

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

**Rosebud Mine Area F Mining Plan Modification
for Federal Coal Lease
MTM 082186**

Record of Decision

SEIS-010-08-000-1732112584

August 2025

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INTRODUCTION

In August 2025, the U.S. Department of the Interior (DOI), Office of Surface Mining Reclamation and Enforcement (OSMRE) published the *Final Supplemental Environmental Impact Statement for the Rosebud Mine Area F* (Final SEIS). Area F includes Federal coal lease MTM 082186. The Final SEIS addresses deficiencies in the 2018 *Western Energy Area F Final Environmental Impact Statement* (2018 Final EIS) identified by the United States District Court for the District of Montana (the Court) regarding *Montana Env't Info. Ctr. v. Haaland*, No. CV 19-130-BLG-SPW, 2022 U.S. Dist. LEXIS 179417 [D. Mont. Sept. 30, 2022]) and considers new information available to analyze potential impacts on social and environmental resources that could result from the continued mining of Federal coal from MTM 082186.

Three alternatives were analyzed in detail in the Final SEIS: Alternative 1 – No Action, Alternative 4 – Proposed Action (Current Federal Mining Plan), and Alternative 5 – Partial Mining Alternative. Two other alternatives from the 2018 Final EIS were not analyzed in detail in the Final SEIS but were incorporated by reference: Alternative 2 – 2018 Final EIS Proposed Action and Alternative 3 – Proposed Action Plus Environmental Protection Measures. The key differences among the three Final SEIS alternatives are (1) total surface disturbance, (2) tons of coal mined, and (3) the duration of mining in the project area. Under Alternative 1, mining would end in 2025; during the 6-year mine life, about 17.1 million tons of coal would be mined, and approximately 1,021 acres would be disturbed in the project area. Under Alternative 4, mining would end in 2039; during the 20-year mine life, about 71.3 million tons of coal would be mined, and approximately 4,288 acres would be disturbed in the project area. Under Alternative 5, mining would end in 2030; during the 11-year mine life, about 37.1 million tons of coal would be mined, and approximately 2,495 acres would be disturbed in the project area. Shortly before publication of the SEIS and this Record of Decision (ROD), the President signed into law, Public Law No. 119-21, commonly referred to as the One Big Beautiful Bill (OBBB). The OBBB may impact whether the alternatives analyzed in the SEIS continue to be reasonable alternatives, meaning that they are legally, technically, and economically feasible; meet the purpose and need of the proposed action; and are within the jurisdiction of OSMRE. However, the passage of the OBBB does not change the environmental analysis for the various alternatives and, therefore, they were retained in the SEIS and considered by the agency in determining its preferred alternative.

OSMRE issued a Notice of Availability (NOA) for the Draft SEIS on December 6, 2024, initiating a 46-day public comment period, and hosted a public open house in Colstrip, Montana (MT) at the Colstrip City Hall on January 8, 2025. The SEIS, ROD, and Mining Plan Decision Document (MPDD) are being finalized simultaneously and will be available on OSMRE's website. The U.S. Environmental Protection Agency (EPA) will also publish a NOA of the Final SEIS in the *Federal Register* on or about August 15, 2025.

This ROD documents OSMRE's selection of Alternative 4 – Proposed Action (Current Federal Mining Plan) as the preferred alternative. OSMRE has prepared and submitted a MPDD for the DOI Assistant Secretary for Land and Minerals Management (ASLM) with its recommendation for approving the proposed mining plan modification for MTM 082186. The ASLM will decide whether to approve, disapprove, or conditionally approve the modification.

PROJECT LOCATION AND BACKGROUND

The Rosebud Mine (mine) is an existing surface coal mine in Rosebud and Treasure Counties, near Colstrip, MT. Area F (project area) is located in Treasure and Rosebud Counties (Township 2 North, Range 38 and 39 East, and Township 1 North, Range 39 East) approximately 12 miles west of Colstrip (**Figure 1**). The Northern Pacific Railway established the city of Colstrip and its associated mine in the

1920s to access coal from the Fort Union Formation. In 1968, the Montana Power Company began production at the mine to serve the Colstrip Power Plant. In 2001, Westmoreland Coal Company purchased the mine, and its subsidiary, Western Energy, began operating the mine. In 2019, Westmoreland Coal Company sold the Rosebud Mine to its creditors (organized as Westmoreland Mining LLC) as part of bankruptcy proceedings. The mine is now operated by Westmoreland Rosebud Mining, LLC (Westmoreland Rosebud), a subsidiary of Westmoreland Mining LLC.

