

# RECORD OF DECISION

## Environmental Impact Statement for the North Porcupine Coal Lease Application WYW173408



October 2011



The BLM's multiple-use mission is to sustain the health and productivity of the public lands for the use and enjoyment of present and future generations. The Bureau accomplishes this by managing such activities as outdoor recreation, livestock grazing, mineral development, and energy production, and by conserving natural, historical, cultural, and other resources on public lands.

**BLM/WY/PL-11/056+1320**

**U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
RECORD OF DECISION  
NORTH PORCUPINE LEASE BY APPLICATION  
WYW173408  
CAMPBELL COUNTY, WYOMING**

**INTRODUCTION**

On September 29, 2006, BTU Western Resources, Inc. (BTU), a subsidiary of Peabody Energy Corporation (PEC), filed an application with the Bureau of Land Management (BLM) for Federal coal reserves in three maintenance tracts encompassing approximately 5,116.65 acres and 598 million tons of coal as estimated by the applicant. The tracts are located west, northwest, and north of and immediately adjacent to the North Antelope Rochelle Mine in Campbell County, Wyoming (Appendix 1, Figure 1). The mine is operated by Powder River Coal, LLC (PRC), a subsidiary of PEC. The application was made pursuant to the Leasing on Application regulations found in the Code of Federal Regulations at 43 CFR Subpart 3425.1.

On October 12, 2007, BTU filed a request with the BLM to modify its application and increase the lease area and coal volume to approximately 8,981.74 acres and 1,179.1 million tons of coal. BLM reviewed the modified tract configuration and notified the company that their application had been modified. BLM determined that the application would be processed as two separate maintenance tracts and, if decisions were made to lease the tracts, a separate competitive lease sale would be held for each tract. Located approximately 12 miles southeast of Wright, the two nominated tracts on the north side of the mine were combined and are referred to as the North Porcupine Lease By Application (LBA) tract with assigned case file number WYW173408. Located approximately 14 miles southeast of Wright, the remaining nominated tract on the west side of the mine is referred to as the South Porcupine LBA tract with assigned case file number WYW176095.

BTU has applied to lease Federal coal reserves in order to extend the life of the North Antelope Rochelle Mine. The BLM refers to these types of applications as maintenance tracts. A maintenance tract is a tract of Federal coal that is adjacent to, and can be mined by, an existing active coal mine. As applied for, the North Porcupine LBA tract includes a total of approximately 5,795.78 acres (Appendix 1, Figure 2). BTU estimates that, as applied for, the tract includes approximately 601.2 million tons of recoverable coal reserves in Campbell County, Wyoming.

The North Porcupine LBA tract was evaluated in the *Wright Area Coal Lease Applications Environmental Impact Statement* (EIS). The EIS analyzed the proposed leasing of six Federal coal tracts located in the Wright Area of the Wyoming portion of the Powder River Basin. The Proposed Action analyzed in the EIS is to hold one competitive sealed-bid lease sale and issue a lease for the Federal coal lands included in the North Porcupine LBA tract as applied for by BTU. The Proposed Action assumes that the applicant would be the successful bidder on the tract, and that the tract would be mined as a maintenance lease for the existing mine. According

to the applicant, the North Antelope Rochelle Mine needs the Federal coal included in the North Porcupine coal lease area in order to extend the life of the mine. The applicant would recover the Federal coal using the same methodology, machinery, and facilities that are currently being used to recover the coal in the existing North Antelope Rochelle Mine coal leases. If the lease for the North Porcupine LBA tract is acquired as it was applied for, PRC anticipates that it would extend the life of the North Antelope Rochelle Mine by approximately 6.3 years.

The North Antelope Rochelle Mine has a permit to conduct mining operations approved by the Wyoming Department of Environmental Quality Land Quality Division (WDEQ/LQD) and a Mineral Leasing Act (MLA) of 1920, as amended, mining plan approved by the Secretary of the Interior to conduct surface coal mining operations on their existing coal leases. The mine complies with the requirements of the Clean Air Act (CAA) through an air quality permit approved by the Air Quality Division of the Wyoming Department of Environmental Quality (WDEQ/AQD) which currently allows mining of up to 140 million tons of coal per year.

BLM administers the Federal Coal Leasing Program under the MLA as amended by the Federal Coal Leasing Amendments Act of 1976. If any proposed lease tract contains surface lands which are under the jurisdiction of any Federal agency other than the Department of Interior (USDI) or are occupied by a qualified surface owner, that agency or individual must consent to the issuance of the lease, and in the case of a Federal agency, may prescribe terms and conditions to be imposed on that lease (43 CFR 3400.3-1 and 3420.4-2). There are no qualified surface owners within the selected configuration for the North Porcupine LBA tract. Powder River Coal, LLC, School Creek Coal Resources, Jerry N. and Rhonda Wilkinson, and Western Railroad Properties, Inc. own the private lands contained within the North Porcupine LBA tract as analyzed in the Wright Area EIS under Alternative 2.

The selected configuration for the North Porcupine tract (Appendix 1, Figure 3) also includes approximately 5,120 acres, more or less, of National Forest System lands in the Thunder Basin National Grassland (TBNG) administered by the USDA-Forest Service (FS). As required by 43 CFR 3420.4-2, the FS has provided consent to BLM to lease the FS-administered lands that were included in the North Porcupine tract. The FS signed their Record of Decision on September 30, 2011. Their prescribed terms and conditions for the North Porcupine coal tract are included in Appendix 2. The FS ROD is subject to appeal under FS administrative procedures. In the event of a FS ROD appeal, BLM's decision would not be implemented until the FS appeal process is completed.

## **BACKGROUND**

### **Lease by Application Process**

In the Powder River Basin (PRB), maintenance tracts are generally nominated for leasing by companies operating adjacent existing mines. To process an LBA, the BLM must evaluate the quantity, quality, maximum economic recovery (MER), and fair market value (FMV) of the Federal coal. The BLM must also evaluate the environmental and socioeconomic impacts of leasing and mining the Federal coal in accordance with the requirements of the National

Environmental Policy Act of 1969 (NEPA). BLM prepared the Wright Area Coal EIS to evaluate and disclose potential impacts of leasing the Federal coal in six Wright Area coal tracts, including the North Porcupine tract. Although leasing the North Porcupine would not authorize mining operations on the tract, the EIS evaluates the potential impacts of mining the North Porcupine tract because mining is a logical consequence of issuing a lease for a maintenance tract of coal.

The Office of Surface Mining Reclamation and Enforcement (OSM) is a cooperating agency on the Wright Area EIS. OSM is the Federal agency with the primary responsibility to administer programs that regulate surface coal mining in accordance with Section 503 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM also recommends approval, approval with conditions, or disapproval of the MLA mining plan to the Assistant Secretary of the Interior, Lands and Minerals Management. The FS is a cooperating agency since a portion of the Wright Area proposed lands for leasing lie within the TBNG.

The WDEQ/LQD, WDEQ/AQD, Wyoming Department of Transportation (WYDOT), and the Converse County Board of Commissioners are also cooperating agencies on this EIS. WDEQ/LQD has a cooperative agreement with the Secretary of the Interior to regulate surface coal mining operations on Federal and non-Federal lands within the State of Wyoming. WDEQ/AQD regulates air borne emissions in Wyoming and administers the air quality standards developed by the Environmental Protection Agency (EPA). WYDOT's responsibilities include maintaining state roads and highways, planning and supervising road improvement work, and supporting airports and aviation in the state. The responsibilities of the Converse County Board of Commissioners include but are not limited to the management and oversight of county roads, facilities, and planning and zoning rules in the county.

By law and regulation, the LBA process is an open, public, competitive sealed-bid process. Bidding at any potential sale is not restricted to the applicant. In order for BLM to award and issue a coal lease, the highest bid received must meet or exceed fair market value of the coal as determined by BLM's economic evaluation.

BTU filed the LBA because the North Porcupine, as applied for, is adjacent to their existing approved mining operations at the North Antelope Rochelle Mine and the Federal coal can be mined using their existing mine facilities, equipment, and employees (Appendix 1, Figure 1). In the Wright Area Coal EIS, the alternatives that are analyzed in detail assume that the applicant would be the successful bidder if a competitive coal lease sale is held.

### **History of Coal Leasing Activity in the Wyoming Portion of the Decertified Powder River Coal Region**

Since decertification of the Powder River Federal Coal Region in 1990, 22 Federal coal leases have been issued in Wyoming's Campbell and Converse counties under the LBA process with competitive sealed-bid sales. These leases include approximately 53,919 acres and 6.2 billion tons of mineable coal. Twenty of these leases were issued to the following producing mines for the purpose of extending operations at those mines: Jacobs Ranch (2), Black Thunder (3), North

Antelope Rochelle (4), Eagle Butte (2), Antelope (5), Buckskin (1), Cordero/Rojo (2), and the former North Rochelle (1).

The remaining two leases, the West Rocky Butte and the West Roundup, were issued to companies intending to open new mines. The West Rocky Butte lease was issued to Northwestern Resources Company in 1992. They planned to start a new mine to recover the coal included in the Rocky Butte and West Rocky Butte leases but the new mine was never developed. The Rocky Butte and West Rocky Butte leases are now held by Caballo Coal Company, a subsidiary of PEC, and are included in the Caballo Mine. The West Roundup lease was issued to West Roundup Resources, Inc., a subsidiary of PEC, and has been incorporated into the recently permitted School Creek Mine.

### **Pending Coal Leasing Applications and Other Proposed Projects in the Wyoming Powder River Basin**

There are currently 11 Wyoming PRB maintenance coal lease applications being processed by BLM including the North Porcupine LBA tract and the recently completed Caballo West, Belle Ayr North, South Hilight Field, West Coal Creek, and South Porcupine LBA Records of Decision. As applied for, the pending coal lease applications comprise of approximately 30,462 acres and 3.292 billion tons of Federal coal (Appendix 1, Figure 1). The coal lease applications and applicant mines include the following: Belle Ayr North (*Belle Ayr Mine*), North Hilight Field (*Black Thunder Mine*), South Hilight Field (*Black Thunder Mine*), West Hilight Field (*Black Thunder Mine*), West Coal Creek (*Coal Creek Mine*), Caballo West (*Caballo Mine*), Hay Creek II (*Buckskin Mine*), West Jacobs Ranch (*Jacobs Ranch Mine*), Maysdorf II (*Cordero Rojo Mine*), South Porcupine (*North Antelope Rochelle Mine*), and North Porcupine (*North Antelope Rochelle Mine*).

In addition to coal leasing and mining, oil and gas leasing and development have also occurred in the area. Both conventional and coalbed natural gas (CBNG) wells have been drilled in and around the North Antelope Rochelle Mine and the North Porcupine LBA. Conventional and CBNG resources are currently being recovered from Federal and private oil and gas leases in the application area. Federal oil and gas lease ownership in the North Porcupine LBA area is described in detail in the Final EIS. Federal oil and gas lessees and private interests identified by the applicant were included on the mailing list for the Wright Area Coal EIS.

The EIS discusses energy development in and around the North Porcupine LBA. The discussion includes a summary of the results of an analysis of the conventional oil and gas drilling that has occurred in the area, prepared by the BLM Wyoming Reservoir Management Group (WSO-RMG). The analysis found that 14 conventional oil and gas wells were permitted and drilled on lands included in the North Porcupine BLM study area. Six conventional gas wells and three oil wells are still producing. Four oil wells and one conventional gas well have been plugged and abandoned.

The Wright Area Coal EIS includes a summary of the results of the BLM WSO-RMG analysis of the CBNG resources in the area. Most of the CBNG production in the area has occurred from

the upper Fort Union Formation (Paleocene) Wyodak-Anderson coal seam, the same coal beds being mined by the surface coal operators. In the Wyoming portion of the PRB, CBNG has been produced from the Wyodak-Anderson zone since the late 1980s. According to data analyzed by the BLM WSO-RMG and the U.S. Geological Survey, measured gas content was minimal in all of the Wyodak-Anderson coal cores that were collected in the year 2000 at locations near the surface coal mines, indicating that the coal seams were already substantially depleted of CBNG in the vicinity of the mines. The EIS identifies 43 CBNG wells that have been drilled over time within the North Porcupine BLM study area. Forty-two of those wells have been producing and one well was shut in. CBNG wells that continue to produce in advance of coal mining assist in removing any remaining methane in the coal seams.

