacts to ensure that violations do not occur in the future. The fact that exceedances are occurring, and that the current design value at the Thunder Basin monitor is within 96% of the NAAQS, strongly indicates the BLM cannot simply ignore the need to quantitatively analyze ozone impacts before authorizing the South Gillette LBAs.

### c. The FEIS Provides no Quantitative Data Showing that any NOx Reductions Will Lead to any Ozone Reductions

The FEIS asserts that measures to reduce mine-related NOx emissions “should also” reduce the potential for the formation of ground level O3 in the PRB.” FEIS at 3-72. There is no

quantitative support for this statement. What's more, even on a qualitative level, this statement is misleading and inaccurate. The direct NO<sub>x</sub> mitigation measures in Section 3.4.3.3 are designed primarily to keep the public away from clouds of NO<sub>2</sub>, not as a means to reduce NO<sub>x</sub> emissions from the coal mines. FEIS at 3-71—3-72. The only mitigation that might reduce emissions is to reduce blast size, but that measure is voluntary and thus not enforceable and cannot be relied upon to demonstrate any NO<sub>x</sub> reductions will occur. *Id.* All of the other measures listed are voluntary, thus not enforceable even if a mine is causing an exceedance. Also, the FEIS does not mention any measures to reduce NO<sub>x</sub> emissions from vehicles and machinery on the mines. All of these NO<sub>x</sub> sources have the potential to lead to increased regional ozone concentrations.

#### **4. The BLM Fails to Demonstrate Compliance with FLPMA With Regards to Air Quality Impacts**

As explained, the BLM has a duty to ensure compliance with the NAAQS in accordance with FLPMA. *See* 43 USC § 1712(c)(8). The FEIS unfortunately fails to demonstrate that the ozone NAAQS in particular will be protected as a result of the South Gillette LBAs, thereby indicating that the BLM may not meet its responsibilities under FLPMA.

#### **5. The Powder River Basin Was Erroneously Decertified as a Coal Production Region**

The BLM has erroneously “decertified” the Powder River Basin as a coal production region. Because of this, coal leasing is done based on an application filed by a private company. The LBA process allows private coal company, and not the federal government, to design the tract of land subject to leasing. Because the Powder River Basin remains a decertified coal production region, leasing is done on an application filed by a private company. The LBA process allows private coal company, and not the federal government, to design the tract of land subject to leasing. In the Powder River Basin this has allowed each major coal producer in the area to submit applications for lease federal coal leases in areas and on tracts that they have designed. This raises significant concerns that coal companies are designing tracts in such a way as to preclude any meaningful competition. Indeed, in the last 20 years of coal leasing in the Powder River Basin, only 3 out of 21 leases have received more than one bid.

This raises concerns that the Federal government is failing to ensure fair market value of any privately designed and nominated lease tracts. Notwithstanding BLM's duty to ensure fair market value, the fact that so little competition occurs for coal leases in the Powder River Basin indicates that any fair market value assessment is skewed. Indeed, with no actual competition for coal leases, any fair market value price could not possibly be based on an appraisal comparable to a situation where actual competition occurs.

