

U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
(OSMRE)

FINDING OF NO SIGNIFICANT IMPACT (FONSI)

FOR

Amendment 3, Bull Mountains Mine No. 1, Mining Plan Modification

Introduction

Signal Peak Energy, LLC (SPE) owns and operates the Bull Mountains Mine No. 1 underground coal mine (Mine) located in the Bull Mountains of south-central Montana. The Mine operates in accordance with a State Mine permit (C1993017) approved by the State of Montana's Department of Environmental Quality (MDEQ). The Mine permit includes Federal coal reserves leased to SPE under Federal Lease MTM 97988. A Federal mining plan approved by the Department of the Interior's Assistant Secretary for Land and Minerals Management (ASLM) on August 2, 2013, authorizes SPE to mine 140 acres of Federal Coal Lands, which is only a portion of Federal Lease MTM 97988. On November 22, 2013, SPE requested approval of a mining plan modification that would authorize expanded underground mining operations into the remaining 1,835 acres of Federal coal (MTM 97988) as described in the approved State Mine permit. After receiving a recommendation from the Office of Surface Mining Reclamation and Enforcement (OSMRE) to approve the mining plan modification, the ASLM, in accordance with the Mineral Leasing Act of 1920 (MLA), originally approved the mining plan modification for Federal coal lease MTM 97988 on February 24, 2015. On August 14, 2017, the U.S. District Court of for the District of Montana vacated the environmental assessment (EA) prepared by OSMRE in support of the 2015 mining plan modification and remanded the matter to OSMRE to take further action consistent with the order (*Montana Environmental Information Center v. U.S. Office of Surface Mining*, 9:15-cv-00106-DWM).

Under the MLA and implementing regulations, the ASLM, must approve, approve with conditions, or disapprove a mining plan modification before surface disturbing activities can occur on Federal Lease MTM 97988. After review of a new EA, public comments received, and other regulatory criteria, OSMRE is recommending approval of the mining plan modification for coal within the Amendment 3 area of MTM 97988 with one special condition regarding cultural resources as described in item number 3.¹

Statement of Environmental Significance of the Proposed Action

Pursuant to 30 Code of Federal Regulations (CFR) Part 746, OSMRE is recommending selection and approval of the Proposed Action set forth in the EA entitled Bull Mountains Mine No. 1 Federal Mining Plan Modification EA and prepared in May 2018. For the reasons explained in this document, the undersigned person has determined that approval of a Federal mining plan modification authorizing the continuation of mining operations to recover the Federal coal for approximately 9 additional years in the Amendment 3 area of MTM 97988 would not have a significant impact on the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 United States Code (USC) 4332(2)(C); therefore, an EIS is not required.

¹ On October 5, 2012, SPE submitted an application for a revision to its State Mine permit. MDEQ subsequently approved this permit revision, which is known as Amendment 3 to the State Mine permit.

Reasons

In preparing the 2018 EA, OSMRE reviewed the environmental impacts of the Proposed Action (approving the proposed mining plan modification) and the No Action (disapproval of the proposed mining plan modification). If, based on the analysis in the 2018 EA, OSMRE determined that this Project would have significant effects, then OSMRE would prepare an Environmental Impact Statement (EIS) for the Project. If the potential effects were not determined to be “significant,” a “Finding of No Significant Impact” (FONSI) statement would document the reason(s) why implementation of the selected alternative would not result in significant environmental effects. The 2018 EA provides evidence for determining whether to prepare an EIS or a FONSI statement.

OSMRE has evaluated the information presented within the 2018 EA and has determined, in accordance with 43 CFR 46.140, that the Proposed Action would cause no significant adverse environmental effects or that any such significant environmental impacts would be mitigated below significance with the inclusion of the eight standard permit conditions within the Federal regulations at 30 CFR Part 944 and the standard permit terms, conditions, and specifications of the Permit Application Package (PAP) approved by the MDEQ, which is the agency primarily responsible for issuing, administering, and enforcing mining permits under the Surface Mining Control and Reclamation Act of 1977. The attached 2018 EA discusses the potential environmental effects of the Proposed Action and provides sufficient evidence and analysis for this FONSI.

The purpose of OSMRE’s action (to make a recommendation to the ASLM to approve, disapprove, or approve with conditions the proposed mining plan modification) is established by the MLA, which requires evaluation of SPE’s PAP before they may conduct mining and reclamation operations to develop the Amendment 3 area (30 CFR Part 746) 30 USC 207(c)). OSMRE is the agency responsible for making a recommendation to the ASLM to approve, disapprove, or approve with conditions, the proposed mining plan modification. The ASLM will decide whether the mining plan modification is ultimately approved, disapproved, or approved with conditions. If the ASLM approves this action, operations would continue at the Bull Mountains Mine No. 1 for 9 additional years. The need for the action is to allow SPE the opportunity to exercise its rights granted under Federal Coal Lease MTM 97988 under the MLA.