Several mechanisms can be used to facilitate recovery of the conventional oil and gas and CBNG resources prior to mining if the Federal coal in the tract is leased:

- BLM will attach a Multiple Mineral Development stipulation in the Federal coal lease which states that BLM has the authority to withhold approval of coal mining operations that would interfere with the development of mineral leases that were issued prior to the North Porcupine coal tract being leased (Appendix 2).
- Conventional oil and gas wells must be abandoned while mining and reclamation operations are in progress. If the value of the remaining oil and gas reserves justifies the expense of reestablishing production, the wells could be recompleted or redrilled following mining.
- BLM has a policy in place regarding CBNG-coal development conflicts (BLM Washington Office Instruction Memorandum (IM) No. 2006-153). The IM directs BLM decision-makers to optimize the recovery of both CBNG and conventional resources and to ensure that the public receives a reasonable return. This policy offers royalty incentives to CBNG operators to accelerate production in order to recover the natural gas while simultaneously allowing uninterrupted coal mining operations. The IM also states that it is the policy of the BLM to encourage oil and gas and coal companies to resolve conflicts between themselves and, when requested, BLM will assist in facilitating agreements between the companies.
- Mining of the North Porcupine LBA tract would not be authorized until: 1) the coal lessee obtains a permit approved by the WDEQ/LQD to mine the tract, and 2) the MLA mining plan is approved by the Secretary of the Interior. Before the MLA mining plan can be approved, BLM must approve a Resource Recovery and Protection Plan (R2P2). Prior to approving the R2P2, BLM can review the status of CBNG and conventional oil and gas development on the tract and the mining sequence proposed by the coal lessee. Because the permit approval process generally takes the coal lessee several years to complete, CBNG resources on the coal tract could continue to be recovered during that time.

- Prior to mining the Federal coal, the coal lessee can negotiate an agreement with the oil, gas, and pipeline owners and operators regarding the removal of their existing facilities on the North Porcupine tract.

Other proposed projects in the Wyoming PRB that have advanced to the planning, permitting, or construction stages and that would reasonably be expected to be completed in the foreseeable future include: the Wygen III coal-fired power plant at the Black Hills Corporation energy complex near the Wyodak Mine site in Gillette, Wyoming (being constructed); the Dry Fork Station coal-fired power plant constructed by Basin Electric Power Cooperative near the Dry Fork Mine north of Gillette (being tested); the Two Elk coal-fired Unit 1 and Unit 2 power plants proposed by the North American Power Group (NAPG) which would be located east of the Black Thunder Mine; and a railroad line from the PRB to Minnesota proposed by the Dakota, Minnesota, and Eastern Railroad Corporation (DM&E). In September, 2007, Canadian Pacific Railway Ltd. announced acquisition of the DM&E and its subsidiaries. The transaction was reviewed and approved by the Surface Transportation Board in October, 2008.

In addition, several coal conversion projects have been proposed. Based on status and available information, only one, the KFx Coal Beneficiation Project, was considered to have a high enough likelihood of proceeding to include it in the PRB Coal Review. The KFx (now Evergreen Energy) coal beneficiation plant produced commercially viable product in 2007 until the plant was idled down in 2008. Since then, Evergreen Energy Inc. and its strategic partner, Bechtel Power Cooperation, decided to relocate operations to a different location.

The proposed power plants, the DM&E railroad line, coal conversion projects, and the ongoing and proposed oil, gas, and CBNG operations are separate projects being developed independently of leasing the North Porcupine tract. If these projects are developed as proposed and the North Porcupine area is leased and mined as proposed, there would potentially be some overlap between the environmental and socioeconomic impacts of constructing and operating some of the projects and the environmental and socioeconomic impacts of mining the North Porcupine tract. The cumulative effects of these projects are described in Chapter 4 of the *Wright Area Coal Lease Applications EIS*. The cumulative impact discussion in the EIS is based on analyses completed for the PRB Coal Review. The PRB Coal Review can be accessed at the following BLM website:

[http://www.blm.gov/wy/st/en/programs/energy/Coal\\_Resource/PRB\\_Coal/prbdocs.html](http://www.blm.gov/wy/st/en/programs/energy/Coal_Resource/PRB_Coal/prbdocs.html).

## **DECISION**

As the BLM Wyoming High Plains District Manager, my decision is that it is in the public interest to offer the North Porcupine LBA tract as described below for competitive sale so that these reserves are available to compete for sale in the open coal market to meet the national coal demand that is expected to exist until at least 2035. The public interest is served by leasing the North Porcupine LBA tract because doing so provides a reliable, continuous supply of stable and affordable energy for consumers throughout the country. Developing this coal also helps reduce our nation's dependence on foreign energy supplies and provides significant socioeconomic benefits for the United States, Wyoming, and local communities.

Under this decision, Alternative 2 for the North Porcupine LBA tract has been selected from the *Wright Area Coal Lease Applications EIS*. Under Alternative 2, the Federal coal included in the North Porcupine LBA tract, as modified by BLM, will be offered for lease at a competitive sealed-bid sale. Under Alternative 2, the North Porcupine tract has been modified by BLM to include additional lands from the BLM study area. The tract includes 6,364.28 acres, more or less, and the BLM estimates that the tract contains approximately 721,154,828 tons of mineable Federal coal resources in Campbell County, Wyoming.

If the highest bid received at the sale meets or exceeds the FMV as determined by the BLM and if all other leasing requirements are met, a lease will be issued to the successful qualified high bidder. The competitive lease sale will be held as described in Federal regulations found at 43 CFR Subpart 3422, Lease Sales. In the event that the highest bid submitted at the competitive lease sale of the North Porcupine LBA tract does not meet or exceed the FMV as determined by BLM, the BLM may, but is not obligated to, re-offer the coal tract for leasing at a later date.

Under Alternative 2, it is assumed that the applicant would be the successful bidder on the North Porcupine LBA tract and that the Federal coal would be mined to extend the life of the adjacent North Antelope Rochelle Mine. The tract would be mined and reclaimed in a logical sequence in concert with ongoing mining and reclamation operations at the adjacent existing mine. This would be consistent with the analysis of the impacts described in the EIS.

This decision incorporates by reference the standard coal lease stipulations which address compliance with the basic requirements of the environmental statutes and additional BLM special stipulations (Appendix 2).

This decision is in conformance with the *Approved Resource Management Plan for Public Lands Administered by the BLM Buffalo Field Office (RMP)*, which was completed in 2001 and amended in 2003. This decision is also in conformance with the *USDA-FS Land and Resource Management Plan for the Thunder Basin National Grassland* which was completed in 2001.

For FS-administered lands, consent decision authority has been delegated to the Forest Supervisor level on the Medicine Bow-Routt National Forests and Thunder Basin National Grassland. The North Porcupine LBA tract includes Federal coal lands located within the TBNG administered by FS. Therefore, FS must consent and prescribe terms and conditions in order for the tract to be leased. The FS provided BLM their consent to lease the lands in the North Porcupine LBA tract in the FS Record of Decision signed on September 30, 2011. The FS consent decision is conditioned on application of the Notice for Lands of the National Forest System under Jurisdiction of the Department of Agriculture (FS Notice) on the North Porcupine Federal coal lease tract (WYW173408), when and if the tract is leased (Appendix 2).

## **REASONS FOR DECISION**

Denying this proposed coal leasing is not likely to affect current or future domestic coal consumption used for electric generation. Not offering the North Porcupine Federal coal tract

for lease is unlikely to affect changes in the national electric generation portfolio. The rationale for this conclusion is summarized below.

Various commenters on the Wright Area Coal EIS asserted that by not leasing this LBA, and, in a cumulative sense, by denying proposed coal leasing in the Wyoming portion of the PRB, BLM would slow global climate change and would push the national electric generation portfolio to contain only non-carbon fuel alternatives. BLM has thoroughly considered this comment in our decision.

BLM agrees that movement toward electric generation capacity not reliant on carbon fuels is positive. Carbon fuels are a finite resource and will likely become more costly and rare. Having more non-carbon instead of carbon-based electric generation would assist in decreasing human-caused greenhouse gas (GHG) emissions. Reducing human-caused GHG emissions would help to lessen any harmful effects that they may be causing to global climate.

BLM reviewed two independent studies that determined the ability of the domestic electric generation industry to alter the present portfolio (mix of electric generation technologies) corresponding to the time period that the North Porcupine reserves would be leased and produced. The first study was done by the Department of Energy (Annual Energy Outlook 2008 Report, Energy Information Administration, April 2008) and the second was by the domestic electric generation industry's research arm, the Electric Power Research Institute (Electricity Technology in a Carbon Constrained Future, authored by R. James, Carnegie-Mellon University, November 2007).

Both studies projected the electric generation portfolio to 2030 and both studies recognized the likelihood of carbon regulation. While there were differences in each study related to the mix of renewable sources, nuclear, and energy conservation, both studies were consistent in finding that coal-fired electric generation would represent 52-58 percent of the electric generation portfolio by 2030, as compared to the current 51 percent.

The Annual Energy Outlook 2010 Report (Energy Information Administration, December 2009) represents a forecast to the year 2035. This most recent report incorporates the 2009 downturn in electric demand which resulted from lower electric demand for manufacturing in the depressed domestic economy of 2009. This forecast lowered the percentage of coal-fired electric generation in the domestic electric generation portfolio to 44 percent by 2035, based on a slowing in electric demand through 2035, and a doubling, to 17 percent, of renewable electric generation in the domestic electric generation portfolio by 2035.

Based on these studies, even with a considerably more optimistic projection for renewable sources, coal use continues to be projected as the largest portion of the domestic electric fuel mix. As described in the Final EIS, the key determinant of energy consumption is population. As human population and activities have increased over time, coal and other carbon-based fuels have been utilized to provide for these additional energy demands. As directly stated by the Department of Interior Secretary Salazar, "The fact remains that oil and gas and coal are a very important part of our energy portfolio now and they will continue to be an important part of our

energy portfolio in the future . . . Fossil fuels and clean technology coal will have to be part of the mix if the U.S. is able to have enough energy in the future” (Great Plains Energy address, November 9, 2009).

Further, BLM disagrees with the comment that denying the proposed Federal coal leasing application would consequentially reduce the overall rate of national coal consumption by electric generators. Numerous mines located outside of the PRB extract and produce coal in the United States. In order to supply reliable power for the country’s electrical demands, many mines outside of the PRB have the capacity to replace the coal production generated by the North Antelope Rochelle Mine.

The North Porcupine coal reserves, if leased and approved for mining, would allow the coal mining operator to continue to compete for coal sales in a diverse open supply and demand market. Denying this lease offer would not cease currently approved mining operations. Rather, a denial would require the mine to cease operations only after the current lease reserves were depleted. This would deny the mine operator the ability to compete with other operators in an open market for a future coal demand that is projected to continue until at least 2035. The inability of the North Antelope Rochelle Mine, or any other existing PRB producer, to offer reserves in the coal market would not cause electric generators to stop burning coal. Utility companies will likely operate existing coal-burning facilities until either cost or regulatory requirements render them ineffective or they are replaced by other reliable large scale capacity electric generation technologies capable of consistently supporting the bulk electrical demands of the United States’ people.

The effect of rejecting the North Porcupine LBA would be that the existing mine would cease operations after the current reserves are depleted (approximately 9.9 years), and the North Antelope Rochelle Mine would not be competitive in the national coal market to meet the future coal demand in the U.S. that is expected to last until at least 2035. Other national coal producers have the capacity to produce coal and replace the production from this existing mine.

Lastly, PRB coal has competed for an increasing share of coal sales in the market primarily because it is lower cost, environmentally compliant, and successful post-mining reclamation has been thoroughly demonstrated. For these reasons, over the past several decades, PRB coal has been replacing other domestic coals in the open market, and would be expected to compete similarly in the future.

Cumulatively, the effect of rejecting the coal leasing proposed throughout the PRB would be that many of the existing mines would cease operations once current reserves are depleted (ranging from 7 to 15 years). Those mines would then not be able to compete with other mines to meet the future coal demand that is expected to last until at least 2035. When current reserves are depleted at these mines, their production would likely be replaced by other domestic and, potentially, international coal producers with coal that is more costly, less environmentally compliant, and has greater residual environmental impact.

