

**U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND
ENFORCEMENT**

FINDING OF NO SIGNIFICANT IMPACT

Colowyo Coal Mine, Collom Permit Expansion Area Project
Federal Coal Leases COC-0123475 01 and COC-68590
Federal Mining Plan Modification Decision Document

A. Introduction

The Colowyo Coal Mine is located approximately 26 miles (42 km) southwest of Craig, Colorado and 22 miles (35 km) north-northeast of Meeker, Colorado in Moffat and Rio Blanco Counties. The Colowyo Coal Company (Colowyo) currently operates the Colowyo Coal Mine on federal coal leases COC-29225 and COC-29226 and is producing coal from the South Taylor Pit. Colowyo operates the existing Colowyo Coal Mine under Coal Mining Permit number C-1981-019 issued by the Colorado Division of Reclamation Mining and Safety (CDRMS) in accordance with their approved Colorado State Coal Regulatory Program (30 CFR Part 906) issued under the federal Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The Colowyo Coal Mine, Collom Permit Expansion Area Project (the Project) was proposed by Colowyo in a Permit Application Package (PAP) on January 26, 2009, to extend mining operations under their existing SMCRA permit onto federal leases COC-0123475 01 and COC-68590. The Project would also include state lease 257-13s and private land owned by Colowyo. On May 29, 2013, CDRMS approved Colowyo's Permit Revision No. 3 (PR03) for the Collom Permit Expansion Area.

B. Statement of Environmental Significance of Alternative B

Pursuant to 30 CFR Part 746, The Office of Surface Mining Reclamation and Enforcement (OSMRE) is recommending selection and approval of Alternative B (see **Section C.**). The undersigned person has determined that approval of a federal mining plan modification authorizing continuation of mining operations for approximately 15 more years and additional surface disturbance of approximately 2,385 acres of federal leases COC-0123475 01 and COC-68590 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 is not required.

C. Reasons

OSMRE prepared the *Colowyo Coal Mine, Collom Permit Expansion Area Project, Federal Mining Plan Modification Environmental Assessment* (hereafter the EA) to satisfy OSMRE's requirements under NEPA. OSMRE prepared this EA to evaluate the environmental effects that would result from

PR03 pursuant to the requirements of NEPA, the Council on Environmental Quality (CEQ), Department of Interior (DOI), and OSMRE regulations and guidance regarding implementing NEPA. As part of the evaluation process, OSMRE must make a recommendation to the DOI Assistant Secretary for Land and Minerals Management (ASLM) on a decision to approve, disapprove, or approve the mining plan modification with conditions.

OSMRE and the Bureau of Land Management (BLM) are the lead federal agencies responsible for development of the EA. OSMRE has the decision-making authority regarding a recommendation for the proposed mining plan modification under the Mineral Leasing Act (MLA). BLM has decision-making authority regarding issuing a lease modification. As such, this EA follows the CEQ's, DOI's, BLM's, and OSMRE's regulations and guidance for implementing NEPA. The EA analyzed the potential impacts associated with two action alternatives and the No Action alternative. Alternative A (Proposed Action), would modify the existing mining plan to authorize the mining of 81,660,000 tons of additional federal coal from two open pits, the Collom Lite Pit and Little Collom X Pit, located within federal coal leases COC-0123475 01 and COC-68590. Coal would be produced at a maximum rate of 5.1 million tons per year (mtpy) and with a surface disturbance of 2,090.5 acres.

