U.S. DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

RECORD OF DECISION

PIT 14 COAL LEASE-BY-APPLICATION WYW-160394

SWEETWATER COUNTY, WYOMING

U.S. DEPARTMENT OF THE INTERIOR

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SWEETWATER COUNTY, WYOMING

INTRODUCTION

On March 24, 2004, Black Butte Coal Company (BBCC), a joint venture between Kiewit Coal Properties, Inc., a wholly-owned subsidiary of Level 3 Communications of Louisville, Colorado, and Bitter Creek Coal Company, a wholly-owned subsidiary of Anadarko Petroleum Corporation of Houston, Texas, filed a Lease-by-Application (LBA) with the Bureau of Land Management (BLM) to obtain a lease that would allow them access to federal coal reserves located adjacent to the existing Black Butte Mine in Sweetwater County, Wyoming. The application was made pursuant to provisions of the Leasing on Application Regulations found in 43 Code of Federal Regulations (CFR) 3425. The lands applied for, known as the Pit 14 amendment area under BLM case number WYW-160394, are hereafter referred to as the LBA tract. The existing mine and LBA tract are located approximately 28 miles southeast of Rock Springs (Appendix 1, Figure 1).

The Proposed Action is to hold a competitive lease sale for 1,399 acres of unleased federal coal and issue a lease to extract these federal coal reserves from the LBA tract. According to the application, extraction of coal from the LBA tract by BBCC is needed to meet current production commitments. The existing Black Butte Mine operation would mine and process coal reserves contained within the LBA tract using mining, processing, maintenance, and other ancillary facilities located within the current Black Butte Mine permit area. If BBCC acquires the federal coal lease as applied for, these coal reserves would be incorporated into the existing mine permit and would extend the productive life of the Black Butte Mine by an estimated 20 years.

Black Butte Coal Company has a permit approved by the Wyoming Department of Environmental Quality, Land Quality Division (WDEQ/LQD) and a Mineral Leasing Act (MLA) mining plan approved by the Secretary of the Interior to conduct surface coal mining operations on their existing leases. The mine also has an air quality permit approved by the Wyoming Department of Environmental Quality, Air Quality Division (WDEQ/AQD), allowing annual production up to seven million tons of coal.

BACKGROUND

The Lease-by-Application Process

Under the LBA process, federal coal tracts are considered for leasing upon receipt of a complete application. To process an LBA, the BLM must first evaluate the quantity, quality, maximum economic recovery (MER), and fair market value (FMV) of the federal coal resources. Additionally, the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended, must be fulfilled by evaluating the environmental impacts of leasing and mining the federal coal. For this LBA tract, an Environmental Impact Statement (EIS, available via the internet at http://www.wy.blm.gov/nepa/rsfodocs/pit14/index.htm) was prepared in compliance with NEPA. The Office of Surface Mining Reclamation and Enforcement (OSM) has been a cooperating agency during preparation of this EIS since OSM is the federal agency that administers the programs that regulate surface coal mining in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA). For the purposes of this analysis, the EIS assumed that BBCC would be the successful bidder for the lease if a competitive sale is held.

By law and regulation, federal coal leasing is an open process. Bidding is not restricted to the applicant and competitive bids are encouraged. As envisioned by BBCC, the proposed federal coal lease would be mined in conjunction with previously-leased federal and private coal reserves using surface mining techniques. Existing mine operations would support mining coal in the project area through the use of processing, maintenance, and other ancillary facilities already located within the current Black Butte Mine permit area. Issuance of the federal coal lease would enable BBCC to extend the life of their mining operations by about 20 years and allow them to continue to provide high-quality coal to the nearby Jim Bridger Power Plant and other coal users.

DECISION

The decision is to select the Proposed Action as described in the Pit 14 Coal Lease-by-Application EIS. Under the Proposed Action, a lease for the LBA tract, federal coal tract WYW-160394, would be issued to the successful, qualified high bidder if the highest bid received at a competitive lease sale meets or exceeds the Fair Market Value (FMV), as determined by the BLM, and if all other leasing requirements are met. The competitive lease sale will be conducted according to the regulations found at 43 CFR Subpart 3422, Lease Sales. The LBA tract contains 1,399 acres, more or less, and the BLM estimates that the LBA contains approximately 11.2 million tons of mineable coal reserves in the Upper Cretaceous Almond Formation.

This decision is in conformance with the land use decisions contained in the *Record of Decision and Green River Resource Management Plan* (RMP) approved in August 1997. This decision is subject to the standard coal lease stipulations addressing compliance with basic requirements of the environmental statutes and BLM special stipulations (see Appendix 2, Lease Form and Special Stipulations).

In the event that the bid, or bids, submitted at the competitive lease sale of the Pit 14 LBA tract do not meet or exceed the FMV as determined by the BLM, the BLM may schedule a follow-up sale. If needed, the BLM will consider additional re-offers.

Under the Proposed Action, it is assumed that the applicant will be the successful bidder for the LBA tract and that the coal will be mined, processed, and sold by the Black Butte Coal Company. If the tract is mined, it would be environmentally preferable to mine and reclaim the LBA tract as part of a logical development sequence in conjunction with the mining and reclamation operations ongoing at the adjacent existing mine. This would be consistent with the analysis of the impacts described in the EIS.

REASONS FOR THE DECISION

The BLM decision to hold a lease sale for the federal coal lands applied for is based on the careful consideration of a number of factors: consistency with the *Green River RMP* (1997), statutory requirements, potential impacts to the environment, comments raised by the public during public scoping and on the EIS, as well as measures designed to avoid or minimize damage to resource values.

Consistency with Resource Management Plan and Other Statutory Requirements

The Proposed Action (selected alternative) is in conformance with the *Green River RMP* (1997). The objective for management of the federal coal resources in the planning area is to provide for both short- and long-range development of federal coal, in an orderly and timely manner, consistent with the policies of the federal coal management program, environmental integrity, national energy needs, and related demands. Furthermore, federal coal lands within the Coal Occurrence and Development Potential area (approximately 422,000 acres) are open to further consideration for coal leasing and development (i.e., new competitive leasing, emergency leasing, lease modifications, and exchange proposals, under the Federal Coal Management Program) with appropriate and necessary conditions and requirements for protection of other land and resource values and uses.

The Proposed Action would help attain the goals of the National Energy Policy. This policy promotes supplementing existing energy supplies from diverse sources including domestic oil, gas, and coal in addition to hydropower and nuclear power. The BLM recognizes that continued extraction of coal is essential to meet the nation's energy needs. Private development of federal coal reserves is integral to the BLM coal leasing program under the authorities of the Mineral Leasing Act of 1920 (MLA), Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Coal Leasing Amendment Act of 1976 (FCLAA).

The BLM mineral leasing program encourages the development of domestic oil, gas, and coal reserves and reduction of the United States' dependence on foreign sources of energy. The leasing and subsequent mining of federal coal reserves provide the United States, the State of Wyoming, and affected local counties with income in the form of

Eastern Shoshone. On April 1, 2005, at the request of the Wyoming State Historic Preservation Officer, the Rock Springs Field Office wrote a letter to SHPO, outlining BLM's compliance with Section 106 of the National Historic Preservation Act. No response was received during the 30-day SHPO comment period. Section 106 was completed on May 3, 2005.

