

**U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
FINDING OF NO SIGNIFICANT IMPACT**

for
Freedom Mine
Federal Coal Tract NDM 91535
Federal Mining Plan Modification

A. Introduction

An application to lease Federal Coal Tract NDM-91535 was filed with the Bureau of Land Management (BLM) by Coteau Properties Company (Coteau) on January 16, 2002 and subsequently approved by the BLM for competitive lease sale on November 1, 2005. Coteau was the successful high bidder during the lease sale. On April 1, 2011, in accordance with the Mineral Leasing Act of 1920 (MLA), Coteau received federal mining plan approval from the Assistant Secretary of Lands and Mineral Management (ASLM) to mine portions of Federal Coal Tract NDM-91535 at the Freedom Mine, in accordance with the North Dakota Public Service Commission (NDPSC) Surface Coal Mining Permit NACT-0201 (Permit NACT-0201). On October 28, 2014, the NDPSC notified the Office of Surface Mining Reclamation and Enforcement (OSMRE) that they had received Permit Revision No. 18 (PR18) for Coteau's Permit NACT-0201 mining plan, including mining portions of Federal Coal Tract NDM-91535 not previously approved by the ASLM in accordance with its responsibilities under the MLA. Under the MLA, the ASLM must approve, approve with conditions, or disapprove the proposed mining plan modification for Federal Tract NDM-91535.

The Freedom Mine is located approximately 10 miles north of Beulah, North Dakota, north of Highway 200 in Mercer County, North Dakota. PR18 proposes to add zero federal surface acres to the approved permit area and add approximately 960 federal coal acres and 25.6 million tons (mt) of federal coal to the approved federal mining plan. The Freedom Mine uses a combination of dragline and truck shovel mining methods. The average production rate at the Freedom Mine is approximately 13.5 million tons per year (mtpy) and the maximum production rate is 16 mtpy. The current production rate at the Freedom Mine is approximately 14.5 mtpy. Freedom Mine started operation in 1983 and the life of mine will continue operation until 2045. This mining plan modification will not extend the life of the mine.

B. Statement of Environmental Significance of the Proposed Action

Pursuant to 30 C.F.R. Part 746, OSMRE is recommending selection and approval of Alternative A (Proposed Action). The undersigned person has determined that approval of a federal mining plan modification authorizing the mining of 25.6 mt of federal coal and additional surface disturbance of approximately 795 acres to recover the federal coal will 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 U.S.C. 4332(2)(C); therefore, an environmental impact statement is not required.

C. Reasons

In response to the proposed action, an *Environmental Assessment for the Freedom Mine West Mine Area*, (hereafter the “EA”) was prepared to satisfy NEPA requirements. The EA analyzed the potential impacts associated with modifying the mining plan to authorize mining of 960 acres of Federal Coal Tract NDM-91535 that will allow the mine to continue producing coal at the current rate of 14.3 mtpy instead of ceasing production as recoverable private coal reserves are exhausted. Approval of the mining plan modification will allow for a more contiguous mining pattern; a more efficient and economical coal recovery at the Freedom Mine; and will not result in the bypassing federal coal.

This finding of no significant impact (FONSI) is based on and incorporates by reference the attached EA; *the Final Environmental Impact Statement FES 05-03: The Coteau Properties Company federal coal lease by application NDM 91535 for West Mine Area, Freedom Mine, Mercer County, North Dakota., July 2005* (hereafter the “2005 EIS”), and associated FONSI; and Decision Record previously prepared by BLM’s North Dakota Field Office.

In complying with its responsibilities under NEPA, OSMRE did not reevaluate potential impacts previously analyzed as part of the 2005 EIS, which included analysis of all federal coal lands identified in the proposed mining plan modification. Rather, consistent with 40 C.F.R. 1508.28 the EA considered potential changes to the extent or nature of those impacts, based on the current mine permit approved by the North Dakota Public Service Commission (NDPSC), and also considered issues not previously analyzed using new data and or updated information. Because the 2005 EIS thoroughly described the environmental setting of the Freedom Mine permit area and mining operations, it was incorporated by reference in the EA.