Many other factors including but not limited to those listed below were considered in the decision to lease the North Porcupine LBA tract:

- The Federal Coal Program encourages the development of domestic coal reserves and the reduction of the United States' dependence on foreign sources of energy. BLM recognizes that coal extraction is currently necessary in order to meet the nation's energy needs. A primary goal of the National Energy Policy is to add energy supplies from diverse sources including domestic oil, gas, and coal. Private development of Federal coal reserves is integral to the BLM Coal Leasing Program under the authorities of the Mineral Leasing Act of 1920, the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Coal Leasing Amendments Act of 1976 (FCLAA).
- BTU Western Resources, Inc. applied for the North Porcupine LBA coal tract in order to extend the life of the North Antelope Rochelle Mine. The tract, if leased and sold, would allow the mine to acquire access to a continuing supply of low sulfur compliance coal that would be sold to power plants for generating electricity. Continued leasing of low sulfur PRB coal assists coal-fired power plants in meeting the Clean Air Act requirements without constructing new power plants or revamping existing plants. Generally, the expenses associated with constructing new power plants, retrofitting or revamping existing plants, or substituting alternative fuels would increase overall energy costs to customers and consumers.
- The leasing and subsequent mining of Federal coal reserves provides the United States, the State of Wyoming, and its affected counties with income in the form of lease bonus payments, lease royalty payments, and tax payments. Production of Federal coal also provides the public with a supply of cost-efficient, low sulfur coal for power generation. The Governor of Wyoming and other state and local officials support Federal coal leasing.
- The BLM is the lead agency responsible for leasing Federal coal lands under the MLA as amended. When an application to lease Federal coal is submitted, the BLM is obligated to respond to the application in a timely manner. In order to process an LBA, BLM must fulfill the requirements of NEPA by preparing environmental analyses. In this case, an EIS was prepared to provide agency decision-makers and the public with a complete and objective evaluation of the environmental impacts of leasing and mining the Federal coal. BLM then makes a decision on whether or not to offer the Federal coal for lease. In either case, BLM must notify the applicant in a timely fashion of its decision.
- Offering the North Porcupine LBA tract (totaling 6,364.28 acres containing approximately 721,154,828 tons of mineable Federal coal reserves as estimated by the BLM) is responsive to the coal lease application received on September 29, 2006.
- The decision to offer the North Porcupine coal tract for leasing is in conformance with the BLM land use plan decisions covering this area (see section entitled "Conformance with Existing Land Use Plans").

- The *Wright Area Coal Lease Applications EIS* was prepared in response to applications BLM received to lease tracts of Federal coal adjacent to existing mines in Wyoming. The environmental impacts of this decision were fully disclosed in the EIS. Public comments were addressed throughout the NEPA process.
- The BLM’s selected tract configuration under Alternative 2, as modified and described in this decision, provides for maximum economic recovery of the coal resource.
- The U.S. Fish and Wildlife Service has provided written concurrence for leasing the North Porcupine coal tract pursuant to Section 7(a)(2) of the Endangered Species Act of 1973, as amended (Appendix 3). Multiple surveys have been conducted for Ute ladies’-tresses during the known flowering periods. Five sage-grouse leks have been documented within two miles of the North Porcupine general analysis area. The Payne Lek, an occupied lek, is located on the North Porcupine tract. The North Porcupine general analysis area is located outside of the Governor of Wyoming’s statewide designated greater sage-grouse core area. One prairie dog colony, approximately 18.6 acres in size, is located on the North Porcupine tract. Two golden eagle nests were identified on the North Porcupine tract. Twenty-three bird species on the “Coal Mine List of 40 Migratory Bird Species of Management Concern in Wyoming” have historically been observed at least once in the Wright EIS general analysis area. Wildlife mitigation measures will be prescribed in concert with USFWS during the permit for mining process of the North Porcupine LBA.
- Consultation with the appropriate Native American tribes was initiated by the BLM Wyoming State Office on May 29, 2008. No tribes indicated concerns with the disturbance of cultural sites in the North Porcupine general analysis area.
- Fifty archaeological sites have been identified within the North Porcupine general analysis area. Five sites have previously been determined NRHP eligible (48CA1420/3219, 48CA3218, 48CA3606, 48CA3607, and 48CA3612). The other 45 sites have been determined to be not eligible to the NRHP (48CA262, 48CA498, 48CA1163, 48CA1668, 48CA2108, 48CA2791, 48CA2797, 48CA2800, 48CA2849, 48CA2870, 48CA2891, 48CA2908, 48CA2909, 48CA2910, 48CA2911, 48CA3038, 48CA3039, 48CA3040, 48CA3073, 48CA3074, 48CA3220, 48CA3592, 48CA3593, 48CA3594, 48CA3595, 48CA3596, 48CA3597, 48CA3598, 48CA3599, 48CA3600, 48CA3601, 48CA3602, 48CA3603, 48CA3604, 48CA3605, 48CA3608, 48CA3609, 48CA3610, 48CA3611, 48CA3613, 48CA3614, 48CA3615, 48CA3616, 48CA3617, and 48CA3618).
- The BLM consulted SHPO in relation to determinations of eligibility and impacts for these sites and has determined that leasing the coal would result in an adverse effect to sites 48CA1420/3219, 48CA3218, 48CA3606, 48CA3607, and 48CA3612. However, adverse impacts to 48CA1420/3219, 48CA3218, 48CA3606, 48CA3607, and 48CA3612 have been mitigated by a previously approved adjoining lease action and a land exchange. Therefore, no further consultation or resolution of adverse effects is required. On April

1, 2011, BLM notified SHPO that the undertaking would result in an adverse effect to historic properties. Any further National Historic Preservation Act mitigation consultation with the Wyoming State Historic Preservation Office will be completed as required during the mine permitting process by OSM and WDEQ prior to any surface disturbance of the tract.

- Issuing a Federal coal lease for the North Porcupine tract would not result in the creation of new sources of human-caused GHG or mercury emissions. The North Antelope Rochelle Mine would produce the North Porcupine coal at currently permitted levels using existing production and transportation facilities. If the North Porcupine tract is leased and mined, site-specific GHG emission rates from the North Antelope Rochelle Mine are anticipated to increase slightly compared to current emission rates due to increased strip ratios and added hauling distances.
- If the coal reserves contained within the North Porcupine tract are leased and mined at the currently permitted levels and the coal is used to generate electricity by coal-fired power plants, the emissions of GHG and mercury attributable to the coal produced at the North Antelope Rochelle Mine would be extended for approximately 7.8 years. The rate of human-caused CO<sub>2</sub> and mercury emissions would depend upon the permitted levels at the coal combustion facilities where the coal is burned and the potential emission limits that may be applied to those facilities in the future by regulation or legislation.
- The potential for regulation of GHG emissions as an air pollutant is recognized in this decision. Should such regulation be put in place, there may be an effect on coal demand, depending on how the regulatory actions affect the demand for electric power and the mix of methods used to produce electricity. Effects to coal demand would be reflected through the coal market, coal pricing, and supply. If demand decreases, it is expected that less efficient coal producers, or those with reserves having less desirable coal characteristics, may lose customers. Based on review of past performance, North Antelope Rochelle Mine has competed very well in the national coal market.

## **PUBLIC INVOLVEMENT**

BLM received the Porcupine coal lease application on September 29, 2006. BLM announced the receipt of the LBA and published a Notice of Public Meeting in the Federal Register on December 12, 2006. At the public meeting held in Casper, Wyoming on January 18, 2007, the Powder River Regional Coal Team (PRRCT) reviewed the Porcupine coal lease application and BTU presented information about their existing mine and the pending lease application. The PRRCT recommended that BLM process the application. On March 14, 2007, BLM notified the Governor of Wyoming that BTU had made application for the North and South Porcupine Federal coal lands.

BLM published a Notice of Intent to Prepare an EIS and Notice of Public Meeting in the Federal Register on July 3, 2007, in the Gillette News-Record on July 6, 2007, and in the Douglas Budget on July 11, 2007. Scoping notices were also mailed to Federal, state, and local

government agencies, conservation groups, commodity groups, and individuals who could be impacted by this LBA. BLM and the applicant jointly developed the distribution list. On July 24, 2007, a public scoping meeting was held in Gillette, Wyoming. The scoping period extended from July 3 through September 3, 2007, during which time BLM received nine comment letters.

A notice announcing the availability of the *Wright Area Coal Lease Applications Draft EIS* was published in the Federal Register by the EPA on June 26, 2009. Parties on the distribution list were sent copies of the Draft EIS at that time. A 60-day comment period on the Draft EIS commenced with publication of the EPA's Notice of Availability and ended on August 25, 2009. The BLM published a Notice of Availability/Notice of Public Hearing for the Draft EIS in the Federal Register on July 8, 2009. The BLM's Federal Register notice announced the date and time of the formal public hearing, which was held on July 29, 2009, in Gillette, Wyoming. The purpose of the public hearing was to solicit public comment on the Draft EIS, fair market value, maximum economic recovery, and the proposed competitive sale of Federal coal from the Wright Area LBAs. BLM also published a Notice of Public Hearing in both the Douglas Budget and Gillette News-Record newspapers on July 8, 2009. Two individuals presented statements on the Draft EIS during the hearing. BLM received written comments from 17 individuals, agencies, businesses, and organizations as well as over 500 comment e-mails from other interested parties. Comments that BLM received on the Draft EIS and how BLM considered these comments during the preparation of the Final EIS were included in Appendix I of the Final EIS. Written comments and the transcript of the formal public hearing are also available for review at the BLM Wyoming High Plains District Office in Casper.

A notice announcing the availability of the *Wright Area Coal Lease Applications Final EIS* was published in the Federal Register by the EPA on July 30, 2010. Parties on the distribution list were sent copies of the Final EIS at that time. The comment period for the Final EIS ended on August 30, 2010. As explained on the first page of the Final EIS, the public review period was open for 30 days after EPA's Notice of Availability published in the Federal Register.

BLM received written comments on the Final EIS from Michael J. Strawn, Powder River Basin Resource Council/Sierra Club/Center for Biological Diversity, Leslie Glustrom, WildEarth Guardians/Sierra Club/Defenders of Wildlife, Dorsey & Whitney LLP/Ark Land Company, and the Campbell County Board of Commissioners. BLM has reviewed, evaluated, and considered these comments. The comment letters and BLM's responses are available at <http://www.blm.gov/wy/st/en/info/NEPA/HighPlains/Wright-Coal.html>.

All comments that were received in a timely manner were considered in the preparation of this Record of Decision (ROD).

## **SUMMARY OF THE PROPOSED ACTION AND ALTERNATIVES**

The EIS analyzed the proposed action and two alternatives in detail for the North Porcupine LBA tract. Chapter 2 of the EIS contains a full description of each. Summarized descriptions are presented below.

**Proposed Action: Hold a competitive lease sale for the Federal coal lands as applied for and issue a maintenance lease to the successful bidder.**

Under the Proposed Action, the as applied for lands in the North Porcupine application as submitted by BTU would have been offered for lease at a competitive sealed-bid sale. As applied for, the tract included approximately 5,795.78 acres (Appendix 1, Figure 2). The applicant estimated that the lands contained approximately 601.2 million tons of recoverable Federal coal. This alternative assumed that the applicant would be the successful bidder and that the coal would be mined, processed, and sold by the North Antelope Rochelle Mine.

**Alternative 1 (Environmentally Preferable Alternative): Reject the application.**

Under this alternative, BTU's application to lease the Federal coal lands included in the North Porcupine LBA tract would be rejected and the tract would not be offered for competitive sale at this time. This is the No Action Alternative.

The applicant is presently mining existing leases that were previously acquired. Previously approved and permitted mining activity at the adjacent North Antelope Rochelle Mine would continue with or without leasing the North Porcupine LBA tract. Assuming that the North Porcupine LBA tract would never be leased and coal removal and the associated disturbance would never occur, this alternative would be the environmentally preferable alternative. However, selection of this alternative would not preclude future applications to lease all or part of the Federal coal included in the North Porcupine LBA tract.

Rejection of the application would not cause mining operations to immediately cease at the North Antelope Rochelle Mine, nor would it immediately reduce production from this mine. Coal is mined in 27 states and is mostly used for generating electricity to support the country's demand for energy. If the North Porcupine application was rejected and, in the long term, the North Antelope Rochelle Mine was to close, other regional and national mining companies would replace the coal production that would have been lost due to the North Antelope Rochelle Mine's closure.

**Alternative 2 (Selected Alternative): Reconfigure the tract and hold one competitive sale for Federal coal lands in the tract as modified by BLM and issue a lease to the successful bidder.**

Along with the Federal coal lands that were applied for by BTU, BLM identified and evaluated an additional area comprised of approximately 1,572.01 acres of unleased Federal coal adjacent to the northern and southwestern edges of the application lands (Appendix 1, Figure 2). These additional lands and the as applied for tract were referred to as the BLM study area. The study area enabled BLM to evaluate and explore the potential of increasing competitive interest in the tract, allowing for more efficient recovery of Federal coal in the area, and reducing the likelihood of bypassed Federal coal.