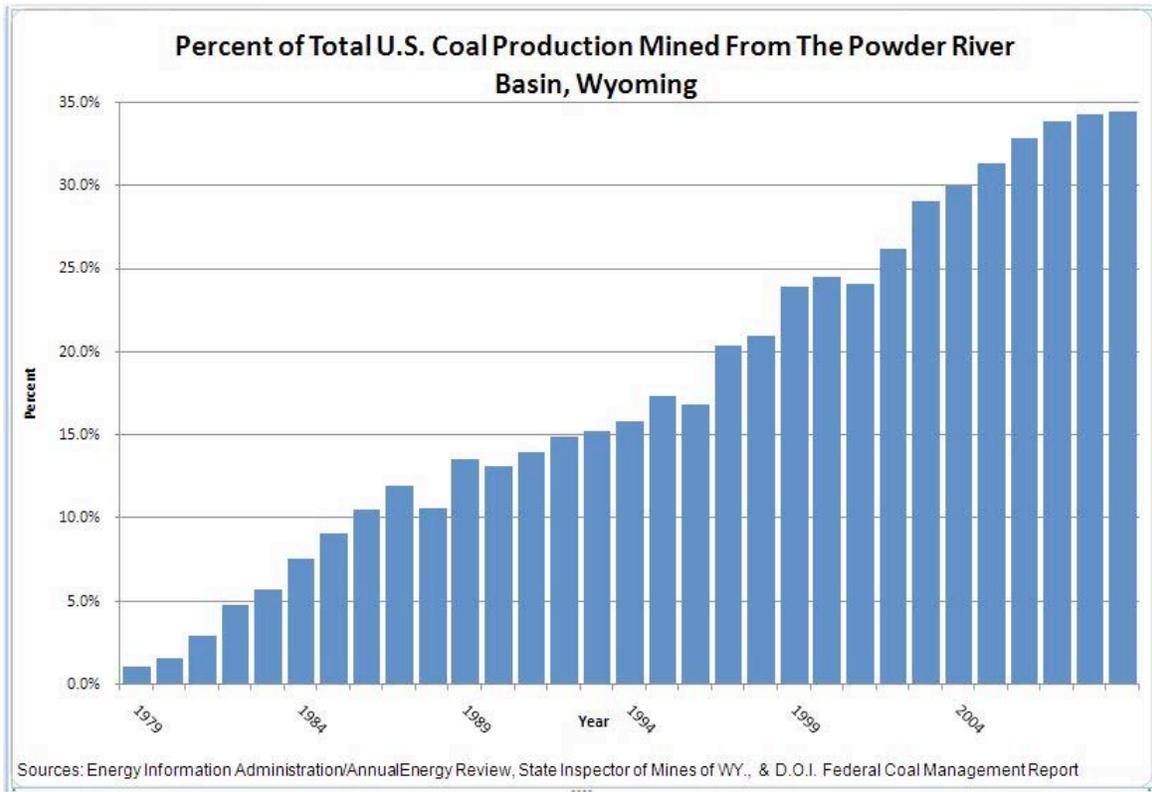
What's more, the “decertification” and the LBA process has allowed the BLM to avoid establishing regional leasing levels based on a regional analysis of environmental impacts and public comment. As will be explained further, the “decertification” is preventing the BLM from fully analyzing, assessing, and addressing the regional environmental impacts of coal leasing in

the Powder River Basin. For the reasons explained below, the BLM cannot move forward with the South Gillette LBAs in light of the decertification.

**a. The Decertification was Arbitrary and Capricious and Contrary to BLM’s Coal Leasing Regulations**

The Powder River Basin was “decertified” as a Federal coal production region coal production region in January of 1990. In other words, the BLM has asserted that the Powder River Basin is outside a coal production region in accordance with 43 CFR § 3400.5. This “decertification” was made on the recommendation of the Powder River Regional Coal Team in October of 1989. This decertification was arbitrary and capricious, and contrary to BLM coal leasing regulations. As applied in the context of the South Gillette LBAs, it is blatantly illegal.

Although there is no definition of “coal production region” in BLM’s regulations, the common sense meaning of the word is that it refers to a region where coal is produced. This is exactly why the Powder River Basin was originally designated a “coal production region” in accordance with 43 CFR § 3400.5. Such a designation made sense, even in 1989. Indeed, even in 1989, the Powder River Basin produced nearly 15% of all coal produced in the United States. *See* chart below.<sup>29</sup> This hardly seems indicative of a region that was not producing coal, or that otherwise had no interest from the coal industry.



<sup>29</sup> This chart is available at [www.blm.gov/pgdata/etc/medialib/blm/wy/programs/energy/coal/prb.Par.5321.Image-1.-1.1.gif](http://www.blm.gov/pgdata/etc/medialib/blm/wy/programs/energy/coal/prb.Par.5321.Image-1.-1.1.gif).