Westmoreland Rosebud currently holds four active state operating permits for the mine issued by the Montana Department of Environmental Quality (DEQ): Area A (permit C1986003A), Area B (permit C1984003B), Area C (permit C1985003C), and Area F (permit C2011003F, which is analyzed in the Final SEIS). Although still an active state permit area, coal removal is finished in Area D (permit C1986003D), and the area is being reclaimed. Area E (permit C1981003E), a former state permit area, received full bond release and is no longer a permitted coal mine.

Westmoreland Rosebud is currently mining Area F, including MTM 082186, which encompasses 947.6 acres of Federal coal in Area F, and two private coal leases (1001 and 1001a), pursuant to the DEQ-approved state operating permit C2011003F and the 2019 ASLM-approved Federal mining plan for MTM 082186 (**Figure 2**). Westmoreland Rosebud estimates that about 71.3 million tons of recoverable coal are in Area F, including about 33.8 million tons of Federal coal within MTM 082186. Area F development began in 2019, and coal recovery has been ongoing in the project area since 2020. For the analysis in the Final SEIS, 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 2023, Westmoreland Rosebud has disturbed 582 acres in the project area; 494 acres of that disturbance is due to active mining, and the remainder is due to site development, such as roads and soil or spoil stockpiles. About 8.5 million tons of coal have been produced in the project area during this timeframe and sold to the Colstrip Power Plant and the Rosebud Power Plant.

