

**United States Department of the Interior  
Office of Surface Mining Reclamation and Enforcement**

**Spring Creek Mine  
Mining Plan Modification for  
Federal Coal Leases  
MTM 94378 and MTM 110693**

**Record of Decision**

**EISX-010-08-000-1732112528**

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## 1.0 INTRODUCTION

On January 13, 2025, the U.S. Department of the Interior (DOI), Office of Surface Mining Reclamation and Enforcement (OSMRE) published a Notice of Availability of the *Final Environmental Impact Statement for the Spring Creek Mine Mining Plan Modification for Federal Coal Leases MTM 94378 and MTM 110693*, collectively referred to as the Lease by Application 1 (LBA1) tracts, to address deficiencies in the 2016 *Environmental Assessment for Spring Creek Mine Mining Plan Modification for Federal Coal Lease MTM 94378* (2016 LBA1 EA) identified by the United States District Court for the District of Montana (the court) (*WildEarth Guardians v. Haaland*, No. CV 17-80-BLG-SPW (D. Mont. 2021)).

The Final Environmental Impact Statement (EIS) addressed the deficiencies identified by the court and considered new information available in analyzing potential impacts to environmental resources that could result from the continued mining of Federal coal from the LBA1 tracts. Four alternatives were analyzed in this Final EIS: Alternative 1 - Proposed Action, Alternative 2 - Partial Mining Alternative, Alternative 3 - Accelerated Mining Rate Alternative, and Alternative 4 - No Action. The primary differences among the four alternatives are (1) remaining tons of recoverable LBA1 coal, (2) remaining years of LBA1 coal recovery, and (3) the remaining LBA1 area disturbance.

OSMRE issued a Notice of Intent to prepare an EIS on March 17, 2022, initiating a 30-day public scoping period. OSMRE issued a Notice of Availability for the draft EIS on September 4, 2024, initiating a 45-day public comment period, and hosted a public meeting in Hardin, Montana on September 24, 2024. The U.S. Environmental Protection Agency (EPA) published a Notice of Availability of the Final EIS in the *Federal Register* on January 10, 2025 (90 FR 2001), and OSMRE published its Notice of Availability on January 13, 2025 (90 FR 2744).

This Record of Decision (ROD) documents OSMRE's selected alternative. OSMRE will prepare and submit a Mining Plan Decision Document (MPDD) for the DOI Assistant Secretary for Land and Minerals Management (ASLM) with its recommendation for the

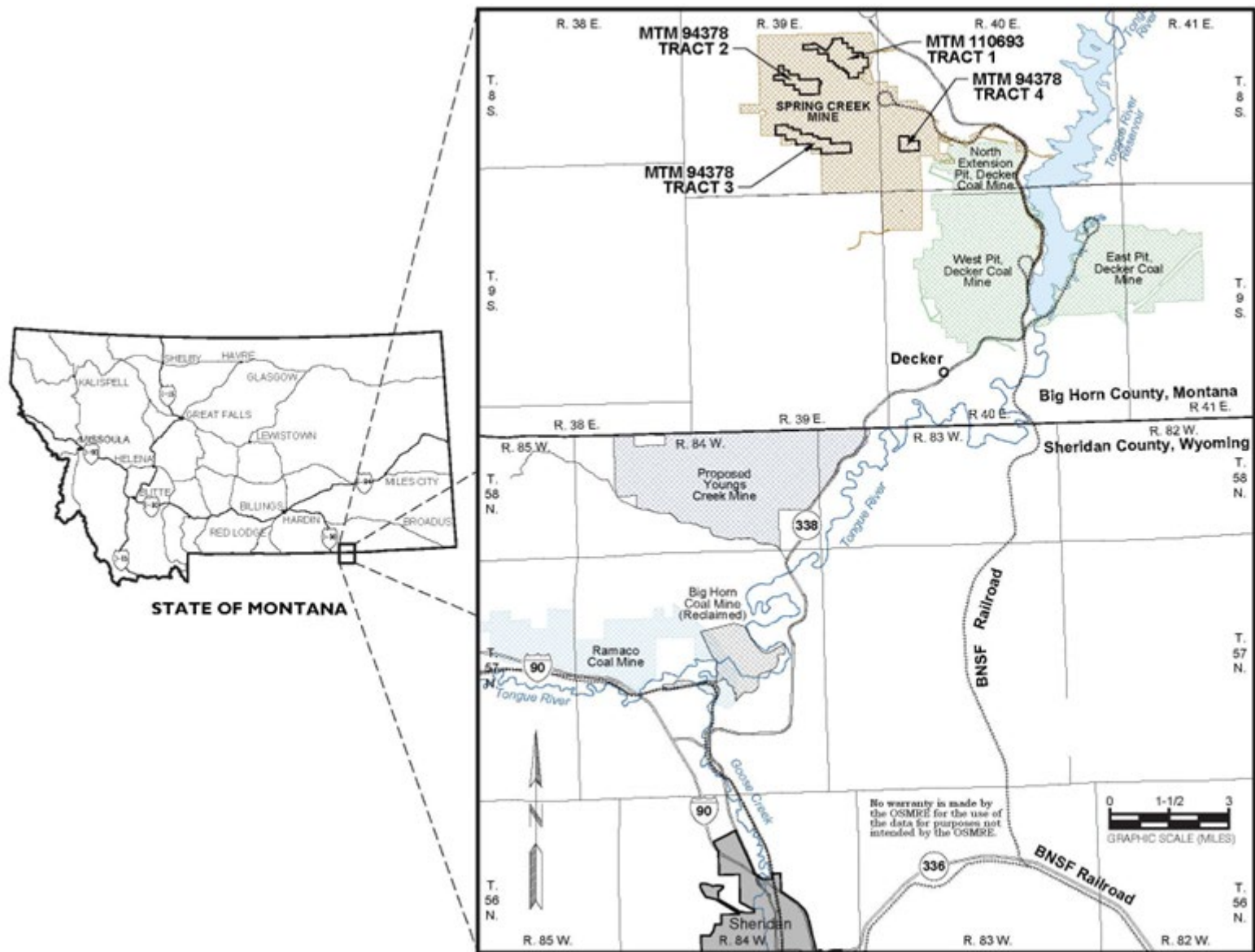
proposed mining plan modification. The ASLM will decide whether to approve, disapprove, or conditionally approve the modification.

