

U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
FINDING OF NO SIGNIFICANT IMPACT
Caballo Mine
Federal Coal Lease WYWI72657
Federal Mining Plan Modification

A. Introduction

Peabody Caballo Mining, LLC (PCM) operates the Caballo Mine, which is located in Campbell County, Wyoming, approximately 10 miles south-southeast of Gillette. In 2011, the Bureau of Land Management (BLM) issued federal coal lease WYWI72657 to PCM. The Wyoming Department of Environmental Quality (WDEQ)-Land Quality Division (LQD) issued Permit No. 433 in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the Wyoming State Coal Regulatory Program (30 CFR Part 950). If approved, this federal mining plan modification (the Project) would allow the mining of federal coal within lease WYWI72657, and more specifically within a tract of land known as Caballo West tract, from the date of approval through the life-of-mine (LOM). The accompanying *Caballo Mine, Federal Coal Lease WYWI72657, Mining Plan Modification Environmental Assessment* (hereafter, the EA) details the environmental effects of this Project, beginning in 2019 through the LOM for the area. The EA incorporates by reference the Final Environmental Impact Statement for the South Gillette Area Coal Lease Applications (hereafter 2009 SGAC EIS).

On November 30, 2015, WDEQ-LQD approved PCM's application to amend Mine Permit No. 433 to include the Caballo West tract. As discussed in **EA chapter 4**, mitigation measures required by WDEQ-LQD Permit No. 433 (in accordance with WDEQ-LQD Rules and Regulations) and Air Permit MD-1477 will offset/reduce potential resource impacts.

B. Statement of Environmental Significance of the Proposed Action

Pursuant to 30 CFR Part 746, the Office of Surface Mining Reclamation and Enforcement (OSMRE) is recommending selection and approval of the Proposed Action (see **section C**). The undersigned person has determined that approval of a federal mining plan modification authorizing continuation of mining operations for approximately 8.9 more years and additional surface disturbance of approximately 866.7 acres to recover the federal coal would not have a significant impact on the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 USC 4332(2)(C); therefore, an Environmental Impact Statement (EIS) is not required.

C. Reasons for a Finding of No Significant Impact

OSMRE prepared the EA to satisfy OSMRE's requirements under NEPA. OSMRE prepared this EA to evaluate the environmental effects resulting from approving federal mining plan modification request related to WYWI72657, pursuant to the requirements of NEPA; the Council on Environmental Quality (CEQ), DOI, and OSMRE regulations; and guidance regarding implementing NEPA. As part of the evaluation process, OSMRE will make a recommendation to the Assistant Secretary of Lands and Minerals (ASLM) on a new decision to approve, disapprove, or approve the federal mining plan modification with conditions.

OSMRE is the lead federal agency responsible for development of this EA because, under the SMCRA and Mineral Leasing Act (MLA), OSMRE will prepare a mining plan decision document (MPDD) in support of its recommendation to the ASLM regarding federal mining plans or mining plan modifications to either approve, approve with conditions, or deny the proposed federal mining plan modification. The ASLM will decide whether the federal mining plan modification is approved, disapproved, or approved with conditions. As such, this EA followed the CEQ's, DOI's, and OSMRE's regulations and guidance for implementing NEPA. The EA analyzed the potential impacts associated with the Proposed Action and No Action Alternative. The Proposed Action would authorize mining of approximately 130.2 million tons (Mt) and recovery of approximately 119.8 Mt of additional federal coal, at an estimated rate of 13.5 million tons per year (Mtpy) and with a surface disturbance of 866.7 acres. The Proposed Action includes design features to reduce or eliminate potential adverse impacts to the environment.

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

The attached EA considers the Proposed Action and a reasonable range of alternatives to the Proposed Action, discloses the potential environmental effects of the Proposed Action and reasonable alternatives, and provides sufficient evidence and support for this Finding of No Significant Impacts (FONSI). The EA was prepared by a third-party consulting firm at the direction of OSMRE. During the development of the EA, OSMRE independently reviewed the document to ensure compliance with 43 CFR Part 46, Subpart D and all relevant provisions of CEQ regulations, and other program requirements. This independent review included OSMRE's evaluation of all environmental issues disclosed in the EA and also those identified in comments received from the public. OSMRE takes full responsibility for the accuracy, scope, and the content of this document.

The undersigned has determined that, per CEQ, Department of Interior (DOI), and OSMRE regulations and guidance, the public involvement requirements have been met. OSMRE conducted public scoping regarding the preparation of the EA from December 19, 2018 through January 18, 2019. However, the OSMRE Western Region website was inaccessible from late December 2018 through January 2019 due to the government shutdown. Therefore, OSMRE extended the scoping period from February 7, 2019 through February 22, 2019. Additional outreach occurred from May 16, 2019 to June 17, 2019 with release of the EA and unsigned FONSI. All substantive public comments received to date have been fully considered in the EA and in reaching this FONSI (see **EA Appendix A and B**).

