

# RECORD OF DECISION for the Maysdorf II Lease by Application Campbell County, Wyoming WYW173360 and WYW180711



*Mule Deer on Reclaimed Rangeland  
Coal Creek Mine, Wyoming*



*Reclaimed Belle Fourche River  
Cordero Rojo Mine, Wyoming*



*Reclaimed Tisdale Creek  
Caballo Mine, Wyoming*



*American Avocet in a Reclaimed Wetland  
Belle Ayr Mine, Wyoming*

Wyoming High Plains District Office

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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-12/037+1320**

**U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
RECORD OF DECISION  
MAYSDORF II LEASE BY APPLICATION  
WYW173360 AND WYW180711  
CAMPBELL COUNTY, WYOMING**

**INTRODUCTION**

On September 1, 2006, Cordero Mining Company (CMC) filed an application with BLM to lease the Federal coal included in a tract west and south of and immediately adjacent to the Cordero Rojo Mine in Campbell County, Wyoming, approximately 15 miles south-southeast of Gillette (Appendix 1, Figure 1). The Federal coal reserves were applied for as a maintenance tract for the Cordero Rojo Mine, which is operated by CMC, a directly held subsidiary of Rio Tinto Energy America (formerly Kennecott Energy and Coal Company). On November 21, 2011 tracts were delineated from the study area associated with the Maysdorf II LBA tract such that all surface which did not obtain surface owner consent was removed and the remaining the area was delineated into a north tract containing one parcel and a south tract containing three parcels. The application was made pursuant to the Leasing on Application regulations found in the Code of Federal Regulations at 43 CFR Subpart 3425.1. The delineated north tract, which was assigned case file number WYW173360, is referred to as the Maysdorf II Lease by Application (LBA) North tract. The delineated south tract, which was assigned case file number WYW180711, is referred to as the Maysdorf II LBA South tract.

Cordero Mining Company has applied to lease Federal coal reserves in order to extend the life of the Cordero 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 Maysdorf II LBA includes a total of approximately 4653.8 acres (Appendix 1, Figure 2). Cordero Mining Company estimates the as applied for tract includes approximately 504 million tons of in place Federal coal in Campbell County, Wyoming.

The Maysdorf II LBA has been evaluated in an environmental impact statement (EIS) containing the Maysdorf II LBA and three other LBAs adjacent to one another in the middle group of mines in the south Gillette area in the Powder River Basin, Wyoming. The group EIS is the *South Gillette Area Coal Lease Applications EIS* (hereafter referred to as the South Gillette Area Coal EIS). Under Alternative 3 for the Maysdorf II LBA, BLM considered adding all or part of the BLM study area to the tract as applied for, splitting the revised tract into two tracts (Maysdorf II LBA North and Maysdorf II LBA South) and offering one or both of those tracts for sale. Two separate competitive sealed bid lease sales would be held. The Maysdorf II LBA North tract consists of one contiguous block of Federal coal; the Maysdorf II LBA South tract consists of three non-contiguous blocks of Federal coal. Alternative 3 assumes that the applicant would be the successful bidder on the tracts, and that the tracts would be mined as maintenance

leases for the existing Cordero-Rojo Mine. According to the applicant, the Cordero-Rojo Mine needs the Federal coal included in the Maysdorf II North and South coal lease tracts in order to extend the life of the mine. The applicant would recover the Federal coal using the same methodology, machinery, and facilities that are currently being used to recover the coal in the existing Cordero-Rojo Mine coal leases. Cordero Mining Company anticipates that, if they acquire the leases for the Maysdorf II LBA North and South tracts, it could extend the mine life by approximately 9.9 years. The Cordero-Rojo Mine has a permit to conduct mining operations approved by the Wyoming Department of Environmental Quality Land Quality Division (WDEQ/LQD) and as provided for by the Mineral Leasing Act (MLA) of 1920, as amended, and a 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 65 million tons of coal per year. In the environmental impact statement the estimated production by the year 2015 at the Cordero-Rojo Mine has been assumed to increase to 39 million tons of coal per year and remain at that rate through the year 2020.

BLM administers the Federal Coal Leasing Program under the MLA as amended and the Federal Coal Leasing Amendments Act (FCLAA) of 1976. If any proposed lease tract contains surface lands which are under the jurisdiction of any Federal agency other than the Department of the 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 the Federal agency prescribe the terms and conditions to be imposed on that lease (43 CFR 3400.3-1 and 3420.4-2 and 3427.1). The Maysdorf II LBA North tract, as configured does not include any surface held in Federal ownership. Under BLM's Maysdorf II LBA North tract delineation, surface ownership consists of private lands owned by Alpha Coal West, Inc. and a subsidiary of Cloud Peak Energy. The Maysdorf II LBA South tract, as configured, consists of private lands owned by subsidiaries of Cloud Peak Energy and 284.96 acres of Federal lands administered by the BLM.

## **BACKGROUND**

### **Lease by Application Process**

In the Powder River Basin (PRB), maintenance tracts are 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 South Gillette Area Coal EIS to evaluate and disclose potential impacts of leasing the Federal coal included in the Maysdorf II coal lease application. Although leasing the Maysdorf II LBA North and or South tract would not authorize mining operations on the

tract, the EIS evaluates the potential impacts of mining the Maysdorf II LBA because mining is a logical consequence of issuing a lease for a maintenance tract of Federal coal.

The Office of Surface Mining Reclamation and Enforcement (OSM) is a cooperating agency on the South Gillette Area Coal Lease EIS because 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 WDEQ and the Wyoming Department of Transportation (WDOT) are also cooperating agencies on this EIS. WDEQ 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 regulates airborne emissions in Wyoming and administers the air quality standards approved by the Environmental Protection Agency (EPA). The responsibilities of the WDOT include, but are not limited to, management, planning, and oversight of state roads and highways.

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 the fair market value of the coal as determined by BLM's economic evaluation.

Cordero Mining Company filed the Maysdorf II LBA because the area applied for is adjacent to their existing approved mining operations at the Cordero-Rojo Mine and the Federal coal can be mined using their existing mine facilities, equipment, and employees. As shown in Appendix 1, Figure 1, the Cordero-Rojo Coal mine and related Maysdorf II LBA are adjacent to one another. In the South Gillette Area Coal EIS, the alternatives that are analyzed in detail assume that the applicant will be the successful bidder if a competitive 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 Coal Region in 1990, 26 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 61,833.43 surface acres and approximately 7,176,711,524 tons of mineable coal. 24 of the new leases were issued to the following existing mines for the purpose of extending operations at those mines: Jacobs Ranch (now Black Thunder)(2), Black Thunder (4), North Antelope Rochelle (3), Eagle Butte (2), Antelope (5), Buckskin (1), Cordero/Rojo (2), Belle Ayr (1), Caballo (2), and School Creek (the former North Rochelle) (2). 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 Peabody Energy Corporation (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 seven pending maintenance lease applications in the Wyoming portion of the PRB, including the Maysdorf II LBA tracts (Appendix 1, Figure 1). As applied for, the pending coal lease applications include approximately 27,167.03 acres and 3,532 million tons of Federal coal. In addition to the Maysdorf II LBA, the pending LBAs and the applicant mines are: North Hilight Field (Black Thunder Mine), West Hilight Field (Black Thunder Mine), Hay Creek II (Buckskin Mine), West Jacobs Ranch (Jacobs Ranch Mine – prior to Arch purchase) Belle Ayr West (Belle Ayr Mine) and Antelope Ridge (Antelope Mine).