## **1.1 Project Location and Background**

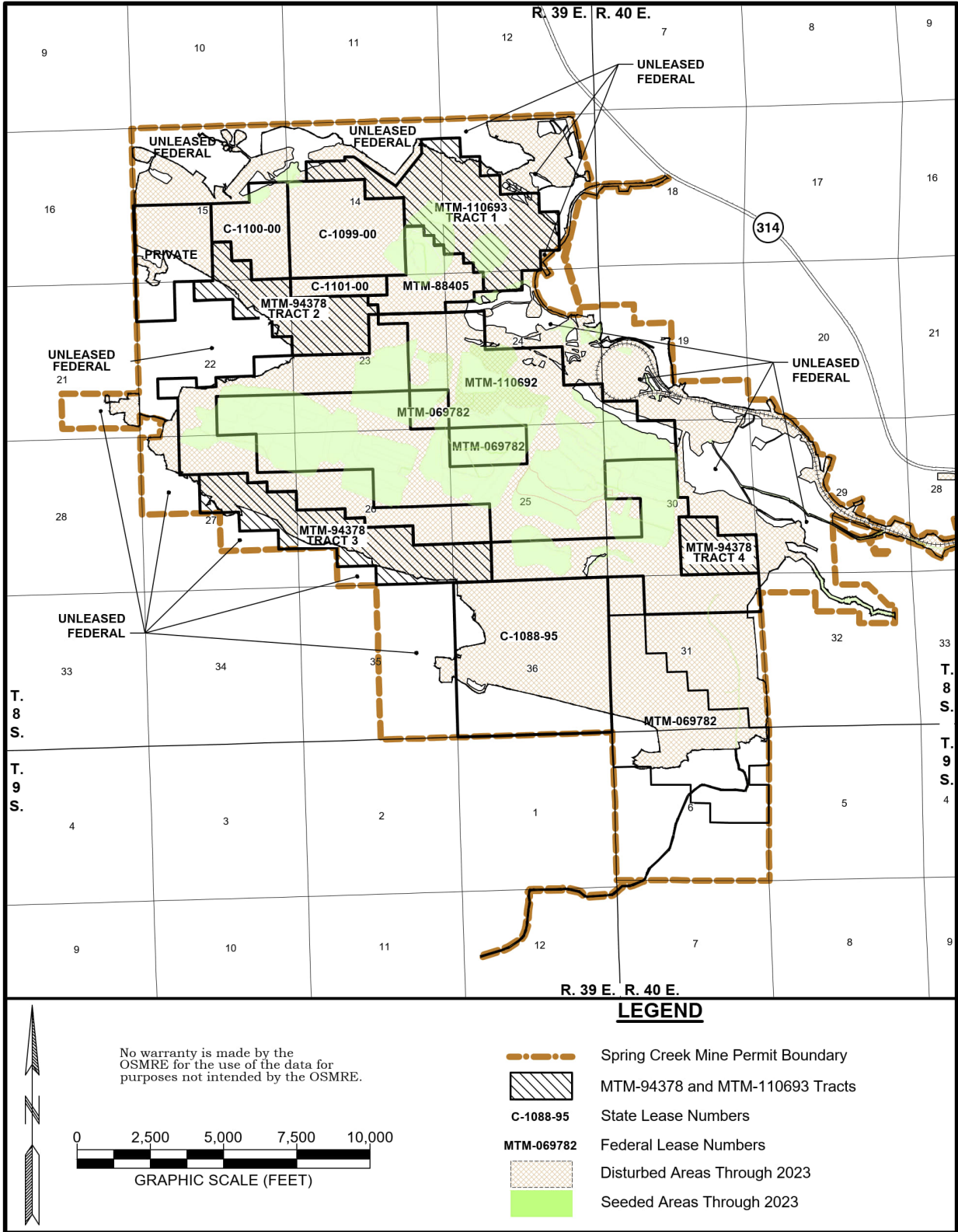
The Spring Creek Mine (SCM) is an existing surface coal mine in Big Horn County, Montana, approximately 32 miles north of Sheridan, Wyoming (**Map 1**). Coal has been mined on a commercial scale at the SCM since 1979. The SCM is currently operated by Navajo Transitional Energy Company, LLC (NTEC) following NTEC's acquisition in 2019 of substantially all the assets owned by Cloud Peak Energy, Inc., including the assets held by Spring Creek Coal, LLC. NTEC is a wholly owned limited liability company of the Navajo Nation.

The three tracts associated with Federal coal lease MTM 94378 and the tract associated with Federal coal lease MTM 110693 are referred to collectively as the LBA1 tracts. In addition to the LBA1 tracts, the SCM is permitted to mine coal from other non-LBA1 tracts, including Federal, state, and private leases within the permit boundary. The SCM recovers coal under 10 distinct coal leases (**Map 2**). There is approximately 63.4 million tons (Mt) of Federal, state, and private coal that cover approximately 971 acres outside of the area covered by the LBA1 tracts. Coal from the various leases is blended due to variability in quality to fulfill contracts.

Mining has been ongoing within the LBA1 tracts since the Federal mining plan modification was initially approved by the ASLM in 2012. For the analysis in the Final EIS, OSMRE used December 31, 2023, as the cutoff date for existing conditions at the mine because calculations and potential impacts are evaluated on an annual basis. As of December 31, 2023, approximately 63.3 Mt of the 103.2 Mt of LBA1 Federal coal had been recovered and 461.4 acres of the 627.9 acres had been disturbed within the four LBA1 tracts. As of December 31, 2023, approximately 39.9 Mt of LBA1 Federal coal remained, and approximately 162.5 acres of the LBA1 tracts had yet to be disturbed.