The EA also analyzed the impacts of another action alternative: Alternative B (Reduced Mining and Additional Greater Sage-Grouse Protection). Public outreach comments identified concerns about the direct and indirect surface impacts of Alternative A on rare imperiled fish, wildlife, and plants. Outreach comments also identified the need for OSMRE and BLM to consider an alternative that would reduce environmental impacts by limiting the amount of coal tonnage and/or acreage to be mined to lower levels than are currently proposed. Further, through internal consideration of Alternative A, OSMRE and BLM identified concerns about the potential impact of Alternative A on greater sage-grouse (GRSG), and their habitat. Alternative B would incorporate Project design features in addition to those already incorporated in Alternative A to reduce or eliminate potential impacts to GRSG and its habitat, as well as to enhance the protection of habitat and the understanding of GRSG behavior and reactions to mining operations. The additional Project design features were collaboratively developed by Tri-State, Colowyo, OSMRE, BLM, Colorado Parks and Wildlife (CPW), and USFWS during meetings held at the CPW office in Meeker, between January 23, 2014, and October 23, 2014. A final Project design feature proposal was preliminarily agreed upon on October 23, 2014; the Project design feature proposal will be formally agreed to with the signing of a Memorandum of Understanding (MOU) between the agencies and Tri-State (finalized on September 26, 2016). The Project design features agreed to include the following items:

1. Design the temporary overburden stockpile to locate proposed new surface disturbances for the temporary overburden stockpile to a minimum distance of 0.9 mile (1.5 km) from GRSG lek SG4.
2. Donation to CPW of 4,543 acres of Priority Habitat Management Area (PHMA, formerly referred to as Preliminary Priority Habitat), including breeding and winter habitat with some summer habitat, for GRSG in five distinct parcels outside the SMCRA permit boundary, currently owned and managed by Colowyo, to preserve the PHMA in perpetuity.

3. Transfer of all mineral rights and grazing preference held by Colowyo on those parcels to CPW, as well as the water rights to any stock watering structures located on those parcels.
4. Monitoring of GRSG by CPW in the vicinity of the Colowyo mine funded by a donation of at least \$150,000 from Tri-State to CPW.

In comparison with Alternative A, Alternative B would also result in the following: 1) mining of approximately 2,550,000 tons less coal thereby reducing the overall mine life by about four years by not mining the Little Collom X pit; 2) reduction of the amount of overburden needing storage in the temporary overburden stockpile by 43,600,000 cubic yards or about 28 percent; 3) re-design and relocation of the footprint of the temporary overburden stockpile further south and upslope in Collom Gulch to maintain a no surface disturbance distance of 3,820 feet from the perimeter of GRSG lek SG4; 4) maintenance of a no surface activity distance of 1 mile (1.6 km) from the GRSG lek SG4 during the lekking and early brood rearing season; 5) relocation of the power line alignment away from the Collom Haul Road further to the south and further from GRSG lek SG4; 6) reduction of the amount of explosives used by 14,754,325 lbs.; and 7) reduction of water usage by approximately 120,000,000 gallons.

The design of the temporary overburden stockpile under Alternative B would require 27.84 acres of surface disturbance on unleased public land. Authorization for the disturbance of that tract for activities that would support the proposed mining operations would require approval by the BLM, Little Snake Field Office (LSFO) of a lease modification to add that tract of unleased federal land to federal lease COC-0123475 01. On September 24, 2014, Colowyo submitted a lease modification application to the LSFO. The BLM issued a FONSI and a decision on the lease modification application on June 27, 2016, as a co-lead agency on the EA. The BLM issued the lease modification to Colowyo on September 13, 2016, and it went into effect on October 1, 2016.

Selection and implementation of Alternative B would also require prior CDRMS approval of a revision to Colowyo's SMCRA permit under state regulations. On March 16, 2015, Colowyo submitted a PAP for Permit Revision No. 4 (PR04) to CDRMS, incorporating design features consistent with Alternative B. CDRMS approved PR04 on September 13, 2016, after the BLM issued their decision on the lease modification. Since CDRMS approved PR04, OSMRE can issue a final, signed FONSI and make a recommendation to the ASLM on a decision for the mining plan modification.

Alternative B would have a final disturbance footprint of 2,385¹ acres, or about 26 percent more acreage (546.2 acres) than Alternative A. This would be due to the nature of the terrain over which the temporary overburden stockpile would be placed under Alternative B in comparison to Alternative A. Under Alternative A, that stockpile would be placed primarily within Little Collom Gulch. Under Alternative B, the stockpile would be spread over a wider area of flatter terrain when compared with Alternative A. Alternative B would also disturb

¹ The EA analyzed approximately 2,637 acres of disturbance, however PR04 as approved by CDRMS authorizes the disturbance of approximately 2,385 acres.

more federally-owned surface over federally-owned coal and privately-owned surface over federally-owned coal than Alternative A.