Oil and gas leasing and development have occurred in this area in addition to coal leasing and mining. Both conventional and coalbed natural gas (CBNG) wells have been drilled in and around the Cordero-Rojo Mine and the Maysdorf II LBA area. 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 Maysdorf II LBA area is described in Figure 3-39 and Table 3-17 of the Final EIS. Federal oil and gas lessees and private interests identified by the applicant were included on the mailing list for the South Gillette Area Coal EIS.

The EIS discusses energy development in and around the Maysdorf II LBA tract. 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 there are active conventional oil or gas wells on lands included in the Maysdorf II study area, Proposed Action, and Alternatives 1, 2 and 3. The Cordero-Rojo Mine has obtained mine-over rights for all oil and gas installations within the tract and study area.

The EIS also includes a summary of the results of the BLM WSO-RMG analysis of the coal bed natural gas (CBNG) resources in the area. At the Cordero-Rojo Mine, the mineable coal seams are the Wyodak-Anderson coal zone. In this area, CBNG has been produced from the Wyodak-Anderson zone since the late 1980s. The WSO-RMG analysis indicated that in the Wyodak-Anderson zone underlying the Cordero-Rojo Mine, CBNG depletion had already occurred before accelerated CBNG development began in the region in the late 1990s. Recoverable Methane in the coals in the Maysdorf II LBA will be nearly completely removed by the CBNG operators before mining occurs. This will result in the reduction of the amount of methane released into

the atmosphere by coal exposed during mining. The EIS identifies CBNG wells on lands included in the BLM study area of the Maysdorf II LBA and the operating status of those wells. The remaining CBNG wells can continue to operate in advance of the coal mining operation until the wells become prepared for mine-over.

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 Maysdorf II LBA North or South coal tract being leased (Appendix 2). The Cordero-Rojo Mine has obtained mine-over rights to the oil and gas leases included in this tract for any remaining oil and gas operations within the tract area.
- 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 oil and gas 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. In addition, 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 Maysdorf II LBA North and or South tracts 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 coal tract could continue to be recovered during that time period.
- 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 Maysdorf II LBA North and or South tracts.

Any proposed coal-fired power plants that plan to initiate operation by 2020 currently would need to be undergoing air permit review in order to obtain the required construction permits and complete construction by 2020.

The coal technology project by White Energy Coal North America which plans to use a Binderless Coal Briquetting technology in 2 plants, one near the Buckskin Mine and one near the Caballo mine is in the early planning stages with construction possible by 2020.

Methane production from in situ low temperature methanogenesis is being proposed in the PRB. Several companies have developed methods of increasing biogenetic methane within coal seams through enriched methanogenesis using the coal as a hydrogen source. This process uses the predominantly anaerobic microorganisms that metabolize the complex organic molecules in hydrocarbon deposits and produce methane gas as a waste product. The companies propose to transform uneconomic CBNG wells into economic production wells and use the existing infrastructure for their operations. None of the CBNG wells located within the Maysdorf II LBA North or South are planned for use in methanogenic methane operations and none of the wells proposed for this process will be impacted by operations at the Cordero-Rojo Mine during the life of either lease tract. Furthermore, the Cordero-Rojo Mine has mine-over rights to all CBNG wells on the Maysdorf II LBA North and South tracts.

Coal plants, coal conversion projects, ongoing and proposed oil, gas, and CBNG operations are separate projects being developed independently of leasing the Maysdorf II LBA. If these other projects are developed as proposed and the Maysdorf II lease application area is leased and mined as proposed, there would potentially be some overlap between the environmental and economic impacts of constructing and operating some of those projects and the environmental and economic impacts of mining the Maysdorf II LBA tracts. The cumulative effects of these projects are described in chapter 4 of the South Gillette Area Coal Lease Applications EIS. The cumulative impact discussion in the EIS is based on the analyses done for the PRB Coal Review, which can be viewed on the BLM website at: [http://www.blm.gov/wy/st/en/programs/energy/Coal\\_Resources/PRB\\_Coal/prbdocs.html](http://www.blm.gov/wy/st/en/programs/energy/Coal_Resources/PRB_Coal/prbdocs.html)

## **DECISION**

As BLM Wyoming High Plains District Manager, my decision is that it is in the public interest to offer the Maysdorf II LBA North and South tracts 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 Maysdorf II LBA North and South tracts 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 3 for the Maysdorf II LBA as described in Chapter 2 of the *South Gillette Area Coal EIS* has been selected. Under Alternative 3 the BLM has added part of the BLM study area to the tract as applied for, split the revised tract into two tracts (Maysdorf II LBA North and Maysdorf II LBA South), and removed the lands from consideration which have not received consent from the qualified surface owner. Two separate competitive sealed bid lease sales will be held.

The tracts will be offered for lease at competitive sealed-bid sales. 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 the 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 Maysdorf II LBA North or South tracts 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.

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 1985 with an RMP Plan Update in 2001 and an RMP Plan Amendment in 2003.

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).

Under Alternative 3, it is assumed that the applicant would be the successful bidder on the Maysdorf II LBA tracts and that the Federal coal would be mined to extend the life of the adjacent Cordero-Rojo 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.

## **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 Maysdorf II LBA tracts is unlikely to affect changes in the national electric generation portfolio. The rationale for this conclusion is summarized below.

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

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

BLM reviewed an independent study 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 Maysdorf II LBA North and South reserves would be mined. The study 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).

The study projected the electric generation portfolio to 2030 (beyond the time both the Maysdorf II LBA North and South lease reserves would be produced) and recognized the possibility of carbon regulation. The study related the mix of renewable energy sources, nuclear, and hydrocarbon sources, and energy conservation, and found that coal-fired electric generation would represent 52-58 percent of the electric generation portfolio by 2030, as compared to the current approximately 51 percent.

The Annual Energy Outlook 2012 Report (Energy Information Administration, June 2012) represents a forecast to the year 2035. This most recent report forecast a lowered percentage of coal-fired electric generation in the domestic electric generation portfolio to 38% percent by 2035, 28% electric generation from natural gas by 2035, and 15% from renewable energy sources, and 18% from nuclear energy sources.

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. The factors affecting change in the electric generation portfolio are time and cost of alternate technologies, infrastructure and increasing electric demand. BLM concludes that during the time that the proposed Federal coal lease reserves would be produced, the demand for coal-fired electric generation in the United States will still require coal be a major part of the U.S. energy portfolio.

Further, BLM disagrees with the comment that denying the proposed Federal coal leasing application would reduce the rate of coal consumption by domestic electric generators. Numerous mines located outside of the Powder River Basin (PRB) are extracting and producing coal in the United States. In order to supply reliable power for

the country's electrical needs, many mines outside of the PRB have the capacity to replace the coal production generated by the Cordero-Rojo Mine.

The Maysdorf II LBA North and South coal reserves, if leased and approved for mining, would allow the coal mining operator to continue to compete for coal sales in an open, diverse supply and demand market. PRB mines have been selling coal in this market for decades, and denying this lease offer would not cease currently approved mining operations. Rather, a denial would require the mine to stop operations only after the current lease reserves are depleted. This would deny the mine operator the ability to compete with other operators for a future coal demand that is expected to last until at least 2035. The inability of the Cordero-Rojo Mine, or any other existing PRB producer, to sell in the coal market will not cause electric generators to stop burning coal. Utility companies will operate existing coal-burning facilities until either cost or regulatory requirements make them ineffective, or until they are replaced by non-hydrocarbon electrical generation facilities.

The effect of denying the Maysdorf II LBA North would be that the existing mine would cease operations after the current reserves are depleted, and the Cordero-Rojo 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 to 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 denying the leasing proposed throughout the PRB would be that many of the existing mines would cease operations once current reserves are depleted (ranging from 8 to 20 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 more residual environmental impacts.

