

U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
FINDING OF NO SIGNIFICANT IMPACT
Antelope Mine
Federal Coal Lease WYW-177903
Mining Plan Modification

A. Introduction

Antelope Coal, LLC (AC) is currently seeking approval from the Assistant Secretary of Land and Minerals Management (ASLM) to recover coal associated with the modified lease WYW-177903. AC, a subsidiary of Navajo Transitional Energy Corp (NTEC), operates the Antelope Mine. The mine is located in Converse County, Wyoming, approximately 20 miles south-southeast of Wright, Wyoming. AC operates the Antelope Mine under WDEQ-LQD Permit No. 525 in accordance with the approved Wyoming State Coal Regulatory Program (30 CFR Part 950). AC filed an application for a coal lease modification with the Bureau of Land Management (BLM) on November 29, 2012. The BLM prepared Environmental Assessment WY-060-EA13-147, *West Antelope II South Lease Modification WYW – 177903*, to analyze the impacts of the proposed lease modification and signed a Finding of No Significant Impact and the Decision Record on January 5, 2018. BLM issued the modified coal lease on February 1, 2018. OSMRE determined that this EA could incorporate by reference analyses included in the 2008 West Antelope II EIS (hereafter 2008 WAI EIS) and the 2014 West Antelope II South Lease Modification EA (hereafter 2014 WAI South EA) prepared by the Bureau of Land Management (BLM). The currently approved permit boundary includes the entire West Antelope II South Modification tract. WDEQ-LQD approved the most recent version of Permit No. 525 with the condition that AC may not mine coal from any federal coal lease prior to receiving approval from the ASLM. AC submitted a revision to Permit No. 525 for a revised mine and reclamation plan. WDEQ-LQD is currently going through the technical adequacy review. Although WDEQ-LQD permits are issued based on the life-of-mine (LOM) plans for the mining operation, under the Wyoming Environmental Quality Act of 1973 (WEQA), permits must be renewed every 5 years (Wyoming Statute [W.S.] § 35-11-405 (c)). The accompanying environmental assessment (EA) considers potential effects from mining the West Antelope II South tract and does not reevaluate existing federal mining areas and operation, except for cumulative effects.

B. Statement of Environmental Significance of the Proposed Action

Pursuant to 30 CFR Part 746, the 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 modification authorizing continuation of mining operations for approximately 0.5 more years and additional surface disturbance of approximately 856.6 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 NEPA, 42 USC 4332(2)(C); therefore, an Environmental Impact Statement (EIS) is not required.

C. Reasons

OSMRE prepared the *Environmental Assessment Antelope Mine, Mining Plan for Federal Coal Lease WYW-177903* (hereafter, the EA) to satisfy OSMRE's responsibilities under the National Environmental Policy Act (NEPA). OSMRE prepared this EA to evaluate the environmental effects

resulting from approving the federal mining plan modification request related to adding portions of federal coal lease WYW-177903, 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 evaluation process, OSMRE will make a recommendation to the ASLM on a new decision to approve, disapprove, or approve the mining plan modification with conditions.

OSMRE is the lead federal agency responsible for development of the EA because it has the decision-making authority regarding a recommendation for the proposed federal mining plan modification under the Mineral Leasing Act of 1920 (MLA). 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 Alternatives. The Proposed Action would authorize recovery of approximately 15.8 million tons (Mt) of coal at an estimated rate of 30.0 million tons per year (Mtpy) and with a surface disturbance of 856.6 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.

The attached EA considers the Proposed Action and a reasonable range of alternatives to 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 the CEQ's, DOI's, and OSMRE's regulations and guidance, the public involvement requirements have been met. OSMRE conducted public outreach and received scoping comments regarding the project and preparation of the EA for a 30-day period, ending December 3, 2019. The EA and unsigned FONSI were made available to the public for review during a 30-day comment period starting May 8, 2020. All substantive public comments received to date have been fully considered in the EA and in reaching this FONSI (see **EA appendix B**).

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

Context: AC proposes to meet demand for coal and continue mine operations through approximately 2040 by

1. securing federal mining plan modification approval authorizing mining of leased federal coal within portions of federal coal lease WYW-177903, and
2. continuing to mine, process, and transport coal from the Antelope Mine to various power plants within the United States.

Approval of the Proposed Action is a site-specific action that would authorize mining of approximately 15.8 Mt of mineable federal coal (14.5 Mt of recoverable coal) at an estimated rate of 30.0 Mtpy and a surface disturbance of 856.6 acres. The annual production rate used to

calculate the environmental impacts resulting from the Proposed Action will be 30 Mtpy, which is the estimated future annual production rate suggested by Antelope Mine and is below the maximum permitted production rate of 52 Mtpy set by WDEQ-Air Quality Division (AQD) air quality permit MD-13361. The effects of the action have been analyzed at the local and regional scale.

Intensity: The following discussion is organized around the 10 Significance Criteria described within the federal regulations at 40 C.F.R. §1508.27. The following criteria have been considered in evaluating the severity of impacts for this proposal.

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, mitigation measures related to air quality, migratory birds, special status species, cultural resources, and paleontological resources are required by the state-approved mine permit and stipulations to the federal coal lease, and approved mining plan.