The BLM has responded that decertification was needed to spur interest in coal leasing in the Powder River Basin. This is not supported by the record of that decision. In response to a March 2009 Freedom of Information Act request submitted to both the Montana and Wyoming BLM offices by WildEarth Guardians seeking all records supporting the 1989 decision by the Regional Coal Team to decertify the Powder River Basin, we received no records indicating that coal leasing interest had been waning, that decertification would actually lead to increased leasing interest, or any other information suggesting that the Powder River Basin was not a coal production region. What seems apparent is that the Powder River Regional Coal Team appeared to move to “decertify” the Powder River Coal Production Region so as to be able to utilize the LBA process. This is clearly an arbitrary and capricious reason to “decertify” the Powder River Basin as a coal production region.

Furthermore, although BLM may have discretion to “change” a coal production region or alter boundaries, the regulations are clear that coal production regions are to be used to identify, rank, analyze, select, and schedule lease tracts (i.e., activity planning) in accordance with 43 CFR § 3420.3-1. Logically, the only time the BLM would be allowed to “decertify” a coal production region is if activity planning was inappropriate, such as in areas that were determined to be unacceptable for further consideration for leasing through any land use planning prepared consistent with 43 CFR § 3420.1-4.

Did the BLM make a determination that the entire Powder River Basin was unacceptable for further consideration for leasing through any land use planning prepared consistent with 43 CFR § 3420.1-4? The answer, based on data received through FOIA, appears to be no.

**b. Even if the Decertification was Appropriate in 1989, it is Now Inappropriate in Light of Current Production and Leasing Levels in the Powder River Basin**

Although it is seriously questionable whether the “decertification” of the Powder River Basin as a coal production region was appropriate in 1990, it is clear that it is inappropriate today. Indeed, coal production in the Powder River Basin region is significant and has increased substantially over the years. According to data from the BLM’s own website, coal production just in the Wyoming portion of the Powder River Basin has increased from 293 million tons to more than 446 tons in 2008.<sup>30</sup> The region is currently producing record amounts of coal.

Furthermore, the Powder River Basin region produces more coal than any other region in the United States. Currently, the Powder River Basin provides 42% of the nation’s coal, a figure that has grown substantially over the years. According to the Energy Information Administration, the Powder River Basin currently produces more coal than all the coal mines combined east of the Mississippi River. Indeed, in 2007, the entire Powder River Basin produced more than 479,000 tons of coal while mines east of the Mississippi produced 477,006.<sup>31</sup> This is a significant amount of coal to be produced from a single region.

---

<sup>30</sup> See Exhibit 11.

<sup>31</sup> See <http://www.eia.doe.gov/cneaf/coal/page/acr/table1.html>.

Additionally, leasing interest has been very high in the Powder River Basin. Since 1990, 21 coal leases have been offered amounting to more than 5.8 billion tons of coal. Not only that, but the BLM has 12 coal leases pending—including the four leases that are part of the South Gillette LBAs—that collectively have the potential to lead to the leasing of an additional 5.8 billion tons of coal.<sup>32</sup>

What’s more, in light of the fact that “decertification” has apparently spurred additional leasing interest in the Powder River Basin (as evidenced by the South Gillette LBAs), why hasn’t the BLM taken steps to “recertify” the Powder River Basin. If “decertification” is warranted in light of low interest in leasing, then certainly “recertification” clearly is warranted in light of the current high interest in leasing. Clearly the Powder River Basin is a coal production region and must be recertified as such in light of current leasing and production levels.

**c. The Decertification Means the BLM has Failed to Appropriately Assess Environmental Impacts and Appropriately Involve the Public in Regional Leasing**

Although the decertification of the Powder River Basin as a coal production region raises well-founded concerns that the BLM is unable to ensure fair market value through the LBA process, we are most concerned with the fact that the decertification has prevented the BLM from appropriately analyzing and assessing the environmental impacts of leasing, from setting appropriate leasing, or activity, levels, and from appropriately involving the public in regional coal leasing decision.