Many other factors, listed below, were considered in the decision to lease the Maysdorf II LBA:

- The BLM coal leasing program encourages the development of domestic coal reserves and the reduction of the United States' dependence on foreign sources of energy. BLM recognizes that the extraction of coal is currently necessary in order to meet the nation's energy needs, and 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 MLA of 1920, the Federal Land Policy and Management Act of 1976 (FLPMA) and the Federal Coal Leasing Amendments Act of 1976 (FCLAA).

- The Cordero Mining Company submitted the application to lease the Federal coal in the Maysdorf II LBA in order to extend the life of the Cordero-Rojo Mine by allowing them to acquire access to a continuing supply of low sulfur compliant coal that will be sold to power plants for generating electricity. Continued leasing of low sulfur PRB coal assists coal-fired power plants to meet the CAA requirements for sulfur emissions.
- 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 Wyoming Governor, the Wyoming legislature, 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 the 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 Maysdorf II LBA tracts (totaling 3,644.27 acres more or less and containing approximately 382,115,000 million tons of mineable Federal coal reserves as estimated by the BLM) is responsive to the coal lease application received on September 1, 2006.
- The decision to offer the Maysdorf II LBA North and South coal tracts 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 *South Gillette Area Coal 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 comment was addressed in the Final EIS.
- The BLM’s preferred tract configuration under Alternative 3 provides for maximum economic recovery of the coal resource. Acreage from the original application has been removed due to the lack of qualified surface owner (QSO) consent. In order to ensure maximum economic recovery, the economic analysis

of the bonus value for the LBA coal tracts along this QSO boundary includes a reasonable cost to acquire an over-strip agreement towards the end of mine life in order to mine the last of the LBA coal.

- The U.S. Fish and Wildlife Service has provided written concurrence for leasing the Maysdorf II LBA North and South tracts pursuant to section 7(a)(2) of the Endangered Species Act of 1973, as amended (Appendix 3). Suitable habitats for Ute Ladies'-tresses were surveyed during the known flowering periods in 2006 and 2007. One golden eagle/ferruginous hawk nest was identified outside the tract but still within the general analysis area. Twenty-three bird species on the "Coal Mine List of 40 Migratory Bird Species of Management Concern in Wyoming" have historically been observed in the South Gillette Area combined general analysis area at least once. Additional surveys and mitigation will be completed at the permitting for mining stage of the process for each individual LBA.
- No Greater Sage-Grouse leks occur within the Maysdorf II LBA tracts as applied for, or within the Maysdorf II LBA North or South tracts as delineated with lands added under Alternative 3. Two Greater Sage-Grouse leks have been found within the Maysdorf II LBA wildlife general analysis area outside the delineated tract configurations. Seven other Greater Sage-Grouse leks have been documented within 2 miles of the Maysdorf II wildlife general analysis area. The Belle Ayr 1, Cordero Mine, and Thrush leks have been classified as occupied. The Doud and Belle Fourche South leks are classified as unoccupied/abandoned and the Stowe, Belle Ayr II, Hoadley Road and Coal Creek II leks are classified as unoccupied/destroyed. Occupied leks are protected through prescribed management actions during surface disturbing activities. Additional surveys and mitigation will be completed at the permitting for mining stage of the process for the Maysdorf II LBA North and South tracts.
- There are 49 previously recorded sites within the APE (defined as the lease area and a ¼ mile buffer surrounding the lease area), 43 of which have been determined not eligible by the BLM with SHPO concurrence (48CA94, 48CA877, 48CA880, 48CA882, 48CA1436, 48CA1437, 48CA1568, 48CA1879, 48CA1880, 48CA1881, 48CA1883, 48CA1884, 48CA1886, 48CA1888, 48CA1893, 48CA1894, 48CA1895, 48CA1900, 48CA3177, 48CA3342, 48CA4124, 48CA5601, 48CA5625, 48CA5626, 48CA5627, 48CA5628, 48CA5635, 48CA5685, 48CA5687, 48CA5689, 48CA5690, 48CA5716, 48CA5724, 48CA5727, 48CA5736, 48CA5738, 48CA5740, 48CA5798, 48CA6816, 48CA6817, 48CA6819, 48CA6821 and 48CA6822). Ten of these sites (in bold text in the above list) have already been destroyed by permitted mining activity. It is anticipated that all 43 of the existing not eligible sites will be destroyed by

strip mining activities.

The assumed location of the eligible Deadwood Road (48CA1568, segment 17) is in the APE, but no definite traces of the trail were discovered during a Class III cultural resource inventory and the segment is considered to be non-contributing with lease issuance resulting in a BLM determination of “no adverse effect”.

Sites 48CA5717 and 48CA5723 (prehistoric sites with buried components) are eligible under criterion “d” and are within the APE for the Maysdorf II lease. After tribal consultation with representatives from the Fort Peck, Northern Arapaho, Cheyenne River Sioux, Rosebud Sioux, Sisseton Wahpeton Oyate, and Yankton Sioux tribes, BLM determined that sites 48CA5735 and 48CA5737 (sites containing multiple stone features) are eligible under criterion “a” and that they have religious and cultural significance to all the aforementioned tribes. Both sites are within the APE for the Maysdorf II lease. BLM determined that issuance of the lease will result in an “adverse effect” to sites 48CA5717, 48CA5723, 48CA5735 and 48CA5737. BLM will include a stipulation in the lease prohibiting surface disturbance on each site until mitigation is determined by WDEQ and OSM in consultation with the Wyoming SHPO and interested tribes.

The Bureau has determined that the proposed Maysdorf II coal lease will result in an “adverse effect” to 48CA1439, 48CA1442, 48CA5717, 48CA5723, 48CA5798, 48CA5735 and 48CA5737. Lease issuance will result in “no adverse effect” to site 48CA1568. No other historic properties will be affected by the project. According to the Wyoming State Protocol Section VI (B)(1) the Bureau of Land Management requested concurrence of the Wyoming SHPO on 8/6/12. BLM received concurrence on these determinations from SHPO on 8/22/12.

- Issuing a Federal coal lease for the Maysdorf II LBA North and or South tracts would not result in the creation of new sources of human-caused GHG or mercury emissions. The Cordero-Rojo Mine would produce the Maysdorf II LBA coal at currently permitted levels using existing production and transportation facilities. If the Maysdorf II LBA tracts are leased and mined, site-specific GHG emission rates from the Cordero-Rojo Mine are anticipated to increase slightly compared to current emission rates due to increased strip ratios and added hauling distances.
- If the Maysdorf II LBA Federal coal is leased and mined at the currently permitted levels and is used to generate electricity by coal-fired power plants, the emissions of GHG and mercury attributable to the coal produced from the Cordero-Rojo Mine would be extended for approximately 2.6 additional years. The rate of anthropomorphic CO<sub>2</sub> 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 regulation of GHG emissions as an air pollutant is recognized in this

decision. An effect on coal production and use may develop, depending on how the regulatory actions affect the demand for coal and the mix of methods used to produce electricity in the U.S.. Effects to coal demand are 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 desired coal characteristics, may lose customers.

## **PUBLIC INVOLVEMENT**

BLM received the Maysdorf II coal lease application on September 1, 2006. The Maysdorf II coal lease application was announced to the public on March 29, 2007. The Powder River Regional Coal Team (PRRCT) was notified that Cordero Mining Company had filed an application for the Maysdorf II coal lease and presented with the Maysdorf II LBA for review on January 18, 2007. At the January 18, 2007 public meeting, the PRRCT reviewed the Maysdorf II coal lease application. Cordero Mining Company presented information about their existing mine, the history of the Maysdorf II LBA, and the current pending Maysdorf I lease application to the PRRCT at that meeting. The PRRCT recommended that the BLM process the application. On September 18, 2006, BLM notified the Governor of Wyoming of the recommendation. BLM published a Notice of Intent to Prepare an Environmental Impact Statement and Notice of Public Meeting in the Federal Register on March 29, 2007. Scoping notices were 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. BLM published public scoping meeting notices in the local newspapers. On April 11, 2007, a public scoping meeting was held in Gillette, Wyoming. The scoping period extended from March 29, 2007 to June 1, 2007, during which time BLM received written, e-mailed, and telephoned comments from six entities.