Map 1. General Location of the LBA1 Tracts



**Map 2.** Configuration of the LBA1 Tracts and Coal Leases within the Spring Creek Mine Permit Boundary

## 1.2 Project Timeline

An extensive timeline of this mining plan modification and its associated court orders is detailed in the Final EIS (**Section 1.3**).

2005—Spring Creek Coal, LLC, files a Lease by Application with the Bureau of Land Management (BLM) to lease four tracts of Federal coal (MTM 94378)

2006—BLM publishes a Notice of Availability of an Environmental Assessment (EA) for Spring Creek Coal Lease by Application, MTM 94378

2007—BLM issues a Finding of No Significant Impact (FONSI), offers MTM 94378 for competitive sale, accepts Spring Creek Coal, LLC's bid, and issues the lease

2008—Spring Creek Coal, LLC, applies to Montana Department of Environmental Quality (MDEQ) for a revision to State Mining Permit (SMP) C1979012, and applies to OSMRE for a Federal mining plan modification

2011—MDEQ approves SMP C1979012 permit revision

2012—OSMRE adopts the 2006 BLM LBA1 EA, publishes a FONSI, and submits a MPDD to the ASLM recommending the approval of the mining plan modification

2012—ASLM approves the Federal mining plan modification; environmental groups file a challenge to the approval

2016—The court issues a decision holding that OSMRE had failed to fulfill its obligations under the National Environmental Policy Act (NEPA) and orders OSMRE to prepare an updated EA (*WildEarth Guardians v. OSMRE*, Civil Nos. 14-13-SPW & 14-103-SPW (D. Mont. 2016))

2016—OSMRE publishes the Spring Creek Mine Mining Plan Modification Environmental Assessment for Federal Coal Lease MTM 94378 (2016 LBA1 EA) and FONSI, and submits an MPDD to the ASLM recommending the approval of the mining plan modification

2016—ASLM approves the Federal mining plan modification; environmental groups file a challenge to the approval



2018—Spring Creek Coal, LLC applies to BLM to consolidate Tract 2, 3 and 4 of MTM 94378 into a logical mining unit; the remaining Tract 1 was segregated into a new lease MTM 110693 (collectively, the LBA1 tracts)

2019—NTEC acquires the SCM

2021—The court orders OSMRE to complete a remedial NEPA analysis that addresses identified deficiencies in the 2016 LBA1 EA, allowing for a deferred vacatur of the Federal mining plan modification until October 2, 2021; OSMRE requests and is granted an extension of the deferred vacatur until April 1, 2023

2022—OSMRE publishes a Notice of Intent to prepare an EIS and holds a public scoping meeting

2024—OSMRE requests and is granted an extension of the deferred vacatur until March 14, 2025; OSMRE publishes a Notice of Availability of the draft EIS and holds a public comment meeting

2025—OSMRE and the EPA publish a Notice of Availability of the Final EIS

### **1.3 Purpose and Need**

OSMRE’s purpose in preparing the Final EIS is to fully analyze the environmental impacts from the Federal mining plan modification, with particular attention to addressing the deficiencies identified in the 2021 Court Order, so that OSMRE can make a recommendation to the ASLM to approve, disapprove, or conditionally approve the proposed Federal mining plan modification for the LBA1 tracts. The ASLM will decide whether the mining plan modification is approved, disapproved, or approved with conditions. Under the current Court Order, the deferred vacatur is set to expire on March 14, 2025.

### **1.4 Agency Authority and Actions**

OSMRE is the lead agency for the Project. No Federal or state agencies, tribes, counties, municipalities, conservation districts, or non-government organizations indicated interest in participating as a cooperating agency on this project.

This ROD documents OSMRE’s selected alternative. Pursuant to 30 U.S.C. § 207(c) and 30 C.F.R. part 746, OSMRE will prepare and submit an MPDD to the ASLM with its

recommendation for the proposed mining plan modification. The ASLM will decide whether to approve, disapprove, or conditionally approve the modification.

## **1.5 Public Involvement**

During the development of the Final EIS, OSMRE provided opportunities for public involvement and comment, including an initial 30-day scoping period, a virtual public scoping meeting, a 45-day public comment period on the draft EIS, and an in-person public comment meeting. OSMRE also mailed letters to Federal agencies, state agencies, tribes, counties, municipalities and conservation districts, non-government organizations, and individuals.

Comments received during the scoping and public comment process were reviewed to identify additional significant environmental issues for the Final EIS. Refer to **Appendix D** of the Final EIS for a description of the comments received on the draft EIS, and OSMRE's responses to substantive comments.

## **2.0 U.S. District Court for the District of Montana Order**

In 2021, the court found that OSMRE's 2016 LBA1 EA failed to take a "hard look" at the indirect effects of coal transportation, non-greenhouse gas emissions, and greenhouse gas (GHG) emissions resulting from the proposed mining plan modification (*WildEarth Guardians v. Haaland*, No. CV 17-80-BLG-SPW (D. Mont. 2021)). OSMRE finds that the analysis in the Final EIS adequately addresses the deficiencies in the 2016 LBA1 EA identified in the Court Order, specifically:

### **2.1 Coal Transportation**

Indirect and cumulative effects of diesel emissions, noise, vibrations, and coal dust emissions from rail cars based on the final destination and routes of SCM coal shipments are addressed in **Sections 4.4.3, 4.14, and 4.15** of the Final EIS.

### **2.2 Non-Greenhouse Gas Emissions**

Indirect effects of non-greenhouse gas from downstream combustion emissions are addressed in **Section 4.4.4** of the Final EIS.

## 2.3 Greenhouse Gas Emissions

Effects related to the social cost of GHG emissions are addressed in **Section 4.4.5** of the Final EIS.

