

RECORD OF DECISION

Federal Coal Lease Modifications COC-1362 & COC-67232

Gunnison County, Colorado

Office of Surface Mining Reclamation and Enforcement

March 2019

1.0 Introduction

The Office of Surface Mining Reclamation and Enforcement (OSMRE) participated as a cooperating agency on the U.S. Forest Service (USFS) Supplemental Final Environmental Impact Statement (SFEIS) for Federal Coal Lease Modifications COC-1362 and COC-67232 (including on-lease exploration plan) at the West Elk Mine located in Gunnison County, CO. The Bureau of Land Management (BLM) also participated as a cooperating agency. The West Elk Mine is owned and operated by Ark Land LLC (Ark) and Mountain Coal Company (MCC). OSMRE has reviewed the mine plan included in Permit Revision 15 (PR 15) submitted to Colorado Division of Reclamation, Mining and Safety (CDRMS), and has concluded that the action is substantially similar to that analyzed in the SFEIS, all comments submitted by OSMRE on the SFEIS were addressed, and the environmental analysis completed in the SFEIS is adequate. OSMRE therefore adopts the SFEIS and has prepared this Record of Decision (ROD).

2.0 Background

2.1 U.S. Forest Service and Bureau of Land Management

A SFEIS for Federal Coal Lease Modifications COC-1362 & COC-67232 (including on-lease exploration plan) was prepared by Grand Mesa, Uncompahgre and Gunnison National Forests (GMUG) by USFS in August, 2017 and was adopted by the BLM in December, 2017. OSMRE and CDRMS participated as cooperating agencies.

The SFEIS supplements the Final EIS for coal lease modifications and incorporates and updates analyses from the BLM Environmental Assessment (EA) for the consideration of on-lease exploration. The EIS and EA were prepared in 2012 and 2013 respectively. In *High Country Conservation Advocates v. United States Forest Service*, 52 F. Supp. 3d 1174 (D. Colo. 2014) the United States District Court for the District of Colorado determined that portions of the environmental analyses were inadequate. The court vacated and enjoined the agency decisions, as well as the exception for temporary road building in the North Fork Coal Mining Area (NFCMA) under the Colorado Roadless Rule (CRR). *High Country Conservation Advocates v. United States Forest Service*, 67 F. Supp. 3d 1262 (D. Colo. 2014). The USFS prepared the SFEIS to address Court-identified deficiencies and to incorporate new information and policies since 2012. The SFEIS incorporates analysis and disclosure of proposed on-lease exploration and analyzes and discloses the impacts of modifying Federal coal leases COC-1362 and COC-67232 in response to applications received by the BLM Colorado State Office.

On February 04, 2015, USFS received a request from BLM to resume analysis of proposed modifications and stipulations to lease COC-1362 containing about 800 acres, and lease COC-67232, containing about 920 acres. Coal in these leases is mined at the West Elk Mine near Somerset, Colorado. Lease COC-67232 is held by Ark, and lease COC-1362 is held by MCC. The applications were made to ensure that compliant and super-compliant coal reserves are recovered and not bypassed. The BLM processed the lease modification applications pursuant to 43 CFR 3432.

The coal lease modification areas lie in portions of sections 10, 11, 14, 15, 22 and 23 of Township 14S., Range 90W., 6th Prime Meridian in Gunnison County, Colorado. The modification areas are within National Forest System (NFS) lands managed by the GMUG. The coal estate is administered by the BLM.

The BLM is required by law to consider leasing federally-owned minerals for economic recovery. With respect to NFS lands, USFS considers whether or not to consent to the BLM leasing coal reserves underlying NFS lands and prescribes stipulations for the protection of non-mineral surface resources.

Within the lease modification areas, the coal would be accessed and recovered by underground longwall mining methods from the existing West Elk Mine. The coal would be transported using the existing coal transportation system and surface facilities. At the leasing (or modification) stage, the Federal agencies evaluate the effects of mining on non-mineral (surface) resources. This evaluation includes direct impacts resulting from expected subsidence (i.e. the elevation of the land surface over mined areas would be slightly reduced as a result of mining), and other foreseeable impacts to surface resources from mining related activities. Under a foreseeable mine plan scenario, surface impacts within these modification areas would include those from constructing methane drainage wells (MDWs) and associated access routes required to safely mine the coal resources. Consistent with PR 15 submitted to CDRMS, OSMRE will refer to MDWs as mine ventilation boreholes (MVBs) throughout the ROD when necessary. The use of MDWs is applied if the text is directly from the SFEIS.

On July 3, 2012, the CRR was promulgated and codified at 36 CFR Part 294. The CRR is now the controlling law and the 2001 Roadless Area Conservation Rule (RACR) no longer applies in Colorado. The State of Colorado and USFS developed the CRR in partnership to create a balance between conserving roadless area characteristics for future generations and allowing limited management activities within roadless areas. The CRR includes an exemption for temporary road construction within an area on the GMUG defined as the NFCMA. This exemption was crafted to allow temporary roads needed for coal mining activities. These temporary roads would not have been allowed under the RACR, and the project proponent has said that absent these roads, coal mining would not occur. The portions of lease modification areas within the Sunset Colorado Roadless Area (CRA) are located within the NFCMA and are subject to the exemption for temporary road construction. In 2014, the U.S. District Court for the District of Colorado severed and vacated the NFCMA exception from the CRR. *High Country Conservation Advocates v. United States Forest Service*, 67 F. Supp. 3d 1262 (D. Colo. 2014). Following this, a Supplemental EIS was prepared, and rulemaking “Roadless Area Conservation; NFS Lands in Colorado” was published in the *Federal Register* (81 FR 91811) on December 19, 2016. This rule reinstated the NFCMA exemption to the CRR and was effective April 17, 2017. About 915 of the approximately 920 acres of the proposed modification to Federal coal lease COC-67232, and about 786 of the approximately 800 acres of the proposed modification to Federal coal lease COC-1362 are within the Sunset CRA. Temporary roads

and tree cutting, as allowed by the CRR, will likely be used to construct, operate, and maintain MVBs necessary for safety and incidental to underground mining. .

The NFCMA exemption was developed in the CRR (36 CFR Part 294). In compliance with these requirements, all coal leases containing NFS lands and respective subsequent lease modifications contain standard lease notice language in accordance with USFS Manual (FSM) 2820 (SFEIS, Table 2-1); “The permittee/lessee must comply with all the rules and regulations of the Secretary of Agriculture set forth at Title 36, Chapter II, of the Code of Federal Regulations governing the use and management of the NFS when not inconsistent with the rights granted by the Secretary of Interior in the permit.” Lease stipulations have also been included that are specifically from the CRR (SFEIS, Table 2-1).

On December 11, 2017, the USFS Supervisor signed the ROD that gave consent to the BLM to modify coal leases underlying NFS land and prescribed stipulations to protect non-mineral surface resources. The USFS issued its Consent Decision on December 11, 2017 following resolution of an administrative appeal of the USFS SFEIS and ROD. The BLM adopted the USFS SFEIS and issued its ROD on December 15, 2017.