Both action alternatives include design features to reduce or eliminate potential adverse impacts to the environment, and similar reclamation plans. Mine production would extend 19 years under Alternative A and 15 years under Alternative B. Under all alternatives, once mining has ceased, closure of the pit(s) would commence and reclamation would be completed.

Under Alternative C (No Action) the proposed mining plan would not be approved, federal coal reserves in the Collom Expansion Area would not be recovered and therefore bypassed, and production at the Colowyo Coal Mine could cease around 2019 or before, once coal reserves in the South Taylor Pit are mined out. Reclamation operations would continue after mining ceased. Under Alternative C, there would be no surface disturbance in the Collom Permit Expansion Area.

The attached EA considers a reasonable range of alternatives to the Proposed Action, discloses the potential environmental effects of the alternatives, and provides sufficient evidence and support for this FONSI. The EA was prepared by a third-party consulting firm, at the direction of OSMRE and BLM. During the development of the EA, OSMRE and BLM 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 and BLM'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 and BLM solicited public comments via public outreach legal notices published in the Rio Blanco Herald Times and the Craig Daily Press on September 26 and 27, 2013, and again on October 24 and 31, 2013, respectively. Public comments were accepted between October 1 and November 14, 2013 (44 days)². A public outreach meeting was held at the BLM LSFO in Craig on November 7, 2013. The EA and unsigned FONSI have been made available to the public for review during a 30-day comment period prior to the final decision. All public comments received to date have been fully considered before reaching this FONSI.

This finding is based on the context and intensity of the Project that will be conducted as proposed under Alternative B as described in the following paragraphs.

Context: Colowyo proposes to meet demand for coal and continue mine operations through approximately 2030 by:

² This extended period was due to the delay in holding a public outreach meeting during the government shutdown.

1. Securing a federal coal lease modification approval and authorization from BLM to disturb a 27.84 tract of federal land with mining activities associated with PR04 (BLM issued on September 13, 2016);
2. Securing approval and authorization from CDRMS on PR04 (approval issued on September 13, 2016);
3. Securing a federal mining plan modification approval authorizing mining of leased federal coal in an expanded permit boundary (i.e., the Collom Permit Expansion Area [PR04]);
4. Continuing to mine, process, and ship (via rail) coal from the mine.

Alternative B is a site specific action that considered the disturbance of approximately 2,637 acres of previously undisturbed federal coal lands during active mining and reclamation operations. Relative to No Action (Alternative C), mining will continue for an additional 15 years and approximately 79,110,000 additional tons of coal would be recovered at a maximum rate of 5.1 mtpy. 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 CFR 1508.27. The following 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 Alternative B 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, special status species, cultural resources, visual resources, and soils are incorporated into Alternative B; additionally, mitigation measures related to air quality and wetlands and Waters of the U.S. are required by the state-approved mine permit and stipulations to the federal coal lease permit, and approved mining plan.

The Project will contribute insignificant particulate emissions, gaseous emissions, and hazardous air pollutants in comparison to the Colorado and U.S. totals. Further, the contribution of the Project to greenhouse gas emissions (GHG), both to Colorado and U.S. totals will be insignificant. The direct impacts on air and climate resources when compared to state and U.S. contributions are considered negligible (EA, Page 4-35). Regionally (Garfield, Moffat, Rio Blanco, and Routt Counties), the comparative emissions are higher (moderate to high impact), but the region has and is expected to remain in attainment. Indirectly, the Project will contribute to criteria emissions and GHG emissions through the combustion of coal at the Craig Generating Station and potentially elsewhere. The emissions impacts resulting from the combustion of Colowyo Coal Mine coal under Alternative B will represent insignificant impacts relative to U.S. emissions and moderate impacts relative to Colorado emissions (EA, Page 4-45). The indirect impacts on air and climate resources are considered negligible. On August 1, 2016, the Council on Environmental Quality issued the Final Guidance for Federal Departments and Agencies on Consideration of GHGs and the Effects of Climate Change in NEPA Reviews. As cited on page 33 of the Final Guidance, "CEQ does not expect agencies to apply this