The Proposed Action would authorize mining of approximately 28.5 million tons (Mt) of Federal saleable coal and 58.3 Mt of private saleable coal. The Proposed Action would extend the mining at Bull Mountains Mine No. 1 for approximately 9 additional years.

Under the No Action Alternative, OSMRE would submit a recommendation to the ASLM recommending that the mining plan modification not be approved. Under the previous permit, the Federal coal reserves in Amendment 3 would not be recovered and mining would continue until available coal reserves not contained in MTM 97988 are mined out in approximately 2.5 years. On October 31, 2017 and November 3, 2017, the U.S. District Court for the District of Montana issued orders that allow limited development work displacing and storing no more than 170,000 tons of Federal coal in Section 8, Township 6 North, Ranch 27 East, PMM, Musselshell County, Montana (*see Case 9:15-CV-00106-DWM, ECF Nos. 99 and 103*). That coal must be stockpiled and stored at the Mine and cannot be sold or shipped pending compliance with NEPA.

The attached 2018 EA considers a reasonable range of alternatives (Proposed Action and No Action) and, in conjunction with the previously completed NEPA reviews, discloses the potential environmental effects. These reviews provide sufficient evidence and support for a FONSI.

The 2018 EA was prepared by a third-party consulting firm at the direction of OSMRE. During the development of the EA, OSMRE independently reviewed the document to ensure compliance with 43 CFR Part 46, Subpart D, all Council of Environmental Quality regulations implementing NEPA (40 CFR Parts 1500-1508), and other program requirements. This independent review included OSMRE’s evaluation

of all environmental issues analyzed in the 2018 EA. OSMRE takes full responsibility for the accuracy, scope, and the content of this document.

The undersigned has determined that the public involvement requirements of NEPA have been met. OSMRE conducted public scoping beginning on October 20, 2017 until November 20, 2017 soliciting public comments on the proposed Project, scope of the environmental assessment, and the issues that should be analyzed. OSMRE released the 2018 EA and unsigned FONSI for public review and comment for a 30-day period beginning on March 13, 2018. All comments were carefully reviewed and considered.

This FONSI is based on determining the significance as defined by the context and intensity found in 40 CFR 1508.27 of effects from the Proposed Action.

- a) **Context.** This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

The Proposed Action would allow the continuation of mine operations at the Bull Mountains Mine No. 1 for approximately 9 additional years, which would allow mining of leased Federal coal within the Amendment 3 area. As a result, 28.5 Mt of Federal saleable coal and 58.3 Mt of private and/or state saleable coal in Amendment 3 area will be processed and shipped to customers, primarily in Asia.

Under the No Action Alternative, mining would continue until available coal reserves are mined out (until approximately mid-2019). The effects of both the Proposed Action and No Action have been analyzed at the local, regional, and global scale.

- b) **Intensity.** This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity.

The 10 Significance Criteria in the federal regulations at 40 CFR 1508.27 have been considered in evaluating the severity of impacts.

1. Impacts that may be both beneficial and adverse.

Beneficial and adverse impacts from the Proposed Action are described in the attached 2018 EA. Impacts to most resources will be negligible or minor and short term, while other impacts would be moderate and/or long-term. Particulate matter and criteria pollutants would be within the permitted limits and would not exceed the National Ambient Air Quality Standards and Montana Ambient Air Quality Standards; therefore, direct and indirect impacts would be minor and long-term (2018 EA Section 4.2). Greenhouse gas emissions would combine with emissions from other sources and have minor impacts on climate in the long-term (2018 EA Section 4.3). OSMRE analyzed impacts associated with the Proposed Action (approval of mining in Amendment 3) and the No Action (no mining in Amendment 3 occurs) providing a bounding of potential impacts associated with the Project to aid the decision maker. Based on these conservative assumptions, OSMRE determined that impacts to air quality and climate change would be minor and long-term in nature under the Proposed Action Alternative. Surface water and groundwater will be affected; long-term impacts to affected groundwater and surface water uses would be mitigated in accordance with the Mine permit, ensuring that water is replaced and overall impacts are not major (2018 EA Section 4.4). The US Army Corps of Engineers (USACE) has not made an official determination as to whether water courses or wetlands occurring within the permit area are jurisdictional under Section 404 of the CWA. If jurisdictional waters of the US are present, such features would most likely occur along stream channels and would include connected wetlands. State regulations and permitting administered by USACE would ensure that impacts to waters of the U.S., including wetlands, would be short-term and would not be major