On December 15, 2017, groups again challenged the USFS and the Department of the Interior decisions authorizing the lease modifications, exploration plan and the Department of Agriculture’s (USDA) final decision reinstating the CRR North Fork Valley coal mining exemption. On August 10, 2018, the court issued an order affirming the agencies’ decisions. *High Country Conservation Advocates et al. v. U.S. Forest Service et al.*, Case No. 17-cv-3025-PAB (Dist. Colo.) The court determined that the agencies gave adequate explanations for dismissing an alternative that protected Pilot Knob and an alternative that required methane flaring. Additionally, the court held that the USDA included adequate baseline data in its CRR NEPA analyses (including the previous CRR EIS which the USDA incorporated by reference). The court determined that the agencies appropriately considered the social cost of carbon which was used in the CRR rulemaking NEPA analysis and included the coal within the lease modifications. Additionally, the court did not agree with the plaintiffs’ argument that the SCC analysis in the CRR NEPA was outdated. An appeal of the decision is pending. *High Country Conservation Advocates et al. v. U.S. Forest Service et al.*, Appellate Case: 18-1374 (10th Cir.)

2.2 Colorado Division of Reclamation, Mining and Safety

CDRMS is the regulatory authority (RA) for coal mines in Colorado that occur on state and private lands. As provided for under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), in 1980, OSMRE approved the State of Colorado’s coal Regulatory Program, authorized to issue permits to conduct coal mining and reclamation operations in Colorado. CDRMS manages its coal Regulatory Program under SMCRA and the Colorado Surface Coal Mining Control Act of 1976. CDRMS has the authority and responsibility to:

- Make decisions to approve SMCRA mining permits

- Consult with Federal land management agencies to determine if permit revisions will adversely affect Federal resources and are consistent with that agency's land use plans, Federal laws, regulations and executive orders (EOs) for which it is responsible, and
- Regulate coal mining under regulations of the Colorado Mined Land Reclamation Board for Coal Mining.

Coal leaseholders in Colorado must submit a Permit Application Package (PAP), or permit revision application, to CDRMS for proposed mining and reclamation operations. If the PAP includes Federal lands, the CDRMS must notify OSMRE that the PAP is administratively complete and ready for OSMRE's review. CDRMS determined the PAP was administratively complete on April 5, 2018. CDRMS reviews the PAP to ensure that the application complies with the permitting requirements and that the coal mining operation would meet Colorado's performance standards. CDRMS is required to work with the coal company until the permit or permit revision can be approved unless prohibited by law.

2.3 Office of Surface Mining Reclamation and Enforcement

The Field Operations Branch of OSMRE's Western Region is responsible for the Federal Lands Program and the preparation of mining plan decision documents for review by the Assistant Secretary for Land and Minerals Management (ASLM). When the RA informs OSMRE of a permit application or revision occurring for leased Federal coal and/or Federal surface, OSMRE reviews the PAP to ensure it contains the necessary information to comply with the coal lease, the Mineral Leasing Act of 1920 (MLA), the National Environmental Policy Act (NEPA), and other applicable Federal laws and their attendant regulations. The ASLM must approve mining and reclamation plans on lands containing leased Federal coal. Operations cannot commence until this approval is granted. Pursuant to 30 CFR Part 746, OSMRE must determine if the permit revision requires a mining plan modification. If it does, OSMRE prepares a mining plan decision document (MPDD) for review by the ASLM. On May 30, 2018, OSMRE determined that the mine plan included in PR 15 required a mining plan modification. . 30 CFR § 740.4(b) and 746.13 require the OSMRE to provide a MLA MPDD recommendation for Secretarial approval. If a MPDD is deemed necessary, pursuant to 30 CFR 746, OSMRE must:

- For new mining plans, or for existing approved mining plans that are proposed to be modified, prepare and submit to the ASLM a MPDD recommending approval, disapproval, or approval with condition(s) of the proposed mining plan. OSMRE's recommendation is based, at a minimum, upon:
 1. The PAP
 2. Information prepared in compliance with the NEPA
 3. Documentation assuring compliance with the applicable requirements of Federal laws, regulations, and EOs other than the NEPA
 4. Comments and recommendations or concurrence of other Federal agencies and the public

5. Findings and recommendations of the BLM with respect to the Resource Recovery and Protection Plan (R2P2), Federal lease requirements, and the MLA
6. Findings and recommendations of the CDRMS with respect to the mine permit application and the Colorado State Program; and
7. The findings and recommendations of the OSMRE with respect to the additional requirements of 30 CFR Chapter VII, Subchapter D.

To assist with assuring compliance with other Federal laws, regulations, and EOs, the OSMRE also reviews, at a minimum, the following documents to make its recommendation to the ASLM:

- Information/correspondence concerning the U.S. Fish and Wildlife Service (USFWS) Section 7 consultation for threatened and endangered (T&E) species potentially affected by the proposed mining plan under the Endangered Species Act of 1973 (ESA); and
- National Historic Preservation Act of 1966 (NHPA) Section 106 consultation for the affected area.

The ASLM must review the MPDD and decide whether to approve the mining plan, and if approved, what, if any, conditions may be needed.

3.0 Purpose and Need

The purpose of the Proposed Action is established by the MLA, as amended, which requires the evaluation of MCC's proposed Mining Plan Modification for PR-15 to continue underground mining and reclamation operations to develop Federal coal lands included in Federal Coal Leases COC-1362 and COC-67232. The OSMRE is the agency responsible for making a recommendation to the ASLM to approve, disapprove, or approve with conditions the proposed Mining Plan Modification under 30 CFR. The ASLM will decide whether the Mining Plan Modification is approved, disapproved, or approved with conditions.

The purpose of this action is to evaluate the environmental effects of coal mining on the proposed portions of Federal Coal Leases COC-1362 and COC-67232 within the West Elk Mine, which will assist the OSMRE in developing a recommendation to the ASLM whether to approve, disapprove, or approve with conditions the Federal Mining Plan Modification. ASLM approval of the Federal Mining Plan Modification is necessary to mine the reserves.

The need for this action is to provide MCC the opportunity to mine the Federal coal obtained under Federal Coal Leases COC-1362 and COC-67232 (issued by the BLM in 2017) located at the West Elk Mine.

4.0 Decision

It is OSMRE's decision to adopt the USFS GMUG "Federal Coal Lease Modifications COC-1362 & COC-67232 (including on-lease exploration plan)" SFEIS (2017), as allowed under 40 CFR §

1506.3. Consistent with the USFS decision, OSMRE is selecting Alternative 3, as described in the SFEIS (Section 2.2.3), based on the agencies' consideration of: the purpose and need for the action; the issues; current policies and regulations; the analysis of alternatives contained in the SFEIS; public comments received and other information in the project record.

Alternative 3 as analyzed in the SFEIS would modify existing Federal coal leases COC-1362 and COC- 67232 by adding 800 and 920 additional acres (respectively). Under Alternative 3, the E seam would be mined containing approximately 26.3 million tons of recoverable coal. The leases would be mined using underground longwall mining techniques producing approximately 6.5 million tons per year and continuing mining operations by approximately 3 years (Federal and private reserves). OSMRE received updated information regarding the anticipated site locations and surface disturbance acreage associated with PR-15 submitted to CDRMS. Under Alternative 3, 73.5 acres of surface disturbance would occur on both Federal and private lands for the construction of MVBs and temporary roads.