Endangered Species Act

Consultation with the U.S. Fish and Wildlife Service (USFWS) for Pit 14 was initiated November 10, 2005. The BLM determined there could be depletions of water of the Colorado River System as a consequence of impounding normal precipitation run-off should BBCC successfully bid on the lease. Formal consultation for Colorado River water depletions is required.

A Biological Opinion (BO) for the Black Butte Mine Modification Project was finalized by the USFWS on April 18, 1988 (BO #6-W-88-F001). This BO was amended in February 2004 to reflect an additional 160-acre depletion to offset the effects of the Modification Project as described in the "Reasonable and Prudent Measures" section of the BO of April 18, 1988. Since the proposed Pit 14 project entails an additional annual depletion of 17.8 acre-feet, the original BO must be formally amended through the USFWS Denver Office. The Wyoming Field Office of the USFWS recommended that the BLM wait on further consultation until Black Butte has successfully bid and obtained the Pit 14 LBA and there will actually be implementing activities that will cause the noted depletion. Consultation and BO amendment will continue for this Pit 14 LBA at that time.

Clean Air Act

BLM initiated meetings, beginning in December 2004, with Wyoming Department of Environmental Quality-Air Quality Division (WDEQ-AQD), United States Department of Agriculture Forest Service (USDAFS), National Park Service (NPS) and Environmental Protection Agency (EPA) to develop strategies to address air quality issues. Both agencies have been integrally involved in the development of the air quality assessment modeling protocol and review of the results of the modeling efforts. Subsequently, additional issues raised by the EPA during review of the Draft EIS have been resolved to their satisfaction (see Appendix 3, Public Comments, EPA letter).

Relevant Resource and Economic Issues

Potential impacts to surface resources identified in the EIS are considered to be necessary and due after application of BBCC's proposed protection measures (see Section 2.2.4 of the FEIS). Should BBCC become the successful bidder for the lease, these measures would be applied to the proposed mining operations. Leasing and subsequent mining of federal coal reserves provides the federal, state and affected communities with income in the form of lease bonus and royalty payments and provides the public with a supply of cost-efficient, low sulfur coal for power generation.

The LBA tract configuration provides for maximum economic recovery of the coal resource.

Application of Measures to Avoid or Minimize Environmental Impacts

The standard coal lease stipulations addressing compliance with the basic requirements of the environmental statutes will be attached to the proposed coal lease to be offered (see Appendix 2). Consistent with the analysis, additional special stipulations (see Appendix 2) to protect cultural and paleontological resources, threatened and endangered species, and to address oil and gas/coal resource development, resource recovery and protection, and public land survey protection will also be attached to the coal lease.

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) gives the OSM the primary authority to administer programs associated with surface coal mining operations on federal lands. In the State of Wyoming, the Wyoming Department of Environmental Quality (WDEQ) regulates the surface disturbances associated with coal mining on all lands within the state. The successful bidder for the LBA tract must obtain approval of both a state mine permit from WDEQ and an MLA mining plan from the Assistant Secretary of the Interior prior to mining. Mitigation measures specific to the proposed mine plan will be attached as conditions to the mining permit during this stage. To ensure that the Resource Recovery and Protection Plan (R2P2) is in compliance with the leasing stipulations and that the R2P2 meets the requirements of the MLA, BLM has a responsibility to review it and make recommendations prior to its approval.

Compliance with the applicable regulations and the monitoring of impacts will be carried out as outlined in the approved mine permit or permit revision.

Should BBCC be the successful bidder, applicant committed resource protection measures identified as part of their proposed mine operations (see Section 2.2.4, FEIS) will be adhered to.

PUBLIC INVOLVEMENT

On March 24, 2004, BBCC (a joint venture between Keiwit Coal Properties, Inc, a wholly-owned subsidiary of Level 3 Communications of Louisville, Colorado, and Bitter Creek Coal Company, a wholly-owned subsidiary of Anadarko Petroleum Corp. of Houston, Texas) filed a Lease-by-Application with the BLM. A Notice of Intent to prepare an EIS and a Notice of Scoping was published in the *Federal Register* on January 4, 2005 (*Federal Register* 70 v5:14641465; WY-920-1320-EL; WYW-160394), initiating a 30-day scoping period. Scoping notices were mailed to federal, state and local government agencies, conservation groups, commodity groups, and individuals who could be impacted by this lease application. A scoping meeting was held on January 26, 2005. Scoping resulted in comment letters from 11 individuals and organizations.

The Draft EIS was completed and published for public review in March 2006 (*Federal Register* v57:14892; WY-040-1320-EL, WYW-160394), followed by a formal public

hearing held at the BLM Rock Springs Field Office on May 10, 2006, to solicit public comment on the Draft EIS, the proposed lease sale, and the FMV and maximum economic recovery of the federal coal resource. Two comments were recorded at the public hearing. In addition to the comments recorded at the public hearing, seven letters (one repeated oral comments made at the hearing) were received during the public comment period which ended May 23, 2006. Comment letters received in response to the DEIS were either incorporated as text changes or additions in the FEIS, or responded to in Appendix L of the Final EIS.

Following a 60-day public review and comment period on the DEIS, the BLM completed the FEIS. The Final EIS was mailed to the public and other interested parties in November 2006. The EPA published a Notice of Availability of the Final EIS in the *Federal Register* on November 17, 2006 (*Federal Register* v71:66945; EPA EIS No. 20060466). The BLM published its Notice of Availability in the *Federal Register* on November 28, 2006 (*Federal Register* v71:68833; WY-040-1320-EL, WYW-160394). Three written comments were received on the Final EIS. The comments received on the Final EIS are summarized in Appendix 3 (Public Comments and BLM Responses) of this decision. Corrections to the text of the analysis are presented in Appendix 4 (Errata). All comments received during the EIS process were considered in the preparation of both the draft and final EIS and in this Record of Decision.

ALTERNATIVES ANALYZED IN DETAIL

The EIS analyzed two alternatives in detail for the LBA tract: the Proposed Action and the No Action Alternative. These alternatives are summarized below. A full description of each of the alternatives analyzed in detail may be found in Chapter 2 of the EIS. Four other alternatives were identified and considered, but found to be not reasonable.

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

Under the Proposed Action, the LBA tract as applied for would be offered for lease at a competitive sale and would be subject to standard and special lease stipulations developed for the LBA tract. The Proposed Action assumes that BBCC would be the successful bidder for the LBA tract if it were offered for sale. The Pit 14 LBA tract (WYW-160394) contains 1,399 acres of federal surface and mineral estate. Should BBCC become the successful bidder, the company would conduct mining operations as described under the Proposed Action, including application of the protective measures as described in Chapter 2.2 of the Final EIS.