NEPA does not require an agency to quantify project impacts through a specific methodology, such as estimating the “social cost of carbon,” “social cost of methane,” or “social cost of greenhouse gases.” A protocol to estimate what is referenced as the “social cost of carbon” (SCC) associated with GHG emissions was developed by a Federal Interagency Working Group on the Social Cost of Greenhouse Gases (IWG).

Executive Order (EO) 14154, *Unleashing American Energy* (Jan. 20, 2025), however, disbanded the IWG and withdrew any guidance, instruction, recommendation, or document issued by the IWG, including the SCC protocol. Section 6(c) of EO 14154 states:

The calculation of the “social cost of carbon” is marked by logical deficiencies, a poor basis in empirical science, politicization, and the absence of a foundation in legislation. Its abuse arbitrarily slows regulatory decisions and, by rendering the United States economy internationally uncompetitive, encourages a greater human impact on the environment by affording less efficient foreign energy producers a greater share of the global energy and natural resource market. Consequently, within 60 days of the date of this order, the Administrator of the EPA shall issue guidance to address these harmful and detrimental inadequacies, including consideration of eliminating the “social cost of carbon” calculation from any Federal permitting or regulatory decision.

EO 14154 further directs agencies to ensure consistency with the guidance in OMB Circular A-4 of September 17, 2003, when estimating the value of changes in GHG emissions from agency actions.

In accordance with the EO, OSMRE would not normally include any estimates for the SCC for this action for multiple reasons. First, this action is not a rulemaking. Rulemakings are the administrative actions for which the IWG originally developed the SCC protocol. Second, EO 14154 clarifies that the IWG has been disbanded and its guidance has been withdrawn. Further, NEPA does not require agencies to conduct a cost-benefit analysis. Including an SCC analysis without a complete cost-benefit analysis, which would include the social benefits of the proposed action to society as a

whole and other potential positive benefits, would be unbalanced, potentially inaccurate, and not useful to foster informed decision-making. Any increased economic activity—in terms of revenue, employment, labor income, total value added, and output—that is expected to occur as a result of the proposed action is simply an economic impact, not an economic benefit, inasmuch as any such impacts might be viewed by another person as a negative or undesirable impact due to a potential increase in the local population, competition for jobs, and concerns that changes in population will change the quality of the local community. “Economic impact” is distinct from “economic benefit,” as understood in economic theory and methodology, and the socioeconomic impact analysis required under NEPA is distinct from a cost-benefit analysis, which NEPA does not require. In addition, many benefits and costs from agency actions cannot be monetized and, even if monetizable, cannot meaningfully be compared directly to SCC calculations for a number of reasons, including because of differences in scale (local impacts vs global impacts).

Finally, purported estimates of SCC would not measure the actual environmental impacts of a proposed action and may not accurately reflect the effects of GHG emissions. Estimates of SCC attempt to identify economic damages associated with an increase in carbon dioxide emissions—typically expressed as a one metric ton increase in a single year—and typically includes, but is not limited to, potential changes in net agricultural productivity, human health, and property damages from increased flood risk over hundreds of years. The estimate is developed by aggregating results across models, over time, across regions and impact categories, and across multiple scenarios. The dollar cost figure arrived at based on consideration of SCC represents the value of damages avoided if, ultimately, there is no increase in carbon emissions. But SCC estimates are often expressed in an extremely wide range of dollar figures, depending on the particular discount rates used for each estimate, and would provide little benefit in informing OSMRE’s or the ASLM’s decision. For these reasons, DOI has also rescinded its memorandum of October 16, 2024, entitled, “Updated Estimates of the Social Cost of Greenhouse Gases,” which had directed DOI bureaus to calculate SCC using the methodology contained in the EPA’s Final Rule of March 8, 2024, 89 Fed. Reg. 16,820.

However, notwithstanding the concerns outlined above, in this unique case, OSMRE was directed by the court to take a “hard look” at the costs of greenhouse gas emissions or risk having the mining plan modification approval vacated by the court. Because the SCC analysis in the Final EIS is complete and additional analysis would increase regulatory uncertainty for the mine in contravention of the policy articulated in Section 5(c) of EO 14154, OSMRE, in this ROD, is not revisiting the SCC analysis in the Final EIS. As explained in more detail below, in reaching its decision in the ROD, OSMRE weighed current policy considerations and concerns with the SCC outlined above when reviewing the Final EIS, as well as the fact that NEPA does not require an agency to quantify project impacts through a specific methodology, such as SCC.

### **3.0 OSMRE DECISION AND BASIS FOR DECISION**

#### **3.1 OSMRE Decision**

OSMRE’s decision is to prepare and submit to the ASLM a MPDD recommending the approval of the proposed Federal mining plan modification, analyzed as Alternative 1 in the Final EIS, because this alternative best supports the purpose and need for the proposed action, the goals of the applicant, and national policy to encourage energy exploration and production on Federal lands and waters. OSMRE has based its decision to select Alternative 1, the Proposed Action, on a thorough review of the Final EIS, public input, consultation with Federal, state, and local regulatory agencies, and consultation with affected tribes. This section describes the relevant factors considered and balanced by OSMRE in reaching its decision.

OSMRE verifies that, in reaching its decision, it has complied with the requirements of NEPA, including the Department’s regulations and procedures implementing NEPA at 43 C.F.R. part 46 and Part 516 of the Departmental Manual. All stakeholders’ concerns and comments during the NEPA process have been satisfactorily addressed. OSMRE’s decision to select Alternative 1, the Proposed Action, will be implemented through issuance of this ROD. OSMRE’s MPDD will recommend to the ASLM that the Proposed Action be approved, without conditions.