guidance to concluded NEPA reviews and actions for which a final EIS or EA has been issued". The June 2016 EA incorporated, to the extent practicable, guidance included in the December 2014 Draft Guidance for Federal Departments and Agencies on Consideration of GHGs and the Effects of Climate Change in NEPA Reviews. As discussed in section 4.3.3., the EA considered the effects of GHG emissions and climate change in the evaluation of the proposed Federal actions. The direct and indirect effects to topography (EA, Page 4-53), geology (EA, Page 4-7), water resources (EA, Page 4-58), vegetation (EA, Page 4-60), fish and wildlife (EA, Page 4-66), special status species (EA, Page 4-81), visual resources (EA, Page 4-95), recreation (EA, Page 4-96), noise (EA, Page 4-100), livestock grazing (EA, Page 4-101), and soils (EA, Page 4-102) are considered negligible to minor, short-term (except for grazing), and adverse. The impacts to grazing will be minor but long term until reclamation is successful and complete (EA, Page 4-101).

There will be beneficial, long-term impacts to the GRS (EA, Page 4-88) as a result of design features required by the MOU and PR04 that will include a donation of 4,543 acres of land for the preservation of GRS habitat to CPW, and the funding of a CPW monitoring study to better understand the impacts of coal mining on GRS in the Axial Basin. Alternative B will also result in moderate to major beneficial impacts to socioeconomics in the area of influence for 15 years. There will be an extension of employment for approximately 220 employees in Moffat, Rio Blanco, and Routt Counties over this time period. The socioeconomic benefits are derived from payroll, insurance, retirement contributions, local expenditures, taxes, and federal coal royalty payments (EA, Page 4-93).

None of the environmental effects discussed in the EA are considered to be significant (EA, Page 4-2, Table 4.1-1).

2. The degree to which Alternative B affects public health or safety:

Activities under Alternative B are designed to control the limited public traffic that may occur in the Project Area (EA, Page 4-96). Public access to the areas affected by mining is limited and strictly controlled by the mine. All mine activities with potential public exposure will also be subject to state mine permit approval and review by the Mine Safety and Health Administration, which include safety standards (EA, Page 2-14). Precautions for public health and safety will also be implemented during transport of equipment along public roads to and from the Project Area (EA, Page 2-10). Construction and operation of road crossings associated with the Project will be subject to County approval. 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 will be well below levels that would affect human health (EA, Page 4-100). Potential risks to public health and safety will be negligible and will occur over limited, brief periods (EA, Page 4-99).

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, wild and scenic rivers, or ecologically critical areas within the Project Area. Inventories of historic or cultural resources have been completed for the Area of Potential Effect and no sites eligible for the National Register of Historic Places

(NRHP) have been identified within the disturbance area. One NRHP-eligible site and one site requiring additional data collection were identified within the Project Area and adjacent to areas of proposed disturbance. If future mining operations cannot avoid the NRHP-eligible site, a mitigation plan would be written, approved by BLM in consultation with SHPO, and implemented prior to planned mining activities (EA, Page 4-91). A formal testing and data recovery plan was completed for the site requiring additional data collection that details the implementation of the excavations and report of findings if the site cannot be avoided. The plan is part of the approved PR04.

The EA conservatively analyzed 1.3 acres of jurisdictional wetlands in Section 4.7.2. Pursuant to Section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (USACE) was consulted and determined that 0.8 acres of jurisdictional wetlands under Alternative B would be impacted and require an individual permit in accordance with the Section 404 Permit Program. The Colowyo Coal Company is coordinating with the USACE to define a compensation plan that will mitigate impacts to jurisdictional wetlands by developing wetlands of the same or better functional classification. No jurisdictional wetlands will be disturbed prior to approval of the compensation plan by USACE and issuance of the individual permit.