A notice announcing the availability of the *South Gillette Area Coal Lease Applications Draft EIS* was published in the Federal Register by the EPA on October 24, 2008. Parties on the distribution list were sent copies of the Draft EIS at that time and the Draft EIS became available on the Wyoming BLM webpage. A 60-day comment period on the Draft EIS commenced with publication of the EPA's Notice of Availability and ended on December 24, 2008. The BLM published a Notice of Availability/Notice of Public Hearing in the Federal Register on October 17, 2008. The BLM's Federal Register Notice of Public Hearing announced the date and time of the formal public hearing, which was held on November 19, 2008, 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 LBA tract. One individual presented statements on the draft EIS during the hearing and written comments were received from 18 individuals, agencies, or organizations during the comment period.

A notice announcing the availability of the *South Gillette Area Coal Lease Applications Final EIS* was published in the Federal Register by the EPA on August 17, 2009; parties

on the distribution list were sent copies of the Final EIS at that time. The comment period for the Final EIS ended on September 16, 2009. The review period was open for 30 days after the EPA's Notice of Availability published in the Federal Register.

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. BLM received eight comment letters regarding the Final EIS. Of the 8 letters, 6 letters were individual and 2 were form letters. Of the form letters, Form Letter 1 was received from 423 individuals and Form Letter 2 was received from 14,427 individuals. Within Form Letter 1, 4 individuals modified their letter to include additional comments. Within Form Letter 2, 665 individuals modified their letter to include additional comments. The 6 individual letters were from: Dorsey and Whitney LLP, Crook County Land Use Planning and Zoning Commission, WildEarth Guardians, Clean Energy Action, Rio Tinto Energy America, and Powder River Basin Resource Council/Center for Biological Diversity. The issues of greatest concern were: Power plant greenhouse gas emissions from Powder River Basin coal combustion, Powder River Basin air quality, wanting greater emphasis on renewable energy development from the BLM, concern about the success of the mining reclamation process, concern about water resources in the Powder River Basin, and concern for adequate protection of plant and animal species. Comments that BLM received on the Final EIS have been reviewed and evaluated, and comment letters and a consolidated BLM response are available at

<http://www.blm.gov/pgdata/content/wy/en/info/NEPA/HighPlains/SouthGillette.html>.

Written comments and the transcript of the formal hearing are also on the South Gillette Area Coal EIS webpage. All comments that were received were considered in the preparation of the Final EIS and in this Record of Decision.

## **SUMMARY OF THE PROPOSED ACTION AND ALTERNATIVES**

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

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

Under the Proposed Action, the lands applied for in the Maysdorf II application by the Cordero Mining Company would have been offered for lease at a competitive sealed-bid sale. As applied for, the tract included approximately 4653.8 acres. The applicant estimated that the lands contained approximately 504 million tons of mineable 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 Cordero-Rojo Mine.

**Alternative 1: The No Action Alternative**

Under Alternative 1 the Cordero Mining Company application to lease the coal included in the Maysdorf II LBA tract would be rejected. The tract would not be offered for competitive sale at this time, and the coal included in the tract would not be mined. Under this alternative, the Cordero-Rojo Mine would mine its remaining 571.5 million tons of recoverable coal reserves on the existing Cordero-Rojo mine leases in approximately 11.4 years at an average production rate of approximately 46.3 mmtpy (million tons per year).

Rejection of the application would not affect permitted mining activities or employment at the Cordero-Rojo Mine during the remaining life of the mine.

**Alternative 2: 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 the Cordero-Rojo Coal Company, BLM identified and analyzed an additional 4895.6 acres of unleased Federal coal adjacent to the southwestern edge of the application land. 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.

**Alternative 3 (Selected Alternative): Reconfigure the tract and hold two competitive sales for Federal coal lands in the tract as modified by BLM and issue leases to the successful bidders.**

Under Alternative 3 for the Maysdorf II LBA tract, BLM considered adding all or part of the BLM study area to the tract as applied for and dividing the revised tract into two tracts and offering one or both of those tracts for sale. Under this alternative, BLM could add all, part, or none of the adjacent lands to the tract or reduce the size of the tract. A separate, competitive sealed bid sale would be held for each tract that is offered for sale. Each tract would be subject to standard and special lease stipulations developed for the PRB and for that tract.

Along with the Federal coal lands that were applied for by the Cordero-Rojo Coal Company, BLM identified and analyzed an additional 241.80 acres of unleased Federal coal adjacent to the application land. 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.

Under the selected configuration, the Maysdorf II LBA modified North and South tracts include approximately 3,644.27 acres and BLM estimates that they contain 438 million tons of in place coal (382,115,000 million tons of mineable coal). As delineated the Maysdorf II LBA North tract contains approximately 1,338.37 acres and 167 million tons of in place coal (148,565,000 minable tons of coal); the Maysdorf II LBA South tract contains approximately 2,305.90 acres and 271 million tons of in place coal (233,550,000 minable tons of coal).

The legal descriptions of the lands to be offered for competitive sale under Alternative 3, BLM's selected tract configuration, for the Maysdorf II LBA tracts are:

Maysdorf II LBA North Tract

T. 47 N., R. 71 W., 6th P.M., Wyoming

Sec. 7: Lots 6-11, 14-19; 490.180 acres

T. 47 N., R. 72 W., 6<sup>th</sup> P.M., Wyoming

Sec. 1: Lots 9-13, NW $\frac{1}{4}$ SE $\frac{1}{4}$ ; 241.80 acres

Sec. 12: Lots 1-12, 14-16; 606.39 acres

Containing 1,338.37 acres, more or less.

Maysdorf II LBA South Tract

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

Sec. 4: Lots 8, 9, 16, 17; 163.79 acres

Sec. 5: Lots 5, 12, 13, 20; 165.03 acres

Sec. 9: Lots 6-8; 122.86 acres

Sec. 10: Lots 7-10; 162.62 acres

Sec. 11: Lots 13-16; 161.87 acres

Sec. 14: Lots 1-4;	161.69 acres
Sec. 15: Lots 1-4;	162.59 acres
<u>T. 47 N., R. 71 W., 6<sup>th</sup> P.M., Wyoming</u>	
Sec. 17: Lots 1-15, SW $\frac{1}{4}$ NW $\frac{1}{4}$ ;	639.73 acres
Sec. 18: Lots 5, 6, 11, 12;	160.08 acres
Sec. 20: Lot 1;	37.93 acres
Sec. 21: Lot 4;	40.13 acres
Sec. 32: Lots 1, 8, 9, 16;	162.94 acres
Sec. 33: Lots 4, 5, 12, 13.	164.64 acres

Containing 2,305.90 acres, more or less.

The land descriptions and acreage are based on the BLM Status of Public Domain Land and Mineral Titles Approved Master Title Plat as of November 17, 2011. The coal estate in the tracts described above is Federally owned. Surface ownership consists of private lands owned by subsidiaries of Cloud Peak Energy and Federal lands administered by the BLM.