OSMRE's decision to adopt the SFEIS and select Alternative 3 was made after carefully considering the contents of the SFEIS, public comments, agency response to comments, and the supporting project file. The SFEIS meets the standards for an adequate EIS under the Council of Environmental Quality (CEQ) regulations. OSMRE has independently evaluated the SFEIS and has determined that the USFS satisfactorily addressed OSMRE's concerns, comments, and suggestions as a Cooperating Agency during the NEPA process.

Other environmental documents (SFEIS, Section 1.11) prepared for activities in the immediate vicinity were also consulted. OSMRE has considered the court's orders in *High Country Conservation Advocates v. United States Forest Service*, 67 F. Supp. 3d 1262 (D. Colo. 2014) and *High Country Conservation Advocates et al. v. U.S. Forest Service et al.*, Case No. 17-cv-3025-PAB (D. Colo.), and the resultant revised and additional analysis and clarifications in the SFEIS, with particular attention to greenhouse gas (GHG) emissions, social cost of carbon (SCC), socioeconomics, and recreation.

OSMRE's decision will be implemented through issuance of this ROD and my recommendation to approve the mining plan. The Operator cannot begin mining until they receive approval from the ASLM.

4.1 Selected Alternative Compliance with Federal Laws and Executive Orders

4.1.1 National Environmental Policy Act

NEPA declares a national environmental policy and promotes consideration of environmental concerns by Federal agencies in decision making. Procedures and regulations issued by the CEQ, as authorized under NEPA, direct implementation of NEPA by Federal agencies. CEQ regulations are promulgated at 40 CFR 1500–1508, and the Department of the Interior's (DOI)'s NEPA regulations are promulgated at 43 CFR 46 and in Department Manual 516. The OSMRE NEPA Handbook (OSMRE 1989) and the BLM NEPA Handbook (BLM 2008) also provide guidance and were considered in the preparation of the EIS.

All documentation in the project record in support of, and including the SFEIS and ROD have been developed to comply with this Act, CEQ regulations at 40 CFR 1500, OSMRE policies, the OSMRE Handbook, and any requirements that evolved through the practice of NEPA, and from case law.

Finding

OSMRE finds that the decision to select Alternative 3 complies with the procedural and analytical requirements of NEPA.

4.1.2 SMCRA/State-Federal Cooperative Agreement/Mineral Leasing Act

OSMRE is a bureau within DOI charged with administration of SMCRA. SMCRA establishes a program of cooperative federalism that allows the states to enact and administer their own regulatory programs within limits established by Federal minimum standards and with prescribed oversight enforcement authority by OSMRE (30 CFR 1253). CDRMS operates an approved state program under SMCRA and therefore has primary jurisdiction over the regulation of surface coal-mining and reclamation operations on non-Federal and non-Indian lands within the state. See 45 CFR 21560; 30 CFR 906.10, 906.15, and 906.30. Under Section 1273(c) of SMCRA, a state with a permanent regulatory program approved by the DOI Secretary, such as CDRMS, can elect to enter into a cooperative agreement for state regulation of surface coal-mining and reclamation operations on Federal lands within the state. OSMRE granted CDRMS this authority, and CDRMS regulates permitting and operation of surface coal mines on Federal lands within Colorado under the authority of Colorado Surface Coal Mining Control Act of 1976.

The State-Federal Cooperative Agreement (Agreement) between CDRMS and OSMRE (codified in 30 CFR 906.30) outlines the decision process for a coal mine in Colorado. Under the Agreement, CDRMS reviews an operator's (in this case, Ark and MCC's) PAP to ensure the permit application complies with the permitting requirements and that the coal-mining operation would meet the performance standards of the approved Colorado program as outlined in Colorado Surface Coal Mining Control Act of 1976. OSMRE, BLM, and other Federal agencies such as the USFWS review the PAP to ensure it complies with the terms of the coal lease(s), MLA, NEPA, and other Federal laws and regulations. CDRMS makes a decision to approve or deny the permit application component of the PAP in accordance with Colorado Surface Coal Mining Control Act of 1976. OSMRE, in accordance with 30 CFR 746.1 through 746.18, reviews CDRMS's permit and recommends approval, disapproval, or conditional approval of the mining plan to the DOI ASLM.

Once the RA informs OSMRE of a permit revision occurring for leased Federal coal and/or Federal surface, OSMRE reviews the PAP to ensure it contains the necessary information to comply with the coal lease, the MLA, the NEPA and other applicable Federal laws and their attendant regulations. Then, in consultation with the BLM, OSMRE must determine if the action requires the preparation of a MPDD. While OSMRE is prohibited from implementing any function of the MLA, 30 CFR § 740.4(b) and 746.13 require the OSMRE to provide a recommendation for Secretarial approval. If a MPDD is deemed necessary, pursuant to 30 CFR 746, OSMRE must prepare and submit to the ASLM a MPDD recommending approval, disapproval, or approval with condition(s) of the proposed mining plan.

Finding

OSMRE finds that the decision to select Alternative 3 is consistent with SMCRA, the State-Federal Cooperative Agreement, and the MLA.

4.1.3 Endangered Species Act

The USFS prepared a Biological Assessment (BA) for this decision considering all known endangered or threatened species in the area. Due to “may affect, not likely to adversely affect” determinations for Canada Lynx and water depletions related to the four endangered Colorado River fish, informal consultation with the USFWS was completed on June 16, 2010 (ES/CO: FS/GMUG/Paonia RD; Tails 65413-2010-F-0109) USFWS had concurred with USFS findings. OSMRE received concurrence from USFWS based on USFS previous consultation on August 8, 2018.

Finding

OSMRE finds that the decision to select Alternative 3 is consistent with the Endangered Species Act. OSMRE completed the Section 7 consultation process under the Endangered Species Act and found no new threatened and endangered species and no new circumstances requiring reinitiating or new consultation. OSMRE received concurrence from the Fish and Wildlife Service on August 8, 2018 that the previous determinations for Canada Lynx and four Colorado River fish made in consultation with USFS remain in effect.

4.1.4 Clean Air Act

This Clean Air Act (CAA) required States to develop plans to implement, maintain, and enforce primary and secondary ambient air quality standards for any criteria air pollutants, and called Federal agencies to prevent deterioration of air quality. The agencies analyze the effects on air quality as a result of this project which showed that this project will have negligible effects on air quality. Further, MCC is required to hold and maintain state air quality permits for their activities under the CAA. MCC currently holds a valid permit from the Colorado Division of Public Health and Environment (CDPHE) for construction air emissions. However, there is no new construction or additional mining capacity required to process the lease modification coal under Alternative 3 (SFEIS page 111 and Appendix F).

Finding

OSMRE finds that the decision to select Alternative 3 is consistent with the Clean Air Act.

