



**4310-05-P**

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**[S1D1S SS08011000 SX064A000 190S180110; S2D2S SS08011000 SX064A00 19XS501520]**

**Notice of Record of Decision for the West Elk Mine Mining Plan Modification**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice of Record of Decision.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSMRE) announces its decision to adopt 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. In accordance with Section 102 of the National Environmental Policy Act of 1969 (“NEPA”), the Council on Environmental Quality’s (“CEQ”) regulations implementing NEPA, and other applicable authorities, OSMRE has conducted an independent review and evaluation of the USFS’s SFEIS for Federal Coal Lease Modifications COC-1362 and COC-67232 (including on-lease exploration plan) at the West Elk Mine dated August 2017.

As a cooperating agency with responsibility 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), OSMRE provided subject matter expertise to the USFS during the environmental review process. Based on its independent review and evaluation, OSMRE has determined the SFEIS, including all supporting documentation, as incorporated by reference, adequately assesses and discloses the environmental impacts for the mining plan

modification, and that adoption of the 2017 SFEIS by OSMRE is authorized under 40 CFR 1506.3, Adoption. Accordingly, OSMRE adopts the 2017 SFEIS, and takes full responsibility for the scope and content that addresses the proposed mining plan modification at West Elk Mine. Documents are available on OSMRE's website:

<https://www.wrcc.osmre.gov/westElkMine.shtm>

**FOR FURTHER INFORMATION CONTACT:** For further information about the Project, contact: Gretchen Pinkham, OSMRE Project Manager, at 303-293-5088 or by email at [osm-nepa-co@osmre.gov](mailto:osm-nepa-co@osmre.gov). Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Project

II. Alternatives

III. Environmental Impact Analysis

IV. Decision

**I. Background on the Project**

As established by the Mineral Leasing Act (MLA) of 1920, the Surface Mining Control and Reclamation Act (SMCRA) of 1977, as amended (30 U.S.C. §§ 1201-1328), and the Cooperative Agreement between the State of Colorado and the Secretary of the U.S. Department of the Interior (DOI) in accordance with Section 523(c) of SMCRA (30 U.S.C. 1273(c)), Mountain Coal Company's (MCC) Permit Application Package (PAP) (also referred to as Permit

Revision 15 (PR 15)) must be reviewed by OSMRE and a mining plan modification approved by the Assistant Secretary for Land and Minerals Management (ASLM) before MCC may significantly disturb the environment in order to develop the Federal Coal Leases COC-1362 & COC-67232. The Colorado Division of Reclamation, Mining and Safety (CDRMS) is the SMCRA regulatory authority principally responsible for reviewing and approving PAPs. Under the MLA, OSMRE is responsible for making a recommendation to the ASLM about whether the proposed mining plan modification should be approved, disapproved, or approved with conditions (30 CFR 476.13). CDRMS approved the PAP for PR 15 on September 4, 2018.

It is OSMRE's decision to adopt the USFS Grand Mesa, Uncompahgre and Gunnison National Forests (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 10 million tons of recoverable coal. The leases would be mined using room and pillar development and longwall retreat mining recovery methods producing approximately 4.5 million tons per year and continuing mining operations by approximately 3 years. OSMRE received updated information regarding the anticipated site locations and surface disturbance acreage associated with PR-15 submitted to CDRMS. Under

Alternative 3, approximately 54 acres of surface disturbance would occur on both Federal and private lands for the construction of mine ventilation boreholes (MVBs) and temporary roads.

OSMRE consulted with the Colorado State Historic Preservation Officer in compliance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (54 U.S.C. §§ 300101- 307108), as provided for in 36 CFR Part 800.2(d)(3) and providing for public involvement, as required. Consultations with Native American Tribes are being conducted in accordance with DOI policy.

As part of its consideration of impacts of the proposed Project on threatened and endangered species, OSMRE completed the Section 7 consultation process under the Endangered Species Act and received concurrence from USFWS that they have no concerns on August 8, 2018, pursuant to Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. §§ 1531 et seq.) and its implementing regulations.

In addition to compliance with NEPA, NHPA Section 106, and ESA Section 7, all Federal actions will be in compliance with applicable requirements of the SMCRA; the CWA, 33 U.S.C. §§ 1251-1387; the Clean Air Act of 1970, as amended, 42 U.S.C. §§ 7401-7671q; the Native American Graves Protection and Repatriation Act of 1990, as amended, 25 U.S.C. §§ 3001-3013; and all applicable laws, regulation, and Executive Order on topics such as Environmental Justice, Sacred Sites, and Tribal Consultation.

### **III. Alternatives**

The analysis in the SFEIS considers direct, indirect, and cumulative impacts of the Proposed Action and two Alternatives. Alternatives for the Project that were analyzed in the SFEIS include:

- (a) Alternative 1 – No Action Alternative: This Alternative was identified as the environmentally preferable Alternative. Even though this is the No Action 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.
- (b) Alternative 3 – Preferred Alternative: 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 10 million tons of recoverable coal. The leases would be mined using underground longwall mining techniques producing approximately 4.5 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, approximately 54 acres of surface disturbance would occur on both Federal and private lands for the construction of MVBs and temporary roads.
- (c) Alternative 4: Under Alternative 4, the agencies would consent and 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 Colorado Roadless Rule including temporary road construction in the Sunset Colorado Roadless Area, 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.

A wide range of additional Alternatives were considered by OSMRE but not carried forward for detailed analysis in the SFEIS. The following Alternatives were not analyzed in the SFEIS because they either did not meet the purpose and need of the Project or were not considered technically feasible or economically feasible or cost-effective:

- Alternative 2;<sup>1</sup>
- Helicopter drill Methane Drainage Wells (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
- Mitigate the potential Greenhouse Gas (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

---

<sup>1</sup> 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).

- 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

### **III. Environmental Impact Analysis**

The SFEIS analyzes the potential environmental impacts to 18 different resource categories, including:

- Air Quality
- Climate Change
- Topographic and Physiographic Environment
- Geology and Soils
- Heritage Resources
- Watershed
- Vegetation
- Threatened and Endangered Species
- Sensitive Species
- Sensitive Plants
- Management Indicator Species
- Migratory Birds
- Range Resources
- Transportation System
- Roadless
- Recreation
- Socioeconomics
- Visual Resources

#### **IV. Decision**

In consideration of the information presented above, OSMRE approves the Record of Decision (ROD) adopting the USFS GMUG SFEIS and selects Alternative 3 (Consent to and Modification of the Leases) as the Preferred Alternative 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, United States District Judge of the United States District Court for the District of Colorado, Philip A. Brimmer, found that the Agencies' decisions were affirmed in the *High Country Conservation Advocates v. Forest Service* (17-cv-03025-PAB). OSMRE understands that a notice of appeal has been submitted; 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 mining plan modification by the ASLM.

Dated: February 26, 2019.

Marcelo Calle,

Acting Regional Director, Western Region.

[FR Doc. 2019-04839 Filed: 3/14/2019 8:45 am; Publication Date: 3/15/2019]