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

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

##### **Alternative 4**

Under this alternative, as under the Proposed Action and Alternative 2, BLM would hold a competitive coal lease sale and issue a lease for the lands included in the Maysdorf II LBA tract. Alternative 4 assumes, however, that the successful qualified bidder would be someone other than the applicant and that this bidder would plan to open a new mine to develop the Federal coal resources. In BLM's current estimation, in order 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 by the lease of this tract. The total amount of coal included in the tract is not sufficient to consider opening a new mine. Also, a new mine

would 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.

## **Alternative 5**

Under Alternative 5, the BLM would have delayed the sale of the Maysdorf II LBA tract as applied for. Delaying the sale may have allowed CBNG resources to be more completely recovered prior to mining. If the coal 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 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 U.S. 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 Maysdorf II LBA.

## **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 for Public Lands Administered by the BLM Buffalo Field Office (RMP)*, which was completed in 1985 with an RMP Plan Update in 2001 and an RMP Plan Amendment in 2003, governs and addresses the leasing of Federal coal in Campbell County.

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, and other evaluations, and 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 Maysdorf II coal lease application 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 Maysdorf II LBA tracts and surrounding lands.

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. The area where Highlight Road crosses BLM's Maysdorf II LBA tract as applied for and study area has been removed from leasing. As there are no other roads within the area covered by the Maysdorf II LBA and study area, Unsuitability Criterion Number 3 is no longer applicable to the Maysdorf II LBA.

No other lands included in the Maysdorf II LBA tracts 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 South Gillette 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 Maysdorf II LBA North and South tract configurations do not extend into any of the municipal buffer zones.

BLM's evaluation of the multiple mineral development conflicts related to issuing leases for the Maysdorf II lands 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 Cordero-Rojo Mine has obtained mine-over rights for all oil and gas installations within the tract and study area.

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. If private surface owners are determined to be qualified under this CFR, then qualified

surface owner consent is required before those lands can be included in a Federal coal lease. The Norma L. Duvall and Kenneth R. Duvall Trusts are qualified surface owners. The land surface owned by the Norma L. Duvall and Kenneth R. Duvall Trusts has not received surface owner consent for leasing at this time and has been removed from consideration for leasing under the Maysdorf II coal lease application. Parts of T47N R71W Sections 20, 21, and 28, and T47N R72W Sections 12 and 13 were removed from consideration for leasing under the Maysdorf II LBA. Subsidiaries of Cloud Peak Energy and Federal lands administered by the BLM are the remaining surface owners in the configured North and South tracts.

In summary, the lands in the Maysdorf II LBA tracts have been subjected to the four coal leasing screens and are determined to be acceptable for further consideration for leasing. Thus, a decision to lease the Maysdorf II LBA Federal coal is in conformance with the current BLM Buffalo RMP.

### **MITIGATION, COMPLIANCE, AND MONITORING**

If the Maysdorf II LBA North or South 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. No additional special stipulations were identified in Appendix D of the Final EIS. The final special stipulations are attached to this decision and will become part of the Federal coal lease records and pertain to all lands 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 the Cordero Mining Company is the successful, qualified high bidder for the Federal coal included in the Maysdorf II LBA North and South tracts, 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 tracts can 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 Maysdorf II LBA tracts. The mining permit would be amended to include the new mitigation requirements.

If the successful bidder(s) on the Maysdorf II LBA North or South coal lease sale does not currently operate a mine that is adjacent to the Maysdorf II LBA North or South tract (WYW173360 or WYW180711 respectively), 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(s) 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.

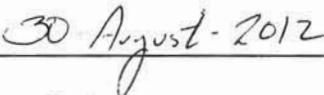
To ensure that the revised plan is in compliance with the leasing stipulations, BLM has a responsibility to review the R2P2 prior to approval of the mining plan. Before any mining operations can begin on the Maysdorf II LBA tracts, R2P2s applicable to the tracts must be approved by the BLM, a permit 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 two competitive lease sales are held, two Federal coal tracts WYW173360 and WYW180711, with the Maysdorf II LBA North tract containing approximately 1,338.37 acres and 167 million tons of in place coal (148,565,000 minable tons of coal) and the Maysdorf II LBA South tract containing approximately 2,305.90 acres and 271 million tons of in place coal (233,550,000 minable tons of coal) 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 each tract as determined by the BLM and that all other leasing requirements are met.

This is Alternative 3 for the Maysdorf II LBA, as modified by BLM, and as described in this record of decision. The competitive lease sales will be held in accordance with the requirements at 43 CFR Subpart 3422. The leases will be subject to the attached BLM special lease stipulations (Appendix 2).

  
\_\_\_\_\_  
Al Elsef  
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 tracts WYW173360 and WYW180711 for competitive lease sale.



Stephanie Connolly  
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.