As part of the fair market value determination process, BLM would independently evaluate the volume and average quality of the federal coal reserves included in the LBA tract. If offered for sale, the BLM estimate of the mineable reserves and average quality of the coal included in the LBA tract will be published in the sale notice. Federal lands included in the LBA tract as applied for include:

T. 17 N., R. 101 W. 6th P.M., Wyoming

Section 2: Lots 3, 4, SW1/4 NW1/4

Section 4: Lots 1, 2, S1/2 NE1/4, SE1/4 NW1/4, NE1/4 SW1/4, S1/2 SW1/4, SE1/4

Section 10: NW1/4, N1/2 SW1/4

T. 18 N., R. 101 W., 6th P.M., Wyoming

Section 34: E1/2, E1/2 NW1/4, SW1/4

Containing 1,399 acres, more or less.

If BBCC were awarded the lease and granted an associated mine permit, recoverable portions of the mineable coal reserves would be mined in conjunction with adjacent privately-owned and previously-leased federal lands over a 20-year period using the same surface mining methods currently utilized at the Black Butte Mine. Approximately 1.5 to three million tons of coal per year would be mined once topsoil stockpiling and initial overburden removal has occurred. Pit construction is proposed to begin in 2008. The estimated 20-year mine life would be followed by a potential 20-year reclamation and revegetation monitoring period.

The Proposed Action would be considered a maintenance tract for the existing Black Butte Mine. BBCC plans to shift production from its active pits to the project area and continue at a similar production rate. Because the project area would be an extension of the existing Black Butte Mine, the majority of facilities and infrastructure would be the same as those identified in the WDEQ Mine Permit No. 467-T5 and the BBCC's Resource Recovery and Protection Plan for the Black Butte Mine. A detailed mine and reclamation plan revision for the project area would be submitted in coordination with the WDEQ/LQD using the existing WDEQ Mine Permit No. 467-T5 as the basis for the revision. In addition to resource protection measures contained in the mine permit, BLM special lease stipulations (Appendix 2) would apply to the LBA tract.

No Action Alternative

Under the No Action Alternative, the Proposed Action would not be approved and the LBA tract would not be leased or developed for the extraction of federal coal reserves by BBCC. Though current mining operations would continue for an additional four years, BBCC may decide to re-evaluate future mining operations based upon known reserves within the leases currently held.

The No Action Alternative allows a comparison of the economic and environmental consequences of leasing and mining the LBA tract lands under BBCC's Proposed Action versus not leasing and mining them. Not leasing this land to BBCC to be mined as part of the existing Black Butte Mine may not serve the public's best interest, since federal coal

reserves may be bypassed. However, selection of the No Action Alternative would not preclude future leasing and mining of these lands as a stand-alone mine should economic conditions prove favorable (see Section 2.4.2 of the FEIS).

BBCC's ability to sustain historic coal production levels would be limited to the remaining economically recoverable coal reserves located within their existing Black Butte Mine permit area. Current projections based on existing contracts indicate production would continue through 2008 at 2.2 million tons per year (BBCC 2003). In 2009, production would decline and eventually cease (BBCC 2005a). Employment levels at the mine would be substantially reduced from the current 171 employees. The remaining employees would be used to complete Black Butte Mine's reclamation commitments.

ALTERNATIVES CONSIDERED BUT NOT ANALYZED IN DETAIL

The BLM considered a total of four other alternatives; however, none were considered reasonable based on technical, economic, and/or environmental factors. Additionally, none would effectively address the purpose and need for the Proposed Action as described. The rationale for eliminating each of these alternatives from detailed analysis is further summarized. The FEIS contains additional details for each.

Accessing Federal Coal Reserves by Underground Mining Methods

During public scoping one alternative suggested mining the project area coal reserves using underground recovery methods. BLM reviewed the technical and economic feasibility of this mining method and determined that for the project area it would suit neither the geology nor the anticipated surface cover, and it would be cost prohibitive. The coal seams of the Almond Formation underlying the project area are very different from those of the Fort Union Formation currently being mined via underground techniques by Bridger Coal Company located to the north of the project area. The Almond Formation has a steeper dip and thinner coal seams. The main Fort Union seam dips at about 4%, while the Almond seams dip at about 10%. The main Fort Union coal seam is up to 25 feet thick, whereas the Almond Formation seams range from 5.5 feet to eight feet thick, with some thinner than two feet. Shallow cover could allow caving to the surface, which would impact the surface, and pillar crushing, which would create a hazardous working environment. Additionally, the capital and operating costs associated with underground mining would exceed those of surface mining.

Non-BBCC Coal Lease

This alternative assumes that the BLM would award the lease to a bidder other than the current applicant. Because there are no adjacent mines that could incorporate the coal reserves into an existing operation, a successful bidder other than BBCC would have to establish a new stand-alone mine, including associated facilities and infrastructure, which would require considerable initial capital expenses and would compete for customers with established mining operations in the immediate area and the region. No other

companies have expressed an interest to the BLM in coal exploration or development activity in the LBA tract. Further, the size of the LBA tract and the small amount of estimated federal coal reserves contained would not be sufficient to make a new, stand-alone mine economically practical. For these reasons, it is unlikely that the LBA tract would attract additional bidders interested in starting a new mine.

In the event that the successful bidder for the federal coal reserves within the LBA tract is not BBCC, that bidder would be required to submit detailed mine development information, including mine and reclamation plans and mine and support facility requirements. Because any new mine facilities not associated with the Proposed Action have not been addressed in an analysis to date, this NEPA analysis would be reviewed and supplemented as necessary.

Postpone Competitive Lease Sale

Under this alternative, the sale of the federal coal reserves within the LBA tract would be postponed more than five years based on the assumption that coal prices would rise in the future. This rise could increase the fair market value of the tract resulting in a higher bonus bid and the possibility of higher royalty payments. However, an increase in the price of coal and its sustainability are unpredictable and negate the economic concept of "net present value of money" which suggests that money earned today is more valuable than undetermined revenues earned in the future because it can be invested at a known rate. Therefore, this alternative was eliminated from consideration and not analyzed in detail, because the potential economic benefits of postponement are not predictable and because the effects of mining at a later time would be similar to those discussed.

Conveyor Extension

In its May 23, 2006, response to the Pit 14 LBA Draft EIS, the EPA requested a comparison between project area emissions that could be generated with and without an overland conveyor. This alternative assumes that an overland conveyor extending from the Pit 8 hopper to the Pit 14 project area would be constructed to reduce fugitive dust. An analysis was prepared using a Best Available Control Technology (BACT) analysis as required for new emission sources by the WDEQ and is presented in detail under Section 2.4.4 in the Final EIS. Based on the analysis, it was determined that replacing truck haulage with a conveyor is not economically feasible. Factors contributing to high incremental emissions control costs include a large capital investment, short project duration, and marginal emissions reductions. Thus, this alternative is economically unfeasible and was eliminated from further consideration.

MITIGATION, COMPLIANCE, AND MONITORING

If the LBA tract is leased, the lease will contain the standard coal lease stipulations and the BLM Special Stipulations (Appendix 2) regarding cultural resources, paleontological resources, threatened and endangered species, multiple mineral development of oil and gas or coal resources or both, resource recovery and protection, and public land survey protection.