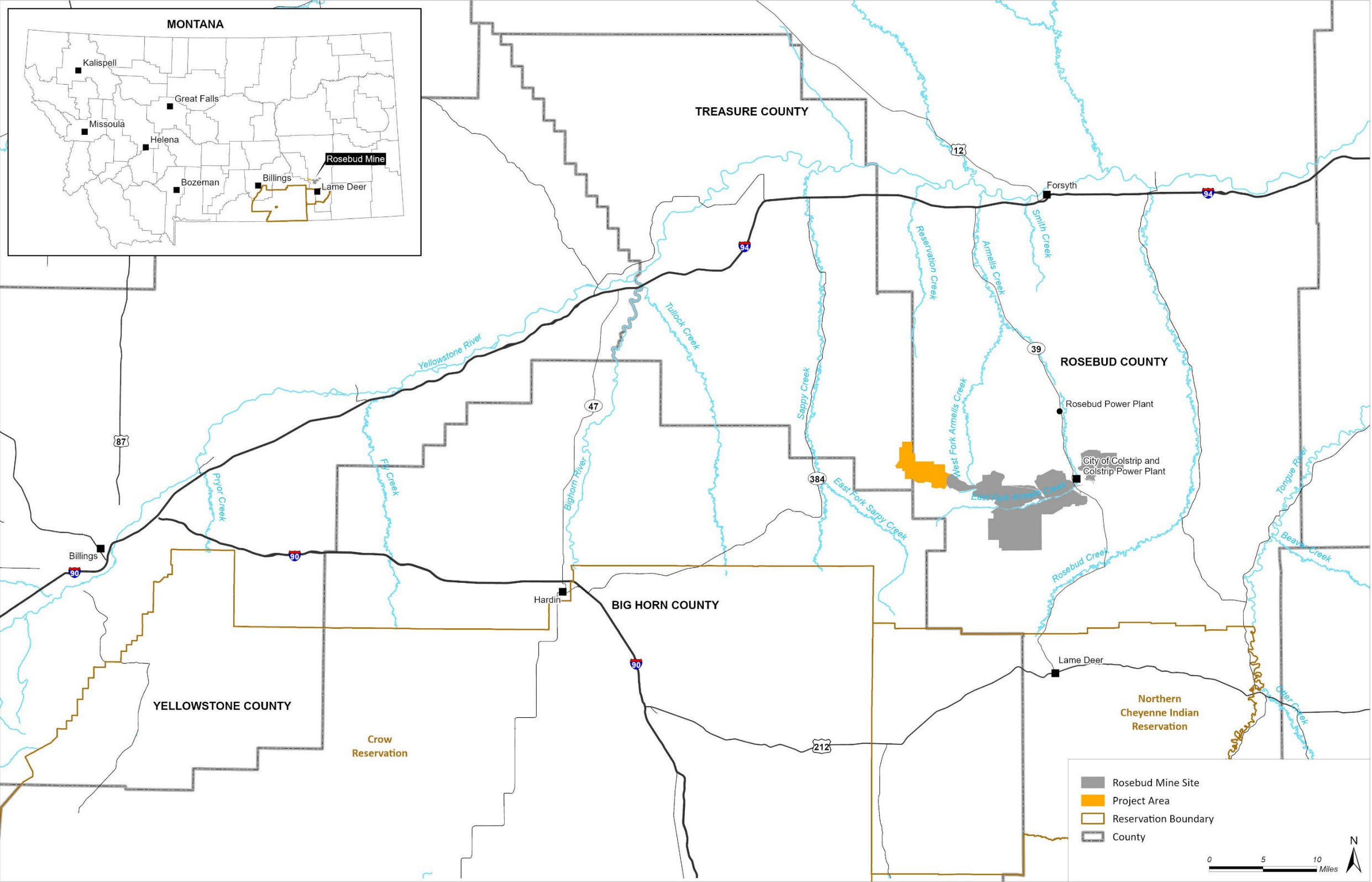


Figure 1. Project Location.

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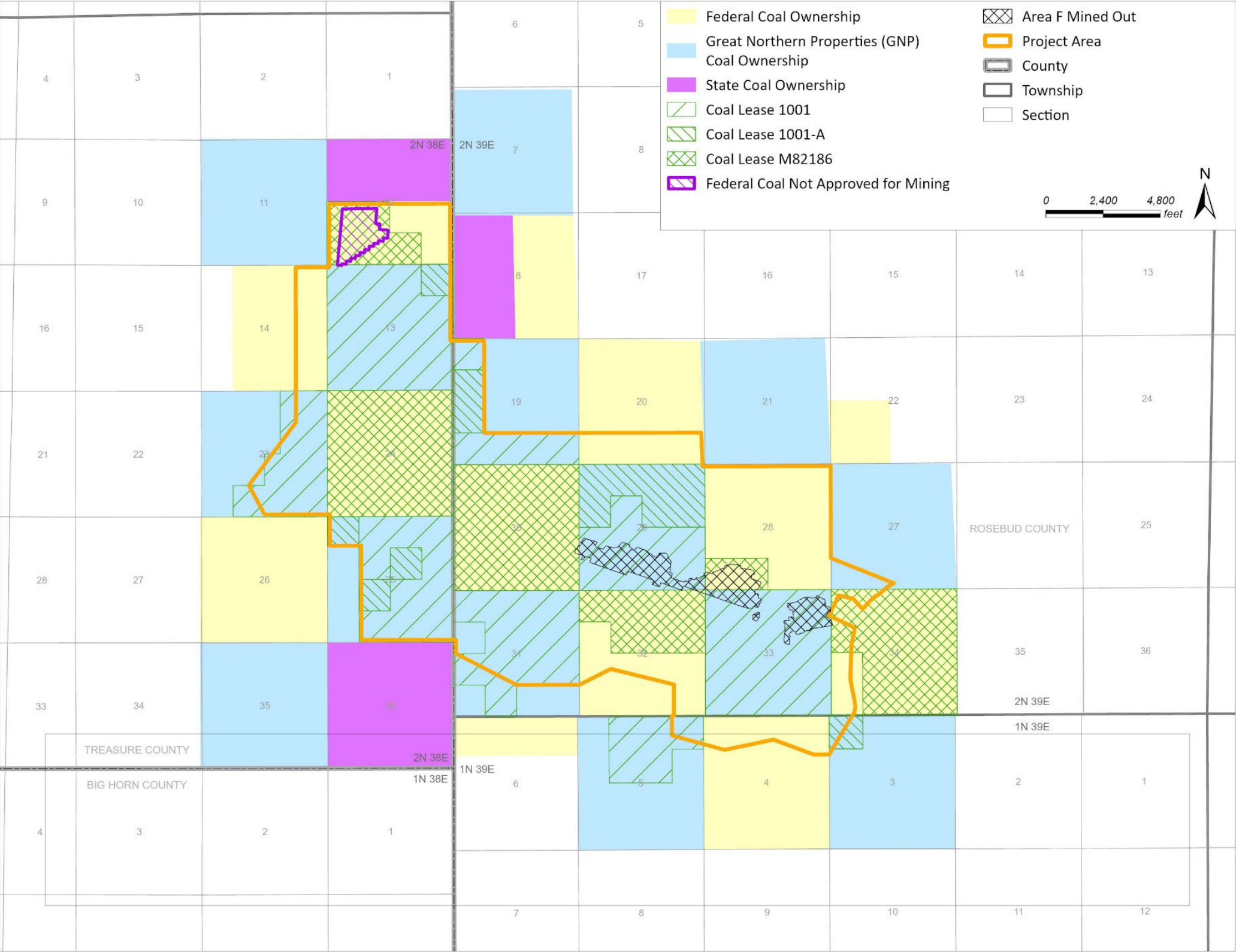