Indeed, BLM’s coal leasing regulations prescribe a number of requirements and procedures that are normally followed when leasing occurs in a “coal production region.” For instance, 43 CFR § 4320.2 requires, among other things, that regional leasing levels be established, that a regional leasing environmental impact statement be prepared, and that the Secretary of the Interior take into account the environmental effects when setting regional leasing levels. Further, activity planning at 43 CFR § 3420.3-1 requires that alternative leasing levels be analyzed in the regional leasing EIS, and that the tract ranking process at 43 CFR § 3420.3-4(a)(1) also requires consideration of environmental effects when the regional coal team sets tract rankings. The regulation states, “Three major categories of consideration shall be used in tract ranking: coal economics; impacts on the natural environment; and socioeconomic impacts.” If the Powder River Basin was a coal production region, the BLM would be required to prepare a regional lease sale EIS “on all tract combinations selected by the regional coal team for the various leasing levels” and consider “[t]he site-specific potential environmental impacts of each tract being considered for lease sale” and “[t]he intraregional cumulative environmental impacts of the proposed leasing action and alternatives, and other coal and noncoal development activities.” 43 CFR § 3420.3-4(c).

In other words, if the Powder River Basin was a coal production region, the BLM would not only be required to set regional leasing levels based on consideration of

---

<sup>32</sup> Based on the high development scenario alternatives for the Hay Creek II, South Gillette, West Antelope II, and Wright LBAs.

environmental impacts, but would prepare a much more comprehensive EIS addressing the impacts of all lease tracts, both individually and cumulatively, before moving to lease coal in the Powder River Basin.

Not only would environmental impacts be appropriately considered, but the public would have numerous opportunities to submit input not only on regional coal leasing levels, but on the regional leasing EIS as well. *See* 43 CFR §§ 3420.2 and 3420.3-4. The regulations give the public an opportunity to consider the environmental effects of regional leasing levels and of tract selections for leasing. By “decertifying” the Powder River Basin as a coal production region, the BLM has shut the door on the ability of the public to influence regional leasing levels and the selection of regional tracts for leasing. Currently, the public is simply forced to respond to LBAs proffered by coal companies.

The inability of the BLM to fully address the environmental impacts of regional coal leasing in the Powder River Basin and to fully involve the public in accordance with the competitive leasing requirements of 43 CFR § 4320, is especially problematic in light of the global warming impacts of coal leasing in the Powder River Basin. Put simply, the BLM has failed to establish regional leasing levels accordingly based on consideration of global warming impacts and failed to address the regional global warming impacts of coal leasing in the Powder River Basin. The agency has also denied the public the ability to influence regional leasing levels based on their concerns over global warming.

**d. The FEIS Cannot Serve as Functional Equivalent to a Regional Leasing EIS, Which Would Otherwise be Required**

Although the BLM may claim that the South Gillette LBAs FEIS fulfills the agency’s duties to consider regional leasing impacts and involve the public, this is not the case. Particularly in the context of global warming and GHG emissions, there is no possible way that the FEIS could serve as a functional equivalent.

While the FEIS presents some regional data regarding CO<sub>2</sub> emissions for the Powder River basin region, the public does not have an opportunity to comment on these regional impacts because the FEIS only deals with the question of leasing the South Gillette LBAs. Thus, this FEIS cannot be a “functional equivalent” of a regional EIS because the action considered, as well as the alternatives considered, are limited in size and scope to the South Gillette LBAs.

Moreover, the BLM emphasizes the limited scope of this NEPA analysis by asserting that the No Action Alternative would not result in fewer CO<sub>2</sub> emissions because other coal mines would supply just as much coal to the national market. Although this claim is spurious, to say the least, under a regional leasing level EIS, this would certainly not be true because the Powder River Basin is the United States’ largest sources of coal. A decision not to lease any coal in the Basin would significantly impact the nation’s coal supply and national CO<sub>2</sub> emissions. Under a regional EIS, the public would be able to comment on a No Action Alternative or various other action alternatives that could better address the need to reduce national CO<sub>2</sub> emissions in order to mitigate the impacts of global warming. Here, in contrast, the public may only submit comments on Alternatives that the BLM asserts will not impact climate change anyway. Thus, the LBA

process does not provide the public with an opportunity to consider and comment upon the significant environmental effects caused by the tremendous amount of CO<sub>2</sub> emissions release by coal from the PRB region.