Should BBCC, the adjacent mine operator, be the successful, qualified high bidder for federal coal tract WYW-160394, the WDEQ/Land Quality Division (LQD) must approve a modification to their existing mine permit before development of the tract can begin.

All practicable means to avoid or minimize environmental harm will be adopted as lease stipulations or, consistent with normal practices, as conditions of the mining permit. Protective measures specific to the current approved mine plan will be revised to include the standard and special stipulations for the surface facilities associated with federal coal tract WYW-160394.

Should BBCC be the successful bidder, applicant committed resource protection measures identified as part of their proposed mine operations (see Section 2.2.4, FEIS) will be adhered to.

If the successful, qualified high bidder does not operate the adjacent mine and proposes to construct and operate a new mine, then a new permit and new mining plan must be prepared and approved before coal can be mined. Before federal coal tract WYW-160394 can be mined, protective measures and monitoring plans must be attached to any new mining or reclamation plan.

RECOMMENDATION

I recommend that following a competitive lease sale, federal coal tract WYW-160394 and its associated 1,399 acres, more or less, be leased to the successful, qualified high bidder provided it is determined that the highest bid meets, or exceeds, the Fair Market Value of the tract as determined by the BLM and that all other leasing requirements are met. The competitive lease sale will be held in accordance with the requirements at 43 CFR 3422. The lease will be subject to the standard and special stipulations found in Appendix 2 of this decision.

Michael R Holliday
Field Manager, Rock Springs Field Office

2-6-2007
Date

APPROVAL

I agree with the recommendation of the Rock Springs Field Manager and approve the decision to offer federal coal tract WYW-160394 for competitive lease sale.

BLM, Wyoming State Director

2/8/07
Date

APPEAL OF STATE DIRECTOR DECISION

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR 4 and the enclosed Form 1842-1 (Appendix 5). If an appeal is filed, your notice of appeal must be filed in this office (BLM, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003) within thirty (30) days from the date BLM published the Notice of Availability (NOA) of this Record of Decision in the *Federal Register*. BLM expects that the NOA will be published during the week of February 14, 2007. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (request) pursuant to regulation 43 CFR 4.21(a)(2) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standard for Obtaining a Stay

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

1) The relative harm to the parties if a stay is granted or denied;
2) The likelihood of the appellant's success on the merits;
3) The likelihood of immediate and irreparable harm if the stay is not granted; and
4) Whether the public interest favors granting a stay.

APPENDICES

Appendix 1. Figure 1.

Appendix 2. Lease Form and Special Lease Stipulations.

Appendix 3. Public Comments on FEIS and BLM Responses.

Appendix 4. Errata.

Appendix 5. Appeal Procedures.

APPENDIX 1

Figure 1

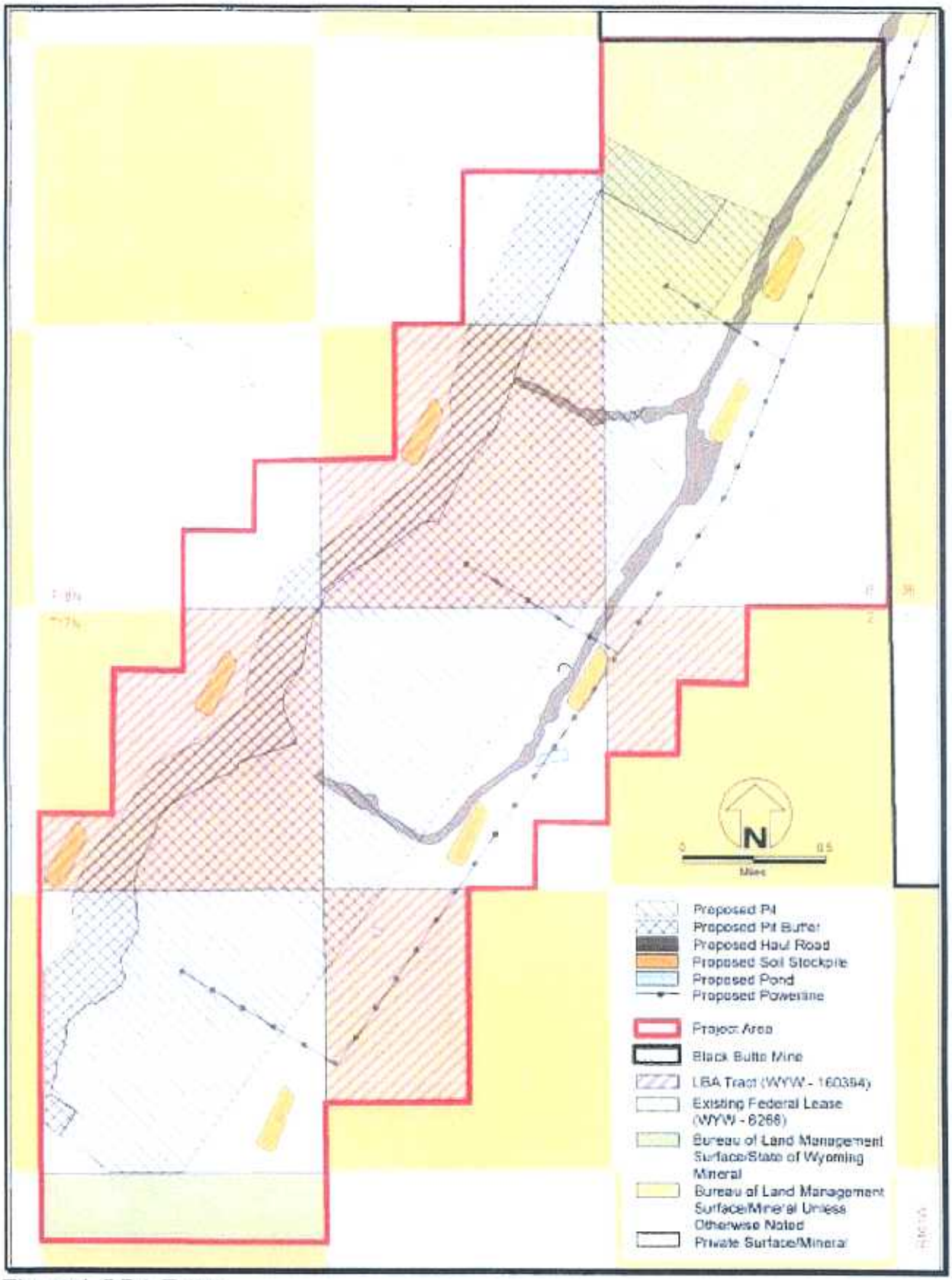


Figure 1, LBA Tract

APPENDIX 2

LEASE FORM

AND SPECIAL STIPULATIONS

Form 3400-12
(February 2005)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

COAL LEASE

FORM APPROVED
OMB NO. 1004-0073
Expires January 31, 2007

Serial Number

PART I. LEASE RIGHTS GRANTED

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

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

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

☐ Mineral Lands Leasing Act of 1920, Act of February 25, 1920, as amended, 41 Stat. 437, 30 U.S.C. 181-287, hereinafter referred to as the Act;

☐ Mineral Leasing Act for Acquired Lands, Act of August 7, 1947, 61 Stat. 913, 30 U.S.C. 351-359,

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

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

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

PART II. TERMS AND CONDITIONS

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

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

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

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

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

Sec. 4. DILIGENCE - This lease is subject to the conditions of diligent development and continued operation, except that these conditions are excused when operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee. The lessor, in the public interest, may suspend the condition of continued operation upon payment of advance royalties in accordance with the regulations in existence at the time of the suspension. Lessee's failure to produce coal in commercial quantities at the end of 10 years will terminate the lease. Lessee must submit an operation and reclamation plan pursuant to Section 7 of the Act not later than 3 years after lease issuance.