After analyzing the additional lands included in the BLM study area for the North Porcupine, BLM selected the tract configuration as described below. BLM’s selected tract configuration includes approximately 1,255.57 acres of additional lands from the BLM study area. The final configuration (Appendix 1, Figure 3) was selected because it allows for more efficient recovery of the Federal coal, may increase competitive interest in the tract, and best serves the public interest. Under the selected configuration, the North Porcupine tract includes approximately 6,364.28 acres and BLM estimates that it contains approximately 721,154,828 tons of mineable Federal coal resources.

The legal description of the lands to be offered for competitive lease sale under Alternative 2, BLM’s selected tract configuration, for the North Porcupine tract is as follows:

North Porcupine Tract (WYW173408):

T.42N., R.70W., 6th P.M., Campbell County, Wyoming

Section 19: Lots 9 through 20;	445.96 acres
Section 20: Lots 5 through 16;	490.93 acres
Section 21: Lots 1 through 16;	660.25 acres
Section 22: Lots 3 through 6, 9 through 16;	491.54 acres
Section 26: Lots 3 through 6, 9 through 16;	496.64 acres
Section 27: Lots 1 through 16;	664.48 acres
Section 28: Lots 1 through 4;	165.98 acres
Section 29: Lots 1 through 4;	164.30 acres
Section 30: Lots 5 through 8;	147.79 acres

T.42N., R.71W., 6th P.M., Campbell County, Wyoming

Section 22: Lots 20, 21, and 24;	12.89 acres
Section 23: Lots 5 through 16;	487.45 acres
Section 24: Lots 5 through 16;	489.12 acres
Section 25: Lots 1 through 4;	162.96 acres
Section 26: Lots 1 through 6, 11 through 14;	404.09 acres
Section 27: Lots 9, 15 through 17, 20, 22, 23, 25, 28, 30;	276.51 acres
Section 34: Lots 1 through 12;	480.20 acres
Section 35: Lots 3 through 6, 11 through 14.	323.19 acres

North Porcupine Tract Total: 6,364.28 acres

The land descriptions and acreages are based on the BLM Status of Public Domain Land and Mineral Titles Approved Master Title Plats as of September 7, 2007 and Coal Plats as of September 20, 2007. The coal estate in the tract described above is Federally-owned. Surface ownership consists of privately owned lands and Federal lands administered by the USDA-Forest Service (FS). The selected configuration for the North Porcupine tract (Appendix 1, Figure 3)

includes approximately 5,120 acres, more or less, of National Forest System lands in the Thunder Basin National Grassland (TBNG) administered by the FS.

## **ALTERNATIVES CONSIDERED BUT NOT ANALYZED IN DETAIL**

Further descriptions of these alternatives may be found in Chapter 2 of the Final EIS.

### **New Mine Start**

Under this alternative, as under the Proposed Action, Alternative 1, and Alternative 2, BLM would have held a competitive coal lease sale and issued a lease for the lands included in the North Porcupine tract. This alternative assumed, however, that the successful qualified bidder would have been someone other than the applicant and that this bidder would have planned to open a new mine to develop the Federal coal resources. In BLM's current estimation, for a new mine to open in the Wyoming PRB, the first lease would need to contain approximately 500 to 600 million tons of coal.

This alternative was considered but was not analyzed in detail because it was unlikely that a new mine would start up and lease this tract even though the total amount of coal included in the North Porcupine LBA is sufficient to consider opening a new mine. A new mine start would require considerable initial capital expenses, development of new mining and reclamation plans, and a large number of new employees. A new mine start would also create a new source of air quality impacts. The potential difficulty in obtaining an air quality permit is another issue that could discourage new mine starts in the PRB. In view of these issues, the development of a new mine start on any of the LBA tracts included in the Wright Area EIS is considered unlikely.

### **Delaying the Sale**

Under this alternative, the BLM would have delayed the sale of the North Porcupine tract as applied for. This alternative assumed that the tract could be developed later as either a maintenance tract or a new mine start, depending on how long the sale would have been delayed. The environmental impacts of mining this Federal coal at a later time as a maintenance tract would be expected to be similar to the Proposed Action and Alternative 2. If a new mine start was required to mine the coal in this tract, the environmental impacts would be expected to be greater than if it were mined as an extension of an existing mine.

In general, delaying the sale may have allowed CBNG resources in the Wright general analysis area to be more completely recovered prior to mining. If market prices increased in the future, bonus and royalty payments to the government would have been higher if the tract was offered for sale at a later date.

This alternative was considered but was not analyzed in detail because it would not produce substantially different impacts than other alternatives that were analyzed in detail. First, rental and royalty provisions in the proposed lease provide for the United States to benefit if coal prices increase by the time of mining. Royalty and tax payments are collected at the time the coal is

sold. They increase as coal prices increase, which allows the United States to benefit if coal prices have increased by the time of mining. Second, as described in Chapter 2 of the EIS, several mechanisms are already in place to facilitate continued CBNG recovery prior to mining the lands included in the Wright general analysis area.

## CONFORMANCE WITH EXISTING LAND USE PLANS

Under the requirements of FCLAA, lands that are being considered for Federal coal leasing must be included in a comprehensive land use plan and leasing decisions must be compatible with that plan. The *Approved Resource Management Plan (RMP) for Public Lands Administered by the Bureau of Land Management Buffalo Field Office*, completed in 2001 and amended in 2003, governs and addresses the leasing of Federal coal in Campbell County. The USDA-FS *Land and Resource Management Plan for the Thunder Basin National Grassland (TBNG), Medicine Bow-Routt National Forest, Rocky Mountain Region*, completed in 2001, guides resource management activities on the TBNG.

The major land use planning decision that BLM must make concerning Federal coal resources is a determination of which Federal coal lands are acceptable for further consideration for leasing. There are four coal screening procedures that BLM uses to identify these coal lands. The screening procedures require BLM to: 1) estimate development potential of the coal lands, 2) apply the unsuitability criteria listed in the regulations at 43 CFR 3461, 3) make multiple land use decisions that eliminate Federal coal deposits from consideration for leasing to protect other resource values, and 4) consult with surface owners who meet the criteria defined in the regulations at 43 CFR 3400.0-5 (gg) (1) and (2). The coal screens were developed for Federal decision-making and are utilized in environmental analyses associated with BLM RMPs, EISs, USDA-FS TBNG planning documents, evaluations, and other resource management activities.

Under the first coal screening procedure, a coal tract must be located within an area that has been determined to have coal development potential in order to receive further consideration for leasing [43 CFR 3420.1-4(e)(1)]. The North Porcupine tract is within the area identified by BLM as having coal development potential.

The second coal screening procedure requires the application of the coal mining unsuitability criteria which are listed in the Federal coal management regulations at 43 CFR 3461. These criteria have been applied to high to moderate coal development potential lands in the Wyoming PRB, including the North Porcupine tract and surrounding lands.

Biological surveys have been conducted throughout the North Porcupine general analysis area. The USFWS has provided written concurrence for leasing the North Porcupine LBA tract pursuant to Section 7(a)(2) of the Endangered Species Act of 1973, as amended (Appendix 3). In coordination with WDEQ, the USFWS will develop and prescribe wildlife mitigation measures as a component of the mining permit authorization process.

A portion of the Burlington Northern Santa Fe & Union Pacific (BNSF & UP) railroad right-of-way (ROW) crosses and borders the west side of the North Porcupine tract. Lands within the rail

line right-of-way (ROW) and associated 100-foot buffer zone were found to be unsuitable for mining under Unsuitability Criterion 2. Although the lands within the railroad ROW and buffer zone have been determined to be unsuitable for mining, they are included in the tract lease to allow for efficient recovery of all mineable coal adjacent to and outside of the ROW and its associated buffer zone. This determination also complies with coal leasing regulations which do not allow leasing in less than 10-acre aliquot parts. The lease will include a stipulation stating that no mining activity may be conducted in the portion of the lease within the railroad ROW or associated 100-foot buffer zone. This stipulation honors the finding of unsuitability for mining under Criterion 2.

Unsuitability Criterion Number 3 states that lands within 100 feet of the outside line of the ROW of a public road shall be considered unsuitable for surface coal mining. SMCRA Section 522(e)(4) and 30 CFR 761.11(d) prohibit surface mining operations on lands within 100 feet of the outside line of the ROW for a public road. A portion of the ROW of Antelope Road (Campbell County Road 4), Matheson Road (Campbell County Road 70), and Mackey Road (Campbell County Road 69) are located within BLM's selected configuration for the North Porcupine tract (Appendix 1, Figure 3). BLM has determined that the portion of the North Porcupine tract that includes segments of these three roads, their ROWs, and the 100-foot buffer zones extending on either side of the ROWs must be considered unsuitable for mining at this time under Criterion Number 3.

There is an exception to the public road ROW prohibition in the regulations at SMCRA Section 522(e)(4) and 30 CFR 761.11(d) which can be applied if the appropriate road authority (Campbell County Board of Commissioners) allows the road to be relocated or closed. Surface coal mining could potentially occur within a public road ROW and buffer zone if the regulatory authority, or the appropriate public road authority designated by the regulatory authority, allows the public road to be relocated or closed after providing public notice and opportunity for a public hearing. A finding must be reached, and stated in writing, that the interests of the affected public and landowners will be protected [30 CFR 761.11(d) and 43 CFR 3461.5(c)(iii)].

PRC has obtained approval from the Campbell County Board of Commissioners to close and relocate the portion of Antelope Road that crosses the North Porcupine tract (approximately one mile located in T42N R71W between Section 23 and 24 and between Section 25 and 26). PRC has also consulted the Campbell County Board of Commissioners and other stakeholders for request of approval to close and relocate the Mackey Road in the eastern portion of the North Porcupine tract. The segment of Matheson Road that borders the southern portion of the North Porcupine tract located between T42N R71W Section 35 and T41N R71W Section 2 has been formally vacated by the Campbell County Board of Commissioners.

For public roads granted approval for closure and relocation, the exception to the prohibition on mining within the public road ROW and associated buffer zone could be applied and the unsuitability determination could be reconsidered. A mining company could recover the coal underlying those segments of the public road ROWs and buffer zones that are approved for closure and relocation. If approval is not obtained to relocate or close a public road, the coal

underlying the ROW and buffer zone would remain unsuitable for mining and would not be recovered.

Although a portion of the lands within the Antelope Road, Mackey Road, and Matheson Road ROWs and buffer zones have been determined to be unsuitable for mining, they are included in the tract lease to allow for efficient recovery of all mineable coal adjacent to and outside of the ROWs and buffer zones. This determination also complies with coal leasing regulations which do not allow leasing in less than 10-acre aliquot parts. If a lease is issued for this tract, stipulations will be attached stating that no mining activity may be conducted within the public road ROWs and associated buffer zones unless permits to close or relocate the roads are approved by the Campbell County Board of Commissioners. This stipulation honors the finding of unsuitability for mining under Criterion 3.

No other lands included in the North Porcupine tract were found to be unsuitable for mining during the application of the unsuitability criteria for BLM's 2001 Buffalo RMP update. Site-specific unsuitability determinations for some criteria were deferred until an application to lease was filed. These findings are included in Appendix B of the Wright Area Coal Final EIS.

The third coal screening procedure, a multiple land use conflict analysis, must be completed to identify and "eliminate additional coal deposits from further consideration for leasing to protect resource values of a locally important or unique nature not included in the unsuitability criteria," in accordance with 43 CFR 3420.1-4(e)(3). The 2001 Buffalo RMP update addresses two types of multiple land use conflicts: municipal/residential conflicts and multiple mineral development (coal versus oil and gas) conflicts.

The municipal/residential multiple land use conflict was addressed by applying buffers around the municipal planning boundaries for the major municipalities within the BLM Buffalo Field Office area including Gillette and Wright. BLM's selected North Porcupine tract configuration does not extend into any of the municipal buffer zones.

BLM's evaluation of the multiple mineral development conflicts related to issuing a lease for the North Porcupine tract is discussed above in the "Pending Coal Leasing Applications and Other Proposed Projects in the Wyoming Powder River Basin" section of this record of decision.