4.1.5 Clean Water Act

This Act requires State and Federal agencies to control and abate water pollution. This project was designed to comply with this Act through USFS and the BLM stipulations (Appendix B and SFEIS Table 2-1 through the inclusion of stipulations for surface and ground water, water depletions, baseline data, and monitoring and compliance with all state and local laws).

Finding

OSMRE finds that the decision to select Alternative 3 is consistent with the Clean Water Act.

4.1.6 National Historic Preservation Act

Section 106 of the NHPA and its implementing regulations under 36 CFR 800 require all Federal agencies to consider effects of Federal actions on cultural resources eligible for or listed in the National Register of Historic Places. Traditional cultural properties are also protected under Section 106 of the NHPA.

To date, three cultural resource inventories have occurred within the project area and no heritage resources were located. Therefore the lease modifications are found to have no potential to affect cultural resources, as defined in regulations 36 CFR 800. The addition of the standard lease clause will protect currently undiscovered sites (SFEIS Section 3.31 and Project File). Site specific resource surveys have been completed for exploration disturbance, and must be conducted prior to any post-lease ground disturbing activities in coordination with USFS (Appendix B, SFEIS Table 2-1). OSMRE received concurrence from the State Historic Preservation Office (SHPO) on October 10, 2018.

Finding

OSMRE finds that the decision to select Alternative 3 is consistent with the National Historic Preservation Act.

4.1.7 Executive Order 13175 – Government-to-Government Consultation with Tribes

EO 13175 requires Federal agencies to consult with American Indian tribal representatives and traditionalists on a government-to-government basis. The following affected tribes were contacted during the scoping period that occurred prior to the initiation of the preparation of the DEIS and again when the USFS engaged in a rulemaking that reinstated the NFCMA exception to the CRR: Ute Mountain Utes, Southern Utes, and (Northern) Utes. The Tribes provided no formal comments and did not request any meetings. OSMRE has sent notification letters to Tribes of the Notice to Adopt the SFEIS.

Finding

OSMRE finds that the decision to select Alternative 3 was made in consideration of and consistent with EO 13175.

4.1.8 Executive Order 12898 Environmental Justice

EO 12898 requires Federal agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects on minority and low-income populations when implementing their respective programs, including American Indian programs. OSMRE's analysis of environmental justice follows the CEQ's guidance on environmental justice and the EPA's guidance on environmental justice. The population around the project area was reviewed (SFEIS Section 3.21.1.1) and for this project, no disproportionately high adverse impacts are expected.

Finding

OSMRE finds that the decision to select Alternative 3 was made in consideration of and consistent with EO 12898.

4.1.9 Executive Orders 11990 and 11988

The management of wetlands and floodplains are subject to EOs 11990 and 11988, respectively. The purpose of the EOs are to avoid to the extent possible the long and short-term adverse impacts associated with the destruction or modification of wetlands and floodplains and to avoid direct or indirect effects of new construction in wetlands wherever there is a practical alternative. This order requires the OSMRE to take action to minimize destruction, loss, or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands. The project was designed to avoid impacts to wetlands and floodplains through the addition of USFS and the BLM lease stipulations therefore no additional mitigation measures or conditions of approval would be necessary from OSMRE. Permits currently held by MCC, including NPDES, Spill Prevention, Control, and Countermeasure, and CWA section 404 remain valid until renewal is necessary. MCC would complete a pre-construction site visit and survey with the USFS and then implement avoidance measures in order to comply with the USFS lease stipulations for protection of wetlands.

Finding

OSMRE finds that the decision to select Alternative 3 was made in consideration of and consistent with EO 11990 and 11988.

4.1.10 Executive Order 13045

Direction regarding protection of children is recognized in “Protection of Children from Environmental Health Risks and Safety Risks”, April 21, 1997. Children are seldom present at coal mining facilities. On such occasions, the coal mining companies have taken and will continue to take precautions for the safety of children by using a number of means, including fencing, limitations on access to certain areas, and provision of adult supervision (SFEIS, Section 3.21.1.2).

Finding

OSMRE finds that the decision to select Alternative 3 was made in consideration of and consistent with EO 13045.

4.1.11 Executive Order 13783

EO 13783 provides direction regarding promoting energy independence and economic growth. This Order disbanded the Interagency Working Group (IWG) on the Social Cost of Carbon and its technical supporting documents for the SCC analysis. This order rescinded the 2013 President’s Climate Action Plan, the 2014 Climate Action Plan Strategy to Reduce Methane Emissions, and the CEQ’s Final Guidance on Consideration of GHG’s and the Effects of Climate Change in NEPA Reviews.

Finding

OSMRE finds that the decision to select Alternative 3 was made in consideration of and consistent with EO 13783. OSMRE’s decision does not rely on the SCC protocol and technical documents nor

any of the rescinded reports and is therefore consistent with EO 13783. Additional rationale regarding this topic is provided in Section 4.4.1 of this Decision.

4.2 Other Alternatives Considered and Environmentally Preferred Alternative

4.2.1 Alternative 1- No Action Alternative (Environmentally Preferred Alternative)

OSMRE did not select Alternative 1, No Action, because it is only incrementally different from the selected alternative in environmental effects, and does not meet OSMRE's purpose and need as well as the selected alternative. The need for this action is to provide the MCC the opportunity to mine the Federal coal obtained under Federal Coal Lease COC-1362 and COC-67232 which would not be met with this Alternative.

This Alternative was identified as the environmentally preferable Alternative. Under this alternative currently permitted temporary road and pad construction and use would continue for about ten years under this alternative. Most of these uses are and would continue to be in the Sunset Roadless Area. Alternative 3, the selected alternative, would likely add less than 3 years to this progression and add approximately 73.5 acres of additional temporary disturbance to the preexisting surface disturbance already constructed, used, and reclaimed concurrent with other valid uses of NFS lands in the area.

Under PR 15, the revised tonnage would be approximately 57.7 million tons of recoverable coal from the B and E seams. The B seam recoverable reserves would equal 31.4 million tons and the E seam recoverable reserves would equal 26.3 million tons. The B seam is not part of the proposed lease modifications and therefore not part of OSMRE's recommendation and not ripe for the decision maker as it would be mined under previous approvals.

4.2.2 Alternative 2

Alternative 2 was considered but eliminated from further study in the SFEIS. Alternative 2 was eliminated from further study because it followed the provisions of the 2001 CRR which prohibited construction of roads in the lease areas. USFS determined that without the ability to construct temporary roads to access the lease modification areas there would be impacts to worker safety. In addition to worker safety impacts, Alternative 2 was eliminated from further study because the 2001 CRR is no longer in effect and was replaced with 2012 CRR. Section 2.3.1 of the SFEIS provides details as to why Alternative 2 was eliminated. After review of PR 15, OSMRE determined that Alternative 2 did not warrant additional consideration and was not carried forward for further study.

4.2.3 Alternative 4

Alternative 4 was fully considered in this analysis. OSMRE compared: reasonably foreseeable surface disturbance; amount of expected coal to be recovered; and extension of mine life of the Alternatives. Under Alternative 4, the agencies would consent/lease the proposed modification to COC-1362 only, while not consenting to proposed modification to lease COC-67232. Alternative 4 analyzed the effects of post-lease surface activities under the CRR including temporary road construction in the Sunset CRA, as described in Alternative 3 above. The on-lease exploration activities would remain similar to Alternative 3 except roads would stop at the lease modification boundary. See Table 1 below.