Figure 2. Coal Ownership and Leases with Extent of Mining in Project Area as of December 31, 2023.

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PROJECT TIMELINE

An extensive timeline for Area F permitting and the associated Court Order is provided in Final SEIS **Chapter 1** and in DEQ's 2019 ROD and Written Findings. Descriptions of past and existing mine and reclamation operations are provided in Final SEIS **Section 2.2**.

- September 1, 1966 – Bureau of Land Management (BLM) issued a lease for MTM 082186 to Western Energy (predecessor to Westmoreland Rosebud).
- November 2, 2011 – DEQ received the Permit Application Package (PAP) for Area F from Western Energy (predecessor to Westmoreland Rosebud).
- August 8, 2012 – DEQ determined that the application for Area F (C2011003F) was complete pursuant to the Montana Strip and Underground Mine Reclamation Act (MSUMRA) and determined that an EIS was needed pursuant to the Montana Environmental Policy Act (MEPA).
- October 5 through November 5, 2012 – DEQ conducted public scoping for the Rosebud Mine Area F EIS process pursuant to MEPA. DEQ hosted two public open houses in Colstrip on October 16, 2012.
- 2012 – OSMRE determined that a Federal mining plan was needed for extraction of Federal coal from MTM 082186.
- August 27 through November 8, 2013 – OSMRE conducted public scoping for the Rosebud Mine Area F EIS process pursuant to the National Environmental Policy Act (NEPA). OSMRE hosted an open house and hearing in Colstrip on September 12, 2013.
- June 10, 2015 – BLM waived the lease adjustment for MTM 082186. The next renewal period will be September 1, 2026.
- September 1, 2017 – BLM approved the Resource Recovery and Protection Plan (R2P2) for Rosebud Mine Area F.
- January 4, 2018 – OSMRE and DEQ issued a joint Area F Draft EIS. OSMRE issued a NOA in the *Federal Register*, initiating a 60-day public comment period for the Draft EIS pursuant to MEPA and NEPA. The comment period was extended by the agencies to March 5, 2018 (a 15-day extension).
- October 5, 2018 – DEQ found that the Area F original PAP, submitted on November 2, 2011, and revised through June 8, 2018, was complete and accurate and compliant with Montana's permanent regulatory program.
- November 30, 2018 – OSMRE and DEQ issued the 2018 Final EIS. OSMRE issued a NOA in the *Federal Register*.
- January 18, 2019 – DEQ received the surety bond in the amount of \$13,750,000 from Western Energy (predecessor to Westmoreland Rosebud).
- April 18, 2019 – DEQ issued its ROD and Written Findings approving the Area F PAP (as revised through June 8, 2018), which was the proposed action (Alternative 2) in the 2018 Final EIS. DEQ conditioned its approval pursuant to MSUMRA, including prohibiting surface-disturbing activity (e.g., mining) in 74 acres of Federal coal in the northwestern part (T2N, R38E, Section 12) of the Area F permit area in the Trail Creek drainage to prevent material damage outside the permit area.
- June 28, 2019 – OSMRE issued its ROD for the Area F/MTM 082186 Federal mining plan required under the Mineral Leasing Act (MLA) of 1920, as amended. OSMRE recommended conditions to the MPDD, including prohibiting surface-disturbing activity (e.g., mining) in 74