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

- a) **Context:** This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

PCM proposes to meet demand for coal and continue mine operations for approximately 33 years by

1. securing federal mining plan modification approval authorizing mining of leased federal coal within a previously authorized area (i.e., WYWI72657) and
2. continuing to mine, process, and transport coal from the Caballo Mine.

Approval of the Proposed Action is a site specific action that would authorize recovery of approximately 119.8 Mt of federal coal at a maximum rate of 13.5 Mtpy and a surface disturbance of 866.7 acres. The effects of the action have been analyzed at the local and regional scale.

- b) Intensity: This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity.

The 10 significance criteria in the federal regulations at 40 CFR 1508.27 have been considered in evaluating the severity of impacts.

1. Impacts that may be both beneficial and adverse:

Beneficial and adverse impacts of the Proposed Action are described in the attached EA. Environmental design features to reduce potential short-term and long-term impacts to topography, air quality, water resources, vegetation, fish and wildlife, threatened and endangered (T&E) species, cultural resources, visual resources, and soils are incorporated into the design of the Proposed Action. Additionally, mitigation measures related to air quality, migratory birds, special status species, cultural resources, and paleontological resources are required by the state-approved mine permit and stipulations to the federal coal lease, and approved mining plan.

As discussed in **section 4.4.5** of this EA, the contribution of the Proposed Action to greenhouse gas (GHG) emissions to Campbell County totals would be minor and short-term. The direct impacts on air quality from a state and U.S. comparison are considered to be moderate and short-term (**EA section 4.4.5.1**). Indirectly, the Proposed Action would contribute to criteria emissions and GHG emissions through rail transport and the combustion of coal at power plants located throughout the U.S. The indirect impacts on air quality are considered moderate and short-term. The direct and indirect effects to topography, geology, water resources, soils, vegetation, fish and wildlife, species of special interest, land use, visual resources, noise, and transportation are considered moderate, short-term, long-term, and permanent (**EA Sections 4.2, 4.3, 4.8-4.11, and 4.13-4.15**). Impacts to wetlands/aquatic resources and hazardous and solid waste would be minor and short-term (**EA Sections 4-7 and 4-16**). Impacts to cultural resources would be negligible and long-term (**EA Section 4.12**).

The Proposed Action would result in moderate and short-term impacts to socioeconomics in the area of influence. There would be an extension of employment for approximately 156 employees, primarily from Campbell County of up to approximately 8.9 years. The Proposed Action represents an estimated economic impact to this area over the LOM of wages, goods and services related to the mining operation, and payment of federal, state, and local taxes. The socioeconomic impacts are derived from payroll, insurance, retirement contributions, local expenditures, taxes, and federal coal royalty payments (**EA Section 4.17**).

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

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

The EA project area is located entirely on private lands. Public access to the area affected by mining are strictly controlled by the mine. All mine activities with potential public exposure would also be subject to state mine permit approval and review by the Mine Safety and Health Administration (MSHA), which include safety standards. Precautions for public health and safety would also be implemented during transport of equipment along public roads to and from the EA project area. Emissions and effluent limits are within approved standards, as required by state permits, thereby limiting potential impacts to public health. Noise levels at the nearest residences would be well below levels that would affect human health. According to **EA sections 4.4, 4.14, and 4.15**, potential risks to public health and safety would be negligible and would occur over limited, brief periods. After full reclamation has occurred, no public health or safety concerns are expected, and the land would be suitable for historical uses of grazing and wildlife uses and recreational use.

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

As discussed in **EA sections 4.8, 4.10, 4.11, and 4.12**, there are no park lands, prime farmlands, wilderness, wild and scenic rivers, or ecologically critical areas within the EA project area. There are approximately 1.79 acres of aquatic features within and adjacent to the tract boundary (see **EA section 4.7**). Inventories of historic or cultural resources have been completed for the EA project area and, as confirmed by the Wyoming State Historic Preservation Office (SHPO), no sites within the Proposed Action tract are classified as National Register of Historic Places (NRHP) eligible sites that would require mitigation prior to disturbance (see **EA section 4.12**). Additional cultural resources discussions are included below under **Item 8**.

4. The degree to which the impacts on the quality of the human environment are likely to be highly controversial:

As a factor for determining within the meaning of 40 CFR 1508.27(b)(4) (whether or not to prepare a detailed EIS) “controversy” is not equated with “the existence of opposition to a use.” *Northwest Environmental Defense Center v. Bonneville Power Administration*, 117 F.3d 1520, 1536 (9th Cir. 1997). The term ‘highly controversial’ refers to instances in which “a substantial dispute exists as to the size, nature, or effect of the major federal action rather than the mere existence of opposition to a use” *Hells Canyon Preservation Council v. Jacoby*, 9 F.Supp.2d 1216, 1242 (D. Or. 1998).