The Federal Mining Plan Modification EA was prepared in accordance with the requirements of NEPA and the Council on Environmental Quality (CEQ) regulations implementing NEPA. OSMRE is the lead Federal agency responsible for development of this EA because it has the decision-making authority regarding the proposed mining plan modification under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). As such, this EA follows the Department of Interior’s, Departmental Manual Part 516 Chapter 13, which describes OSMRE’s management of the NEPA process. The undersigned has determined that OSMRE’s public involvement requirements for the EA have been met. The EA and FONSI were made available to the public during a 30-day comment period prior to the decision.

The EA was prepared by the applicant, at the direction of OSMRE. The EA considered a reasonable range of alternatives to the Proposed Action, and their potential environmental effects, and provides sufficient evidence and analysis for this FONSI. During the development of the EA, OSMRE independently reviewed the document to ensure compliance with 43 C.F.R. Part 46, Subpart D and all relevant provisions of the CEQ regulations, and other program requirements. This independent review of the EA included OSMRE’s evaluation of all environmental issues discussed therein. OSMRE

takes full responsibility for the accuracy, scope and the content of this document.

In accordance with 40 C.F.R. 1508.27, this finding is based on consideration of the context and intensity of the project as described in the following paragraphs.

Context: Coteau proposes to meet demand for coal and continue mine operations in the Freedom Mine, West Mine Area, through approximately 2045 by:

1. Securing a federal mining plan modification authorizing mining of 960 acres of Federal Coal Tract NDM-91535 in accordance with the valid existing right granted by BLM within the current Freedom Mine permit boundary; and,
2. Continuing to mine, process, and deliver coal from the mine to adjacent Dakota Gasification Company's Great Plains Synfuels Plant (DGC), the adjacent Antelope Valley Station (AVS) coal-fired power plant, and the Leland-Olds Station (LOS) coal-fired power plant, near Stanton, North Dakota.

In 2005 the BLM leased Federal Coal Tract NDM-91535, including approximately 5,344 acres of federal coal, to Coteau within a proposed 17,051 acre expansion, called the West Mine Area (WMA). On April 1, 2011, Coteau received federal mine plan approval from the ASLM to mine 1,748 acres of Federal Coal Tract NDM-91535. On June 11, 2015 Coteau submitted to the state regulatory authority, the NDPSC, PR18 to Permit NACT-0201. PR18 was subsequently approved by the NDPSC on October 21, 2015. PR18 proposes to mine 960 acres of federal coal in Federal Coal Tract NDM-91535 not previously approved by the ASLM on April 1, 2011.

Due to a variety of factors including setbacks from cultural sites, transmission lines, and roads, approximately 795.1 of the 960 acres are actually mineable for coal. Within the 795.1 acres, approximately 25.6 mt of mineable in-place federal coal exists. However, with Coteau's historic average coal recovery rate of 90 percent, approximately 23.0 mt will likely be mined. It is reasonably foreseeable that Coteau will mine at the current rate of 14.3 mtpy. At this rate of production, the additional federal coal approved in the Proposed Action could be mined in approximately 1.6 to 1.8 years, but is expected to be mined in approximately 10-15 years due the mining plan and pit progression including adjacent non-federal coal reserves.

The area considered in the Proposed Action represents approximately 21 percent of the total federal coal leased in the WMA; approximately 45 percent of the WMA is federal coal. Coteau will likely only be able to mine approximately 3,750 acres of federal coal leased in the WMA, due to setbacks, terrain, and deep overburden. Total coal reserves in the WMA are approximately 268.0 mt. Total federal mineable coal within the WMA is approximately 121.5 mt. The federal coal proposed to be mined in the Proposed Action considered equals approximately 9.5 percent of total coal reserves in the WMA.