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

Sec. 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 the 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.

(Continued on page 2)

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. 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

(Continued on page 3)

THE UNITED STATES OF AMERICA

By _____

(Company or Lessee Name)

(Signature of Lessee) (BLM)

(Title) (Title)

(Date) (Date)

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

NOTICES

The Privacy Act of 1974 and the regulation in 43 CFR 2.48(d) provide that you be furnished with the following information in connection with information required by this application.
AUTHORITY: 30 U.S.C. 181-287 and 30 U.S.C. 351-359.
PRINCIPAL PURPOSE: BLM will use the information you provide to process your application and determine if you are eligible to hold a lease on BLM Land.
ROUTINE USES: BLM will only disclose the information according to the regulations at 43 CFR 2.56(d).
EFFECT OF NOT PROVIDING INFORMATION: Disclosing the information is necessary to receive a benefit. Not disclosing the information may result in BLM's rejecting your request for a lease.

The Paperwork Reduction Act of 1995 requires us to inform you that:
The BLM collects this information to authorize and evaluate proposed exploration and mining operations on public lands.
Response to the provisions of this lease form is mandatory for the types of activities specified.
The BLM would like you to know that you do not have to respond to this or any other Federal agency-sponsored information collection unless it displays a currently valid OMB control number.

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

SPECIAL LEASE 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 their 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.

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 Office of the BLM, if activities are associated with coal exploration outside an approved Mining permit area (hereinafter called Authorized Officer), and the Authorized Officer of the surface managing agency, if different. The lessee shall undertake measures, in accordance with instructions from the Western Regional Director, or Authorized Officer, to protect cultural resources on the leased lands. The lessee shall not commence the surface disturbing activities until permission to proceed is given by the Western Regional Director or Authorized Officer.

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

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

(4) If cultural resources are discovered during operations under this lease, the lessee shall immediately bring them to the attention of the Western Regional Director or Authorized Officer, or the Authorized Officer of the surface managing agency, if the Western Regional Director is not available. The lessee shall not disturb such resources except as may be subsequently authorized by the Western Regional Director or Authorized Officer.

Within two (2) working days of notification, the Western Regional Director or Authorized Officer will evaluate or have evaluated any cultural resources discovered and will determine if any action may be required to protect or preserve such discoveries. The cost of data recovery for cultural resources discovered during lease operations shall be borne by the lessee unless otherwise specified by the Authorized Officer of the BLM or of the surface managing agency, if different.

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

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

(c) THREATENED and ENDANGERED 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 (R2P2) by the BLM, lessor reserves the right to seek damages against the operator/lessee in the event (i) the operator/lessee fails to achieve maximum economic recovery (MER) (as defined at 43 CFR 3480.0-5(21)) of the recoverable coal reserves or (ii) the operator/lessee is determined to have caused a wasting of recoverable coal reserves. Damages shall be measured on the basis of the royalty that would have been payable on the wasted or unrecoverable 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 lease 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 Office 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 had demonstrated an unwillingness to extract the coal.

The BLM may enforce this provision either by issuing a written decision requiring payment of the MMS 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 locations, using the 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.

APPENDIX 3

PUBLIC COMMENTS ON FEIS and BLM RESPONSES

Three comment letters were received during the comment period on the Final EIS. Comments are in **bold** and responses are in regular font.

1. John Emmerich, Deputy Director, Wyoming Game and Fish Department

The staff of the Wyoming Game and Fish Department has reviewed Final Environmental Impact Statement for the Pit 14 LBA for Black Butte Coal Company. We offer the following comments for your consideration.

General Comments:

The wildlife sections adequately cover the affected environment to include accounting for seasonal ranges, wildlife species within the area, and potential impacts during coal mining operations. However, there is a lack of mitigation regarding big game species, especially for mule deer crucial winter range.

> Thank you for your comment. BBCC proposed protective measures are found in Section 2.2.4 of the FEIS, and Appendix J provides federal and state required mitigation to ensure that reclamation standards are met following mining. The EIS recognizes that there will be some long-term but temporary loss of habitat to wildlife including mule deer. However, reclamation practices will be sufficient to offset the negative impacts expected from this activity. The BLM encourages the Wyoming Game and Fish Department to cooperate with the Wyoming Department Environmental Quality-Land Quality Division to develop site-specific measures to enhance reclamation efforts during the mine permit approval process.

At a minimum, there should be timing stipulations (i.e., avoid human disturbance from November 15-April 30) in place for crucial winter ranges in the lease area that will not be disturbed by mining. Habitat enhancement of areas adjacent to disturbed crucial winter range is recommended, to prevent loss of the winter habitat function.

Another concern is the lost recreational opportunity on federal lands during mining and reclamation activates [*sic*]. The FEIS addresses this point, but does not offer any mitigation to alleviate the impact. On page 162 (Section 4.13.3.3), it states that as many as 4,359 acres of federal lands would be closed to public access if this Lease by Application (LBA) tract is leased under the maximum tract area configuration. Again, habitat enhancement in areas not closed to access could increase animal use and maintain hunting in these adjacent areas.

> Because of the proximity to the existing mine leases, the area is lightly used by hunting recreation users. The 7 square miles of the LBA are in sparsely vegetated ground and represent approximately 0.003% of the available hunt area for antelope and deer, and 0.001% of the available hunt area for elk. It is

likely that hunting recreation users will disburse to areas away from the LBA area with little or no change in hunting or other recreation operations.

Specific Comments:

We acknowledge that wildlife may "diminish available forage on reclaimed" lands (Table 2.7, page 39), but so do wild horses and trespass livestock. Based on observations for previously reclaimed lands, wild horses and trespass livestock can do as much, if not more damage, to reclamation sites than wildlife. We suggest modifying the last sentence in this section to read "Wildlife, wild horses and trespass livestock use may diminish available forage..." to correct this deficiency. We suggest adding the same wording to page 149, first sentence on paragraph 8: "Although the use of reclaimed areas by wildlife, wild horses and trespass livestock could impede reclamation success... ".

The section on page 39 that this comment is referring to is specific to wildlife impacts. Impacts due to wild horses and livestock grazing are found in their respective sections in Table 2.7. The section referred to on page 149 is again specific to big game. Impacts due to wild horses and livestock are discussed in Sections 4.12 and 4.13.2, respectively.

