

U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
FINDING OF NO SIGNIFICANT IMPACT
Spring Creek Mine
Federal Coal Lease MTM-069782
Federal Mining Plan Modification

A. Introduction

Spring Creek Coal Limited Liability Company (SCC) owns and operates the Spring Creek Mine (SCM), which is located in Big Horn County, Montana, approximately 32 miles north of Sheridan, Wyoming. In 2010, the Bureau of Land Management (BLM) modified federal coal lease MTM-069782 to add one tract within the surface mining permit SMP C1979012 issued by the Montana Department of Environmental Quality (MDEQ) in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the MDEQ Mining Bureau Coal Section (30 CFR Part 926.30). If approved, this mining plan (the Project) would allow the mining of federal coal within lease MTM-069782, and more specifically within a tract of land known as TRI, from the date of approval through the life-of-the mine. The accompanying *Environmental Assessment Spring Creek Mine Big Horn County, Montana Mining Plan for Federal Coal Lease MTM-069782* (hereafter, the EA) details the environmental effects of this Project, beginning in 2017 through the life-of-mine (LOM) for the area. The EA is tiered off and incorporates by analyses included in the *Environmental Assessment for Spring Creek Coal Lease Modification MTM-069782 and Amendment to Land Use Lease MTM-74913* (hereafter 2010 LBM EA) (BLM 2010).

On March 2, 2012, SCC submitted an application (Minor Revision [MR] 168) to revise MDEQ-approved SMP C1979012 to include recovering the federal coal within the TRI tract and address the revised Land Use Lease (LUL). MDEQ determined that the revision was actually a major revision due to the increased bond amount and land disturbance amounts. SCC resubmitted the application on September 30, 2013 as the TRI Major Permit Revision. This MDEQ permit revision was approved on March 27, 2020.

As discussed in **chapter 4** of this EA, environmental protection measures required by SMP C1979012 (in accordance with MDEQ Rules and Regulations) and SCM air quality permit MAQP #1120-12 will offset/reduce potential resource impacts.

B. Statement of Environmental Significance of the Proposed Action

Pursuant to 30 CFR Part 746, Office of Surface Mining Reclamation and Enforcement (OSMRE) is recommending selection and approval of the Proposed Action (see **section C**). The undersigned person has determined that approval of a federal mining plan authorizing continuation of mining operations for approximately 3.0 more years and additional surface disturbance of approximately 728.4 acres to recover the federal coal 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 USC 4332(2)(C); therefore, an Environmental Impact Statement (EIS) is not required.

C. Reasons for a Finding of No Significant Impact

OSMRE prepared the EA to satisfy OSMRE's requirements under NEPA. OSMRE prepared this EA to re-evaluate the environmental effects resulting from the currently approved federal mining

plan related to MTM-069782, pursuant to the requirements of NEPA; the Council on Environmental Quality (CEQ), Department of the Interior (DOI), and OSMRE regulations; and guidance regarding implementing NEPA. As part of the re-evaluation process, OSMRE will make a recommendation to the Assistant Secretary of Land and Minerals Management (ASLM) on a new decision to approve, disapprove, or approve the mining plan with conditions.

OSMRE is the lead federal agency responsible for development of this EA because, under the SMCRA and Mineral Leasing Act (MLA), OSMRE will prepare a mining plan decision document (MPDD) in support of its recommendation to the ASLM regarding federal mining plans or mining plan modifications to either approve, approve with conditions, or deny the proposed mine plan. The ASLM will decide whether the mining plan is approved, disapproved, or approved with conditions. As such, this EA followed the CEQ's, DOI's, and OSMRE's regulations and guidance for implementing NEPA. The EA analyzed the potential impacts associated with the Proposed Action and No Action Alternative. The Proposed Action would authorize mining of approximately 56.3 million tons (Mt) and recovery of approximately 53.5 Mt of federal coal, at an estimated rate of 18.0 million tons per year (Mtpy) and with a surface disturbance of 728.4 acres. The Proposed Action includes design features to reduce or eliminate potential adverse impacts to the environment.

The EA also analyzed the impacts of the No Action Alternative. Under the No Action Alternative OSMRE would not recommend and the ASLM would not approve the proposed mining plan.

The attached EA considers the Proposed Action, discloses the potential environmental effects of the Proposed Action and reasonable alternatives, and provides sufficient evidence and support for this Finding of No Significant Impacts (FONSI). The 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 and all relevant provisions of CEQ regulations, and other program requirements. This independent review included OSMRE's evaluation of all environmental issues disclosed in the EA and also those identified in comments received from the public. OSMRE takes full responsibility for the accuracy, scope, and the content of this document.