The fourth coal screening procedure requires consultation with surface owners who meet the criteria defined in the regulations at 43 CFR 3400.0-5(gg)(1) and (2). Under BLM's selected alternative, surface ownership consists of privately owned lands and Federal lands administered by the USDA-FS. Powder River Coal, LLC, School Creek Coal Resources, and Western Railroad Properties, Inc. own the private lands contained within the selected North Porcupine LBA tract. If private surface owners are determined to be qualified under this CFR citation, then qualified surface owner consent is required before those lands can be included in a Federal coal lease. There are no qualified surface owners within the selected configuration for the North Porcupine LBA tract.

In summary, the lands in the North Porcupine coal tract have been subjected to the four coal planning screens and are determined to be acceptable for further consideration for leasing. Thus, a decision to lease the North Porcupine Federal coal lands is in conformance with the current BLM Buffalo RMP and the Thunder Basin National Grassland LRMP.

### **MITIGATION, COMPLIANCE, AND MONITORING**

If the North Porcupine tract is leased, the lease will contain standard coal lease stipulations and also BLM Special Stipulations. BLM has applied special stipulations (Appendix 2) to avoid environmental damage or mitigate potential conflicts affiliated with cultural resources, paleontological resources, threatened and endangered species, multiple mineral development of oil and/or gas and coal resources, resource recovery and protection, and/or public land survey. Special coal lease stipulations were identified in Appendix D of the Final EIS. The final special stipulations are attached (Appendix 2) to this decision and will become part of the Federal coal lease records and pertain to all lands as described in the Federal coal lease tract.

After Federal coal leases are issued, SMCRA gives the OSM authority to administer programs that regulate surface coal mining operations. The WDEQ regulates surface coal mining activities in Wyoming. If BTU is the successful, qualified high bidder for the Federal coal included in the North Porcupine coal tract, a permit revision must then be approved by the WDEQ/LQD. An MLA mining plan revision must also be approved by the Assistant Secretary of the Interior before the coal in the tract could be mined. The existing mitigation measures specific to the currently approved mine plan for the adjacent mine would then be revised to include the new mitigation measures specific to the North Porcupine tract. The mining permit would be amended to include the new mitigation requirements.

If the successful bidder on the North Porcupine coal lease sale does not currently operate a mine that is adjacent to WYW173408, then the bidder would likely propose to construct a new mine in order to recover these Federal coal reserves. Because this would be a new mine start, the proponent would then submit a new permit application package to WDEQ/LQD for approval. A new MLA mining plan would also need to be submitted and approved by the Assistant Secretary of the Interior before the tract could be mined. The approved permit would include mitigation measures and monitoring plans specific to mining the newly leased tract.

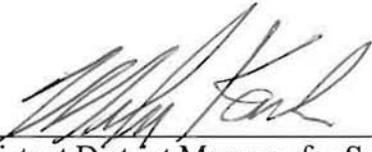
Prior to mining a coal lease area, the lease must be permitted for mining by OSM and WDEQ. If a lease is permitted for mining, additional conditions and stipulations may be assigned by OSM and WDEQ. Please see Section 1.3 of the Final EIS for additional information regarding regulatory authority and responsibility in relation to coal mining in Wyoming.

To ensure that the revised plan is in compliance with the leasing stipulations, BLM has a responsibility to review the R2P2 prior to approval of the mining plan. Before any mining operations can begin on the North Porcupine tract (WYW173408), the appropriate R2P2 must be approved by the BLM, a permit or permit revision must be approved by WDEQ/LQD, and an MLA mining plan or plan revision must be approved by the Assistant Secretary of the Interior.

## RECOMMENDATION

I recommend that, after a competitive lease sale is held, Federal coal tract WYW173408, with its associated 6,364 acres more or less, be issued to the successful, qualified high bidder, provided it is determined that the highest bid at the sale meets or exceeds the FMV of the tract as determined by the BLM and that all other leasing requirements are met.

This is Alternative 2 for the North Porcupine LBA coal tract, as modified by BLM, and as described in this record of decision. The competitive lease sale will be held in accordance with the requirements at 43 CFR Subpart 3422. The lease will be subject to the attached BLM special lease stipulations (Appendix 2).



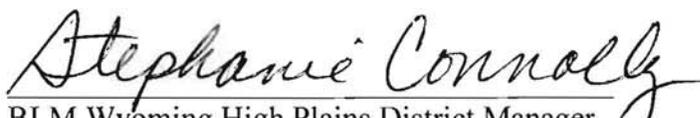
Assistant District Manager for Solid Minerals  
Wyoming High Plains District Office

10/17/2011

Date

## APPROVAL

I agree with the recommendation of the Assistant District Manager for Solid Minerals, and I approve the decision to offer Federal coal tract WYW173408 for competitive lease sale.

  
BLM Wyoming High Plains District Manager

10/17/2011  
Date

## APPEAL OF DISTRICT MANAGER DECISION

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR Subpart 4 and the enclosed form 1842-1 (Appendix 4). If an appeal is filed, your notice of appeal must be filed in this office (BLM Wyoming High Plains District Office, 2987 Prospector Drive, Casper, WY 82604) within thirty (30) days from the date BLM published the Notice of Availability (NOA) of this Record of Decision in the Federal Register. The appellant has the burden of showing that the decision appealed is in error.

If you wish to file a petition (request) pursuant to regulations 43 CFR 4.21(a)(2) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

### Standard for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- 1) The relative harm to the parties if a stay is granted or denied;
- 2) The likelihood of the appellant's success on the merits;
- 3) The likelihood of the immediate and irreparable harm if the stay is not granted; and,
- 4) Whether the public interest favors granting a stay.

- Appendix 1. Figures 1, 2, and 3
- Appendix 2. BLM Special Coal Lease Stipulations (WYW173408), Notice for Lands of the National Forest System under Jurisdiction of the Department of Agriculture (WYW173408), and BLM Coal Lease Form 3400-12
- Appendix 3. U.S. Fish and Wildlife Service Concurrence Letter
- Appendix 4. Appeal Procedures