Table 1. Summary of Reasonably Foreseeable Actions by Alternative

Action	Alternative 3	Alternative 4	Difference
Estimated Foreseeable Surface Disturbance (acres)	72	66	(6)
Estimated Coal (tons)	10,100,000	9,265,000	(835,000)
Estimated Foreseeable Extension of Mine Life (years)	1.6	1.4	(0.2)

OSMRE considered the relatively small environmental footprint difference between Alternatives 3 and 4 and the temporary nature of the expected post-lease disturbance and past reclamation success at the West Elk Mine when selecting Alternative 3. OSMRE determined that while both the environmental impacts and coal recovery differences were very small between Alternatives 3 and 4, preventing MCC from exercising its valid Federal Coal Leases issued by the BLM and consented to by USFS would not serve OSMRE's purpose and need. The 835,000-ton increase in coal recovery outweighs the environmental effects of disturbing 6 more acres of NFS lands for a short period of time as compared to Alternative 4.

4.3 Alternatives Considered but Eliminated

An alternative may be considered during the environmental analysis process, but not analyzed in detail. The agency must identify those alternatives and briefly explain why they were eliminated from detailed analysis (40 CFR 1502.14). An alternative may be eliminated from detailed study if:

- It is ineffective (does not respond to the purpose and need for the proposed action);
- It is technically or economically infeasible (considering whether implementation of the alternative is likely, given past and current practice and technology);
- It is inconsistent with the basic policy objectives for the management of the area;
- Its implementation is remote or speculative;
- It is substantially similar in design to an alternative that is analyzed; or
- It would result in substantially similar impacts to an alternative that is analyzed.

Alternatives specific to this analysis that were considered, but that would not be analyzed in detail, are discussed in Section 2.3 of the SFEIS and included:

- Alternative 2;¹
- Helicopter drill MDWs in roadless area
- MDWs using horizontal boreholes or directional drilling technology
 - Directionally Drill MDWs from Outside Roadless
 - Use Horizontal Boreholes or Longhole Horizontal Boreholes
- Consideration of other mining methods

¹ Under which the USFS would consent to and BLM would modify the leases with stipulations/notices/addendums above listed for the Action Alternatives but based on the provisions of the 2001 Roadless Area Conservation Rule (which is no longer in effect) road construction or reconstruction was prohibited. Although mining without construction of temporary roads may be physically possible, it may be limited by safety, technology, productivity, and expense (see SFEIS Section 2.3.1).

- Mitigate the potential GHG emissions of the project by requiring MCC to use MDW ventilation air methane (VAM)
- Mitigate the potential GHG emissions of the project by requiring MCC to purchase of carbon credits or do off-set mitigations
- Mitigate the potential GHG emissions of the project by requiring MCC to use other potential methane mitigation measures
 - Methane Capture to Power On-Site Heaters
 - Methane Drainage Well Emissions Capture
 - MDW Capture, Electricity Production
 - MDW Capture, Sale Gas
 - Flaring (MDW Emissions)
 - Thermal Oxidation (VAM & MDW Emissions)
- Prevent all future disturbances from road construction, methane drainage well pads and the like in Roadless Areas
- Shrink the boundaries of the lease to conform to the area where the coal will be mined underground
- Protect values of the area by using this set of stipulations for the Proposed Action
 - No Surface Occupancy (NSO) stipulations prohibiting road and MDW well pad construction within ¼ mile of the hiking route known as “Sunset Trail,” which traverses the lease modification, to protect recreational values.
 - NSO stipulations prohibiting road and MDW well pad construction for all areas within ¼ mile of: (a) all lynx denning habitat; (b) all lynx winter foraging habitat; and (c) all lynx foraging habitat which is adjacent to lynx denning habitat.
 - NSO stipulations prohibiting road and MDW well pad construction for all areas within ¼ mile of a water influence zone.
 - NSO stipulations prohibiting road and MDW well pad construction for all areas within ½ mile of the West Elk Wilderness boundary, to protect roadless, wildlife, scenic, and other values.
 - NSO stipulations prohibiting road and MDW well pad construction within ¼ mile of any old growth forest to prevent fragmentation.
 - Until the Forest Plan is amended to address new information about the threat of climate change, the GMUG should protect existing mature forest through an NSO stipulation.
 - NSO stipulations prohibiting road and MDW well pad construction within ½ mile of any raptor nest site.
 - NSO stipulations prohibiting road and MDW well pad construction on slopes greater than 40% to protect soils and prevent erosion.
- For Exploration, use helicopters to transport drill rig
- For Exploration, do not consider redundant access
- For Exploration, analyze only the holes proposed to be drilled during the first field season

4.4 Basis of Decision

Based on the information contained in the SFEIS, the results of tribal consultation, consultations under the ESA and NHPA, and the additional considerations listed in this ROD, OSMRE has selected Alternative 3, subject to the mitigation and monitoring requirements of the USFS and the BLM lease stipulations, because it achieves the project goals consistent with all applicable regulatory requirements, while minimizing potential impacts. As set forth in Section 4 of this ROD, OSMRE has determined that all applicable statutory and regulatory requirements necessary for approval of the project components addressed in the ROD have been satisfied.

The following section discusses how the selected alternative addresses the key issues considered in the FSEIS. Direct, indirect, and cumulative impacts are described fully by alternative in Chapter 3 of the FSEIS. Effects are summarized in Table 1 below by key issues. The Selected Alternative provides the best balance among the key issues and other concerns identified during the USFS public involvement process (Section 6, Public Involvement).

Table 1. Comparison of the Effects of Alternatives Relative to Key Issues

Key Issue	Alternative 1 – No Action	Alternative 3 – Colorado Roadless	Alternative 4 – COC-1362 Only
Issue 1: Effects on surface water quality and quantity	No mining induced effects on water resources in the lease modification area.	Subsidence may alter surface and groundwater hydrology by altering groundwater regimes, surface water drainages, seeps and stock ponds. Water quality may be impacted in up to 11.3 miles of streams from sedimentation or water derived from mining activities. Monitoring, best management practices, permitting and lease stipulations should ensure that impacts are minimized.	Effects would be similar to Alternative 3 if roads are authorized, but only to a slightly lesser extent.
Issue 2: Effects on vegetation	Ongoing management activities and Sudden Aspen Decline will continue to impact vegetation in the lease modification area.	Subsidence is expected to have minimal disturbance on vegetation. Post-lease surface disturbance is expected to remove vegetation from up to 73.5 acres. Reclamation requirements will ensure that appropriate species are used to revegetate the area and return it to productivity. Additionally, approximately 73.5 acres of vegetation may be removed on parent leases and adjacent private lands because of the COC-1362 lease modification.	Effects would be similar to Alternative 3 except approximately 66 acres of vegetation may be disturbed on the lease modifications. Additionally, approximately 63 acres of vegetation may be removed on parent leases and adjacent private lands because of the COC-1362 lease modification.
Issue 3: Effects on wildlife and their habitats	No change over existing conditions and management.	Canada lynx-may affect, but is not likely to adversely affect. Four Big River Endangered Fish-fish not present but water depletions of approximately 4.5 acre feet total for MDWs may affect these species. Water depletion is consistent with existing Programmatic Biological Opinions. Additional MDWs on parent leases and private lands as a result of COC-1362 modification may deplete an additional approximately 4.2 acre-feet of water.	The effects would be similar to Alternative 3 but slightly reduced in scale. Four Big River Endangered Fish-fish not present but water depletions of approximately 4.1 acre feet total for MDWs may affect these species. Water depletion is consistent with existing Programmatic Biological Opinions. Additional MDWs on parent leases and private lands as a result of COC-1362 modification may deplete an additional approximately 4.2 acre-feet of water.