The approval of the federal mining plan modification is a site-specific action

involving lands that are entirely within the boundaries of the Freedom Mine state mine permit. The effects of the action have been analyzed at the local and regional scale.

Intensity: The following discussion is organized around the 10 Significance Criteria described within the federal regulations at 40 CFR 1508.27(b). The following have been considered in context in evaluating the severity of impact for this proposal:

1. Impacts that may be both beneficial and adverse:

Beneficial and adverse effects of the Proposed Action Alternative were described in the EA. Measures to reduce potential short-term and long-term adverse impacts to air quality, topography, water resources, soils, vegetation, wildlife, sensitive species, cultural resources, noise, visual resources, transportation, and public health and safety are incorporated in the Proposed Action and are required by the NDPSC, approved Permit NACT-0201, and stipulations to the Federal Coal Tract NDM-91535. Consequently, it is expected that these measures will be implemented during mining and reclamation at the Freedom Mine WMA.

Emissions attributed to the mining and combustion of coal are not anticipated to increase as a result of the Proposed Action. The amounts of criteria pollutants and hazardous air pollutants will remain consistent with past and current levels which have been approved by the state's regulatory authorities and are in compliance with their regulatory standards. Both the direct contributions of greenhouse gases (GHGs) from mining the federal coal and indirect contributions from combustion of the federal coal were quantified, and considered minor when contextualized against state, national and global sources of GHGs. Cultural resources may be affected by surface disturbing activities, but approved cultural resource management plans will mitigate adverse impacts to known sites and unanticipated discoveries. Noise and transportation impacts to local residents will be comparable and consistent with past and current intensity; adverse impacts to public health and safety are considered minor. The topography will be permanently altered due to the removal of coal and overburden but will be restored to approximate original contour. Adverse impacts to topography and visual resources will be short term and minor. The hydrology of surface water and groundwater systems will be impacted by mining. Topographic restoration including the replacement of ephemeral stream channels, surface depressions, wetlands and livestock ponds will minimize the severity of adverse impacts to the hydrologic regime. The Proposed Action is designed to maintain the quantity, quality, and hydrologic regime of surface and ground water systems in the area. The effects of all existing and proposed mining operations should not materially damage the hydrologic balance and water availability within or near the proposed permit area. The Proposed Action is expected to establish habitats that replicate pre-mining habitats as closely as possible. The reclaimed habitats may be different than the pre-mining habitats, but will be of high value to wildlife. The reclamation and post-mining land use plans will ensure that approximately the same acreage of wetlands, woodlands, and native prairie will be reclaimed. Mining will have no effect on any known federally-listed threatened, endangered, proposed, or candidate

species; or areas designated as critical habitat for threatened and endangered species. Beneficial impacts of the Proposed Action will include the continuation of gainful employment at the mine, royalty and tax revenues, local supply and service economies and contribution to the supply of coal to meet the nation's energy demands. 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 Proposed Action is designed to control the limited public traffic that may occur in the project area. Mine truck and employee traffic will not increase as the Proposed Action does not propose an increase in production. Precautions for public health and safety will be implemented during transport of equipment along public roads to and from the project area.

All mine activities with potential public exposure will be subject to State mine permit approval and review by the Mine Safety and Health Administration, and include measures to protect health and safety. No designated or illegal sites for hazardous or solid waste are located within the WMA. Several items used for mining operations are recycled, including fluorescent light bulbs, used oil, wire rope, batteries, and tires. All other waste is taken to an approved solid-materials landfill.

The Freedom Mine conducts blasting when mining coal in the WMA. Residents and owners of manmade dwellings within one mile of the permit area are notified of an opportunity to receive a preblast survey. Additionally, an annual blasting schedule is sent to all residents within a half-mile of blasting sites, as well as others that regularly work within the area. Permitting requirements, and inspection and enforcement performed by the state regulatory authority, help ensure that blasting will not adversely affect public health and safety.