MAYSDORF II ROD

**APPENDIX 1**

Figures

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

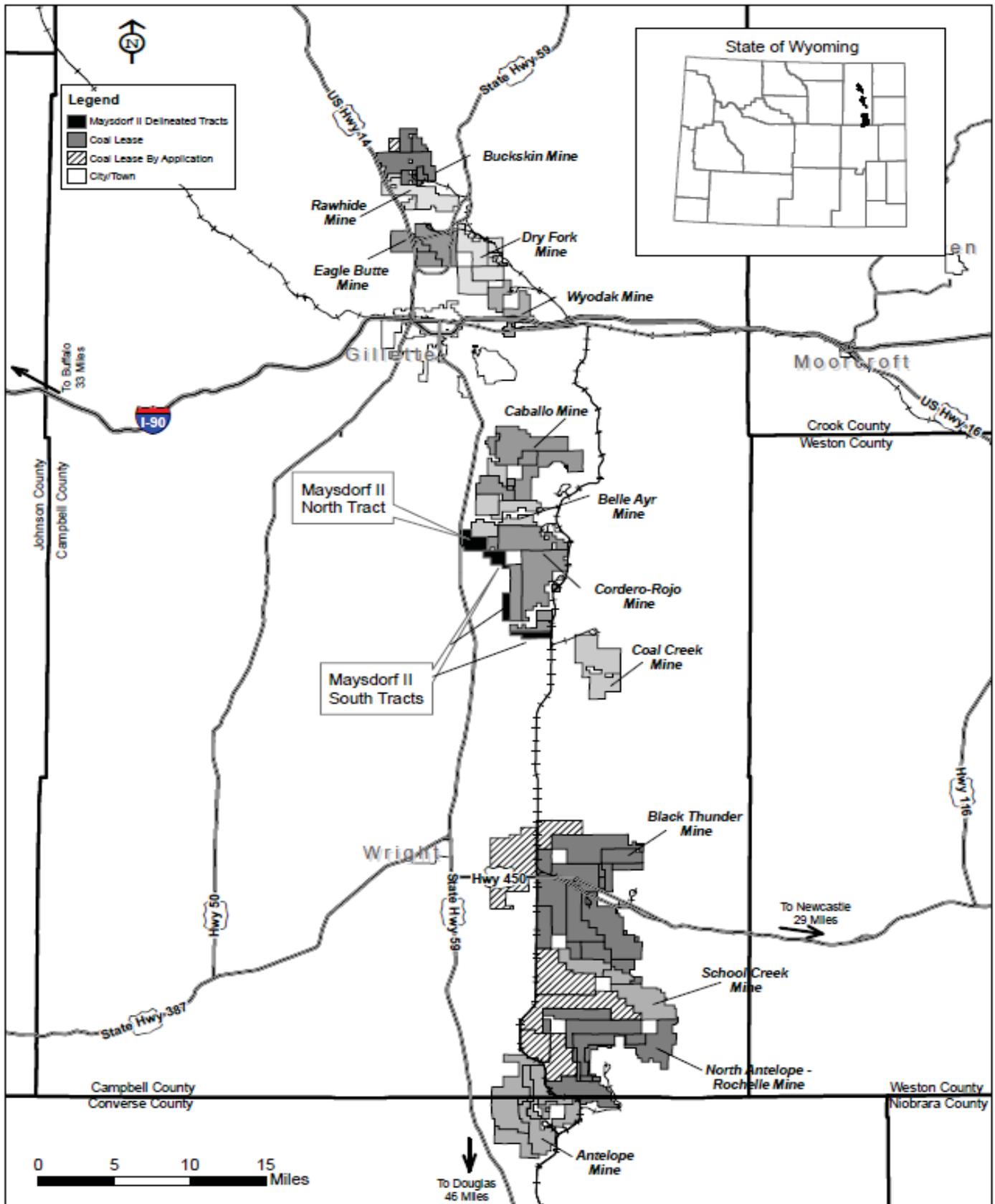


Figure 2. Maysdorf II LBA Tracts

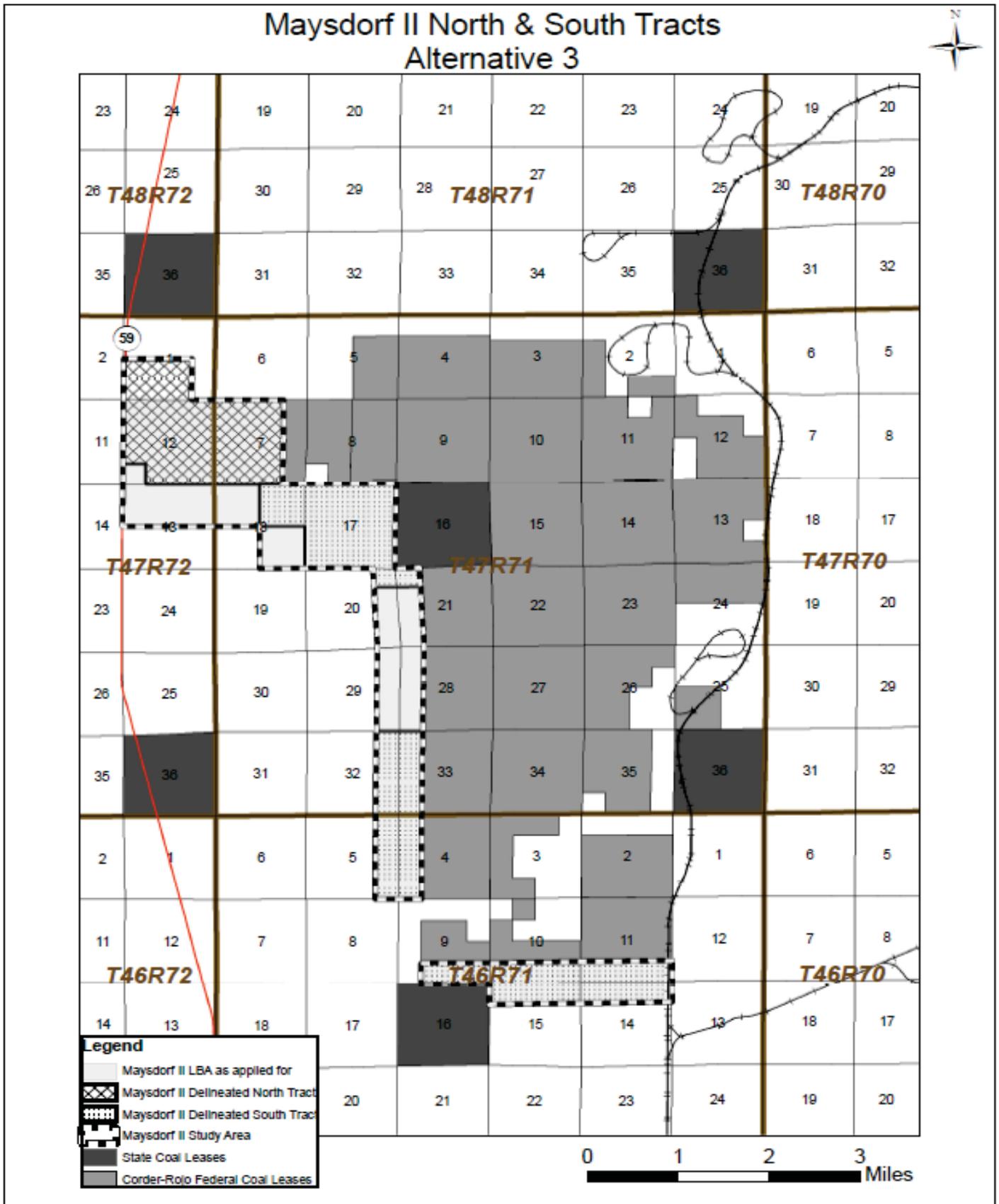
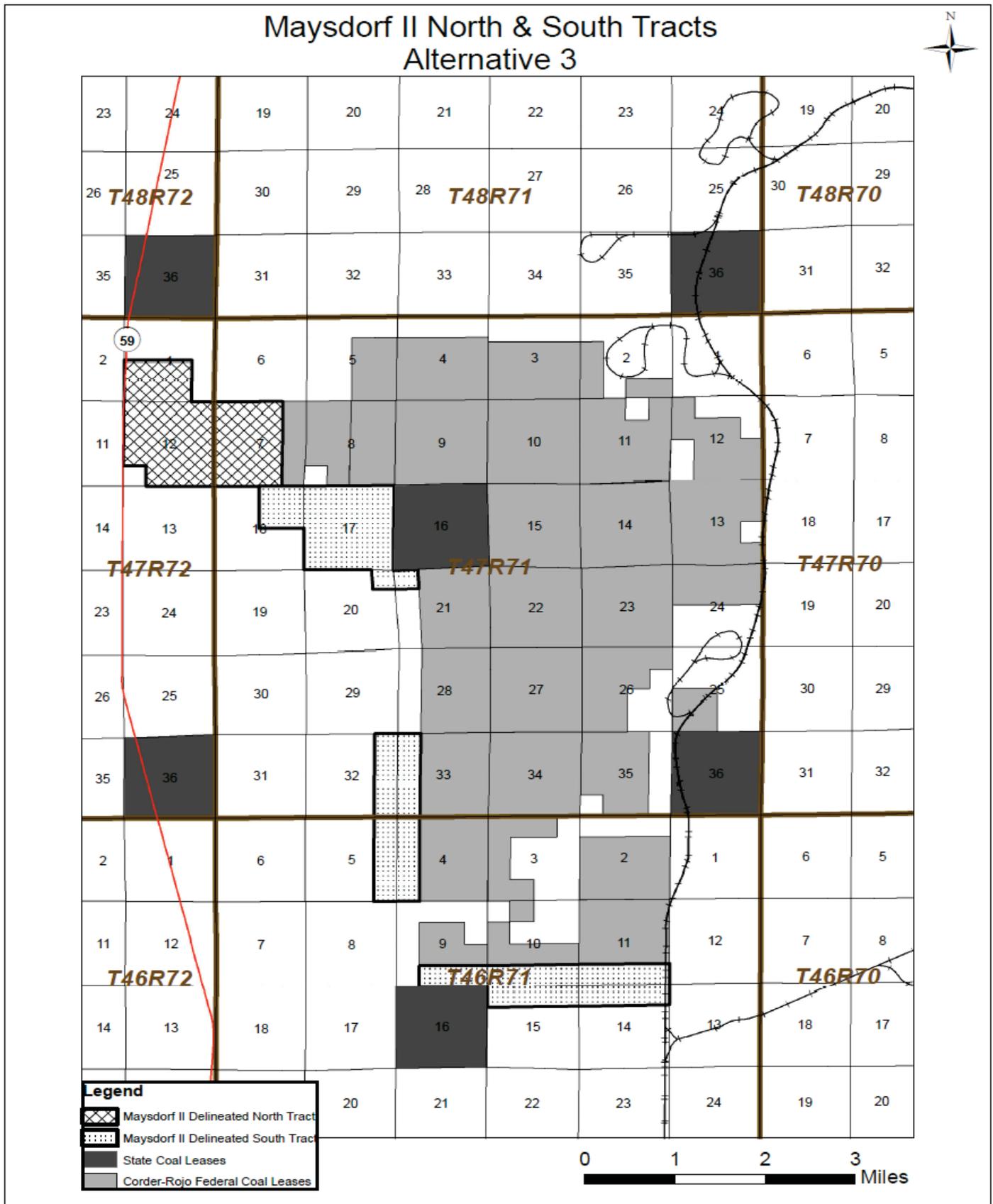