acres of Federal coal in the northwestern part (T2N, R38E, Section 12) of the Area F permit area in the Trail Creek drainage to prevent material damage outside the permit area.

- July 15, 2019 – DOI ASLM signed the MPDD authorizing the Federal mining plan for Federal coal lease MTM 082186, which encompasses 947.6 acres in Area F. To comply with the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and prevent material damage outside the permit area, the MPDD prohibited surface-disturbing activity (e.g., mining) in 74 acres of Federal coal in the northwestern part (T2N, R38E, Section 12) of the Area F permit area in the Trail Creek drainage.
- November 18, 2019 – A group of plaintiffs led by the Montana Environmental Information Center filed a lawsuit against DOI with the Court arguing that the MPDD and OSMRE ROD violated NEPA and the Endangered Species Act (ESA).
- January 2020 – Westmoreland’s coal recovery began in Area F (mine development began in 2019).
- September 30, 2022 – The Court held that the 2018 Final EIS was deficient in several analyses. Specifically, the Court remanded the 2018 Final EIS to OSMRE and ordered it to remedy the following: (1) inadequate surface water cumulative impacts analysis, (2) inadequate greenhouse gas (GHG) emissions analysis, (3) inadequate analysis of indirect effects of mine expansion on water withdrawals from the Yellowstone River, and (4) failure to analyze a reasonable range of alternatives in violation of NEPA.
- 2019 – 2023 – DEQ approved 20 minor revisions to the Area F state operating permit C2011003F (Final SEIS **Table 2.2-6**). Minor adjustments to mining operations are typical as a mine is developed and operated due to on-the-ground conditions.
- December 6, 2024 – OSMRE issued the Draft SEIS. EPA and OSMRE issued NOAs in the *Federal Register* as well as on the OSMRE website (<https://www.osmre.gov/laws-and-regulations/nepa/projects>) and in a press release statement. The Draft SEIS was available for a 46-day public comment period that ended on January 21, 2025. OSMRE hosted an open house in Colstrip, MT on January 8, 2025, during the comment period.
- December 16, 2024 – OSMRE requested and was granted an extension of the deferred vacatur until October 7, 2025.
- May 29, 2025 – The Supreme Court issued a unanimous decision in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 2025 U.S. LEXIS 2068 (*Seven County*), holding that an agency is entitled to “substantial deference” in determining when an EIS has complied with NEPA “[s]o long as the EIS addresses environmental effects from the project at issue . . .” and that NEPA does not require an agency to evaluate the environmental effects of activities separate in time or place from the agency’s proposed action.
- August 2025 – OSMRE issued the Final SEIS and identified Alternative 4 as its preferred alternative. EPA and OSMRE published a NOA in the *Federal Register*. Notice was also posted on the OSMRE website (<https://www.osmre.gov/laws-and-regulations/nepa/projects>) and in a press release statement.

PURPOSE AND NEED

OSMRE’s purpose in preparing the Final SEIS was to fully analyze the environmental impacts associated with the proposed Federal mining plan modification for Rosebud Mine Area F. The analysis addressed the deficiencies identified by the Court, and updated other relevant information and analysis, so that OSMRE could make an informed recommendation to the ASLM (in the form of a MPDD) to disapprove, approve, or approve with conditions the Federal mining plan modification. Under the current Court Order, the deferred vacatur is set to expire on October 7, 2025. Westmoreland Rosebud’s need for the action is to

exercise its valid existing rights granted by the BLM under Federal coal lease MTM 082186 (Final SEIS **Appendix 6**) to access and mine undeveloped Federal coal resources located in the project area (**Figure 2**).

