



United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
Washington, D.C. 20240



MEMORANDUM

To: Casey Hammond
Principal Deputy Assistant Secretary,
Land and Minerals Management

From: Lanny E. Erdos
Principal Deputy Director,
Office of Surface Mining Reclamation and Enforcement

Subject: Recommendation regarding the previously approved mining plan modification for Federal Lease MTM-97988 at Signal Peak Energy, LLC.'s Bull Mountains Mine No.1, located in Musselshell and Yellowstone Counties, Montana

The U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement (OSMRE), Western Region Office, has prepared an Environmental Assessment (EA) and issued a Finding of No Significant Impact (FONSI) for Signal Peak Energy, LLC's Bull Mountains Mine No. 1, Amendment 3 mining plan modification for Federal coal lease MTM 97988.

Signal Peak Energy, LLC (SPE) owns and operates the Bull Mountains Mine No.1 underground coal mine (Mine), located in the Bull Mountains of southcentral Montana (see attached figure). The Mine is located in Musselshell and Yellowstone counties between the Musselshell and Yellowstone rivers, approximately 30 miles north of Billings, Montana, and 20 miles southeast of Roundup, Montana.

This is the third EA that OSMRE has prepared for the Mine's Amendment 3 area. OSMRE first prepared an EA and FONSI and the Assistant Secretary, Land and Minerals Management (ASLM) approved a mining plan modification in 2015. Environmental groups challenged the 2015 EA, and that EA, along with the mining plan modification, was vacated by the U.S. District Court for the District of Montana in 2017. *Mont. Env'tl. Infor. Ctr. v. U.S. Office of Surface Mining Reclamation and Enf't*, 274 F. Supp. 3d 1074 (D. Mont. 2017). OSMRE prepared another EA in 2018 to address the 2017 ruling by the Court and to satisfy OSMRE's responsibilities under the National Environmental Policy Act of 1969 (NEPA). Based on the 2018 EA, OSMRE signed a FONSI on May 21, 2018, and the ASLM again approved the mining plan modification on August 3, 2018. On March 9, 2020, the Court identified a deficiency in OSMRE's 2018 EA, vacated and set aside the 2018 EA, and remanded the matter back to OSMRE for further action (see *350 Mont. v. Bernhardt*, No. 9:19-cv-00012-DWM, 2020 WL 1139674 (D. Mont. Mar. 9, 2020)). The 2020 opinion and order by the Court did not vacate the 2018 ASLM approval of the mining plan modification. In response, OSMRE prepared a new EA in 2020 to address the deficiency identified in the most recent Court ruling¹ and satisfy

¹ On May 8, 2020, the environmental groups filed a notice of appeal with the Ninth Circuit, *350 Montana v. Bernhardt*, No. 20-35410. This appeal is pending.

OSMRE's responsibilities under NEPA (see attached chronology for additional detail). OSMRE released the EA for a 30-day public comment period on June 26, 2020. OSMRE received 21 comment letters on the EA and has prepared responses in Appendix I of the EA.

OSMRE has evaluated the information presented within the 2020 EA and the comments submitted. OSMRE has determined, in accordance with 43 C.F.R. § 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 C.F.R. § Part 944 and the standard permit terms, conditions, and specifications of the Permit Application Package approved by the Montana Department of Environmental Quality, which is the agency primarily responsible for issuing, administering, and enforcing mining permits under the Surface Mining Control and Reclamation Act of 1977. The 2020 EA in conjunction with the 2018 EA adequately discusses the potential environmental effects of the Proposed Action and provides sufficient evidence and analysis for this FONSI. OSMRE signed the FONSI on October 15, 2020.

ASLM approved the 2018 Mining Plan modification based on the 2018 EA and FONSI. There have been no changes in the MPDD since that time, except for the updated EA to address the court order. After reviewing the information contained in the new EA, OSMRE maintains its recommendation for the prior approval of the mining plan modification, and, in turn, is requesting ASLM concurrence reaffirming its prior 2018 approval of the mining plan modification for Federal Lease MTM-97988 at Signal Peak Energy, LLC.'s Bull Mountains Mine No.1 Amendment 3 under the Mineral Leasing Act of 1920, as amended.