Figure 3. Maysdorf II LBA North and South Tracts



# MAYSDORF II ROD

## **APPENDIX 2**

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

## **SPECIAL STIPULATIONS**

In addition to observing the general obligations and standards of performance set out in the current regulations, the lessee shall comply with and be bound by the following special stipulations.

These stipulations are also imposed upon the lessee's agents and employees. The failure or refusal of any of these persons to comply with these stipulations shall be deemed a failure of the lessee to comply with the terms of the lease. The lessee shall require his agents, contractors and subcontractors involved in activities concerning this lease to include these stipulations in the contracts between and among them. These stipulations may be revised or amended, in writing, by the mutual consent of the lessor and the lessee at any time to adjust to changed conditions or to correct an oversight.

### **(a) Cultural Resources**

(1) Before undertaking any activities that may disturb the surface of the leased lands, the lessee shall conduct a cultural resource intensive field inventory in a manner specified by the Authorized Officer of the BLM or of the surface managing agency, if different, on portions of the mine plan area and adjacent areas, or exploration plan area, that may be adversely affected by lease-related activities and which were not previously inventoried at such a level of intensity. The inventory shall be conducted by a qualified professional cultural resource specialist (i.e., archeologist, historian, historical architect, as appropriate), approved by the Authorized Officer of the surface managing agency (BLM, if the surface is privately owned), and a report of the inventory and recommendations for protecting any cultural resources identified shall be submitted to the Regional Director of the Western Region of the Office of Surface Mining (the Western Regional Director), the Authorized Officer of the BLM, if activities are associated with coal exploration outside an approved mining permit area (hereinafter called Authorized Officer), and the Authorized Officer of the surface managing agency, if different. The lessee shall undertake measures, in accordance with instructions from the Western Regional Director, or Authorized Officer, to protect cultural resources on the leased lands. The lessee shall not commence the surface disturbing activities until permission to proceed is given by the Western Regional Director or Authorized Officer.

(2) Any existing Class III inventory report covering the lease area that has not received federal agency review must be reviewed and accepted by the agency, site NRHP eligibility determinations made, and consultation with the State Historic Preservation Officer completed before any surface disturbing activities take place.

(3) No surface disturbance will occur near eligible sites 48CA5717, 48CA5723, 48CA5735 and 48CA5737 until consultation with the Wyoming SHPO office has occurred and an appropriate mitigation plan implemented. The BLM has determined that leasing the coal will result in an adverse effect to sites 48CA5717, 48CA5723, 48CA5735 and 48CA5737. Consultation in relation to the resolution of the adverse effect will be completed by the OSM and WDEQ during the mine permitting process, prior to any surface disturbance.

(4) The lessee shall protect all cultural resource properties that have been determined eligible or unevaluated to the National Register of Historic Places within the lease area from lease related activities until the cultural resource mitigation measures or site evaluations can be implemented as part of an approved mining and reclamation or exploration plan unless modified by mutual agreement in consultation with the State Historic Preservation Officer.

(5) The cost of conducting the inventory, preparing reports, and carrying out mitigation measures shall be borne by the lessee.

(6) If cultural resources are discovered during operations under this lease, the lessee shall immediately bring them to the attention of the Western Regional Director or Authorized Officer, or the Authorized Officer of the surface managing agency, if the Western Regional Director is not available. The lessee shall not disturb such resources except as may be subsequently authorized by the Western Regional Director or Authorized Officer. Within two (2) working days of notification, the Western Regional Director or Authorized Officer will evaluate or have evaluated any cultural resources discovered and will determine if any action may be required to protect or preserve such discoveries. The cost of data recovery for cultural resources discovered during lease operations shall be borne by the lessee unless otherwise specified by the Authorized Officer of the BLM or of the surface managing agency, if different.

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

#### **(b) Paleontological Resources**

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

#### **(c) Threatened, Endangered, Candidate, Or Other Special Status Plant And Animal Species**

The lease area may now or hereafter contain plants, animals, or their habitats determined to be threatened or endangered under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*, or that have other special status. The Authorized Officer may recommend modifications to exploration and development proposals to further conservation

and management objectives or to avoid activity that will contribute to a need to list such species or their habitat or to comply with any biological opinion issued by the Fish and Wildlife Service for the Proposed Action. The Authorized Officer will not approve any ground-disturbing activity that may affect any such species or critical habitat until it completes its obligations under applicable requirements of the Endangered Species Act. The Authorized Officer may require modifications to, or disapprove a proposed activity that is likely to result in jeopardy to the continued existence of a proposed or listed threatened or endangered species, or result in the destruction or adverse modification of designated or proposed critical habitat.

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

#### **(d) Multiple Mineral Development**

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

#### **(e) Oil And Gas/Coal Resources**

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

#### **(f) Resource Recovery And Protection**

Notwithstanding the approval of a resource recovery and protection plan by the BLM, the lessor reserves the right to seek damages against the operator/lessee in the event (i) the operator/lessee fails to achieve maximum economic recovery (as defined at 43 CFR 3480.0-5(21)) of the recoverable coal reserves or (ii) the operator/lessee is determined to have caused

a wasting of recoverable coal reserves. Damages shall be measured on the basis of the royalty that would have been payable on the wasted or unrecovered coal.

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

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

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

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

#### **(g) Public Land Survey Protection**

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

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

FORM APPROVED  
OMB NO. 1004-0073  
Expires: June 30, 2013

Serial Number

**COAL LEASE**

**PART 1. LEASE RIGHTS GRANTED**

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

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

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

- The Mineral Leasing Act of 1920, as amended, 30 U.S.C. 181 - 287; or
- The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 - 359;

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

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

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

**PART II. TERMS AND CONDITIONS**

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

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

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

(b) ADVANCE ROYALTIES - Upon request by the lessee, the BLM may accept, for a total of not more than 20 years, the payment of advance royalties in lieu of continued operation, consistent with the regulations. The advance royalty will be based on a percent of the value of a minimum number of tons determined in the manner established by the advance royalty regulations in effect at the time the lessee requests approval to pay advance royalties in lieu of continued operation.

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

Sec. 4. DILIGENCE - This lease is subject to the conditions of diligent development and continued operation, except that these conditions are excused  
(Continued on page 2)

when operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee. The lessor, in the public interest, may suspend the condition of continued operation upon payment of advance royalties in accordance with the regulations in existence at the time of the suspension. Lessee's failure to produce coal in commercial quantities at the end of 10 years will terminate the lease. Lessee must submit an operation and reclamation plan for the BLM's approval pursuant to 30 U.S.C. 207(c) prior to conducting any development or mining operations or taking any other action on a leasehold which might cause a significant disturbance of the environment.