# **APPENDIX 1**

## **FIGURES**

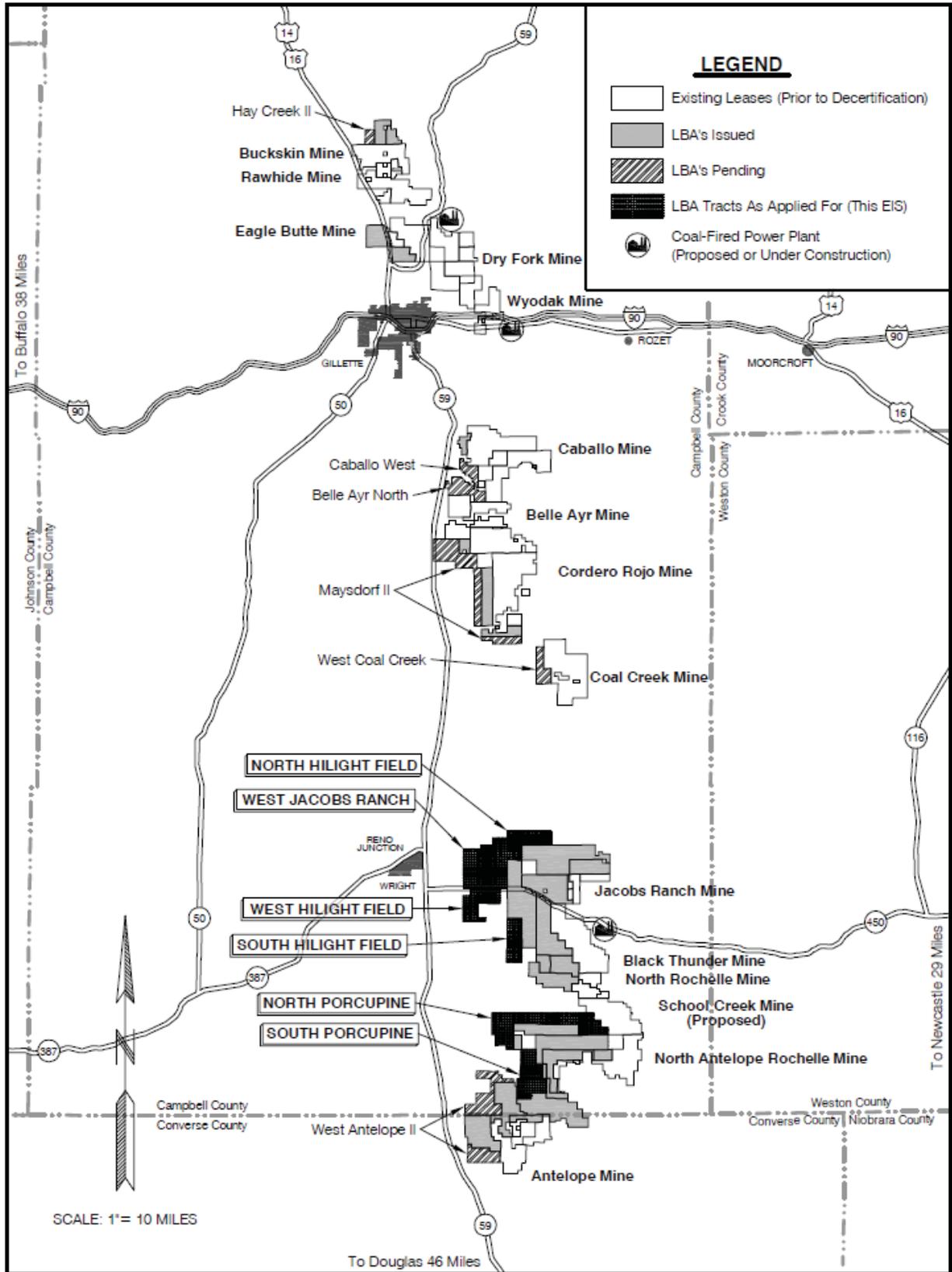


Figure 1. General Location Map with Federal Coal Leases and LBA Tracts

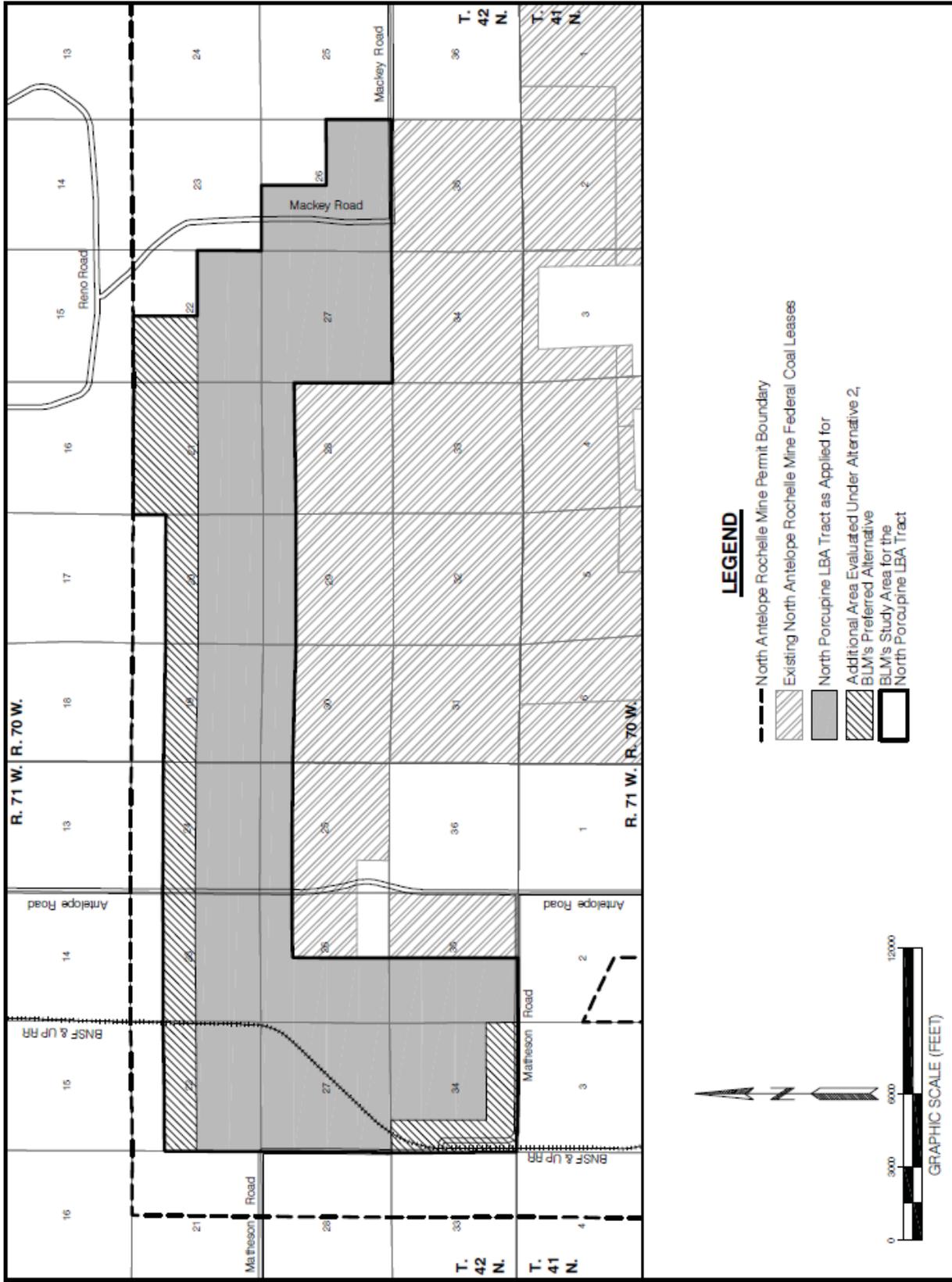


Figure 2. North Porcupine LBA Tract Alternatives

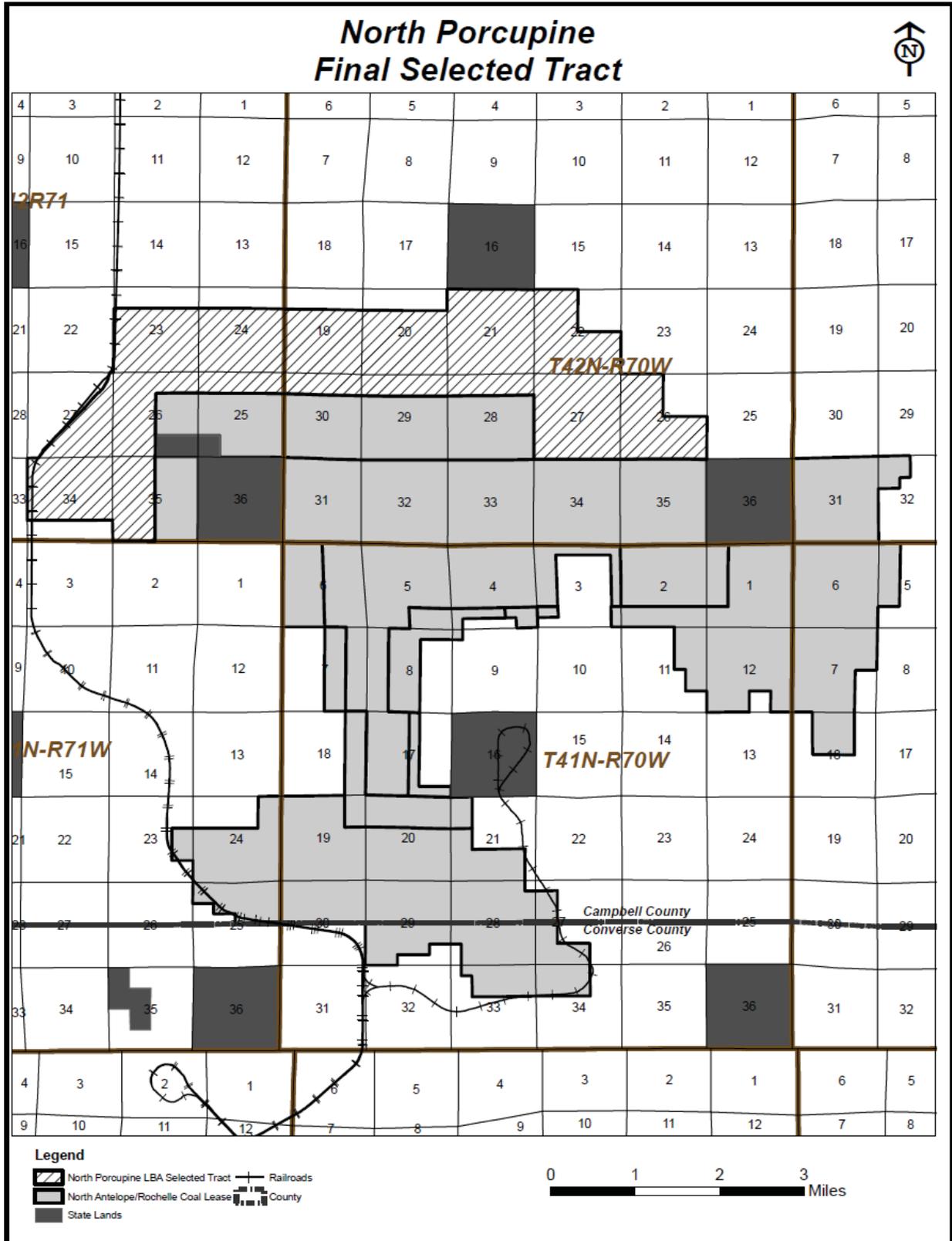


Figure 3. North Porcupine Tract Selected Configuration

## **APPENDIX 2**

BLM SPECIAL COAL LEASE STIPULATIONS,

NOTICE FOR LANDS OF THE  
NATIONAL FOREST SYSTEM UNDER JURISDICTION  
OF THE DEPARTMENT OF AGRICULTURE,

AND BLM COAL LEASE FORM 3400-12

**SPECIAL STIPULATIONS FOR THE  
NORTH PORCUPINE LBA COAL TRACT:  
WYW173408**

In addition to observing the general obligations and standards of performance set out in the current regulations, the lessee shall comply with and be bound by the following special stipulations.

These stipulations are also imposed upon the lessee's agents and employees. The failure or refusal of any of these persons to comply with these stipulations shall be deemed a failure of the lessee to comply with the terms of the lease. The lessee shall require his agents, contractors, and subcontractors involved in activities concerning this lease to include these stipulations in the contracts between and among them. These stipulations may be revised or amended, in writing, by the mutual consent of the lessor and the lessee at any time to adjust to changed conditions or to correct an oversight.

(a) ***CULTURAL RESOURCES***

(1) Before undertaking any activities that may disturb the surface of the leased lands, the lessee shall conduct a cultural resource intensive field inventory in a manner specified by the Authorized Officer of the BLM or of the surface managing agency, if different, on portions of the mine plan area and adjacent areas, or exploration plan area, that may be adversely affected by lease-related activities and which were not previously inventoried at such a level of intensity. The inventory shall be conducted by a qualified professional cultural resource specialist (i.e., archeologist, historian, historical architect, as appropriate), approved by the Authorized Officer of the surface managing agency (BLM, if the surface is privately owned), and a report of the inventory and recommendations for protecting any cultural resources identified shall be submitted to the Regional Director of the Western Region of the Office of Surface Mining (the Western Regional Director), the Authorized Officer of the BLM, if activities are associated with coal exploration outside an approved mining permit area (hereinafter called Authorized Officer), and the Authorized Officer of the surface managing agency, if different. The lessee shall undertake measures, in accordance with instructions from the Western Regional Director, or Authorized Officer, to protect cultural resources on the leased lands. The lessee shall not commence the surface disturbing activities until permission to proceed is given by the Western Regional Director or Authorized Officer.

2) Any existing Class III inventory report covering the lease area that has not received federal agency review must be reviewed and accepted by the agency, site NRHP eligibility determinations made, and consultation with the State Historic Preservation Officer completed before any surface disturbing activities take place.

(3) The lessee shall protect all cultural resource properties that have been determined eligible or unevaluated to the National Register of Historic Places within the lease area from lease-related activities until the cultural resource mitigation measures or site evaluations can be implemented as part of an approved mining and reclamation or exploration plan unless modified by mutual agreement in consultation with the State Historic Preservation Officer.

(4) The cost of conducting the inventory, preparing reports, and carrying out mitigation measures shall be borne by the lessee.

(5) If cultural resources are discovered during operations under this lease, the lessee shall immediately bring them to the attention of the Western Regional Director or Authorized Officer, or the Authorized Officer of the surface managing agency if the Western Regional Director is not available. The lessee shall not disturb such resources except as may be subsequently authorized by the Western Regional Director or Authorized Officer. Within two (2) working days of notification, the Western Regional Director or Authorized Officer will evaluate or have evaluated any cultural resources discovered and will determine if any action may be required to protect or preserve such discoveries. The cost of data recovery for cultural resources discovered during lease operations shall be borne by the lessee unless otherwise specified by the Authorized Officer of the BLM or of the surface managing agency, if different.

(6) All cultural resources shall remain under the jurisdiction of the United States until ownership is determined under applicable law.

(b) ***PALEONTOLOGICAL RESOURCES***

If paleontological resources, either large and conspicuous, and/or of significant scientific value, are discovered during mining operations, the find will be reported to the Authorized Officer immediately. Mining operations will be suspended within 250 feet of said find. An evaluation of the paleontological discovery will be made by a BLM-approved professional paleontologist within five (5) working days, weather permitting, to determine the appropriate action(s) to prevent the potential loss of any significant paleontological value. Operations within 250 feet of such discovery will not be resumed until written authorization to proceed is issued by the Authorized Officer. The lessee will bear the cost of any required paleontological appraisals, surface collection of fossils, or salvage of any large conspicuous fossils of significant scientific interest discovered during the operations.

(c) ***THREATENED, ENDANGERED, CANDIDATE, OR OTHER SPECIAL STATUS PLANT AND ANIMAL SPECIES***

(1) The lease area may now or hereafter contain plants, animals, or their habitats determined to be threatened or endangered under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*, or that have other special status. The Authorized Officer may recommend modifications to exploration and development proposals to further conservation and management objectives or to avoid activity that will contribute to a need to list such species or their habitat or to comply with any biological opinion issued by the U.S. Fish and Wildlife Service for the Proposed Action. The Authorized Officer will not approve any ground disturbing activity that may affect any such species or critical habitat until it completes its obligations under applicable requirements of the Endangered Species Act. The Authorized Officer may require modifications to, or disapprove a proposed activity that is likely to result in jeopardy to the continued existence of a proposed or listed threatened or

endangered species, or result in the destruction or adverse modification of designated or proposed critical habitat.

(2) The lessee shall comply with instructions from the Authorized Officer of the surface managing agency (BLM, if the surface is private) for ground disturbing activities associated with coal exploration on federal coal leases prior to approval of a mining and reclamation permit or outside an approved mining and reclamation permit area. The lessee shall comply with instructions from the Authorized Officer of the Office of Surface Mining Reclamation and Enforcement, or his designated representative, for all ground disturbing activities taking place within an approved mining and reclamation permit area or associated with such a permit.

(3) Any potential habitat that has not already been surveyed for Ute ladies'-tresses within the project area shall be identified and surveyed prior to surface mining activities.

(d) ***MULTIPLE MINERAL DEVELOPMENT***

Operations will not be approved which, in the opinion of the Authorized Officer, would unreasonably interfere with the orderly development and/or production from a valid existing mineral lease issued prior to this one for the same lands.

(e) ***OIL AND GAS/COAL RESOURCES***

The BLM realizes that coal mining operations conducted on Federal coal leases issued within producing oil and gas fields may interfere with the economic recovery of oil and gas, just as Federal oil and gas leases issued in a Federal coal lease area may inhibit coal recovery. BLM retains the authority to alter and/or modify the resource recovery and protection plans for coal operations and/or oil and gas operations on those lands covered by Federal mineral leases so as to obtain maximum resource recovery.

(f) ***RESOURCE RECOVERY AND PROTECTION***

Notwithstanding the approval of a resource recovery and protection plan (R2P2) by the BLM, the lessor reserves the right to seek damages against the operator/lessee in the event (i) the operator/lessee fails to achieve maximum economic recovery (MER) (as defined at 43 CFR 3480.0-5(21)) of the recoverable coal reserves or (ii) the operator/lessee is determined to have caused a wasting of recoverable coal reserves. Damages shall be measured on the basis of the royalty that would have been payable on the wasted or unrecovered coal.

The parties recognize that under an approved R2P2, conditions may require a modification by the operator/lessee of that plan. In the event a coal bed or portion thereof is not to be mined or is rendered unmineable by the operation, the operator/lessee shall submit appropriate justification to obtain approval by the Authorized Officer to leave such reserves unmined. Upon approval by the Authorized Officer, such coal beds or portions thereof shall not be subject to damages as described above. Further, nothing in this section shall prevent the operator/lessee from exercising its right to relinquish all or a portion of the lease as authorized by statute and regulation.