The 2018 ASLM authorization expands the approved mining plan area into the following Federal coal lands:

Federal Lease MTM-97988

TOWNSHIP 6 NORTH, RANGE 27 EAST, PMM
SECTION 4 - LOT 1, S1/2, SE1/4 NW1/4, S1/2 NE1/4
SECTION 8 - S1/2, S1/2 NW1/4, NE1/4 NW1/4, NE1/4
SECTION 10 - S1/2, NW1/4, S1/2 NE1/4, NW1/4 NE1/4
SECTION 14 - S1/2, NW1/4, SW1/4 NE1/4
SECTION 22 - S1/2, NW1/4

WHICH IS ALSO LOCATED WITHIN THE FOLLOWING DESCRIBED PERIMETER:
BEGINNING AT A POINT ON THE NORTHEASTERN PERMIT BOUNDARY OF
BULL MOUNTAINS MINE NO. 1, AMENDMENT 02, (MINING PERMIT C1993017)
WHICH IS 1313.41' SOUTHEASTERLY OF THE NORTHEAST CORNER OF SAID
PERMIT BOUNDARY; THENCE N56°13'54"E A DISTANCE OF 11,134.04'; THENCE
S33°46'06"E A DISTANCE OF 19,698.00'; THENCE S56°13'54"W A DISTANCE OF
11,134.04' TO A POINT ON SAID NORTHEASTERN PERMIT BOUNDARY; THENCE
N33°46'06"W, ALONG SAID NORTHEASTERN PERMIT BOUNDARY, A DISTANCE
OF 19,698.00' TO THE POINT OF BEGINNING.

These lands encompass approximately 1,725 federal coal acres.

My recommendation requesting the ASLM reaffirm the approval of the Bull Mountains Mine No. 1 mining plan modification is based on:

- (1) Signal Peak Energy, LLC.'s complete permit application package (PAP) including the Resource Recovery and Protection Plan (R2P2);
- (2) Compliance with the National Environmental Policy Act of 1969;
- (3) Documentation assuring compliance with applicable requirements of other Federal laws, regulations, and executive orders;
- (4) Comments and recommendations or concurrence of other Federal agencies, and the public;
- (5) The Bureau of Land Management's findings and recommendations regarding the R2P2, the Federal lease requirements, and the Mineral Leasing Act; and,
- (6) Findings and recommendations of the Montana Department of Environmental Quality Industrial and Energy Minerals Bureau Coal Program regarding the PAP and the State program.
- (7) Inclusion of one special condition requiring avoidance of unevaluated sites 24ML667, 24ML940, 24ML942 and 24ML949 from disturbance activities.

The Secretary may approve a mining plan for Federal leases under 30 U.S.C. §§ 207(c) and 1273(c). In accordance with 30 C.F.R. Chapter VII, Subchapter D, I find that the 2018 mining plan modification remains in compliance with all applicable laws and regulations and recommend reaffirming the mining plan modification.

If you concur with this recommendation, please sign below to reaffirm the 2018 Bull Mountains Mine No. 1 mining plan modification.