### **3.2 Description of the Selected Alternative: Alternative 1 – Proposed Action**

Under Alternative 1 - Proposed Action, the SCM would be authorized to mine the remaining 39.9 Mt of coal within the LBA1 tracts in accordance with the life of mine (LOM) mining sequence outlined in the approved MDEQ SMP C1979012. Under the Proposed Action, it is assumed that the remaining LBA1 tracts' coal would be mined and approximately 162.5 acres would be disturbed over a 16-year LOM.

As described in Section 1.1, mining has been ongoing within the LBA1 tracts since the Federal mining plan modification was approved in 2012. If approved, the Proposed Action would continue to mine the remaining 39.9 Mt of Federal coal, which would be shipped primarily to domestic industrial customers, as well as foreign markets. In the U.S., coal is transported by rail from the SCM to power plants in Washington, Arizona, Minnesota, and Michigan. Coal is also transported by rail to terminals in Wisconsin and Canada for vessel transport.

Following the completion of mining operations, the SCM will return the land to its approved postmining land uses (grazing, wildlife habitat, pastureland, and cropland) by adhering to the Reclamation Plan in SMP C1979012.

### **3.3 Environmentally Preferred Alternative: Alternative 4 – No Action**

Under Alternative 4 - No Action, the Federal coal remaining within the LBA1 tracts as of March 14, 2025 (U.S. District Court for the District of Montana Order CV 17-80-BLG-SPW) would not be recovered. If the mining plan is not approved by the ASLM by the March 14, 2025, deadline, SCM would be unable to continue mining Federal coal within the LBA1 tracts or complete its required reclamation commitments within the boundaries of the LBA1 tracts. This alternative assumes that the SCM would apply for and receive all appropriate approvals to fully reclaim any disturbed areas in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and its current approved mining and reclamation permit.

The No Action alternative was identified in both the draft and Final EIS as the environmentally preferable alternative because it would cause the least amount of additional adverse environmental effects from the production or combustion of the remaining LBA1 tracts coal. Moderate direct and indirect negative socioeconomic

effects of a reduced LOM would be partially offset by the continued operation in other portions of the SCM, which has approximately 63.4 Mt of permitted non-LBA1 Federal, state, and private coal remaining. The No Action alternative was not selected for OSMRE's recommendation decision because it does not meet the purpose and need, and it does not align with current national policy to encourage energy exploration and production on Federal lands and waters. EO 14154 Sec. 2(a).

### **3.4 Other Alternatives Considered**

A total of four alternatives were analyzed in the Final EIS. The primary differences among the four alternatives are: (1) remaining tons of recoverable LBA1 coal; (2) remaining years of LBA1 coal recovery; and (3) the remaining LBA1 area disturbance. Other alternatives were considered but eliminated from detailed analysis for the reasons discussed below.

#### **3.4.1 Alternative 2 – Partial Mining**

Under Alternative 2 - Partial Mining, ASLM approval of the mining plan modification for the LBA1 tracts would end after an approximate five-year term, and, if the operator would like to continue mining beyond the initial 5-year term, the operator would be required to apply for an additional mining plan modification, which OSMRE would review under the circumstances that exist in the future. During the five-year term, approximately 19.3 Mt of coal would be mined from the LBA1 tracts and approximately 78.5 acres would be disturbed. Under this alternative, any mining of the LBA1 tracts after this date would require a new application from the mine requesting permission to mine the remaining LBA1 Federal coal, new analysis by OSMRE, a new recommendation from OSMRE to ASLM, and a new mining plan modification approval from ASLM.

The Partial Mining alternative was identified in the Final EIS as the preferred alternative. Although the final mining plan modification decision remains with the ASLM, since the publication of the Final EIS on January 13, 2025, OSMRE has reevaluated the Partial Mining alternative and determined that it is not in alignment with current national policy considerations. OSMRE does not recommend this alternative to the ASLM.

Most notably, the January 20, 2025, EO 14154 (*Unleashing American Energy*), declared that it is the policy of the United States “to encourage energy exploration and production on Federal lands and waters . . . in order to meet the needs of our citizens and solidify the United States as a global energy leader long into the future.” EO 14154 Sec. 2. The EO directed the heads of all agencies to identify agency actions “that impose an undue burden on the identification, development or use of domestic energy resources - - with particular attention to oil, natural gas, coal, hydropower, biofuels, critical mineral, and nuclear energy resources. . .” *Id.* at Sec. 3. OSMRE finds that the recommendation of the Partial Mining alternative would constitute an agency action that imposes an “undue burden on the identification, development, or use of domestic energy resources” because it would limit mining Federal coal within the LBA1 tracts at SCM to five years, create significant uncertainty for NTEC and SCM about whether and how it could continue mining beyond the five-year approval period, and place an unnecessary barrier on the development of affordable energy resources in the United States. Further, the Secretary of the Interior issued Secretary’s Order (SO) 3418 on February 3, 2025, to implement provisions of EO 14154. That order, in part, directs the Department to focus on improving energy permitting, development, and production by removing regulatory impediments. As such, OSMRE finds that the Partial Mining alternative is inconsistent with EO 14154 and SO 3418, and it would create uncertainty for NTEC and the SCM about whether it would be authorized to continue mining beyond the initial 5-year approval period. OSMRE has decided not to select the Partial Mining alternative as its recommendation to ASLM.

#### **3.4.2 Alternative 3 – Accelerated Mining Rate**

Under Alternative 3 - Accelerated Mining Rate, the agency assumed that the remaining 39.9 Mt of coal would be mined from the LBA1 tracts at a rate of 18 Mtpy. Using this higher annual production rate, mining would continue for another 2.2 years within the LBA1 tracts. Approximately 162.5 acres, the same as the Proposed Action, would be disturbed under this alternative.

The Accelerated Mining Rate alternative was included in the alternatives analysis in the Final EIS because it was originally analyzed as the Proposed Action in the 2016 LBA1 EA and because it provided an opportunity to understand how changing the rate



of mining would change the duration and intensity of impacts. The Accelerated Mining Rate alternative was not selected for OSMRE's recommendation decision because, based on current coal market conditions, it would not be feasible for the SCM to mine the remaining LBA1 tract coal at the accelerated rate. Additionally, if SCM is operating in accordance with its approved mining plan and MDEQ permit, the rate of mining is an NTEC business decision, not a regulatory one.