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 15. SPECIAL STIPULATIONS -

Sec. 9. (a) TRANSFERS -

This lease may be transferred in whole or in part to any person, association or corporation qualified to hold such lease interest.

This lease may be transferred in whole or in part to another public body or to a person who will mine coal on behalf of, and for the use of, the public body or to a person who for the limited purpose of creating a security interest in favor of a lender agrees to be obligated to mine the coal on behalf of the public body.

This lease may only be transferred in whole or in part to another small business qualified under 13 CFR 121.

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

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

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

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

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

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

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

Sec. 15. SPECIAL STIPULATIONS (Cont'd.) -

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THE UNITED STATES OF AMERICA

_____	By _____
(Company or Lessee Name)	
_____	_____
(Signature of Lessee)	(BLM)
_____	_____
(Title)	(Title)
_____	_____
(Date)	(Date)

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

(Continued on page 4)

(Form 3400-12, page 3)

## NOTICES

**The Privacy Act** and 43 CFR 2.48(d) require that you be furnished with the following information in connection with the information requested by this form.

**AUTHORITY:** 30 U.S.C. 181 - 287 and 30 U.S.C. 351 - 359 permit collection of the information requested by this form.

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

**ROUTINE USES:** The BLM will only disclose this information in accordance with the provisions at 43 CFR 2.56(b) and (c).

**EFFECT OF NOT PROVIDING INFORMATION:** Submission of the requested information is necessary to obtain or retain a benefit. Failure to submit all of the requested information or to complete this form may result in delay or preclude the BLM's acceptance of your application for a coal lease.

**The Paperwork Reduction Act** requires us to inform you that:

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

Submission of the requested information is necessary to obtain or retain a benefit.

You do not have to respond to this or any other Federal agency-sponsored information collection unless it displays a currently valid OMB control number.

**BURDEN HOURS STATEMENT:** The public reporting burden for this form is estimated to average 25 hours per response when the form is used under the authority of 43 subpart 3422 (Lease Sales), or 800 hours per response when the form is used under the authority of 43 subpart 3430 (Preference Right Leases). The estimated burdens include the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. You may submit comments regarding the burden estimate or any other aspect of this form to: U.S. Department of the Interior, Bureau of Land Management (1004-0073), Bureau Information Collection Clearance Officer (WO-630), 1849 C Street, Mail Stop 401 LS, Washington, DC 20240.

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(Form 3400-12, page 4)

# MAYSDORF II ROD

## **APPENDIX 3**

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



# United States Department of the Interior

FISH AND WILDLIFE SERVICE

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

SEP 17 2009

In Reply Refer To:  
ES-61411/W.02/ WY0910376

## Memorandum

To: Assistant Field Manager of Resources, Bureau of Land Management, Buffalo Field Office, Buffalo, Wyoming

From: *for* Field Supervisor, U.S. Fish and Wildlife Service, Wyoming Field Office, Cheyenne, Wyoming  
*Scott Hicks*

Subject: Informal Consultation for the South Gillette Coal Lease Application

The U.S. Fish and Wildlife Service (Service) received the Bureau of Land Management's (Bureau) request for initiation of informal consultation, pursuant to the Endangered Species Act (Act) of 1973 as amended (50 CFR §402.13), for the proposed South Gillette Coal Lease, on August 19, 2009. The environmental consequences of this competitive lease of approximately 8,162 acres of Federal coal located adjacent to the Belle Ayr, Coal Creek, Caballo, and Cordero-Rojo mines in Campbell County, Wyoming, are described in a Final Environmental Impact Statement (FEIS). Appendix E of the FEIS contains the biological assessment (BA) evaluating the potential effects of the proposed lease on federally listed threatened and endangered species.

The federally listed species addressed in the BA are the threatened Ute ladies'-tresses (*Spiranthes diluvialis*) and the endangered blowout penstemon (*Penstemon haydenii*). As stated in the BA, the Bureau made a 'no effect' for blowout penstemon and a 'may effect, not likely to adversely affect' determination for Ute ladies'-tresses. Our office has reviewed the BA and the potential effects of the South Gillette Coal Lease on the Ute ladies'-tresses, in accordance with section 7(a)(2) of the Act, and this letter transmits the Service's concurrence.

### Concurrence with Effects to Ute ladies'-tresses

There are no historical records of Ute ladies'-tresses orchids occurring in this lease tract; however, there are areas of potentially suitable habitat. Potentially suitable habitats in the coal lease tract occur primarily along Duck Nest Creek, Coal Creek and the Belle Fourche River. As documented in the BA, all areas of potentially suitable habitat in the South Gillette lease area were surveyed for Ute ladies'-tresses during the known flowering period for this species. Surveys for Ute ladies'-tresses were also conducted in portions of potentially suitable habitat in the proposed coal lease area in 2006 and 2007. No Ute ladies'-tresses orchids were found during any survey.

Based on 1) the documentation that no Ute ladies'-tresses orchids were found during multiple years of comprehensive surveys in all areas of potentially suitable habitat, and 2) much of the potential habitat is underlain by saline and/or ephemeral dry soils, the Service concurs with the Bureau that the proposed coal lease in the South Gillette tract is not likely to adversely affect Ute ladies'-tresses.

**No-effect Determination**

The Service acknowledges that the Bureau determined that the lease of Federal coal on the South Gillette tract will have no effect on the endangered blowout penstemon. When the Bureau makes "no effect" determinations, concurrence from the Service is not required, although, we appreciate receiving a copy of the data you used to make those determination for our records.

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

We appreciate the Bureau's Buffalo Field Office efforts to ensure the conservation of threatened and endangered species. If you have any questions regarding this letter, please contact Scott Covington at the letterhead address or phone (307) 772-2374 extension 246.

cc: WGFD, Lander, Non-Game Coordinator (B.Oakleaf)  
WGFD, Cheyenne, Statewide Habitat Protection Coordinator (M. Flanderka)

MAYSDORF II ROD  
**APPENDIX 4**

APPEAL PROCEDURES

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

**INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS**

**DO NOT APPEAL UNLESS**

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

**IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED**

<b>1. NOTICE OF APPEAL</b> .....	A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the <i>Notice of Appeal</i> in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a <i>Notice of Appeal</i> in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).
<b>2. WHERE TO FILE</b>	
NOTICE OF APPEAL.....	Bureau of Land Management, Wyoming High Plains District 2987 Prospector Drive, Casper, WY 82604
WITH COPY TO SOLICITOR...	U.S. Department of the Interior, Office of the Solicitor, Rocky Mountain Region 755 Parfet Street, Suite 151, Lakewood, CO 80215
<b>3. STATEMENT OF REASONS</b>	Within 30 days after filing the <i>Notice of Appeal</i> , file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the <i>Notice of Appeal</i> , no additional statement is necessary (43 CFR 4.412 and 4.413).
WITH COPY TO SOLICITOR.....	U.S. Department of the Interior, Office of the Solicitor, Rocky Mountain Region, 755 Parfet Street, #151, Lakewood, CO 80215
<b>4. ADVERSE PARTIES</b> .....	Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the <i>Notice of Appeal</i> , (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).
<b>5. PROOF OF SERVICE</b> .....	Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).
<b>6. REQUEST FOR STAY</b> .....	Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a <i>Notice of Appeal</i> (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your <i>Notice of Appeal</i> (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the <i>Notice of Appeal</i> and Petition for a Stay <b>must</b> also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.  <b>Standards for Obtaining a Stay.</b> Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay.

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

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

**43 CFR SUBPART 1821--GENERAL INFORMATION**

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

**STATE OFFICES AND AREAS OF JURISDICTION:**

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

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

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(Form 1842-1, September 2006)