We suggest, as a solution for reducing forage use on reclamation, that habitat enhancements in adjacent areas be considered as a way to spread animal use by providing more improved habitat over the landscape or temporary fencing to exclude large ungulates until reclamation is established.

The Wyoming Department of Environmental Quality-Land Quality Division is responsible for determining specific mitigation. The BLM encourages the Wyoming Game and Fish Department to work closely with the Land Quality Division to assure any agency concerns are addressed in the mine permit.

Since Table 4.1 (Reasonably Foreseeable Future Actions, page 117) contains the latest information on the Hiawatha project, we recommend including the revised Continental Divide- Creston Natural Gas project, replacing the "Creston-Blue Gap II" project. The revised project contains many more wells (i.e., 8,950 versus 1,250) than those included in the current table, as well as increases the project area from 5,000 acres to over 1.1 million acres. This action was announced in a Federal Register Notice on March 3, 2006, and should be included in this analysis for the revised project.

Thank you for your comment. The Continental Divide – Creston Natural Gas project was announced in the *Federal Register* on March 3, 2006 encompassing 1.1 million acres and proposes 8,950 wells. This project replaced the original proposed Creston-Blue Gap II Natural Gas Development Project and the new boundary extends well outside any of the impact assessment areas identified in the Pit 14 EIS. The BLM has updated

Table 4.1, Table 4.2, Figure 4.1, and the affected cumulative impact assessment areas to reflect possible development. Please refer to the Appendix 4, Errata, of this ROD.

We disagree with the last sentence from paragraph 4 on page 149 that states "Mule deer have been especially successful at utilizing developed areas with ongoing noise or disturbance." Past and recent research indicates that while some individuals may adapt, at a herd-level, deer will move away from areas with persistent human occupation and disturbance. For clarity, we suggest simply striking this sentence out.

Thank you for your comment. The BLM has updated the analysis based on your suggestion. Please refer to Appendix 4, Errata, of this ROD.

On page 160 (Section 4.13.2.3), the document states "Approximately 221 AUMs would be lost as direct result of leasing and subsequent mine expansion..." and consequently, livestock would be restricted from the LBA tract. However, there is no place in the document that refers to reducing livestock grazing in the area. Are we to assume there will be no reduction in forage utilization? If so, this places additional burden on wildlife habitats in the area, which are already in poor condition due to the drought.

Thank you for your comment. Please refer to Section 4.13.2.3 for the discussion related to livestock grazing.

Thank you for the opportunity to comment.

2. B. Sachau

black butte surface mining (surface mining in the u.s. has been extremely destructive taking away mountaintops - many writings have effectively described just how bad this is for the people. birds, wildlife, vegetation in an area) [*sic*].

Thank you for your comment. Surface mining does temporarily remove all habitat encompassed by the project footprint. However, these same areas will be reclaimed as described in the FEIS in Section 2.2.3.12 Post Mine Reclamation.

pg 1-5 the water impacts are far too severe and extensive to allow [*sic*].

Thank you for your comment. Please refer to section 4.1.9.3. Also, the proposed mine site is hydrologically isolated from surface waters and will be reclaimed prior to being reconnected to the surface water network. All

streams within the proposed mine area are ephemeral. Catchment basins and other structures will help to assure minimal sediment runoff.

pg L-1 what an answer as to wildlife destruction - it is no answer at all "take pride in America" for the horror this agency is allowing - how can anyone? this is national taxpayer land and BLM is administering it only for profiteers [*sic*].

The BLM is entrusted with managing these lands for multiple uses. Wyoming is the largest producer of low sulfur coal in the nation. Until such a time when the nation's energy needs can be fully supported by alternative sources of energy, the BLM and other federal land management agencies will need to continue to permit the development of fossil fuels on public lands to support the nation's energy needs.

l-8 i dont think the environment is at all "protected" by this plan. it is a scam plan [*sic*].

Thank you for your comment.

pg L-3 - clearly shows devastating habitat loss and destruction of birds and wildlife homes. this is far too great to be allowed and this project should not proceed. those birds and wildlife being destroyed are worth fifty million dollars to american citizens - far more than this bid [*sic*].

The EIS recognizes that some habitat will be removed during the life of this plan. The analysis shows losses should not impact any species at the population level.

pg L-8 - testimony shows poor record of "reclamation". this one will be no better. The federal land policy act is not satisfied with this plan in my opinion [*sic*].

The BLM is not aware of BBCC having "poor reclamation" in this area.

Pg L-11 - mercury, particulate matter and nox kill american citizens. the citizens in this area will have deaths resulting from this industry - babies and senior citizens are particularly affected by fine particulate matter. they have heart attacks, strokes, pneumonia, allergies, asthma and lung cancer from this air pollution [*sic*].

BBCC is required to follow all state and federal regulations with regard to air quality standards as described in Sections 2.2.2.3 Air Quality and 2.2.4.6 Air Quality Protection Measures and as permitted by WDEQ/AQD. Air quality standards are designed to protect the health of all U.S citizens.

pg ES-1 - mentions "federal" coal. it is american taxpayer owned coal - not "federal" coal [*sic*].

The term "federal coal" simply refers to coal belonging to the people of the United States of America that is managed by federal land management agencies for the benefit of all Americans.

3. Larry Svoboda, Region 8, Environmental Protection Agency

The Environmental Protection Agency (EPA) Region VIII has reviewed the Pit 14 Coal Lease-by-Application Final Environmental Impact Statement (FEIS). The EPA reviews EISs in accordance with its responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act. Section 309 of the Clean Air Act directs EPA to review and comment in writing on the environmental impacts of any major federal agency action.

EPA is satisfied that our comments on the draft EIS have been adequately addressed in the FEIS. EPA encourages the BLM to continue investigating mitigation strategies for the control of fugitive dust related to mining operations, particularly the haul roads. With the increasing costs of diesel fuel, the concept of using a conveyor from the LBA tract to Pit 8 hopper may become an economical alternative to trucking the coal over long distances. Reduced vehicle miles would result in reduced fugitive dust emissions.

In the future, if BLM identifies a possible substantial environment impact as in the case for the loss or damage to unidentified cultural or historical site or resources on private lands, BLM should identify, in the EIS, which federal or state agency has jurisdiction over this resource. BLM satisfactorily responded to EPA's comment to clarify which agency has jurisdiction for this resource (WDEQ/LQD), however, future EIS's can identify which agency has jurisdictional responsibility when BLM does not have jurisdiction. This type of information is useful for the interested public so that they will know which agency they should contact to express their concerns for protecting a specific natural resource.

Thank you for your comment. BLM appreciates EPA participation, support, and feedback throughout this process.

APPENDIX 4

ERRATA

Based on public comment, the FEIS needs to be corrected as follows. Specific changes to the text have been made and are shaded for the convenience of the reader.