Key Issue	Alternative 1 – No Action	Alternative 3 – Colorado Roadless	Alternative 4 – COC-1362 Only
Issue 4: Effects of the project on air quality, GHGs, and climate change	<p>The maximum predicted concentration of PM₁₀ due to the mines and other background sources was 148 µg/m³, which is below the primary ambient air quality standard. These results indicate that the area around the mine can be expected to remain within ambient air quality standards for PM₁₀. There are no other criteria pollutant emissions from stationary sources at the mine that are in excess of CDPHE’s minor source permitting thresholds, and therefore the permit does not contain any limits other than those for particulate matter. By extension, no other criteria pollutant emissions associated with the mine’s stationary sources would be considered to be significant with respect to their potential to degrade area air quality.</p> <p>Methane released from VAM and MDWs does not correlate with coal production and has been declining from 2010-2016. No threshold of significance has been established by EPA. See section 3.4 of the SFEIS for additional information.</p> <p>GHGs from combustion of existing coal reserves:</p> <ul style="list-style-type: none"> • CO₂ 137.11 million tons • CH₄ 0.016 million tons • N₂O 0.002 million tons • CO_{2e} 138.22 million tons 	<p>As there would be no change in mine production rate influencing emissions, effects to air quality would be the same as Alternative 1 except the duration would be extended approximately 1.6 years directly (and 2.7 years cumulatively).</p> <p>GHGs from combustion:</p> <ul style="list-style-type: none"> • CO₂ 182.22 million tons • CH₄ 0.021 million tons • N₂O 0.003 million tons • CO_{2e} 183.69 million tons <p>Emissions related to exploration plan would occur related to vehicles and drilling. The construction-related emissions are relatively small and are not expected to contribute significantly to localized or regional air quality degradation.</p>	<p>As there would be no change in mine production rate influencing emissions, effects to air quality would be the same as Alternative 1 except the duration would be extended approximately 1.4 years directly (and 2.6 years cumulatively).</p> <p>GHGs from combustion:</p> <ul style="list-style-type: none"> • CO₂ 180.17 million tons • CH₄ 0.021 million tons • N₂O 0.003 million tons • CO_{2e} 181.62 million tons <p>Emissions related to exploration plan would occur related to vehicles and drilling. The construction-related emissions are relatively small and are not expected to contribute significantly to localized or regional air quality degradation.</p>

4.4.1 Social Cost of Carbon

A protocol to estimate what is referenced as the SCC associated with GHG emissions was developed by a Federal IWG, to assist agencies in addressing EO 12866, which requires Federal agencies to assess the cost and the benefits of proposed regulations as part of their regulatory impact analyses. The SCC is an estimate of the economic damages associated with an increase in carbon dioxide (CO₂) emissions and is intended to be used as part of a cost-benefit analysis for proposed rules. As explained in the Executive Summary of the 2010 SCC Technical Support Document “the purpose of the [SCC] estimates...is to allow agencies to incorporate the social benefits of reducing CO₂ emissions into cost-benefit analyses of regulatory actions that have small, or ‘marginal,’ impacts on cumulative global emissions.” Technical Support Document: SCC for Regulatory Impact Analysis under EO 12866 February 2010 (withdrawn by EO13783). While the SCC protocol was created to meet the requirements for regulatory impact analyses during rulemakings, there have been requests by public commenters or project applicants to expand the use of SCC estimates to project-level NEPA analyses.

USFS received several comments on the Supplemental EIS that suggested it use the SCC protocol to monetize global costs of GHG emissions associated with mining and burning coal from the West Elk Mine.

The CRR was the programmatic decision (rulemaking) to determine how to balance maintaining and preserving roadless area characteristics while addressing the State’s concern of not foreclosing coal mining opportunities in the North Fork Valley (81 FR 91816). The CRR SFEIS included an SCC analysis as part of the cost- benefit analysis as required for the rule-making decision and the coal in the proposed federal coal lease modifications was included within that SCC analysis. OSMRE is familiar with that analysis and believe that the analysis was conducted at the appropriate level at that time and in the appropriate context. This analysis informs OSMRE’s decision and the public.

If GHGs were analyzed in a manner that monetized global costs, this type of analysis would not better inform OSMRE’s decision for this project. The SCC is not appropriate at this time because NEPA does not require a cost-benefit analysis, a cost benefit analysis was not conducted and a cost benefit analysis would not substantively add to OSMRE’s ability to reach an informed decision in the matters before it. While the SFEIS contains quantified impacts, and while some of these quantified impacts are monetary, the SFEIS does not contain comparable economic benefits and costs to the SCC that would be needed for cost-benefit analysis per OMB Circular A-4. The SFEIS contains an analysis of environmental consequences (40 CFR 1502.16) that meets the qualitative requirements of NEPA (40 CFR 1502.23). If the agency set out to quantify climate impacts as monetized costs, it would be necessary to balance these costs by also quantifying the benefits of burning coal to generate electricity such as providing affordable, reliable electricity and the resultant benefits of having electricity in general such as human health from medical advancements, comfort, work efficiencies, etc. and other actions that are beyond the scope of my decision. .

OSMRE acknowledges the potential adverse impacts of GHG release on the local, regional, and global climate. Currently, there are no established criteria identifying the monetized values that are to be considered significant for NEPA purposes, and, at present, there are no known NEPA significance levels to prescribe to GHG emissions for evaluating climate change impacts. OSMRE does not believe any additional project level SCC analysis would improve the authorized officer's decision. OSMRE has taken a hard look at climate change impacts and both OSMRE and the public have been informed by the analysis done to date.

OSMRE does not need a project-level SCC analysis to determine potential mitigation measures or conditions of approval and whether non-mineral and surface resource impacts are acceptable or not. The SCC protocol describes the monetary impact at the global scale of increased carbon emissions and does not translate to site-specific surface resource impacts.

OSMRE knows there are resource impacts caused by the effects of climate change and OSMRE knows that GHG releases contribute to this change. My decision has been informed by the climate change analysis for each of the resources in Chapter 3 at the local, regional, global levels of the SFEIS and all other impact analyses contained within the SFEIS.