As discussed in **section 4.4.5** of this EA, the contribution of the Proposed Action to greenhouse gas (GHG) emissions to Wyoming, U.S., and global totals would be moderate and short-term. The direct impacts on air quality from a state, U.S., and global comparison are considered to be minor and short term (**EA section 4.4.4**). Indirectly, the Proposed Action would contribute to criteria emissions and GHG emissions through rail transport and the combustion of coal at power plants located throughout Wyoming and the U.S. The indirect impacts on air quality are considered minor to moderate and short term (**EA section 4.4.1 – 4.4.4**). 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 moderate, short term, long term, and permanent (**EA sections 4.2, 4.3, 4.5, 4.8-4.10, and 4.13-4.14**). Impacts to wetlands/aquatic features, transportation, and hazardous/solid wastes would be minor, short and long term (**EA sections 4.7 and 4.15-4.16**). Impacts to cultural resources and land use and recreation would be negligible and long term (**EA sections 4.11 and 4.12**). There would be no direct or indirect effects to alluvial valley floors (AVFs) from the Proposed Action (**EA section 4.6**).

The Proposed Action would result in moderate impacts to socioeconomics in the area of influence. There would be an extension of employment for approximately 650 employees, primarily from Campbell and Converse County, Wyoming for up to approximately 0.5 years. 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 entirely on private lands and the mining activities do not cross any public roads. Public access to the area affected by mining is strictly controlled by the mine. 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 (**EA sections 4.4, 4.14, and 4.16**). After full reclamation has occurred, no public health or safety concerns are expected, and the land would be suitable for historical uses of grazing and wildlife uses and recreational use.

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

As discussed in Section 3.0 of the 2008 WAI EIS, which is incorporated by reference, there are no park lands, wilderness, wild and scenic rivers, prime or unique farmlands, or ecologically critical areas within the EA project area. Based on the results of the wetland delineations there are no jurisdictional wetlands within the project area and only 4.8 acres of aquatic features within and adjacent to the tract. The Proposed Action would result in the loss of approximately 1.6 acres of aquatic features since approximately 3.2 acres are associated with Antelope Creek, which would have a 100-foot disturbance buffer. Disturbed non-jurisdictional aquatic features would be replaced during the reclamation phase of mining (**EA section 4.7**). The West Antelope II South Modification tract has been subjected to Class III cultural resource inventories and only one of the two sites determined to be eligible within the tract has been classified as NRHP eligible. Because this site would not be disturbed under the Proposed Action, no mitigation would be required (**EA section 4.12**). OSMRE is in the process of consultation with the Wyoming State Historic Preservation Office. 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 C.F.R. § 1508.27(b)(4) (whether or not to prepare a detailed EIS) “controversy” is not equated with “the existence of opposition to a use.” *Nw Env'tl. Def. Ctr. v. Bonneville Power Admin.*, 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). “Mere public opposition to a proposed action does not render the action controversial under NEPA, even if the opposition is vigorous.” *350 Montana et al. v. Bernhardt et al.*, 2020 WL 1139674, 7 (D. Mont. 2020) citing *Nw. Env'tl. Def. Ctr.*, [117 F.3d at 1536](#).

The EA has analyzed the direct and indirect effects on and from climate change and, as discussed in **EA section 4.4**, determined the effects to be moderate and short-term and negligible and long-term, respectively. Approvals of federal mining lands and mining plan modifications have been made in the area for several decades. The environmental design features and reclamation plan would reduce the effects on the environment; or, in some cases, would improve the current condition (e.g., soils, vegetation, and wildlife habitat). 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:

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. The issues considered in the EA were developed by OSMRE within the context of past, present, and reasonably foreseeable actions. 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 the context of past, present, and reasonably foreseeable activities, including past, present, and reasonably foreseeable mining for the Antelope Mine and other mining operations in the region, the combustion of that coal at coal-fired power plants in the U.S., ranching, livestock grazing, recreation, and oil and gas development. Both the indirect and cumulative effects of coal combustion were disclosed in the EA. There were no significant cumulative effects identified (**EA section 4.4.6**).

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. According to information provided in the EA, two cultural resources sites (48CO3077 and 48C03078) were identified within the survey area as eligible by the contractor under the NRHP (**EA sections 3.12 and 4.12**). Only one of the two sites determined to be eligible within the tract has been classified as NRHP eligible. Because this site would not be disturbed under the Proposed Action no mitigation would be required. OSMRE is in the process of consultation with the Wyoming State Historic Preservation Office.

Letters of consultation were sent out to Native American tribes/tribal representatives during the preparation of this EA. The consultation included sending out public-outreach and Tribal-consultation letters to the 24 Native American tribes that could be affected by the Proposed Action evaluated in this EA.

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 current USFWS list of plant T&E species that may occur in the vicinity of the tract includes the Ute ladies'-tresses (*Spiranthes diluvialis*). No Ute ladies'-tresses have been found during surveys conducted in potential habitats on the Antelope Mine permit area and the tract. In addition, the USFWS has not designated any "critical" habitat for this species in the vicinity of the Antelope

Mine at this time (**EA Section 3.9.1**). The project area is not located within the known range of the northern long-eared Bat (*Myotis septentrionalis*).

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 Antelope Mine 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:

The Proposed Action would not violate any 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. OSMRE received comments from the public including comments from the local counties. The Proposed Action is consistent with applicable plans, policies, and programs.

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Unified Regions 5, 7, 8, 9, 10 and 11
OSMRE

Date