Regardless, the BLM cannot claim that the South Gillette LBAs FEIS fulfills the requirements of a regional leasing EIS, yet fail to adhere to other procedures under 40 CFR § 3420 regarding the establishment of regional leasing levels and activity planning, among other requirements.

**e. The Powder River Regional Coal Team is Illegally Operating**

We finally want to raise the concern that the Powder River Regional Coal Team appears to be operating illegally. Under BLM regulation, Regional Coal Teams are established only for coal production regions. *See* 43 CFR § 3400.4(a). Because the Powder River Basin has been “decertified” as a coal production region, the Regional Coal Team is not legally allowed to exist or function in any of the capacities set forth under BLM’s coal leasing regulations at 43 CFR §§ 3400 and 3420.

**6. Even if the Decertification of the Powder River Basin Remains Appropriate, the BLM Must Still Assess Whether the South Gillette LBAs Would be Contrary to the Public Interest**

Under the LBA regulations, the BLM must reject any application that, on the basis of environmental or other sufficient reasons, would be contrary to the public interest. *See* 43 CFR § 3425.1-8. In this case, even if the BLM determines that the “decertification” of the Powder River Basin was appropriate, the agency must still provide a full and thorough assessment as to whether the South Gillette LBAs are contrary to the public interest.

In this case, given the global warming impacts of the South Gillette LBAs, it appears apparent that it would be contrary to the public interest to approve the LBAs. It is undisputed that anthropogenically generated carbon dioxide and other greenhouse gases present a substantial endangerment to the health of persons and the environment and that denial of the South Gillette LBAs is necessary to protect the long-term health of the public, the environment, and the economy. As already discussed, and as the BLM has already disclosed, coal from the South Gillette LBAs will be burned, generating massive amounts of carbon dioxide, fueling global warming.

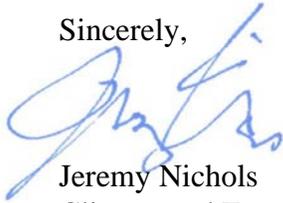
Climate change is the most-serious threat to public health and the environment facing the world today. The evidence is that climate change, including dangerous increases in temperature, primarily attributable to human emissions of carbon dioxide and other greenhouse gasses is occurring now, and has already caused harm to the health of persons and the environment. Unless effective measures to address climate change and its consequences are implemented in the immediate future, harm to human health and the environment of unprecedented severity and scope, including additional loss of human life and collapse of entire ecosystems may result. The need to act urgently to reverse global warming is especially apparent in light of recent findings

by scientists indicating that “the pace of global warming is likely to be much faster than recent predictions, because industrial greenhouse gas emissions have increased more quickly than expected and higher temperatures are triggering self-reinforcing feedback mechanisms in global ecosystems[.]”<sup>33</sup>

WildEarth Guardians and the Sierra Club have submitted numerous pieces of scientific information and comments disclosing and discussing the effects of global warming and the need for the BLM to urgently address the problem. The BLM has similarly disclosed in the FEIS scientific information and analysis documenting the contribution of coal mining in the Powder River Basin and subsequent coal burning to greenhouse gas emissions and global warming. In light of the clear link between anthropogenic greenhouse gas emissions and global warming, as well as the massive impact Powder River Basin coal has on overall greenhouse gas emissions within the United States, the BLM has clear reason to reject the South Gillette LBAs pursuant to 43 CFR § 3425.1-8.

Thank you for the opportunity for us to comment.

Sincerely,



Jeremy Nichols  
Climate and Energy Program Director  
WildEarth Guardians  
1536 Wynkoop, Suite 301  
Denver, CO 80202  
(303) 573-4898 x 1303  
[jnichols@wildearthguardians.org](mailto:jnichols@wildearthguardians.org)

and

Aaron Isherwood  
Senior Staff Attorney  
Sierra Club Environmental Law Program  
85 Second Street, 2d Floor  
San Francisco, CA 94105-3441  
Phone: (415) 977-5680  
[aaron.isherwood@sierraclub.org](mailto:aaron.isherwood@sierraclub.org)

---

<sup>33</sup> See **Exhibit 12**.