Page ES-10 and Page 117, Tables ES-3 and 4.2 Foreseeable Future Actions

Project Name	Type of Disturbance	Acres Affected
Monell Enhanced Oil Recovery Project	126 wells	630
Continental Divide – Creston Natural Gas Project[1]	8,950 Wells (assumes a maximum of 3,355 wells falling within the largest affected IAAs)	16,775
Hiawatha Regional Energy Project[2]	4,208 wells (2,806 wells in RSFO)	14,030 (does not account for the existing infrastructure)
Black Butte Mine[3]	Mine pits and roads	4,363
Bridger Coal Mine[3]	Mine pits and roads	48
Evergreen Wind Energy Exploration[4]	Exploratory monitoring stations	0.2
Salt Wells Basin Burn Block	Prescribed Fire	Up to 9,000
Vernal-Kanda Lateral Pipeline[5]	Natural Gas Pipeline	502[6]
Overthrust-Wamsutter Expansion Project[7]	Natural Gas Pipeline, 100-foot ROW, one compressor station	937.6 [6]
Overland Pass Pipeline[8]	Natural Gas Pipeline, 100-foot ROW, multiple compressor stations	1,341[6]

[1] Project is located within Rawlins Field Office area.

[2] Project area also extends into Little Snake Field Office area in Colorado.

[3] Approved under the existing mine permit but not yet constructed or developed.

[4] Potential wind energy exploration. The current proposal describes the location of two 0.1-acre monitoring stations. Development of future wind energy is pending the results of this monitoring data.

[5] Enhancement of compression will be considered under the analysis associated with that project.

[6] Acres developed based on linear feet within the largest IAA in which the action is proposed (action affects a larger are but falls outside the IAAs). Assumes a 100-foot right-of-way.

[7] Route is located within the 3,500-foot-wide corridor identified in the West-Wide Energy Corridor Programmatic Draft EIS (under preparation). This pipeline also includes a possible addition of 15,000 horsepower natural gas driven compression station. Emissions from this station will be analyzed in the associated EIS and other on-going cumulative analyses (i.e., Hiawatha Regional Energy Project, Continental Divide – Creston Natural Gas Project).

[8] Electrically powered compression stations will be associated with this pipeline. Effects will be considered under the analysis associated with that project.

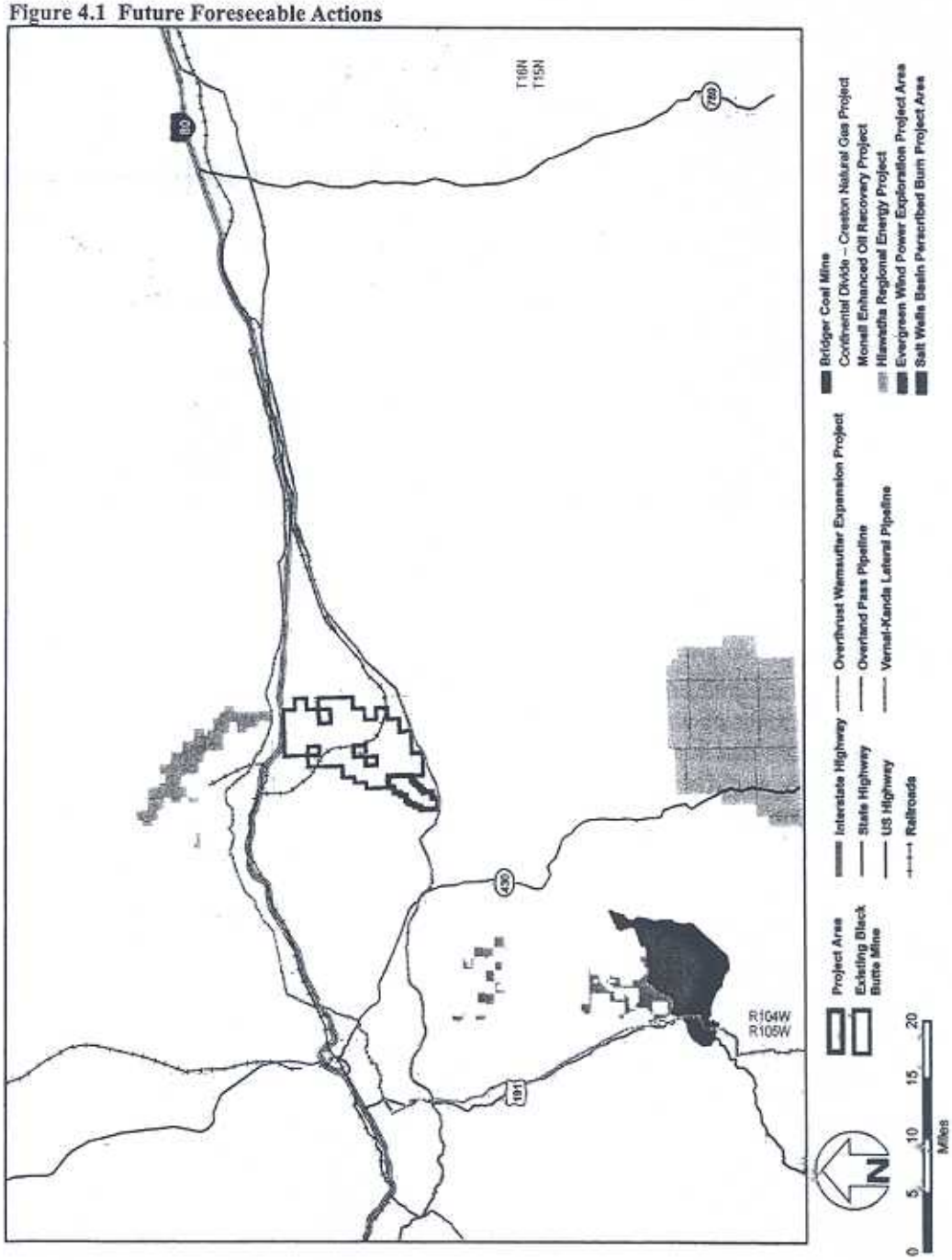
Page 118, Table 4.2 Disturbance Levels for Existing Disturbance, Proposed Action, and Foreseeable Future Actions