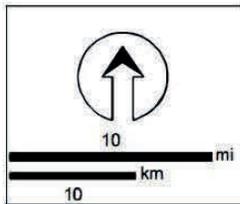
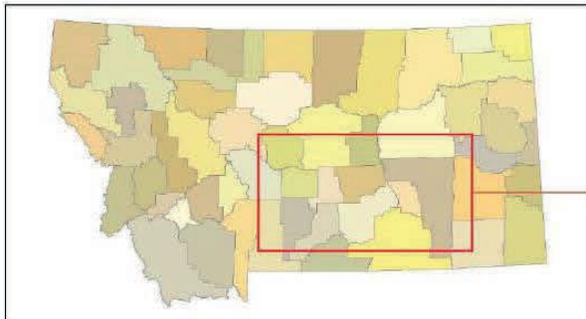
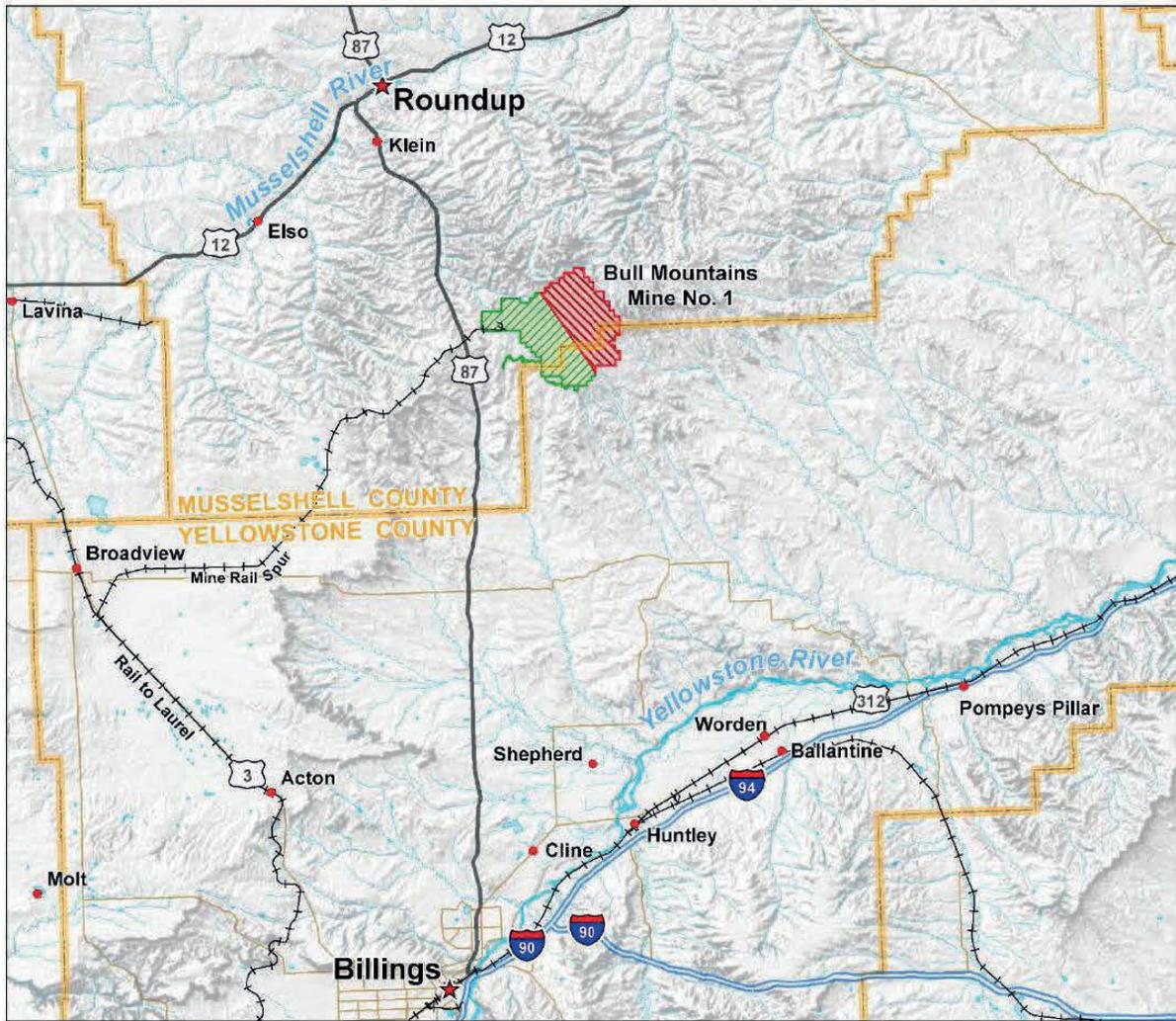
CASEY
HAMMOND

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CASEY HAMMOND
Date: 2020.11.18
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Casey Hammond
Principal Deputy Assistant Secretary,
Land and Minerals Management

Date

Enclosure



- ★ County Seats (Administrative Center)
- Other Cities & Towns
- Bull Mountains Mine No. 1**
- Amendment 2 (AM2) Mining Area
- Amendment 3 (AM3) Mining Area