The undersigned has determined that, per CEQ, DOI, and OSMRE regulations and guidance, the public involvement requirements have been met. OSMRE conducted public outreach and received comments regarding the scope of the EA from September 10, 2015 through October 10, 2015. The OSMRE conducted a 30-day public comment period for the EA and unsigned FONSI from February 13, 2020 to March 13, 2020. All substantive public comments received to date have been fully considered in the EA and in reaching this FONSI (**Appendix A of the EA**).

This finding is based on the context and intensity of the proposed federal mining plan that would be conducted under the Proposed Action, as described in the following paragraphs.

- 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.

SCC proposes to meet demand for coal and continue mine operations through approximately 2027 by

1. securing federal mining plan approval authorizing mining of leased federal coal within a previously authorized area (i.e., MTM-069782), and
2. continuing to mine, process, and transport coal from the SCM.

Approval of the Proposed Action is a site specific action that would authorize mining of approximately 56.3 Mt of federal coal at a maximum rate of 18.0 Mtpy and a surface disturbance of 728.4 acres. The effects of the action have been analyzed at the local, state, regional, national and global scales as deemed appropriate for each resource.

- 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.

OSMRE has considered the 10 Significance Criteria in the federal regulations at 40 CFR 1508.27 in evaluating the severity of impacts.

1. Impacts that may be both beneficial and adverse:

Beneficial and adverse impacts of the Proposed Action are described in the attached EA. Environmental design features to reduce potential short-term and long-term impacts to topography, air quality, water resources, vegetation, fish and wildlife, threatened and endangered (T&E) species, cultural resources, visual resources, and soils are incorporated into the design of the Proposed Action. Additionally, environmental protection measures to minimize impacts to air quality, migratory birds, special status species, cultural resources, and paleontological resources are required by stipulations of the federal coal lease and the mining permit as approved by the SMCRA-designated Regulatory Authority (RA), MDEQ. The contribution of the Proposed Action to greenhouse gas (GHG) emissions, both to Wyoming, Montana, U.S. and global totals would be minor to moderately adverse and short-term. The direct and indirect impacts on air quality and air quality related values from a state and U.S. comparison are considered to be minor to moderately adverse and short term. Regionally (Big Horn County, Montana and Sheridan County, Wyoming), the comparative emissions are higher, but the region has and is expected to remain in attainment. The Proposed Action would indirectly contribute to criteria emissions and GHG emissions through rail transport and the combustion of coal at power plants located throughout the U.S. The indirect impacts on air quality including GHGs are considered moderately adverse and short term. The direct and indirect effects to topography, geology, water resources, soils, vegetation, fish and wildlife, species of special interest, visual resources, and noise are considered moderately adverse, short term, long term, and permanent. Impacts to cultural resources would be negligible and long term.

The Proposed Action would result in moderate and short-term impacts to socioeconomics in the area of influence. There would be an extension of employment for approximately 243 employees, primarily from Sheridan County, Wyoming of up to approximately 3.0 years. The Proposed Action represents an economic impact to this area over the LOM through payment of wages, purchases of goods and services related to the mining operation, and payment of federal, state, and local taxes. The socioeconomic impacts are derived from payroll, insurance, retirement contributions, local expenditures, taxes, and federal coal royalty payments (**EA section 4.17**).

None of the environmental effects discussed in the EA are considered to be significant.

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

The EA project area is located primarily on private lands and the mining activities do not cross any public roads. Approximately 80 acres are federal surface, managed by BLM. All mine activities with potential public exposure would also be subject to state mine permit approval and review by the Mine Safety and Health Administration (MSHA), which include safety standards. Precautions for public health and safety would also be implemented during transport of equipment along public roads to and from the EA project area. Emissions and effluent limits are within approved standards, as required by state permits, thereby limiting potential impacts to public health. Noise levels at the nearest residences would be well below levels that would affect human health. Potential risks to public health and safety would be negligible and would occur over limited, brief periods. After full reclamation has occurred, no public health or safety concerns are expected, and the federal surface will continue to be managed by the BLM for public use and enjoyment.

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

There are no park lands, prime farmlands, wilderness, wild and scenic rivers, or ecologically critical areas within the EA project area. There are no jurisdictional wetlands (aquatic resources) within the tract boundary (**EA section 4.7**). Inventories of historic or cultural resources have been completed for the EA project area and, as confirmed by the Montana State Historic Preservation Office (SHPO), one site (24BH3392) within the Proposed Action tract is classified as a National Register of Historic Places (NRHP) eligible site that would require mitigation prior to disturbance (**EA section 4.12**). Additional cultural resources discussions are included below under **Item 8**.

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).