In the event the Authorized Officer determines that the R2P2, as approved, will not attain MER as the result of changed conditions, the Authorized Officer will give proper notice to the operator/lessee as required under applicable regulations. The Authorized Officer will order a modification if necessary, identifying additional reserves to be mined in order to attain MER. Upon a final administrative or judicial ruling upholding such an ordered modification, any reserves left unmined (wasted) under that plan will be subject to damages as described in the first paragraph under this section.

Subject to the right to appeal hereinafter set forth, payment of the value of the royalty on such unmined recoverable coal reserves shall become due and payable upon determination by the Authorized Officer that the coal reserves have been rendered unmineable or at such time that the operator/lessee has demonstrated an unwillingness to extract the coal.

The BLM may enforce this provision either by issuing a written decision requiring payment of the Office of Natural Resources Revenue (formerly known as Mineral Management Service) demand for such royalties, or by issuing a notice of non-compliance. A decision or notice of non-compliance issued by the lessor that payment is due under this stipulation is appealable as allowed by law.

(g) ***PUBLIC LAND SURVEY PROTECTION***

The lessee will protect all survey monuments, witness corners, reference monuments, and bearing trees against destruction, obliteration, or damage during operations on the lease areas. If any monuments, corners or accessories are destroyed, obliterated, or damaged by this operation, the lessee will hire an appropriate county surveyor or registered land surveyor to reestablish or restore the monuments, corners, or accessories at the same location, using surveying procedures in accordance with the "Manual of Surveying Instructions for the Survey of the Public Lands of the United States." The survey will be recorded in the appropriate county records, with a copy sent to the Authorized Officer.

**ADDITIONAL SPECIAL STIPULATIONS FOR THE  
NORTH PORCUPINE COAL TRACT (WYW173408)**

**(h) PUBLIC ROAD RIGHT-OF-WAY AND BUFFER ZONE**

No mining activity of any kind may be conducted within the Antelope Road (Campbell County Road 4), Mackey Road, or Matheson Road rights-of-way and associated 100-foot buffer zones while these public roads remain in their current (2009) locations. The lessee shall recover all legally and economically recoverable coal from all leased lands not within the foregoing rights-of-way and associated buffer zones. If permits are obtained to relocate these roads and are approved by the appropriate authority, the lessee shall recover all legally and economically recoverable coal from all leased lands within the foregoing rights-of-way and associated buffer zone. The lessee shall pay all royalties on any legally and economically recoverable coal which it fails to mine without the written permission of the Authorized Officer.

**(i) RAILROAD RIGHT-OF-WAY AND BUFFER ZONE**

No mining activity of any kind may be conducted within the Burlington Northern Santa Fe & Union Pacific railroad right-of-way and associated 100-foot buffer zone. The lessee shall recover all legally and economically recoverable coal from all leased lands not within the foregoing right-of-way. The lessee shall pay all royalties on any legally and economically recoverable coal which it fails to mine without the written permission of the Authorized Officer.

**NOTICE FOR LANDS OF THE NATIONAL FOREST SYSTEM  
UNDER JURISDICTION OF DEPARTMENT OF AGRICULTURE**

R2-FS-2820-13 (92)

Serial No. WYW173408

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 National Forest System (NFS) when not inconsistent with the rights granted by the Secretary of Interior in the permit. The Secretary of Agriculture's rules and regulations must be complied with for (1) all use and occupancy of the NFS prior to approval of an exploration plan by the Secretary of the Interior, (2) uses of all existing improvements, such as forest development roads, within and outside the area permitted by the Secretary of the Interior, and (3) use and occupancy of the NFS not authorized by an exploration plan approved by the Secretary of the Interior.

All matters related to this stipulation are to be addressed to:

Forest Supervisor  
Medicine Bow-Routt National Forests & Thunder Basin National Grassland  
2468 Jackson Street  
Laramie, WY 82070  
307-745-2300

who is the authorized representative of the Secretary of Agriculture.

## NOTICE

**CULTURAL AND PALEONTOLOGICAL RESOURCES** - The FS is responsible for assuring that the leased lands are examined to determine if cultural resources are present and to specify mitigation measures. Prior to undertaking any surface-disturbing activities on the lands covered by this lease, the lessee or operator, unless notified to the contrary by the FS, shall:

1. Contact the FS to determine if a site specific cultural resource inventory is required. If a survey is required, then:
2. Engage the services of a cultural resource specialist acceptable to the FS to conduct a cultural resource inventory of the area of proposed surface disturbance. The operator may elect to inventory an area larger than the area of proposed disturbance to cover possible site relocation which may result from environmental or other considerations. An acceptable inventory report is to be submitted to the FS for review and approval at the time a surface disturbing plan of operation is submitted.
3. Implement mitigation measures required by the FS and BLM to preserve or avoid destruction of cultural resource values. Mitigation may include relocation of proposed facilities, testing, salvage, and recordation or other protective measures. All costs of the inventory and mitigation will be borne by the lessee or operator, and all data and materials salvaged will remain under the jurisdiction of the U.S. Government as appropriate.

The lessee or operator shall immediately bring to the attention of the FS and BLM any cultural or paleontological resources or any other objects of scientific interest discovered as a result of surface operations under this lease, and shall leave such discoveries intact until directed to proceed by FS and BLM.

**ENDANGERED OR THREATENED SPECIES** - The FS is responsible for assuring that the leased land is examined prior to undertaking any surface-disturbing activities to determine effects upon any plant or animal species listed or proposed for listing as endangered or threatened, or their habitats. The findings of this examination may result in some restrictions to the operator's plans or even disallow use and occupancy that would be in violation of the Endangered Species Act of 1973 by detrimentally affecting endangered or threatened species or their habitats.

The lessee/operator may, unless notified by the FS that the examination is not necessary, conduct the examination on the leased lands at his discretion and cost. This examination must be done by or under the supervision of a qualified resource specialist approved by the FS. An acceptable report must be provided to the FS identifying the anticipated effects of a proposed action on endangered or threatened species or their habitats.

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Signature of Licensee/Permittee/Lessee

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

COAL LEASE

FORM APPROVED  
OMB NO. 1004-0073  
Expires: June 30, 2013

Serial Number

PART 1. LEASE RIGHTS GRANTED

This lease, entered into by and between the UNITED STATES OF AMERICA, hereinafter called lessor, through the Bureau of Land Management (BLM), and  
(Name and Address)

hereinafter called lessee, is effective (date) / / , for a period of 20 years and for so long thereafter as coal is produced in commercial quantities from the leased lands, subject to readjustment of lease terms at the end of the 20th lease year and each 10-year period thereafter.

Sec. 1. This lease is issued pursuant and subject to the terms and provisions of the:

- The Mineral Leasing Act of 1920, as amended, 30 U.S.C. 181 - 287; or
- The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 - 359;

and to the regulations and formal orders of the Secretary of the Interior which are now or hereafter in force, when not inconsistent with the express and specific provisions herein.

Sec. 2. Lessor, in consideration of any bonuses, rents, and royalties to be paid, and the conditions and covenants to be observed as herein set forth, hereby grants and leases to lessee the exclusive right and privilege to drill for, mine, extract, remove, or otherwise process and dispose of the coal deposits in, upon, or under the following described lands:

containing \_\_\_\_\_ acres, more or less, together with the right to construct such works, buildings, plants, structures, equipment and appliances and the right to use such on-lease rights-of-way which may be necessary and convenient in the exercise of the rights and privileges granted, subject to the conditions herein provided.

PART II. TERMS AND CONDITIONS

Sec. 1. (a) RENTAL RATE - Lessee must pay lessor rental annually and in advance for each acre or fraction thereof during the continuance of the lease at the rate of \$ \_\_\_\_\_ for each lease year.

(b) RENTAL CREDITS - Rental will not be credited against either production or advance royalties for any year.

Sec. 2. (a) PRODUCTION ROYALTIES - The royalty will be \_\_\_\_\_ percent of the value of the coal as set forth in the regulations. Royalties are due to lessor the final day of the month succeeding the calendar month in which the royalty obligation accrues.

(b) ADVANCE ROYALTIES - Upon request by the lessee, the BLM may accept, for a total of not more than 20 years, the payment of advance royalties in lieu of continued operation, consistent with the regulations. The advance royalty will be based on a percent of the value of a minimum number of tons determined in the manner established by the advance royalty regulations in effect at the time the lessee requests approval to pay advance royalties in lieu of continued operation.

Sec. 3. BONDS - Lessee must maintain in the proper office a lease bond in the amount of \$ \_\_\_\_\_. The BLM may require an increase in this amount when additional coverage is determined appropriate.

Sec. 4. DILIGENCE - This lease is subject to the conditions of diligent development and continued operation, except that these conditions are excused  
(Continued on page 2)

when operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee. The lessor, in the public interest, may suspend the condition of continued operation upon payment of advance royalties in accordance with the regulations in existence at the time of the suspension. Lessee's failure to produce coal in commercial quantities at the end of 10 years will terminate the lease. Lessee must submit an operation and reclamation plan for the BLM's approval pursuant to 30 U.S.C. 207(c) prior to conducting any development or mining operations or taking any other action on a leasehold which might cause a significant disturbance of the environment.

The lessor reserves the power to assent to or order the suspension of the terms and conditions of this lease in accordance with, inter alia, Section 39 of the Mineral Leasing Act, 30 U.S.C. 209.

5. LOGICAL MINING UNIT (LMU) - Either upon approval by the lessor of the lessee's application or at the direction of the lessor, this lease will become an LMU or part of an LMU, subject to the provisions set forth in the regulations.

The stipulations established in an LMU approval in effect at the time of LMU approval will supersede the relevant inconsistent terms of this lease so long as the lease remains committed to the LMU. If the LMU of which this lease is a part is dissolved, the lease will then be subject to the lease terms which would have been applied if the lease had not been included in an LMU.

Sec. 6. DOCUMENTS, EVIDENCE AND INSPECTION - At such times and in such form as lessor may prescribe, lessee must furnish detailed statements showing the amounts and quality of all products removed and sold from the lease, the proceeds therefrom, and the amount used for production purposes or unavoidably lost.

Lessee must keep open at all reasonable times for the inspection by BLM the leased premises and all surface and underground improvements, works, machinery, ore stockpiles, equipment, and all books, accounts, maps, and records relative to operations, surveys, or investigations on or under the leased lands.

Lessee must allow lessor access to and copying of documents reasonably necessary to verify lessee compliance with terms and conditions of the lease.

While this lease remains in effect, information obtained under this section will be closed to inspection by the public in accordance with the Freedom of Information Act (5 U.S.C. 552).

Sec. 7. DAMAGES TO PROPERTY AND CONDUCT OF OPERATIONS - Lessee must comply at its own expense with all reasonable orders of the Secretary, respecting diligent operations, prevention of waste, and protection of other resources.

Lessee must not conduct exploration operations, other than casual use, without an approved exploration plan. All exploration plans prior to the commencement of mining operations within an approved mining permit area must be submitted to the BLM.

Lessee must carry on all operations in accordance with approved methods and practices as provided in the operating regulations, having due regard for the prevention of injury to life, health, or property, and prevention of waste, damage or degradation to any land, air, water, cultural, biological, visual, and other resources, including mineral deposits and formations of mineral deposits not leased hereunder, and to other land uses or users. Lessee must take measures deemed necessary by lessor to accomplish the intent of this lease term. Such measures may include, but are not limited to, modification to proposed siting or design of facilities, timing of operations, and specification of interim and final reclamation procedures. Lessor reserves to itself the right to lease, sell, or otherwise dispose of the surface or other mineral deposits in the lands and the right to continue existing uses and to authorize future uses upon or in the leased lands, including issuing leases for mineral deposits not covered hereunder and approving easements or rights-of-way. Lessor must condition such uses to prevent unnecessary or unreasonable interference with rights of lessee as may be consistent with concepts of multiple use and multiple mineral development.

Sec. 8. PROTECTION OF DIVERSE INTERESTS, AND EQUAL OPPORTUNITY - Lessee must: pay when due all taxes legally assessed and levied under the laws of the State or the United States; accord all employees complete freedom of purchase; pay all wages at least twice each month in lawful money of the United States; maintain a safe working environment in accordance with standard industry practices; restrict the workday to not more than 8 hours in any one day for underground workers, except in emergencies; and take measures necessary to protect the health and safety of the public. No person under the age of 16 years should be employed in any mine below the surface. To the extent that laws of the State in which the lands are situated are more restrictive than the provisions in this paragraph, then the State laws apply.

Lessee will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor. Neither lessee nor lessee's subcontractors should maintain segregated facilities.