The emissions associated with the mining and combustion of coal have been analyzed and are within standards intended to protect human health, as required by State permits, thereby limiting potential impacts to public health. Noise levels at the nearest residences are expected to be below levels that will affect human health. Potential risks to public health and safety will be low and will occur over limited, brief periods.

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

There are no park lands, wilderness areas, wild and scenic rivers or ecologically critical areas within the mine permit boundaries. A cultural resource survey and inventory of the entire permit area has been completed. All sites that were identified have been properly tested and evaluated for eligibility on the National Register of Historic Places. The Cultural Resource Management Plan for the WMA was approved by the State Historic Preservation Officer (SHPO) on April 22, 2005 and outlines how cultural resources are managed in the WMA. The management plan also outlines the procedure

to address inadvertent discoveries during the mining process. The federal coal lease includes a special stipulation that prohibits mine related disturbance of two cultural resource areas located over federal coal. Since the issuance of for Federal Tract NDM-91535 in 2005, one site has been avoided and three sites have been mitigated in coordination with the SHPO. The applicant is committed to reporting, testing, and mitigating, if necessary, any previously unrecorded archeological, cultural, or historical materials that may be discovered as a result of mining related activities.

A registered Professional Soil Classifier of North Dakota conducted a detailed soil survey of the WMA. Also, the State Office of the Natural Resources Conservation Service (NRCS) was consulted to determine the extent of prime farmland. Only prime farmland that is historically used as cropland is considered as prime farmland and subject to the special prime farmland provisions of SMCRA and the NDPSC. NRCS designated prime farm lands are present on approximately 1,022 acres throughout the entire WMA. Of this total, approximately 33.5 acres of prime farmland overlays the federal coal. The restoration standards for prime farmland are defined in North Dakota Century Code Chapter 69-05.2-26. Restoration of prime farmlands will be achieved when the average yield of the crop on reclaimed lands equals or exceeds that of crop on non-mined prime farmland in the surrounding area. No impacts to prime farmlands are anticipated.

Coteau has developed plans to reconstruct those wetlands that are impacted by mining at the Freedom Mine. These plans are designed specifically to ensure no net loss of wetland acreage, minimize the farming hindrance wetlands create, and maximize the wetlands wildlife value. Many ephemeral, temporary, seasonal, and semi-permanent wetlands and fen/fen-like wetlands will be disturbed by proposed mining activities within the WMA. Above the federal coal proposed to be mined with the Proposed Action, approximately 1.8 acres of temporary and 1.3 acres of seasonal wetlands will be disturbed. Post-mining seasonal and semi-permanent wetland acreage, including constructed wetlands, are expected to be at least the acreage of what existed before mining. Temporary wetlands are included under other land use categories and will be evaluated using those performance standards. Seasonal and larger constructed wetland success will be evaluated using wetland performance criteria in the latest version of the NDPSC Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Post-Mining Vegetation Assessments. A request for jurisdictional determination of delineated wetlands was submitted by Coteau to the U.S. Army Corps of Engineers (USACE) on October 30, 2015. Once a jurisdictional determination has been made, Coteau will submit an Individual Permit in accordance with Section 404 of the Clean Water Act for impacts to jurisdictional waters. All plans to disturb jurisdictional wetlands and waters of the U.S. will be reviewed by the USACE and required mitigation plans will be implemented.

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

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

The EA has analyzed the direct, indirect, and cumulative effects of the Proposed Action on climate change. Though total emission levels for mining operations and emissions from DCG, AVS, and LOS have been estimated, climate change science is not at a place where levels of emissions attributed at the project level can be correlated to the effect on climate change. The rate of the contribution of GHGs to climate change will not increase under the Proposed Action and when contextualized against state, national and global sources of GHGs is considered minor.

No other anticipated effects have been identified that are controversial. The Freedom Mine plan to mine federal coal and its effects are not unique. Approvals of federal mining plans have been made in this region for many years. There is no controversy over the nature of the impacts. The design features and reclamation plan required by the state permit in accordance with SMCRA will reduce the effects on the environment, or, in some cases, will improve the current condition. Proposed reclamation procedures should be successful in reducing impacts and mitigating impacts in a manner that ensures the quality of the human environment will be restored.