AGENCY AUTHORITY AND ACTIONS

OSMRE is the lead agency for the SEIS. BLM is acting as a cooperating agency as it did for the 2018 Final EIS. This ROD documents OSMRE's selection of Alternative 4 – Proposed Action as the preferred alternative. Pursuant to 30 U.S.C. § 207(c) and 30 C.F.R. part 746, OSMRE will prepare and submit a MPDD to the ASLM with its recommendation for the proposed mining plan modification. ASLM will decide whether to approve, disapprove, or conditionally approve the modification.

PUBLIC INVOLVEMENT

During the development of the Final SEIS, OSMRE provided opportunities for public involvement and comment, including a 46-day public comment period on the Draft SEIS and a public open house in Colstrip, MT. OSMRE mailed letters to interested parties (e.g., Federal agencies, state agencies, counties, municipalities, non-government organizations, and individuals) notifying them of the availability of the Draft SEIS and the opportunity to submit comments. A separate letter also was sent by OSMRE to members of the Senate Committee on Energy and Natural Resources, the House of Representatives Subcommittee on Energy and Mineral Resources, and the Montana Congressional Delegation on December 9, 2024. As part of its obligation to consult with impacted tribes, OSMRE sent letters to tribes to reinstate government-to-government consultation on December 6, 2024.

Comments received during the Draft SEIS public comment process were reviewed to identify additional significant environmental issues for the Final SEIS. Refer to **Appendix 5** of the Final SEIS for a description of the comments received on the Draft SEIS and OSMRE's responses to substantive comments.

U.S. DISTRICT COURT FOR THE DISTRICT OF MONTANA ORDER

In 2022, the Court found that OSMRE failed to adequately analyze surface water cumulative impacts, the economic costs of GHG emissions, and indirect effects of mine expansion on water withdrawals from the Yellowstone River resulting from mining in Area F pursuant to the 2019 ASLM-approved MPDD. The Court also found that OSMRE failed to analyze a reasonable range of alternatives (*Montana Env't Info. Ctr. v. Haaland*, No. CV 19-130-BLG-SPW, 2022 U.S. Dist. LEXIS 179417 [D. Mont. Sept. 30, 2022]). OSMRE finds that the analysis in the Final SEIS fully addresses the deficiencies in the 2018 Final EIS and identified in the Court Order.

However, after the close of the public comment period for the Draft SEIS, but before finalizing the SEIS and issuing this ROD, Executive Orders (EOs), changes to NEPA implementing regulations and guidance, and a Supreme Court decision dramatically changed how agencies should conduct NEPA analyses. For example, EO 14154, "Unleashing American Energy" (January 20, 2025) and a Presidential Memorandum, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity" (January 21, 2025) require the DOI to strictly adhere to NEPA, 42 U.S.C. §§ 4321 *et seq.* Consistent with EO 14154, the Council on Environmental Quality (CEQ) repealed its NEPA regulations (90 *Federal Register* 10610 [February 25, 2025]) and directed that, while agencies review their own NEPA-implementing regulations for consistency with EO 14154, agencies could voluntarily consider CEQ's 2020 NEPA regulations as

guidance. Then, on May 29, 2025, the Supreme Court issued a unanimous decision in *Seven County*, holding that an agency is entitled to “substantial deference” in determining when an EIS has complied with NEPA “[s]o long as the EIS addresses environmental effects from the project at issue,” and that NEPA does not require an agency to evaluate the environmental effects of activities separate in time or place from the agency’s proposed action. Finally, on July 3, 2025, DOI partially rescinded its regulations implementing NEPA and published a separate *NEPA Handbook* containing DOI’s revised NEPA procedures that apply to the internal processing of NEPA analyses.