The EA has analyzed the direct and indirect effects on and from greenhouse gasses/climate change and, as discussed in **section 4.4.5** of this EA, and determined the effects to be moderate and short-term. Approvals of federal mining plans and mining plan modifications have been made in the area for several decades. Stipulations for the MTM-069782 federal coal lease remain in effect and would be carried forward if the federal mining plan modification is approved by the ASLM. No other anticipated effects have been identified that are scientifically controversial.

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

As discussed above, there are no 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.

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 considerations:

This decision is not precedent setting. OSMRE developed the issues considered in the EA within the context of past, present, and reasonably foreseeable actions. Chapter 4 of the EA contains a discussion of potential cumulative impacts for each resource brought forward for analysis. Significant cumulative impacts are not anticipated.

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

OSMRE evaluated the possible issues in context of past, present, and reasonably foreseeable activities, including past, present, and reasonably foreseeable mining for the SCM and other mining operations in the region, the combustion of that coal at coal-fired power plants in Rosebud County, agriculture, livestock grazing, recreation, and oil and gas development.

Per Sections 4.4.6.1 and 4.4.6.2, both the indirect and cumulative effects of coal combustion were disclosed in the EA. There were no significant cumulative effects identified.

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 EA project area was surveyed for cultural and historic resources and, as confirmed by the Montana SHPO, one site (24BH3392) within the Proposed Action tract is classified as an NRHP eligible site that would require mitigation prior to disturbance (**EA section 4.12**). A data recovery plan for site 24BH3392 was initially developed during the BLM leasing process through the Section 106 consultation and approved by the SHPO at that time. The data recovery plan has

been included as a condition of the SMCRA permit approval by the MDEQ before mining in the TRI tract can begin. MDEQ has documented SHPO concurrence on the data recovery plan. The data recovery plan has also been approved by the SHPO per a signed Memorandum of Agreement with OSMRE

BLM consulted representatives of Native American tribes during the preparation of the 2010 LBM EA. In addition, OSMRE sent out Tribal consultation letters to Native American tribes that could be affected by the Proposed Action evaluated in this EA. The consultation letters were sent on two separate occasions during the preparation of the EA. No Native American tribes have responded to OSMRE's consultation request for the Proposed Action.

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

The potential to affect T&E species as well as proposed and final designated critical habitat that may occur within the designated SCM TRI analysis areas, was evaluated by utilizing the U.S. Fish and Wildlife Service's (USFWS) Information, Planning, and Conservation System (IPaC) consultation process. IPaC species assessments fulfill the requirements of the USFWS under section 7(c) of the Endangered Species Act of 1973 (ESA). The USFWS suggests that a biological evaluation similar to a biological assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Detailed biological evaluations of T&E species, including conservation measures, were included in Section 3.10 of the 2010 LBM EA and in **sections 3.10.4** and **4.10.4** of this EA.

The vertebrate T&E species discussed in Section 3.10.7 of the 2010 LBM EA included evaluations of bald eagles (*Haliaeetus leucocephalus*), interior least terns (*Sterna antillarum athalassos*), and black-footed ferrets (*Mustela nigripes*). The current USFWS list of T&E species that may occur in Big Horn County, Montana only includes the black-footed ferret (USFWS 2017a). The bald eagle was removed from the federal list of T&E species on August 9, 2007 (USFWS 2011) and the interior least tern is not included on the current T&E list for Big Horn County (USFWS 2017b). The USFWS has not designated any "critical" habitat for any species in the vicinity of the SCM at this time (USFWS 2017a). While the official list of T&E species that may occur in the area specific to MTM-069782 (USFWS 2017b) indicated that there are no listed species identified within the project area, the one species included on the county list will be reevaluated. The current USFWS list of T&E species that may occur in Big Horn County, Montana includes the black-footed ferret (USFWS 2017).

The black-footed ferret is listed as endangered for the SCM area. Based on information in the USFWS's (2013) recent update to the Black-footed Ferret Recovery Plan, the SCM is not located near an active or potential reintroduction area for this species. Because black-footed ferrets have not been documented in the area, there would be no effect to black-footed ferrets as a result of the Proposed Action.

In the unlikely event that T&E species would be encountered as a result of the Proposed Action, they would be temporarily displaced; however, current reclamation practices in place at the SCM would promote the return of T&E species once reclamation has been completed.

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:

As described in **section 1.2.3 of the EA**, the Proposed Action is in compliance with known federal, state, local, or tribal laws or requirements imposed for the protection of the environment. During the public and agency involvement for this EA, state, local, and tribal interests were given the opportunity to participate in the EA process. The Proposed Action is consistent with applicable plans, policies, and programs.

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Date