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 environmental impact statement—“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, indirect, and cumulative effects of the Project on climate change and determined the effects to be negligible (EA, Page 4-25). No other anticipated effects have been identified that are scientifically controversial. Approvals of federal mining plans and mining plan modifications have been made in the area for several decades. The design features and reclamation plan will reduce the effects on the environment; or, in some cases, will improve the current condition (e.g., vegetation and wildlife habitat).

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 Alternative B 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 consideration:

This decision is not precedent setting. Approvals of federal mining plans and mining plan modifications have been made in the area for several decades. The issues considered in the EA were developed by the interdisciplinary team within the context of past, present, and reasonably foreseeable actions. Significant cumulative impacts are not anticipated for all the resources analyzed (Topography: Page 5-6, Air and Climate Resources: Page 5-14, Geology: Page 5-19, Water Resources: Page 5-21, Vegetation: Page 5-21, Wetlands: Page 5-22, Fish and Wildlife: Page 5-23, Special Status Species: Page 5-24, Cultural and Historic Resources: Page 5-25, Indian Concerns: Page 5-25, Socioeconomics: Page 5-26, Environmental Justice: Page 5-26, Visual Resources: Page 5-27, Recreation: Page 5-27, Paleontology: Page 5-27, Access and Transportation: Page 5-28, Solid and Hazardous Waste: Page 5-28, Noise: Page 5-29, Livestock: Page 5-29, and Soils: Page 5-29).

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 the context of past, present, and reasonably foreseeable actions, including the entire Colowyo operation and other mining operations, the transport of coal from the mine, and the combustion of that coal at the Craig Generating Station, ranching, recreation, and oil and gas development. Both the indirect and cumulative effects of coal combustion at the Craig Generating Station and potentially elsewhere were disclosed in the EA (EA, Page 4-2, Table 4.1-1, Pages 5-9, 5-12 to 5-14, 5-16, and 5-24). 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 NRHP or may cause loss or destruction of significant scientific, cultural, or historical resources:

Inventories of historic or cultural resources have been completed for the Area of Potential Effect and no NRHP-eligible sites have been identified within the disturbance area. One NRHP-eligible and one site requiring additional data collection were identified within the Project Area and adjacent to areas of proposed disturbance. If future mining operations cannot avoid the NRHP-eligible site, a mitigation plan would be written, approved by BLM in consultation with SHPO, and implemented prior to planned mining activities. A formal testing and data recovery plan was completed for the site requiring additional data collection that details the implementation of the excavations and report of findings if the site cannot be avoided (EA, 4-90). The plan is part of the approved PR04. OSMRE consulted with the State Historical Preservation Office and the Eastern Shoshone, Ute, Ute Mountain Ute, and Southern Ute tribes for the Project and no concerns were identified (EA, Page 6-2).

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:

Four endangered Colorado River fish species (humpback chub [*Gila cypha*], Colorado pikeminnow [*Ptychocheilus lucius*], bonytail chub [*Gila elegans*], and razorback sucker [*Xyrauchen texanus*]) and the threatened western yellow-billed cuckoo (*Coccyzus americanus*), were identified as being within the analysis area for the Project. Formal Section 7 consultation on the effects of coal combustion and subsequent mercury and selenium deposition on the Colorado

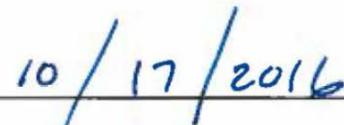
River fish and western yellow-billed cuckoo in the Yampa River basin under Alternative B is complete and determined that the action would likely adversely impact these species but would not jeopardize their continued existence (EA, Page 4-82 and Appendix C).

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 Project will 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 EA, state, local, and Tribal interests were given the opportunity to participate in the environmental analysis process. The Project is consistent with applicable plans, policies, and programs (EA, Page 6-1).



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