In light of DOI’s new regulations and *NEPA Handbook* as well as the Supreme Court’s decision in *Seven County*, OSMRE determined that the SEIS contains significantly more analysis and information on environmental effects than is required under NEPA. For example, the effects analysis in the SEIS contains information on effects of activities that OSMRE considers to be too far in time or place from the proposed action to reasonably be included in a NEPA analysis, and *Seven County* makes it clear that the agency has discretion to determine “where to draw the line” in considering indirect impacts and whether to include other projects separate in time and place separately. Nonetheless, OSMRE decided to not substantially revise the SEIS because a draft of this NEPA analysis containing this unnecessary and excessive information was already published for public comment, it ensures compliance with the Court’s order in *Montana Environmental Information Center* (even though that order preceded *Seven County*), and removal of the unnecessary material would be an inefficient use of agency resources and cause unnecessary delay given the complexity of the analysis, especially in light of the need to quickly address the Nation’s energy supply (see, e.g., EO 14156, “Declaring a National Energy Emergency.”) However, OSMRE maintains that under *Seven County*, no such analysis of these effects, including, but not limited to, the analysis of water withdrawals from the power plant or the cumulative effects analysis, is required because DOI has no control over these effects and no law, including NEPA, the SMCRA, or the MLA, requires this analysis.

Moreover, the Court ordered OSMRE to “remedy its inadequate [greenhouse gas (GHG)] emissions analysis,” which did not quantify those emissions. However, as *Seven County* makes clear, NEPA does not require an agency to consider such impacts or to quantify project impacts through a specific methodology. As further explained in the SEIS, the social cost of GHG protocol is flawed, and it is only included in this NEPA analysis to comply with the Court’s order and because removal would be an inefficient use of agency resources and cause unnecessary delay given the complexity of the analysis, especially in light of the need to quickly address the Nation’s energy supply.

SURFACE WATER CUMULATIVE IMPACTS ANALYSIS

Surface water cumulative impacts are addressed in the Final SEIS in **Section 5.3.6** with additional documentation in **Sections 3.7** and **4.7**.

GREENHOUSE GAS EMISSIONS ANALYSIS

Effects related to the social cost of GHG emissions are addressed in **Section 4.4.7** and **Appendix 2** of the Final SEIS. 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.” DOI’s new *NEPA Handbook* explains that a bureau does not need to prepare an EIS on the grounds of climate change or GHG effects alone, even where a proposed action would result in an increase in GHG emissions. This is because the effects of GHG emissions and global climate change are fundamentally cumulative phenomena; therefore, it is not possible to track the effects of GHG emissions from a proposed action to climate change effects in a localized manner to be able to determine significance one way or the other, and they need not be analyzed (516 Departmental Manual 1 App. 3).

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). EO 14154, *Unleashing American Energy* (January 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 EO 14154, 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, as previously stated. 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 versus 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. However, 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 ASLM’s decision. For these reasons, DOI has also rescinded its memorandum of October 16, 2024, titled “Updated Estimates of the Social Cost of Greenhouse Gases,” which had directed DOI

bureaus to calculate SCC using the methodology contained in EPA’s Final Rule of March 8, 2024, 89 *Federal Register* 16,820.

However, notwithstanding the concerns outlined above, in this unique case, OSMRE was directed by the Court to quantify the economic costs of GHG emissions from Area F because OSMRE quantified the economic benefits, in the form of economic outputs from continued employment, tax revenue, royalty payments, and support of local businesses, or risk having the mining plan modification approval vacated by the Court. Because the SCC analysis in the Final SEIS 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 SEIS. 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 SEIS, as well as the fact that NEPA does not require an agency to quantify project impacts through a specific methodology, such as SCC.

INDIRECT EFFECTS OF MINE EXPANSION ON WATER WITHDRAWALS FROM THE YELLOWSTONE RIVER

Indirect effects of mine expansion on water withdrawals from the Yellowstone River are addressed in the Final SEIS in **Section 4.7** with additional documentation in **Section 3.7**. Indirect effects of the water withdrawals are also addressed for pallid sturgeon in the Final SEIS in **Section 4.13** with additional documentation in **Section 3.13** and in the Biological Assessment (BA) prepared for ESA Section 7 consultation with the U.S. Fish and Wildlife Service (USFWS) in Final SEIS **Appendix 7** and submitted to the USFWS on May 1, 2025.