### **3.4.3 Alternatives Considered but Eliminated from Detailed Analysis**

OSMRE considered additional alternatives that were not analyzed in detail in the Final EIS (Final EIS Section 2.3). OSMRE concluded that there are no other reasonable action alternatives to the Proposed Action that would reduce or eliminate adverse environmental effects and meet the agency's purpose and need.

## **3.5 Basis for Decision**

### **3.5.1 Environmental Considerations**

OSMRE's decision considered the environmental effects of each alternative. Alternative 4, the No Action alternative, was identified in the draft and Final EIS as the environmentally preferable alternative because, based on the environmental analysis in the Final EIS, it would cause the least damage to the biological and physical environment. OSMRE determined that implementation of Alternative 2, the Partial Mining alternative, would not significantly reduce the intensity of the environmental effects resulting from Alternative 1, the Proposed Action. Alternative 3, the Accelerated Mining Rate alternative, while remaining technically unfeasible due to current market conditions, would increase the intensity of impacts resulting from the proposed action.

All direct and indirect impacts, including their intensities, are described fully in **Chapter 4** of the Final EIS, and cumulative impacts are described in **Chapter 5** of the Final EIS.

### **Finding**

OSMRE finds that the decision to select Alternative 1 considers the environmental analysis described in Chapters 4 and 5 of the Final EIS. While Alternative 1 is not the

environmentally preferable alternative and will result in some direct, indirect, and cumulative environmental impacts, Alternative 1 is the alternative that best meets the project's purpose and need, as well as current national policy considerations.

### **3.5.2 Economic Considerations**

OSMRE's decision considered the economic effects of each alternative. Alternative 1, the Proposed Action, and Alternative 3, the Accelerated Mining Rate alternative, would extend the duration of employment for current employees and extend the economic benefits related to mining the Federal coal, including both state and Federal revenues. Alternative 3, however, would extend the employment benefits for a much shorter duration than Alternative 1. Alternative 2, the Partial Mining alternative, would extend the employment and economic benefits for the five-year term of approval, but beyond that term, economic impacts would be uncertain. Alternative 4, the No Action alternative, would not result in the employment or economic benefits associated with the SCM coal mining operations on the LBA1 tracts.

### **Finding**

Direct and indirect socioeconomic impacts are described in **Section 4.17** of the Final EIS, and cumulative socioeconomic impacts are described in **Section 5.2.14** of the Final EIS. OSMRE finds that the decision to select Alternative 1 was based in part on the information contained in these sections on the direct, indirect, and cumulative socioeconomic impacts of this alternative as compared to other alternatives.

### **3.5.3 Essential Considerations of National Policy**

In accordance with section 101(b) of NEPA, in addition to the environmental and economic considerations summarized above, OSMRE's decision included essential considerations of national policy, including:

#### **3.5.3.1 *Unleashing American Energy***

EO 14154 and SO 3418 (*Unleashing American Energy*), direct Federal agencies and DOI bureaus to protect national economic, security, and military preparedness by ensuring that an abundant supply of reliable energy is readily accessible in every State and territory of the United States; to ensure that all regulatory requirements related

to energy are grounded in clearly applicable law; and to ensure that the global effects of a rule, regulation, or action shall, whenever evaluated, be reported separately from its domestic costs and benefits, in order to promote sound regulatory decision making and prioritize the interests of the American people; and to guarantee that all executive departments and agencies provide opportunity for public comment and rigorous, peer-reviewed scientific analysis.

### 3.5.3.2 *Prioritizing Accuracy in Environmental Analyses*

EO 14154 requires Federal agencies to adhere to only the relevant legislated requirements for environmental considerations and requires agencies to use the most robust methodologies of assessment at their disposal and shall not use methodologies that are arbitrary or ideologically motivated. The Order, summarized above, withdrew any guidance, instruction, recommendation, or document issued by the IWG.

As discussed above, the 2021 court order directed OSMRE to take a “hard look” at the costs of greenhouse gas emissions. In response, the draft and Final EIS included an SCC analysis that relied on guidance that has since been withdrawn because of logical deficiencies, a poor basis in empirical science, politicization, and the absence of a foundation in legislation. While the analysis is included in the Final EIS, in reaching the decision in this ROD, OSMRE gave the SCC analysis in the Final EIS the appropriate consideration based on its analytical flaws that were identified in EO 14154 and selected Alternative 1.

### 3.5.3.3 *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*

EO 14154 and Presidential Memorandum (*Ending Illegal Discrimination and Restoring Merit-Based Opportunity*), require DOI to strictly adhere to NEPA, 42 U.S.C. §§ 4321 *et seq.* The Final EIS includes a discussion on environmental justice. However, because such Order and Memorandum repeal EOs 12898 (Feb. 11, 1994) and 14096 (Apr. 21, 2023), evaluation of environmental justice is not legally required or necessary to make a reasoned decision. To reach its recommendation decision, OSMRE considered only the applicable statutory and regulatory requirements necessary for approval of the mining plan modification.

## **Finding**

OSMRE finds that the selection of Alternative 1 was made in consideration of and is consistent with EO 14154 and the Presidential Memorandum Ending Illegal Discrimination and Restoring Merit-Based Opportunity.

### **3.5.4 National Environmental Policy Act of 1969**

NEPA declares a national environmental policy and promotes consideration of environmental concerns by Federal agencies in decision making. DOI NEPA regulations are promulgated at 43 C.F.R. part 46. The OSMRE NEPA Handbook also provided guidance for the Final EIS.