**Bull Mountains Mine No. 1
Federal Mining Plan
Modification EA**

Last Updated: 29 JAN 2018

**Figure 10-1
Project Location**

CHRONOLOGY

Bull Mountains Mine No. 1
Federal Lease MTM-97988
Mining Plan Decision Document

<u>DATE</u>	<u>EVENT</u>
September 21, 2012	The BLM provided its findings and recommendations on the Bull Mountains Mine No. 1 resource recovery and protection plan (R2P2) for Federal Lease MTM-97988.
October 5, 2012	Signal Peak Energy, LLC. (SPE) submitted the permit application package (PAP) under the approved Montana State Program to the Montana Department of Environmental Quality Industrial and Energy Minerals Bureau Coal Program (MDEQ) for permit revision Amendment 3 regarding the Bull Mountains Mine No. 1.
December 14, 2012	MDEQ notifies the Office of Surface Mining Reclamation and Enforcement (OSMRE) that the PAP was determined to be administratively complete for public review and comment.
January 23, 2013	SPE published in the <i>Roundup Record Tribune & the Billings Gazette</i> the fourth consecutive weekly notice that the administratively complete Amendment 3 PAP was filed with MDEQ.
October 18, 2013	MDEQ approved the PAP for Amendment 3.
February 24, 2015	The Assistant Secretary, Land and Minerals Management, approved the mining plan modification for Amendment 3.
August 14, 2017	On August 14, 2017, the U.S. District Court of for the District of Montana vacated the ASLM mining plan decision and the environmental assessment (EA) prepared by OSMRE in support of the 2015 Amendment 3 mining plan modification and remanded the matter to OSMRE to take further action consistent with the order (<i>Montana Environmental Information Center v. U.S. Office of Surface Mining</i> , 9:15-cv-00106-DWM).
October 20, 2017	OSMRE published a notice of intent to prepare an environmental assessment (EA) for the Bull Mountains Mine No.1 mining plan modification on their website and requested comments for 30 days.
October 20, 2017	OSMRE requested continued consultation with Tribes for the proposal development and implementation stages of the final federal action.

<u>DATE</u>	<u>EVENT</u>
November 11, 2017	OSMRE requested concurrence from the Montana State Historic Preservation Officer (SHPO) on findings of no effect to historic properties.
November 14, 2017	OSMRE requested an official Threatened & Endangered Species List from the USFWS.
December 15, 2017	OSMRE documents Determinations of Effect to Threatened and Endangered Species.
February 22, 2018	The Montana SHPO concurred with OSMRE's findings of no effect to historic properties.
March 13, 2018	OSMRE published a notice of availability in the <i>Roundup Record Tribune and the Billings Gazette</i> and OSMRE's website for the <i>Bull Mountains Mine No. 1 Federal Mining Plan Modification EA</i> and unsigned Finding of No Significant Impact (FONSI) requesting comment for 30 days.
April 12, 2018	OSMRE confirms BLM R2P2 findings for Federal Lease MTM-97988.
April 20, 2018	OSMRE re-confirms official Threatened & Endangered Species List from the USFWS.
May 21, 2018	Program Support Division Manager, OSMRE, signed the FONSI.
May 22, 2018	Regional Director, OSMRE, recommended to the Director, OSMRE, that the mining plan modification be approved.
July 26, 2018	The Director, OSMRE, recommended to the Assistant Secretary, Land and Minerals Management, that the mining plan modification be approved.
August 3, 2018	The mining plan modification is approved by the Assistant Secretary, Land and Minerals Management.
December 5, 2018	Western Environmental Law Center 60-Day Notice of Intent to Sue DOI (OSMRE and USFWS).
March 9, 2020	U.S. District Court for the District of Montana (Case 9:19-cv-00012-DWM) vacated the 2018 OSMRE EA.
May 8, 2020	Western Environmental Law Center appeals the U.S. District Court for the District of Montana decision.
June 26, 2020	EA public comment period from June 26, 2020 to July 27, 2020.

DATE

EVENT

October 15, 2020

EA finalized and FONSI signed.

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Principal Deputy Assistant Secretary, Land and Minerals Management, reaffirms the approval of the Bull Mountains Mine No. 1 mining plan modification.