Sec. 15. SPECIAL STIPULATIONS -

Sec. 9. (a) TRANSFERS -

This lease may be transferred in whole or in part to any person, association or corporation qualified to hold such lease interest.

This lease may be transferred in whole or in part to another public body or to a person who will mine coal on behalf of, and for the use of, the public body or to a person who for the limited purpose of creating a security interest in favor of a lender agrees to be obligated to mine the coal on behalf of the public body.

This lease may only be transferred in whole or in part to another small business qualified under 13 CFR 121.

Transfers of record title, working or royalty interest must be approved in accordance with the regulations.

(b) RELINQUISHMENT - The lessee may relinquish in writing at any time all rights under this lease or any portion thereof as provided in the regulations. Upon lessor's acceptance of the relinquishment, lessee will be relieved of all future obligations under the lease or the relinquished portion thereof, whichever is applicable.

Sec. 10. DELIVERY OF PREMISES, REMOVAL OF MACHINERY, EQUIPMENT, ETC. - At such time as all portions of this lease are returned to lessor, lessee must deliver up to lessor the land leased, underground timbering, and such other supports and structures necessary for the preservation of the mine workings on the leased premises or deposits and place all workings in condition for suspension or abandonment. Within 180 days thereof, lessee must remove from the premises all other structures, machinery, equipment, tools, and materials that it elects to or as required by the BLM. Any such structures, machinery, equipment, tools, and materials remaining on the leased lands beyond 180 days, or approved extension thereof, will become the property of the lessor, but lessee may either remove any or all such property or continue to be liable for the cost of removal and disposal in the amount actually incurred by the lessor. If the surface is owned by third parties, lessor will waive the requirement for removal, provided the third parties do not object to such waiver. Lessee must, prior to the termination of bond liability or at any other time when required and in accordance with all applicable laws and regulations, reclaim all lands the surface of which has been disturbed, dispose of all debris or solid waste, repair the offsite and onsite damage caused by lessee's activity or activities incidental thereto, and reclaim access roads or trails.

Sec. 11. PROCEEDINGS IN CASE OF DEFAULT - If lessee fails to comply with applicable laws, existing regulations, or the terms, conditions and stipulations of this lease, and the noncompliance continues for 30 days after written notice thereof, this lease will be subject to cancellation by the lessor only by judicial proceedings. This provision will not be construed to prevent the exercise by lessor of any other legal and equitable remedy, including waiver of the default. Any such remedy or waiver will not prevent later cancellation for the same default occurring at any other time.

Sec. 12. HEIRS AND SUCCESSORS-IN-INTEREST - Each obligation of this lease will extend to and be binding upon, and every benefit hereof will inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

Sec. 13. INDEMNIFICATION - Lessee must indemnify and hold harmless the United States from any and all claims arising out of the lessee's activities and operations under this lease.

Sec. 14. SPECIAL STATUTES - This lease is subject to the Clean Water Act (33 U.S.C. 1252 et seq.), the Clean Air Act (42 U.S.C. 4274 et seq.), and to all other applicable laws pertaining to exploration activities, mining operations and reclamation, including the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.).

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THE UNITED STATES OF AMERICA

_____	By _____
(Company or Lessee Name)	
_____	_____
(Signature of Lessee)	(BLM)
_____	_____
(Title)	(Title)
_____	_____
(Date)	(Date)

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Title 18 U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

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(Continued on page 4)

(Form 3400-12, page 3)

## NOTICES

**The Privacy Act** and 43 CFR 2.48(d) require that you be furnished with the following information in connection with the information requested by this form.

**AUTHORITY:** 30 U.S.C. 181 - 287 and 30 U.S.C. 351 - 359 permit collection of the information requested by this form.

**PRINCIPAL PURPOSE:** The BLM will use the information you provide to process your application and determine if you are eligible to hold a coal lease on public lands.

**ROUTINE USES:** The BLM will only disclose this information in accordance with the provisions at 43 CFR 2.56(b) and (c).

**EFFECT OF NOT PROVIDING INFORMATION:** Submission of the requested information is necessary to obtain or retain a benefit. Failure to submit all of the requested information or to complete this form may result in delay or preclude the BLM's acceptance of your application for a coal lease.

**The Paperwork Reduction Act** requires us to inform you that:

The BLM collects this information to evaluate and authorize proposed exploration and mining operations on public lands.

Submission of the requested information is necessary to obtain or retain a benefit.

You do not have to respond to this or any other Federal agency-sponsored information collection unless it displays a currently valid OMB control number.

**BURDEN HOURS STATEMENT:** The public reporting burden for this form is estimated to average 25 hours per response when the form is used under the authority of 43 subpart 3422 (Lease Sales), or 800 hours per response when the form is used under the authority of 43 subpart 3430 (Preference Right Leases). The estimated burdens include the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. You may submit comments regarding the burden estimate or any other aspect of this form to: U.S. Department of the Interior, Bureau of Land Management (1004-0073), Bureau Information Collection Clearance Officer (WO-630), 1849 C Street, Mail Stop 401 LS, Washington, DC 20240.

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(Form 3400-12, page 4)

# **APPENDIX 3**

U.S. FISH AND WILDLIFE SERVICE  
CONCURRENCE LETTER



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Ecological Services  
5353 Yellowstone Road, Suite 308A  
Cheyenne, Wyoming 82009



MAR 03 2011

In Reply Refer To:  
ES-61411/WY1110131/WY11CPA0109

### Memorandum

To: District Manager, Solid Minerals, Bureau of Land Management, Wyoming High Plains District, Casper, Wyoming

From: Field Supervisor, U.S. Fish and Wildlife Service, Wyoming Field Office, Cheyenne, Wyoming 

Subject: Concurrence for the North Porcupine and South Porcupine Coal Lease-By-Application Tracts

Thank you for your letter dated February 8, 2011, received in our office on February 11, and attached biological assessment for the North Porcupine and South Porcupine Coal Lease-By-Application (LBA) Tracts. Under the Bureau of Land Management's (Bureau) preferred alternative (Alternative 2) in the Wright Area Coal Lease Applications Final Environmental Impact Statement for the North Porcupine and South Porcupine LBA Tracts (FEIS), the Bureau will hold a sealed-bid, competitive coal lease sale for the lands included in the above LBA tracts, and issue the leases to the successful bidder. The legal descriptions for the Bureau's preferred configuration (Alternative 2), for the North Porcupine and South Porcupine LBA tracts can be found in Appendix G, pages G-29 and G-34 of the FEIS.

Your letter requested the U.S. Fish and Wildlife Service (Service) consider Appendix G of the FEIS and errata to serve as the biological assessment for the above two Federal actions. You have also requested the Service concur with the Bureau's determinations contained in your February 8, 2011, letter pursuant to section 7(a)(2) of the Endangered Species Act of 1973 (Act), as amended, 50 CFR § 402.13.

Based on the information provided in (1) the biological assessment (Appendix G of the Wright Area Coal Lease Applications FEIS and errata), (2) the conservation measures identified in Appendix D of the FEIS, and (3) the survey methods and results reported in the Threatened & Endangered Plant Species Survey Report, the Service concurs with the Bureau's determination that leasing the North Porcupine and South Porcupine LBA tracts, may affect, but is not likely to adversely affect the Ute ladies'-tresses orchid (*Spiranthes diluvialis*).

BUREAU OF LAND MANAGEMENT  
HIGH PLAINS DISTRICT  
CASPER FIELD OFFICE  
2011 MAR -4 P 12:49

Appropriately timed surveys of suitable habitat within the above LBA tracts conducted in 1997, 1999, 2000, 2004 – 2006, 2009, and 2010 found no evidence of Ute ladies'-tresses orchids.

The Bureau has determined leasing the North Porcupine and South Porcupine LBA tracts is not likely to jeopardize the continued existence of the mountain plover (*Charadrius montanus*). We encourage project planners to develop and implement protective measures should mountain plovers occur within project areas. Measures to protect the mountain plover from further decline may include: (1) avoidance of suitable habitat during the plover nesting season (April 10 through July 10), (2) prohibition of ground disturbing activities in prairie dog towns, and (3) prohibition of any permanent above ground structures that may provide perches for avian predators or deter plovers from using preferred habitat. Suitable habitat for nesting mountain plovers includes grasslands, mixed grassland areas and short-grass prairie, shrub-steppe, plains, alkali flats, agricultural lands, cultivated lands, sod farms, and prairie dog towns. We strongly encourage you to develop protective measures with an assurance of implementation should mountain plovers be found within the project areas.

The Bureau has determined that leasing the North Porcupine and South Porcupine LBA tracts will have no effect to blowout penstemon (*Penstemon haydenii*). When the Bureau makes a no effect determination, concurrence from the Service is not required although we do appreciate receiving the information used to make that determination.

This concludes informal consultation and coordination pursuant to the regulations implementing the Act. This project should be re-analyzed if new information reveals effects of the action that may affect listed species or designated or proposed critical habitat (1) in a manner or to an extent not considered in this letter, (2) if the action is subsequently modified in a manner that causes an effect to a listed species or designated or proposed critical habitat that was not considered in this letter, and/or (3) if a new species is listed or critical habitat is designated that may be affected by this project.

For our internal tracking purposes, the Service would appreciate notification of any decision made on this project (such as issuance of a permit or signing of a Record of Decision or Decision Memo). Notification can be sent in writing to the letterhead address or by electronic mail to FW6\_Federal\_Activities\_Cheyenne@fws.gov.

Thank you for your efforts to ensure the conservation of threatened and endangered species in Wyoming. If you have any questions regarding this letter or your responsibilities under the Act, please contact Bradley Rogers at (307) 684-1046.

cc: BLM, Field Manager, Buffalo Field Office, Buffalo, WY, (D. Spencer)  
BLM,-State Office, Chief of Branch of Solid Minerals, Cheyenne, WY (B. Neuman)  
BLM-State Office, T&E Coordinator, Cheyenne, WY (T. Abbott)  
FWS, Federal Activities Specialist, Denver, CO (D. Carlson)  
WGFD, Statewide Habitat Protection Coordinator, Cheyenne, WY (M. Flanderka)  
WGFD, Non-Game Coordinator, Lander, WY (B. Oakleaf)

# **APPENDIX 4**

## APPEAL PROCEDURES

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

**INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS**

**DO NOT APPEAL UNLESS**

1. This decision is adverse to you,
- AND
2. You believe it is incorrect

**IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED**

<b>1. NOTICE OF APPEAL</b> .....	A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the <i>Notice of Appeal</i> in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a <i>Notice of Appeal</i> in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).
<b>2. WHERE TO FILE</b>	
NOTICE OF APPEAL.....	Bureau of Land Management, Wyoming High Plains District 2987 Prospector Drive, Casper, WY 82604
WITH COPY TO SOLICITOR...	U.S. Department of the Interior, Office of the Solicitor, Rocky Mountain Region 755 Parfet Street, Suite 151, Lakewood, CO 80215
<b>3. STATEMENT OF REASONS</b>	Within 30 days after filing the <i>Notice of Appeal</i> , file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the <i>Notice of Appeal</i> , no additional statement is necessary (43 CFR 4.412 and 4.413).
WITH COPY TO SOLICITOR.....	U.S. Department of the Interior, Office of the Solicitor, Rocky Mountain Region, 755 Parfet Street, #151, Lakewood, CO 80215
<b>4. ADVERSE PARTIES</b> .....	Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the <i>Notice of Appeal</i> , (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).
<b>5. PROOF OF SERVICE</b> .....	Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).
<b>6. REQUEST FOR STAY</b> .....	Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a <i>Notice of Appeal</i> (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your <i>Notice of Appeal</i> (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the <i>Notice of Appeal</i> and Petition for a Stay <b>must</b> also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.  <b>Standards for Obtaining a Stay.</b> Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that **all** communications are identified by serial number of the case being appealed.

**NOTE:** A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

**43 CFR SUBPART 1821--GENERAL INFORMATION**

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office ----- Alaska  
Arizona State Office ----- Arizona  
California State Office ----- California  
Colorado State Office ----- Colorado  
Eastern States Office ----- Arkansas, Iowa, Louisiana, Minnesota, Missouri  
and, all States east of the Mississippi River  
Idaho State Office ----- Idaho  
Montana State Office ----- Montana, North Dakota and South Dakota  
Nevada State Office ----- Nevada  
New Mexico State Office ---- New Mexico, Kansas, Oklahoma and Texas  
Oregon State Office ----- Oregon and Washington  
Utah State Office ----- Utah  
Wyoming State Office ----- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

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(Form 1842-1, September 2006)