To summarize, this SFEIS does not undertake an analysis of SCC because 1) it is not engaged in a rulemaking for which the protocol was originally developed; 2) the IWG, technical supporting documents, and associated guidance have been withdrawn; 3) NEPA does not require cost-benefit analysis; 4) the full social benefits of coal-fired energy production have not been monetized, and quantifying only the costs of GHG emissions but not the benefits would yield information that is both potentially inaccurate and not useful; 5) for this project it was more effective to qualitatively disclose local regional and global effects of climate change for this project and we quantified GHG emissions across all alternatives, 6) the SCC protocol was used in the CRR (which included the coal within the lease modifications) as the framework to consider the uncertainty around the estimates and caveats around using the protocol; and 7) we did not conduct a cost-benefit analysis for several reasons, including: a. because we did not monetize comparable economic benefits and costs and b. we determined that analysis of the domestic and international energy and economic systems were out of the scope for this project.

5.0 Public Involvement

5.1 Supplemental Final Environmental Impact Statement

USFS and the BLM completed extensive public involvement during the preparation of an EA for the same action as this SFEIS. During that comment period (April-May 2010), approximately 32,002 versions of email form letters were received from environmental groups (more detailed description in subsequent sections); 576 hardcopy/faxed form letters were received from local community members in four counties in support of mining in this area; 78 (mostly modified form letters) were received in response to this scoping effort. Issues ranged from support to opposition of coal mining, effects to

Inventoried Roadless Areas, and global climate change. Most concerns dealt with post-leasing development. These issues led the agencies to develop the Proposed Action which has lease stipulations to protect surface resources including: cultural/paleontological resources, threatened/endangered species, Canada Lynx, raptors, big game winter range, water depletions, breeding birds, geological hazards, riparian/wetlands, subsidence, lease notices for presence of roadless areas, lease addendums for methane flaring/capture/use and new lease stipulations for visual resources. The decision was remanded to the forest over stipulations in February of 2012.

In late 2011 and early 2012, Colorado was transitioning to new state-wide roadless area regulations, U.S. Environmental Protection Agency (EPA) was considering GHG regulations, CEQ was considering significance thresholds for analysis of GHGs and the BLM was preparing its own leasing analysis for these modifications. All of these processes combined, contributed to the decision to prepare an EIS.

USFS published a Notice of Intent (NOI) to prepare an EIS in the Federal Register on April 25, 2012. Approximately 830 copies of letters/emails informing interested parties (including state, Federal, local agencies, tribes, environmental groups, and interested parties) of this intent were also sent out on April 25, 2012 inviting additional comments throughout the process. Additional notification was sent out with the DEIS to approximately 768 individuals; additional legal notices were published in the Grand Junction Daily Sentinel and Delta County Independent.

Approximately 24,680 comment letters were received on the DEIS. Of those, 67 were original comments. Responses to comments received during the 30 day period following the printing of the NOI and the 45 day comment period on the DEIS and other comments specifically included by reference can be found in Appendix I. Comments received during this time can be viewed in entirety in Appendix I (Volume II) of the 2012 Final EIS. Previous GMUG and the BLM decisions (available at: <https://www.fs.usda.gov/project/?project=32459>) were vacated in *High Country Conservation Advocates v. United States Forest Service*, 67 F. Supp. 3d 1262 (D. Colo. 2014) on September 11, 2014. The USFS prepared the Supplemental EIS to correct court identified deficiencies and to updated analysis, as needed, since the FEIS in 2012 and the BLM's EA for exploration in 2013. The leasing and exploration analyses were combined into a single document for agency and public convenience.

Over 9,800 additional submissions (primarily form letters, groups of form letters and petitions) were received on the NOI to Prepare the SEIS in 2016-2017 which was not an official comment period. Comments and responses can be found in Appendix J.

During the official comment period (June 2, 2017-July 24, 2017) on the SDEIS the agencies received approximately 127,250 expressions of interest or comment letters. Issue topics are consistent with those raised in previous comment periods. Summarized substantive comments and responses are included in Appendix K of the SFEIS.

USFS sought public and agency comments during preparation of the SFEIS. Responsive to comments on the DEIS the SFEIS included the development of Alternative 4; analyzing and disclosing impacts of consenting to only one of the proposed lease modifications (COC-1362).

5.2 WildEarth Guardians, Center for Biological Diversity, and Sierra Club Comments

On June 1, 2018 OSMRE received a letter from WildEarth Guardians, Center for Biological Diversity, and Sierra Club (referred to as the Commenters) providing comments on the Federal Mining Plan Modification Review (Section III of the letter). OSMRE has reviewed the comments and found that the SFEIS sufficiently addressed site-specific impacts; PR 15 does not propose to construct redundant roads; the SFEIS sufficiently addressed the alternative of methane flaring; and OSMRE conducted consultation under ESA.

OSMRE took a hard look at the proposed locations of MVBs and temporary roads in comparison to what was previously analyzed in the SFEIS. OSMRE determined that the 38 MVB pads and 6.9 miles of road on Federal land and 5 MVB pads and about 1.5 miles of roads on MCC surface land would not have significant site specific impacts and that there is not substantial new information regarding site specific impacts that wasn't already disclosed in the SFEIS. OSMRE recognizes that the SFEIS was based on a reasonably foreseeable mining plan and there are differences between it and the locations in PR 15. Therefore, OSMRE conducted a review of the actual sites to ensure that no new information or significant impacts were discovered.

The SFEIS provided the public with potential MVB pads and temporary road locations as well as outlining both qualitative and quantified data for those impacts. The SFEIS disclosed to the public that the exact sites may not be known but using best available data presented potential impacts. The SFEIS did not defer the entire analysis regarding the MVB pads and temporary roads to a later date when exact locations would be known (see Figure 3-21 of the SFEIS). After review of the site locations outlined in revised PR-15, OSMRE determined that those impacts previously reviewed are not substantially or significantly different from those currently proposed. OSMRE estimates that the MVB pads and temporary roads would result in a loss of approximately 40 acres of aspen, 29 acres of oak, and 4 acres of shrub types. Lease stipulations and Best Management Practices (BMPs such as from FSH 2509.25) prevent pads and roads in wetlands except for crossing of drainages for access, when other access is not feasible. MCC would complete a pre-construction site visit and survey with the USFS and then implement avoidance measures in order to comply with the USFS lease stipulations for protection of wetlands. OSMRE reviewed the Information for Planning and Consultation (IPAC) database for potential impacts to specific T&E species and received concurrence from USFWS on August 8, 2018 that no new impacts would result from the Project based on 73.5 acres of disturbance.

The Commenters assert that the Company will “likely propose mining further to the southwest” following completion of exploration “requiring the construction of even more roads and MDWs.”