(2018 EA Section 4.4). Soil and vegetation impacts would be minor but long-term (2018 EA Sections 4.5 and 4.6). Short-term impacts to wildlife, including special status species, would be moderate and occur primarily in the vicinity of proposed and existing disturbances. Minor effects to wildlife would persist in the long-term (2018 EA Sections 4.7 and 4.8). Surveys would identify cultural resources prior to disturbance and consultation with the State Historic Preservation Office would ensure that long-term impacts cultural resources are negligible (2018 EA Section 4.9). Noise impacts in the mine vicinity would be moderate and short-term (2018 EA Section 4.10). Short-term impacts to the local economy would be moderate (2018 EA Section 4.11). Cumulative visual impacts would be moderate when combined with impacts of all activities in the Mine vicinity (2018 EA Section 4.13). None of the analyzed environmental effects from the Proposed Action discussed in the EA are considered to be significant.

2. The degree to which the Proposed Action affects public health or safety.

Effects from the Proposed Action that could affect health and safety are transportation, air quality, water quality, and noise. Impacts on transportation including those associated with rail traffic are determined to be negligible to minor (2018 EA Section 4.1). Impacts on water would be negligible to minor (2018 EA Section 4.4). Impacts on noise would be minor to moderate (2018 EA Section 4.9). Air quality impacts would be negligible to minor (2018 EA Section 4.2).

3. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farm lands, wetlands, wild and scenic rivers, or ecologically critical areas.

There are no park lands, wild and scenic rivers, prime or unique farmlands, or ecologically critical areas within the Project Area. There are no wilderness areas within or near the Project Area. Wetlands have not been formally delineated in the Mine permit area (2018 EA Section 3.4.5). Inventories of historic or cultural resources have been completed and have identified no sites that are determined eligible and four sites that have undetermined eligibility and will be treated as eligible in the Project Area (24ML667, 24ML940, 24ML942, and 24ML949). Due to the presence of unevaluated sites, which are treated as eligible, within the Area of Potential Effect, OSMRE will stipulate avoidance of all such unevaluated sites from surface disturbance activities. These sites remain within the subsidence area. Subsidence is not anticipated to have effects to sites to the extent of impacting their eligibility potential. On February 22, 2018 the Montana State Historic Preservation Office (SHPO) concurred with OSMRE's finding of No Adverse Effect. In accordance with the BLM lease stipulations, BLM requires that the operator inventory all affected areas subsequent to the approval of the lease, in consultation with BLM. At that time, BLM will provide copies of the newly inventoried areas to both OSMRE and Montana SHPO.

4. The degree to which the impacts on the quality of the human environment are likely to be highly controversial.

As a factor for determining within the meaning of 40 CFR 1508.27(b)(4)—whether or not to prepare a detailed EIS—“controversy” is not equated with “the existence of opposition to a use.” *Northwest Environmental Defense Center v. Bonneville Power Administration*, 117 F.3d 1520, 1536 (9th Cir. 1997). The term ‘highly controversial’ refers to instances in which “a substantial dispute exists as to the size, nature, or effect of the major federal action rather than the mere existence of opposition to a use.” *Hells Canyon Preservation Council v. Jacoby*, 9 F.Supp.2d 1216, 1242 (D. Or. 1998).

There is little scientific controversy over the nature of the impacts. The 2018 EA includes analysis of the direct, indirect, and cumulative effects on climate change (2018 EA Section 4.3). OSMRE has determined the effects to be minor. No other anticipated effects have been identified that could be construed as scientifically controversial. While there is some uncertainty about the long-term cumulative effects of greenhouse gases (GHGs) and how these effects can be managed when not currently quantifiable or predictable, the potential intensity of effects on the quality of the human environment is minimal.¹ Water quality of some springs may also be affected in the short and long-term. Mitigation measures employed in accordance with the State mine permit (2018 EA Appendix E) would ensure impacts to water quality and availability for existing uses are not major.

5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

There are no direct, indirect, or cumulative effects on the human environment under the Proposed Action that are highly uncertain or involve unique or unknown risks. OSMRE has experience implementing similar actions in similar areas. No potential effects to the human environment considered to be highly uncertain or to involve unique or unknown risks are anticipated.

6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principal about future consideration.