Resource Value	IAA Size	Existing Disturbance		Proposed Action		Foreseeable Future Actions		Totals		Percent Increase[1]
		Acres	%	Acres	%	Acres	%	Acres	%	%
Solid Leasable Minerals	277,120	21,931	7.91	2,250	0.81	4,703	1.7	28,884	10.42	31.71
Fluid Leasable Minerals	902,223	19,483	2.16	2,250	0.25	20,722	2.3	42,455	4.71	117.91
Soils	4,359	3	0.07	2,250	51.62	0	0	2,253	51.69	75,000
Groundwater	4,359	3	0.07	2,250	51.62	0	0	2,253	51.69	75,000
Surface Water	271,169	14,611	5.39	2,250	0.83	6,127	2.26	22,958	8.48	57.33
Vegetation (Including Special Status Plant Species and Invasive Species)	4,359	3	0.07	2,250	51.62	0	0	2,253	51.69	75,000
Pronghorn	1,603,167	35,083	2.19	2,250	0.14	28,810	1.80	66,143	4.13	88.53
Mule Deer	1,134,282	14,108	1.24	2,250	0.2	27,696	2.44	44,054	3.88	212.26
Elk	1,453,728	18,574	1.28	2,250	0.15	23,744	1.63	44,568	3.07	139.95
Raptors	107,860	9,812	9.1	2,250	2.09	4,602	4.27	16,664	15.45	69.84
Special Status Animal Species	4,359	3	0.07	2,250	51.62	0	0	2,253	51.69	75,000
Greater Sage-Grouse	711,526	13,830	1.94	2,250	0.32	16,383	2.30	32,463	4.56	134.73
Fisheries	271,169	14,611	5.39	2,250	0.83	5,597	2.06	22,458	8.28	53.71
Wild Horses	1,170,717	21,014	1.79	2,250	0.19	27,725	2.37	50,989	4.36	142.64
Land Status and Prior Rights	4,359	3	0.07	2,250	51.62	0	0	2,253	51.69	75,000
Livestock and Grazing	1,011,718	17,964	1.78	2,250	0.22	13,795	1.36	34,009	3.36	89.32
Recreation	1,572,997	18,329	1.17	2,250	0.14	28,590	1.82	49,169	3.13	168.26
Transportation and ROWs	4,359	3	0.07	2,250	51.62	0	0	2,253	51.69	75,000
Visual Resources	697,910	17,570	2.52	2,250	0.32	5,365	0.77	25,185	3.61	43.34
Cultural Resources	277,120	21,931	7.91	2,250	0.81	4,703	1.7	28,884	10.42	31.71

[1] Represents percent increase in surface disturbance if Proposed Action and foreseeable future actions are implemented

Page 119, Figure 4.1, Replace Figure with

Figure 4.1 Future Foreseeable Actions



Page 143, Section 4.9.2.5 Cumulative Impacts (Surface Water)

Surface disturbances in the cumulative IAA (271,169 acres) would include 14,611 acres of existing disturbances (5.39 percent of the IAA), 2,250 acres associated with the Proposed Action (0.83 percent) and 6,127 acres of foreseeable future disturbances (2.26 percent), totaling 22,958 acres or 8.48 percent of the cumulative IAA. Implementation of the Proposed Action and foreseeable future actions would represent a 57.33 percent increase in surface disturbance in the cumulative IAA.

Page 149, Paragraph 4, Last Sentence

Delete "Mule deer have been especially successful at utilizing developed areas with ongoing noise or disturbance."

Page 149, Section 4.11.1.5 Cumulative Impacts

Approximately 35,083 acres (2.19 percent of the IAA) of existing, 2,250 acres (0.14 percent) associated with the Proposed Action, and 28,810 acres (1.80 percent) of foreseeable future action surface disturbances would occur within the 1,603,167-acre pronghorn cumulative IAA. The total surface disturbance in the pronghorn cumulative IAA would be 66,143 acres or 4.13 percent of the IAA. Implementation of the existing and foreseeable future actions would represent an 88.53 percent increase in surface disturbance in the cumulative IAA. Impacts on pronghorn within the project area would contribute minimally to cumulative impacts on pronghorn throughout the Bitter Creek Herd Unit.

Approximately 18,574 acres (1.28 percent of the IAA) of existing, 2,250 acres (0.15 percent) associated with the Proposed Action, and 23,744 acres (1.63 percent) of foreseeable future action surface disturbances would occur within the 1,453,728-acre elk cumulative IAA. The total surface disturbance in the elk cumulative IAA would be 44,568 acres or 3.07 percent of the IAA. Implementation of the existing and foreseeable future actions would represent a 139.95 percent increase in surface disturbance in the cumulative IAA. Impacts on elk within the project area would contribute minimally to cumulative impacts on elk throughout the Petition Herd Unit.

Page 156, Section 4.11.3.5 Cumulative Impacts

Approximately 13,830 acres (1.94 percent of the IAA) of existing, 2,250 acres (0.32 percent) associated with the Proposed Action, and 16,383 acres (2.30 percent) of foreseeable future action surface disturbances would occur within the 711,526-acre greater sage-grouse cumulative IAA. The total surface disturbance in the greater sage-grouse cumulative IAA would be 32,463 acres or 4.56 percent of the IAA. Implementation of the existing and foreseeable future actions would represent a 134.73 percent increase in surface disturbance in the cumulative IAA. Impacts on the greater sage-grouse habitat within the project area would contribute minimally to the cumulative impacts on greater sage-grouse habitat throughout the assessment area.

Page 162, Section 4.13.3.5 Cumulative Impacts

Surface disturbances in the recreation cumulative IAA would include 18,329 acres of existing disturbances (1.17 percent of the IAA), 2,250 acres associated with the Proposed Action (0.14 percent) and 28,590 acres of foreseeable future disturbances (1.82 percent), totaling 49,169 acres or 3.13 percent of the cumulative IAA. Implementation of the Proposed Action and foreseeable future actions would represent a 168.26 percent increase in surface disturbance in the recreation cumulative IAA.

APPENDIX 5

APPEAL PROCEDURES

Form 1842-1
(April 2006)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS
1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL	A person served with the decision being appealed must transmit the *Notice of Appeal* in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a *Notice of Appeal* in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).
2. WHERE TO FILE NOTICE OF APPEAL	BUREAU OF LAND MANAGEMENT, 5353 YELLOWSTONE RD, CHEYENNE, WY 82009 OR BUREAU OF LAND MANAGEMENT, PO BOX 1828, CHEYENNE, WY 82003
WITH COPY TO SOLICITOR	U.S. DEPARTMENT OF THE INTERIOR, OFFICE OF THE SOLICITOR, ROCKY MOUNTAIN REGION 755 PARFET STREET, SUITE 151, LAKEWOOD, CO 80215
3. STATEMENT OF REASONS	Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).
WITH COPY TO SOLICITOR	U.S. DEPARTMENT OF THE INTERIOR, OFFICE OF THE SOLICITOR, ROCKY MOUNTAIN REGION 755 PARFET STREET, SUITE 151, LAKEWOOD, CO 80215
4. ADVERSE PARTIES	Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arises must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413). If the decision concerns the use and disposition of public lands, including land selections under the Alaska Native Claims Settlement Act, as amended, service will be made upon the Associate Solicitor, Division of Land and Water Resources, Office of the Solicitor, United States Department of the Interior, Washington, D.C. 20240. If the decision concerns the use and disposition of mineral resources, service will be made upon the Associate Solicitor, Division of Mineral Resources, Office of the Solicitor, United States Department of the Interior, Washington, D.C. 20240.
5. PROOF OF SERVICE	Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).
6. REQUEST FOR STAY	Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a *Notice of Appeal* (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your *Notice of Appeal* (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the *Notice of Appeal* and Petition for a Stay must also be served on each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted. Standards for Obtaining a Stay. Except as other 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(c)). See 43 CFR Part 4, subpart b for general rules relating to procedures and practice involving appeals.

(Continued on page 2)

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 State 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.

(Form 1842-1, September 2005)