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

The Freedom Mine plan to mine federal coal in the WMA is not unique or unusual. The effects of surface mining are well established and highly regulated. The OSMRE has experience implementing similar actions in similar areas. The environmental effects to the human environment are fully analyzed in the EA and the 2005 EIS, which is incorporated by reference. The progression of mining and reclamation and environmental monitoring conducted since the 2005 EIS was prepared improve the certainty with regard to projected impacts discussed in the EA. There are no anticipated effects on the human environment that are considered to be highly uncertain or involve unique or unknown risks.

6. *The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.*

This decision is not precedent setting. The issues considered in the Proposed Action were developed by the interdisciplinary team within the context of past, present, and reasonably foreseeable future actions. Significant cumulative effects are not anticipated. A complete analysis of the direct, indirect, and cumulative effects of all alternatives are

described in Chapter 3 of the EA, as well as Chapter 4 of the 2005 EIS, which is incorporated by reference.

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

The Proposed Action was evaluated for possible impacts in context of past, present and reasonably foreseeable actions. Present and future mining activities in the WMA were considered and significant cumulative effects are not anticipated. The direct effects of mining in the WMA will be ameliorated by the reclamation and restoration requirements enforced by the NDPSC approved Permit NACT-0201. The indirect effects associated with the combustion of the mined federal coal were considered minor and were not considered cumulatively significant. Disclosures of the estimated cumulative effects of the project are contained in Chapter 3 of the EA and Chapter 4 of the 2005 EIS, which is incorporated by reference.

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 or may cause loss or destruction of significant scientific, cultural, or historical resources.

A cultural resource survey and inventory of the entire permit area has been completed. All sites that were identified have been properly tested and evaluated for eligibility on the National Register of Historic Places. The Cultural Resource Management Plan for the WMA was approved by the SHPO on April 22, 2005 and outlines how cultural resources are managed in the WMA. The management plan also outlines the procedure to address inadvertent discoveries during the mining process. The federal coal lease includes a special stipulation that prohibits mine related disturbance of two cultural resource areas located over federal coal. Since the issuance of Federal Tract NDM-91535 in 2005, one site has been avoided and three sites have been mitigated in coordination with the SHPO. The applicant is committed to reporting, testing, and mitigating, if necessary, any previously unrecorded archeological, cultural, or historical materials that may be discovered as a result of mining related activities.

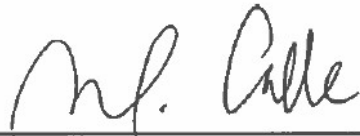
9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

During the 2011 NDPSC and ASLM approval of Revision No. 8 to Permit NACT-0201 to mine portions of Federal Tract NDM-91535, the United States Fish and Wildlife Service (USFWS) confirmed Revision No. 8 to Permit NACT-0201 will have no significant impact on fish and wildlife resources, noting no threatened or endangered species were known to occupy the project area. In 2015, OSMRE queried the USFWS's Information, Planning and Consultation System (IPAC) for the Proposed Action to confirm the most current federally-listed threatened, endangered, proposed, or candidate species list.

Mining will have no effect on any known federally-listed threatened, endangered, proposed, or candidate species, or areas designated as critical habitat for threatened and endangered species. The Poweshiek Skipperling, Western Prairie Fringed Orchid and Greater Sage Grouse (threatened, endangered, proposed or candidate species listed by the North Dakota Game and Fish Department) are not known to occur in Mercer County.

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

The project does not violate any known federal, state, local or tribal law or requirement imposed for the protection of the environment. During the development of the EA and 2005 EIS, state, local, and tribal interests were given the opportunity to participate in the environmental analysis process. In addition, the project is consistent with applicable plans, policies, and programs.



Acting
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Date