This decision is not precedent setting. The issues considered in the 2018 EA were developed by the interdisciplinary team within the context of past, present, and reasonably foreseeable future actions. Such a decision would not be unusual and significant cumulative effects are not anticipated. This decision would not entail any known issues or elements that would set a precedent for future mining decisions.

7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts – which include connected actions regardless of land ownership.

The interdisciplinary team evaluated the possible issues in context of past, present, and reasonably foreseeable future actions, including the Bull Mountains Mine No. 1 operation and other mining operations, the transport of coal from the Mine, and the combustion of that coal. The indirect emissions from coal combustion mined annually from the Bull Mountains Mine No. 1 were disclosed in the 2018 EA (2018 EA Section 4.2). There were no significant cumulative effects identified (2018 EA Sections 4.1.2 – 4.8.2).

8. The degree to which the action may adversely affect districts, sites, highways, structures, or other objects listed in or eligible for listing in the National Register of Historic Places (NRHP) or may cause loss or destruction of significant scientific, cultural, or historical resources.

The Project Area was previously surveyed for cultural and historic resources. Inventories of historic or cultural resources have been completed and have identified no sites that are determined eligible and four

¹ For example, we received several comments stating that we should use the social cost of carbon protocol to provide contextual information about the effects of carbon dioxide. One commenter even completed a social cost of carbon analysis, which found estimated social costs of carbon emissions vary by over 40-fold depending upon the choice of discount rate and geographic boundaries. As stated in Appendix D, Section 2.4, a social cost of carbon analysis is not warranted for this project decision for several reasons including: the project is not a rulemaking, the technical supporting documents and associated guidance have been withdrawn, and it would present a skewed analysis as it would only analyze the costs (*e.g.* decrease in net agriculture productivity, health impacts, property damage from increased flood risk and changes in energy system costs), and not the benefits of coal-fired energy production (*e.g.* electricity generation). In addition, as demonstrated by the numbers produced when the social cost of carbon protocol was completed by the commenter, the total emission costs vary by over “40-fold depending upon the choice of discount rate and geographic boundary.” This large variation supports OSMRE’s decision not to complete the analysis because of its limited utility to the decision maker.

sites that have undetermined eligibility and will be treated as eligible in the Project Area (24ML667, 24ML940, 24ML942, and 24ML949). Due to the presence of unevaluated sites, which are treated as eligible, within the Area of Potential Effect, OSMRE will stipulate avoidance of all such unevaluated sites from surface disturbance activities. These sites remain within the subsidence area. Subsidence is not anticipated to have effects to sites to the extent of impacting their eligibility potential. On February 22, 2018 Montana SHPO concurred with OSMRE's finding of No Adverse Effect. In accordance with BLM lease stipulations, BLM requires that the operator will inventory all affected areas subsequent to the approval of the lease, in consultation with the BLM. At that time, BLM will provide copies of the newly inventoried areas to OSMRE and Montana SHPO.


9. The degree to which an action may adversely affect a threatened or endangered species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

No confirmed observations of species listed, proposed for listing, or candidates for listing under the Endangered Species Act (ESA) have been recorded in the Mine's permit area during the historical wildlife surveys (2018 EA Section 4.8). OSMRE provided the U.S. Fish and Wildlife Service (USFWS) with a memorandum disclosing sites of two golden eagle nests on January 25, 2018. On March 21, 2018, USFWS responded with a memo stating the Service agrees that the mitigation measures proposed in OSMRE's memorandum are appropriate and would serve to minimize potential eagle impacts in conjunction with project implementation.

10. Whether the action threatens a violation of a federal, state, local, or tribal law, regulation, or policy imposed for the protection of the environment, where non-federal requirements are consistent with federal requirements.

The Proposed Action would not violate any known Federal, state, local, or tribal law or requirement imposed for the protection of the environment. During the public and agency involvement for this 2018 EA, Federal, state, local, and tribal interests were given the opportunity to participate in the environmental analysis process. The Proposed Action is consistent with applicable plans, policies, and programs.

Pursuant to 30 CFR Part 746, OSMRE is recommending selection and approval of the Proposed Action. The undersigned person has determined that approval of a Federal mining plan modification authorizing the continuation of mining operations to recover the Federal coal for approximately 9 additional years in the Amendment 3 area would not have a significant impact on the quality of the human environment under section 102(2)(C) of the NEPA, 42 USC 4332(2)(C); therefore, an EIS is not required.



Marcelo Calle, Manager
Program Support Division
Western Region
OSMRE

5.21.2018

Date