MCC submitted a revised PR-15 PAP to CDRMS on July 6, 2018. Map 51, Projected E Seam Operations, presents an updated mining plan based on the exploration drilling. Based on this revised panel alignment MCC would have 38 MVB pads and 6.9 miles of road on Federal land and 5 MVB pads and about 1.5 miles of roads on MCC surface land. This is a reduction from the SFEIS analysis of 77 MVBs on 69 pads (SFEIS page 80). MCC would use roads and drill pads previously designated for exploration for MVB development as well to eliminate redundant roads as shown on the “Sunset Trail Proposed MVB Pads and Roads” Map submitted as part of the PAP and therefore in compliance with 36 C.F.R. § 294.43(d)(1) of the CRR. While OSMRE recognizes that the previous SFEIS analyzed a potential road mileage of 6.5 miles on Federal land and the revised PR-15 states a total of 6.9 miles of road on Federal land, OSMRE does not believe that this 0.4-mile increase (6 percent increase) is a substantial change in what was analyzed under Alternative 3 requiring a supplemental EIS. Furthermore, this increase in road miles combined with the MVB development is within 2 percent of the overall disturbance acreage analyzed in the SFEIS of 72 acres with a total of 73.5 acres (Federal and private lands) not constituting a substantial change warranting a supplemental EIS.

OSMRE reviewed the Alternative of Methane Flaring as described by the Commenters and agree with USFS and the BLM’s determination that this alternative is not technically or economically feasible (SFEIS Section 2.3.7.5). In order for OSMRE to carry this alternative forward or include it as mitigation it would need detailed engineering information, approval from the Mine Safety and Health Administration (MSHA), and a determination that it was economically feasible. At this time, none of those criteria have been met. The mine ventilation plan submitted to CDRMS as part of the PAP does not include information on how methane flaring would be technically feasible. Pursuant to its lease stipulations, MCC submitted to the BLM a report on the economic feasibility of methane mitigation at the mine (SFEIS, Appendix B). The BLM reviewed the report and provided OSMRE the summary of that review which OSMRE has considered; however, OSMRE has independently reviewed and found no new information or significant changes to existing information that would warrant this alternative or mitigation to be carried forward at this time. The SFEIS contemplated that methane flaring could potentially reduce the total global warming potential of the gas by approximately 87%. (SFEIS Section 2.7.3.5). OSMRE understands the environmental benefit that would result from this mitigation. But the issues that remain regarding methane mitigation are not environmental in scope and thus do not require additional environmental analysis. The remaining issues are the technical and economic feasibility of the process and miner safety.

OSMRE completed the Section 7 consultation process under the Endangered Species Act and received concurrence from USFWS on August 8, 2018. The Commenters allege that proposed surface impacts would exceed 75 acres and therefore require a reopening of consultation under ESA for the Canadian Lynx. OSMRE disagrees and found that, as outlined in the PAP, proposed surface disturbance acreage on Federal lands is 63 acres and 10.5 acres on private lands totaling 73.5 acres of disturbance including MVBs and roadways. OSMRE received concurrence from USFWS that there have been no substantial changes to the project and the project would not exceed the 75 acres of disturbance of lynx habitat threshold outlined in the 2010 Biological Opinion. OSMRE is including

the following summary of the process of Canada lynx consultations that are included within the project record.

- A BA was prepared for this decision (SFEIS, Sections 3.10, Project File). All known endangered or threatened species in the area were considered.
- Informal consultation with the USFWS was completed on June 16, 2010 (ES/CO:FS/GMUG/Paonia RD; Tails 65413-2010-F-0109). The USFWS concurred with findings of “may affect, not likely to adversely affect” based on the calculation that less than 0.6% (up to 75 acres) of suitable lynx habitat would become unsuitable due to vegetation alterations under the Foreseeable Mining Plan, which included impacts from MVBs and temporary roads.
- During the CRR rulemaking process additional consultation (ES/GJ-6-CO-09-F-001-GP030’ Tails 06E24100-2016-F-0194) occurred with USFWS. The determination of “may affect, not likely to adversely affect” for Canada Lynx applies projected roads and timber removal to the entire NFCMA, not just to the project area which is approximately 1/10th of the NFCMA.
- Further, GMUG consultation of June 2, 2016 for vegetation removal forest-wide (BO ES/LK-6-CO-08-F-024-GJ0t 6 and TAILS 06824t00-201 6-F -0132) included the earlier project consultation acreages and set acreage limits for disturbance within the LAUs before consultation would again be required. There is over 6,000 additional acres beyond this project and previous disturbances of habitat in the Mount Gunnison LAU that may be treated before approaching a conservation limit in compliance with the Southern Rockies Lynx Amendment (SRLA; USFS 2008). Cumulative effects to lynx that occurred on June 2, 2016 that set habitat alteration limits within the LAU at no more than 30%. This threshold is consistent with the SRLA. There is no critical habitat in the Southern Rockies. The project is covered under the SRLA Standards and Guidelines for protection of lynx and lynx habitat and the project is not expected to cause harm to lynx populations or “take” of lynx. This is supported in the concurrence letter from the USFWS.
- The current project consultation (ES/CO:FS/GMUG/Paonia RD; Tails 65413-2010-F-0109) addresses 75 acres of disturbance of lynx habitat in the LAU for the post-leasing development. This includes habitat that may be lost to roads and drill pads.
- Although the forest lynx habitat map was updated in 2010, following the June 16, 2010 concurrence letter from the USFWS, the changes to percentage of affected habitat does not change much from the previous calculations and is far from reaching the thresholds identified in the SRLA. The SRLA provides standards and guidance regarding vegetation alteration in LAUs. Under SLRA, an LAU should not have more than 30% unsuitable habitat.
- The SFEIS and project (ES/CO:FS/GMUG/Paonia RD; Tails 65413-2010-F-0109) consultation identifies that if greater than 75 acres would be affected by the project, consultation would be reinitiated. Given the USFWS concurrence, OSMRE has analyzed

impacts to Canada lynx and their habitat to ensure that cumulative impacts within the LAU are not leading to exceeding the limits of unsuitable habitat within the LAU.

As a result, OSMRE finds that Alternative 3 is in full compliance with ESA requirements for Canada lynx.

5.3 Notice of Adoption

OSMRE was a cooperating agency and conducted an independent review of the SFEIS. All of OSMRE's comments and suggestions were satisfied in the SFEIS. Therefore, OSMRE is not required to recirculate the SFEIS (40 CFR § 1506.3). OSMRE notified EPA of its intent to Adopt and EPA released a Federal Register Notice.

6.0 Approval

In consideration of the information presented above, OSMRE approves this ROD adopting the USFS GMUG SFEIS and concurs with the USFS's selection of Alternative 3 (Consent to and Modification of the Leases) as described in the SFEIS (Section 2.2.3). USFS and the BLM included lease stipulations which were outlined by each agency in their RODs to minimize environmental impacts. On August 10, 2018, the U.S. District Court for the District of Colorado affirmed the Agencies' decisions in *High Country Conservation Advocates v. Forest Service*, 17-cv-03025-PAB (D. Colo). On September 10, 2018, the plaintiffs filed a Notice of Appeal with the 10th Circuit Court of Appeal; however, the leases are in effect and it is appropriate for OSMRE to adopt the SFEIS. Accordingly, OSMRE recommends approval without conditions of the mining plan modification to the ASLM. This action can be implemented following approval of the MPDD by the ASLM.

For more information about this project, contact Gretchen Pinkham by phone 303-293-5088 or email at gpinkham@osmre.gov.

Approved by:



David Berry, OSMRE Western Region Director

3/12/19

Date