## **Finding**

OSMRE finds that the Final EIS complies with the procedural and analytical requirements of NEPA, including the Department's regulations and procedures implementing NEPA at 43 C.F.R. part 46 and Part 516 of the Departmental Manual. OSMRE's selection of Alternative 1 is consistent with 42 U.S.C. § 4332(2)(B) because OSMRE has insured "that presently unquantified environmental amenities and values [were] given appropriate consideration in decisionmaking along with economic and technical considerations."

### **3.5.5 Mineral Leasing Act of 1920**

The BLM's authority to manage the public's coal resources comes from two laws: the Mineral Leasing Act of 1920, as amended, and the Mineral Leasing Act of 1947, as amended. These Acts provide for the leasing of minerals from public lands, including coal, and require that a royalty be paid on amounts mined and sold. The BLM's role is to conduct lease sales to ensure the public receives fair market value; and to administer and ensure compliance with the terms and conditions of those leases. The BLM also monitors production to ensure maximum economic recovery of the public's coal resource and verifies that production for royalty collection by the Office of Natural Resources Revenue.

Before conducting any Federal coal development or mining operations on Federal leases or licenses, the operator/lessee must submit and obtain approval of a resource

recovery and protection plan (R2P2). On April 16, 2019, the BLM received an R2P2 for the SCM, which included Federal coal leases MTM 094378 and MTM 110693. Following review, the BLM found the application to be complete and in conformance with the requirements of the Mineral Leasing Act of 1920, as amended, and the applicable regulations at 43 CFR part 3480, and approved the R2P2, effective October 1, 2019.

### **Finding**

BLM's competitive lease sale and associated 2006 LBA EA, and its review and approval of the R2P2 constituted compliance with the Mineral Leasing Act. In addition, the Mineral Leasing Act of 1920, as amended, also requires an approved mining plan before a significant disturbance of the environment may occur. 30 U.S.C. § 207(c). OSMRE's recommendation of Alternative 1 of this mining plan modification, if approved by the ASLM, will be consistent with the R2P2 and will complete compliance with the Mineral Leasing Act, as amended.

### **3.5.6 Surface Mining Control and Reclamation Act of 1977**

Before the commencement of any coal development or mining operations on a Federal lease or license, a permit application package (PAP) containing, among other documents, a R2P2 and a permit application must be submitted to the regulatory authority responsible for issuing SMCRA permits.

SMCRA establishes a program of cooperative Federalism that allows a state or tribe to enact and administer its own SMCRA regulatory program on non-Federal and non-Indian lands within its borders and subject to limits established by Federal minimum standards and with prescribed oversight and enforcement authority by OSMRE (30 U.S.C. § 1253). The Montana permanent program was approved by the Secretary in 1982. 30 C.F.R. § 926.10. MDEQ administers both SMCRA, the Montana Strip and Underground Mine Reclamation Act (MSUMRA), and the Montana Environmental Policy Act (MEPA). In addition, DOI and Montana entered into a State-Federal Cooperative Agreement in 1998 that allows Montana to be the primary SMCRA regulatory authority on Federal lands within Montana.

On January 23, 2008, Spring Creek Coal, LLC, submitted a PAP to MDEQ to revise SMP C1979012 to add the Federal coal within the LBA1 tracts. MDEQ found the PAP to

be administratively complete in August 2009 and determined that an EIS under MEPA was not necessary. A PAP notice was published in the local newspaper for four consecutive weeks followed by a 30-day public comment period. No comments were received.

In May 2011, MDEQ completed a checklist EA pursuant to the MEPA to assess potential environmental impacts of the PAP. The MDEQ published the EA and a Determination of Acceptability, followed by a public notice period. No comments were received. MDEQ approved the permit revision on June 21, 2011.

### **Finding**

OSMRE finds that MDEQ's review and approval of the permit revision, which covers all of Alternative 1, constitutes compliance with SMCRA.

#### **3.5.7 National Historic Preservation Act of 1966**

Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations under 36 C.F.R. part 800 require all Federal agencies to consider the effects of Federal actions on cultural resources eligible for or listed in the National Register of Historic Places (NRHP). Traditional cultural properties are also protected under Section 106 of the NHPA.

In 2001, OSMRE, MDEQ, the SCM operator, and the Montana State Historic Preservation Officer (SHPO) executed a Memorandum of Agreement (MOA) pursuant to the NHPA as an enforceable condition under the SCM permit. Comprehensive investigations (BLM Class III inventory) of cultural resources within the SCM permit area are completed. As of 2018, 11 cultural sites within the SCM permit area were designated as eligible for listing on the NRHP, two of which are within the LBA1 tracts.

Site 24BH404 is the most culturally significant site within the LBA1 tracts. The site consists of 46 panels of petroglyphs, including modern, historic and prehistoric glyphs. However, the Federal coal under site 24BH404 was removed from the lease, eliminating any potential disturbance to the site, and, in 2015, mitigation was completed for the purpose of recording the site for historical record. The site was photographed with 3D imagery so that it can be recreated if the site is damaged by weather. The remaining historic properties within the SCM permit were mitigated

pursuant to the MOA. The MOA remains in place to guide mitigation if incidental cultural discoveries are encountered during mining.

### **Finding**

OSMRE finds that the Section 106 process is complete, and Alternative 1 will not negatively impact any culturally significant sites and the MOA will adequately mitigate impacts to any unanticipated cultural discoveries during mining operations.

#### **3.5.8 Tribal Consultation**

Native American tribes were consulted during the preparation of the 2006 and 2016 LBA1 EAs. In response to the 2006 LBA EA consultation, response letters were received from the Blackfeet, Cheyenne River Sioux, and the Northern Cheyenne Tribes. The Blackfeet and Cheyenne River Sioux did not have specific concerns about the LBA1 tracts. The Northern Cheyenne Historic Preservation Officer requested additional information and participated in a discussion of the cultural resource issues related to the LBA1 tracts and accompanied mine personnel on tour of several of the sites on February 14, 2006. The Northern Cheyenne Historic Preservation Officer conducted tribal cultural surveys to determine whether there were any indicators that might suggest cultural tribal properties exist within the LBA1 tracts.