The EA has analyzed the direct and indirect effects on and from climate change and, as discussed in **EA section 4.4**, determined the effects to be moderate and short-term. Approvals of federal mining lands and mining plan modifications have been made in the area for several decades. The environmental design features and reclamation plan would reduce the effects on the environment; or, in some cases, would improve the current condition (e.g., soils, vegetation, and wildlife habitat). No other anticipated effects have been identified that are scientifically controversial.

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

As discussed above, there are no effects on the human environment under the Proposed Action that are highly uncertain or involve unique or unknown risks. OSMRE has experience implementing similar actions in similar areas.

6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principal about future considerations:

This decision is not precedent setting. The issues considered in the EA were developed by OSMRE within the context of past, present, and reasonably foreseeable actions. Significant cumulative impacts are not anticipated.

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

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

Both the indirect and cumulative effects of coal combustion were disclosed in the EA. There were no significant cumulative effects identified (**EA section 4.4.5**).

8. The degree to which the action may adversely affect districts, sites, highways, structures, or other objects listed in or eligible for listing in the National Register of Historic Places (NRHP) or may cause loss or destruction of significant scientific, cultural, or historical resources:

The EA project area was surveyed for cultural and historic resources and, as confirmed by the Wyoming SHPO, no NRHP-eligible sites have been identified within the Proposed Action tract (see **EA section 4.12**).

BLM consulted representatives of 18 Native American tribes during the preparation of the 2009 SGAC EIS. In addition, OSMRE sent out public outreach and Tribal consultation letters to 24 Native American tribes/tribal representatives that could be affected by the Proposed Action evaluated in this EA. On March 14, 2019 the Comanche Nation stated that the location of the Project had been cross referenced with the Comanche Nation site files and an indication of “No Properties” have been identified. On March 26, 2019 the Cheyenne and Arapaho tribes responded that the project is categorized as No Adverse Effect.

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

The potential to encounter T&E species, as well as proposed and final designated critical habitat that may occur within the Caballo West tract and/or may be affected by the Proposed Action, was evaluated by utilizing the U.S. Fish and Wildlife Service's (USFWS) Information, Planning, and Conservation (IPaC) system and Natural Resource and Energy Explorer (NREX). As described in correspondence from the USFWS (2018b), IPaC species assessments fulfill the requirements of the USFWS under section 7(c) of the Endangered Species Act of 1973 (ESA). The USFWS suggests that a biological evaluation similar to a biological assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. A detailed biological assessment, including conservation measures, was included in Appendix E of the 2009 SGAC EIS and updated in **EA sections 3.9.1 and 4.9.1.1 (Vegetation)** and **EA sections 3.10.3 and 4.10.4 (Wildlife)**.

The current USFWS list of vertebrate T&E species that may occur in Campbell County includes the northern long-eared bat (*Myotis septentrionalis*). Since the Caballo West tract lies within the area of impact (AOI) for the northern long-eared bat and the white noise syndrome (WNS) zone, OSMRE has an obligation to consult with USFWS. OSMRE has complied with the programmatic biological opinion (BO) and fulfilled the Section 7 consultation requirements under the Endangered Species Act through submission of the Northern Long-eared Bat 4(d) rule streamlined consultation form to the Wyoming Ecological Field Services Office. On March 29, 2019 OSMRE received a memorandum from USFWS indicating that, although the Proposed Action may affect the northern long-eared bat, there are no effects beyond those previously disclosed in the USFWS's programmatic biological opinion for the final 4(d) rule (USFWS 2019b). Therefore, the programmatic biological opinion satisfies OSMRE's responsibilities under section 7 of the ESA relative to the northern long-eared bat.

In 2009 and 2010, surveys for Ute ladies'-tresses were conducted on the Caballo Mine permit area and the tract. No Ute ladies'-tresses were identified (PCM 2014). In addition, the USFWS has not designated any "critical" habitat for this species in the vicinity of the Caballo Mine at this time (USFWS 2018b). Given the fact that no Ute ladies'-tresses have been documented within or adjacent to the Caballo West tract, the direct and indirect effects related to the Proposed Action on T&E species on vegetation would be negligible and short term (8.9 years).

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

10. Whether the action threatens a violation of a federal, state, local, or tribal law, regulation, or policy imposed for the protection of the environment, where non-federal requirements are consistent with federal requirements:

As described in **EA section 1.2.3**, the Proposed Action is in compliance with known federal, state, local, or tribal laws or requirements imposed for the protection of the environment. During the public and agency involvement for this EA, state, local, and tribal interests were given the

Finding of No Significant Impacts

opportunity to participate in the EA process. The Proposed Action is consistent with applicable plans, policies, and programs.



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Date