While preparing the 2016 LBA1 EA, OSMRE requested continued consultation with affected tribes for the stages of the proposal development and implementation of the final federal action. On May 23, 2016, the Cheyenne and Arapahoe Tribes provided a letter in response to OSMRE's consultation request, confirming no properties would be affected. No other tribes responded to OSMRE's consultation request.

While preparing the EIS, OSMRE sent letters to 23 tribes during public scoping and again for the Notice of Availability of the draft EIS. No tribes responded to OSMRE's consultation requests.

### **Finding**

OSMRE finds it has made a good faith and reasonable effort to invite any tribes that may be affected by the Proposed Action to consult on OSMRE's decision and that it has satisfied all tribal consultation obligations when selecting Alternative 1.

### 3.5.9 Endangered Species Act of 1973

Section 7(a)(2) of the Endangered Species Act (ESA) requires each Federal agency to ensure that its activities are not likely to jeopardize the continued existence of listed species or adversely modify designated critical habitats.

While preparing the EIS, in August 2024, OSMRE requested an official species list using the U.S. Fish and Wildlife Service (USFWS) Information Planning and Consultation System (IPaC) of protected species that may be affected by the Proposed Action. At that time, there were no listed or proposed species or designated critical habitats. As such, OSMRE determined that the proposed action would have no effect on any listed or proposed species or designated critical habitats. A “no effect” determination does not require Section 7 consultation with USFWS.

In January 2025, while preparing the MPDD after publication of the Final EIS, OSMRE submitted a request for an updated official species list through IPaC. The updated official species list included three newly proposed species: the proposed threatened monarch butterfly (*Danaus Plexippus*) and western regal fritillary (*Argunnis idalia occidentalis*), and the proposed endangered Suckley’s cuckoo bumble bee (*Bombus suckleyi*). No designated critical habitat for these species has been proposed in the vicinity of the SCM.

On February 11, 2025, after informal discussion with the USFWS Montana Ecological Field Office, OSMRE submitted to USFWS its determinations that the proposed mining plan modification would “not jeopardize the continued existence” of the monarch butterfly, the western regal fritillary, or the Suckley’s cuckoo bumble bee species. OSMRE’s “no jeopardy” determinations were made based on the absence of suitable habitat within the proposed project area, based on previous habitat surveys. Additionally, if approved, the Alternative 1 would adhere to SCM’s approved Reclamation Plan in SMP C1979012, which requires that reclamation efforts, including but not limited to backfilling, grading, topsoil replacement, and revegetation, on all land that is disturbed by surface mining activities will occur as contemporaneously as practicable. Revegetation is required to be comprised of species native to the area, or of introduced species where desirable and necessary to achieve the approved



postmining land use and approved by MDEQ (30 C.F.R. § 816.111). The SCM will adhere to the vegetation monitoring described in Section 1(h)(ix) of the approved Reclamation Plan. On February 21, 2025, USFWS concurred with OSMRE's determinations that the proposed action would not jeopardize the continued existence of the three proposed species.

### **Finding**

OSMRE finds that the selection of Alternative 1 complies with the ESA based on the analysis outlined above. OSMRE's determination and USFWS's concurrence that the proposed action would have no effect on any listed species or designated critical habitats and would not jeopardize the continued existence of any proposed species satisfies OSMRE's obligations under the ESA.

#### **3.5.10 Clean Air Act of 1970**

The State of Montana administers the Federal Clean Air Act and the Montana Clean Air Act. Montana Air Quality Permits (MAQP) are issued by the MDEQ. The SCM's current MAQP #1120-12 limits the SCM to producing a maximum of 30 Mt of coal per year to ensure that all potential sources of air pollutants from mining operations comply with the Montana Clean Air Act.

### **Finding**

OSMRE finds that Alternative 1 is within the production rate limitations of the SCM's current air quality permit and complies with the Clean Air Act.

#### **3.5.11 Clean Water Act 1972**

MDEQ is responsible for administering the Federal Clean Water Act and the Montana Water Quality Act, which prevents degradation of surface and groundwater due to discharges of mine wastewater and storm water. The Montana Pollutant Discharge Elimination System (MPDES) permit is required for surface water and storm water discharges, while the Montana Ground Water Pollution Control System (MCWPCS) permit is required for ground water discharge.

Mining operations in Montana must be designed and conducted in a way to prevent material damage, with respect to protection of the hydrologic balance,

degradation or reduction by coal mining and reclamation operations of the quality or quantity of water outside of the mine permit area in a manner or to an extent that land uses or beneficial uses of water are adversely affected, water quality standards are violated, or water rights are impacted. The SCM MPDES permit (Permit MT0024619) and stormwater permit (Permit MTR000514) have no changes associated with the proposed mining plan modification.

The Final EIS analyzes the direct, indirect, and cumulative impacts to surface and groundwater resources from the proposed mining plan modification (**Sections 4.5.1, 4.5.2, 5.2.4.1, and 5.2.4.2**).

### **Finding**

OSMRE finds that Alternative 1, under SCM's current water quality permits, complies with the Clean Water Act.

#### **4.0 APPROVAL**

In consideration of the information presented above, I approve this OSMRE ROD and the selection of Alternative 1 (Proposed Action), as described in Section 3.2 of this ROD. The State of Montana has approved the MSUMRA permit, which sets forth requirements to minimize environmental impacts that could potentially occur as a result of the Proposed Action. Accordingly, I recommend approval without conditions of the mining plan modification to the ASLM consistent with Alternative 1. This action can be implemented following approval of the mining plan modification by the ASLM.

This ROD is effective on signature.

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David A. Berry, Regional Director, Regions 5, 7, 8, 9, 10 and  
11, Office of Surface Mining Reclamation and Enforcement