REASONABLE RANGE OF ALTERNATIVES

A new alternative that considered reduced mining was developed by OSMRE for the Final SEIS. Alternative 5 – Partial Mining Alternative is described in the Final SEIS in **Section 2.6**. Impacts of Alternative 5 are disclosed in **Chapter 4** of the Final SEIS for each resource.

OSMRE DECISION AND BASIS FOR DECISION

OSMRE DECISION

OSMRE’s decision is to prepare and submit to ASLM a MPDD recommending the approval of the proposed Federal mining plan modification, analyzed as Alternative 4 – Proposed Action in the Final SEIS, 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 4 – Proposed Action on a thorough review of the Final SEIS; 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 NEPA, 42 U.S.C. §§ 4321 *et seq.*; DOI’s NEPA regulations and *NEPA Handbook* (516 Departmental Manual 1); and other applicable guidance and policy documents. All stakeholders’ concerns and comments during the NEPA process have been satisfactorily addressed. OSMRE’s decision to select Alternative 4 – Proposed Action will be

implemented through issuance of this ROD. OSMRE's MPDD will recommend to ASLM that the Proposed Action be approved, with conditions.

DESCRIPTION OF THE SELECTED ALTERNATIVE: ALTERNATIVE 4 – PROPOSED ACTION (CURRENT FEDERAL MINING PLAN)

Under Alternative 4 – Proposed Action, which is described in the detail in the Final SEIS **Section 2.5**, Westmoreland Rosebud will be authorized to mine about 71.3 million tons of coal from Area F, including about 33.8 million tons of Federal coal in Federal coal lease MTM 082186. As described in the Final SEIS, mining has been ongoing in Area F since 2020, including within MTM 082186, after approval of the state operating permit by DEQ in 2019 and ASLM approval of the MPDD in 2019. Westmoreland Rosebud will disturb approximately 4,288 acres in Area F over a 20-year mine life that began in 2020 and is estimated to end in 2039 (see **Table 2.3-1**, **Table 2.3-2**, and **Figure 2.5-1** in the Final SEIS). If approved, Alternative 4 – Proposed Action will allow mining (including disturbance, coal recovery, and production rates); fugitive dust control; protection of the hydrologic balance; monitoring; and mitigation to continue as described in the Final SEIS **Section 2.2.2.2, Area F Operations and Development** and in state operating permit C2011003F. Under Alternative 4 – Proposed Action, Westmoreland Rosebud will diligently develop and maximize economic recovery of coal in Federal coal lease MTM 082186 (Final SEIS **Table 2.2-7**).

Under Alternative 4 – Proposed Action, mining will be prohibited in 74 acres¹ of Federal coal in T2N, R38E, Section 12 to prevent material damage outside of the Area F permit area. Westmoreland Rosebud, however, will still be able to disturb the surface above the 74 acres of Federal coal for mining-related activities (e.g., spoil and topsoil stockpiles). Westmoreland Rosebud may at any time reapply to OSMRE and DEQ to mine the excluded 74 acres of Federal coal provided they affirmatively demonstrate that no material damage will occur.

Under Alternative 4 – Proposed Action, Westmoreland Rosebud will implement the following avoidance and minimization measures designed to protect insect special status species (monarch butterfly, western regal fritillary, and Suckley's cuckoo bumble bee):

- Clearing and grubbing activities will occur from September 1 through June 1, avoiding the monarch butterfly and western regal fritillary active season from June through August.
- Noxious weeds will be controlled and managed to reduce their spread by timing weed spraying to avoid the monarch butterfly and western regal fritillary breeding season (June through August), when feasible, and conducting spot spraying to limit impacts on flowering nectar plants.
- As agreed to among the three parties and documented in the BA, Westmoreland (or any subsequent owner), OSMRE, and USFWS will meet at least once every four years to discuss any changes in the status of pallid sturgeon and other listed species, any changes in power plant or mine operations, and any other new information that might warrant an update to this effects analysis. Any of the parties may also request an ad hoc meeting if the party becomes aware of new information warranting discussion.

¹ Westmoreland Rosebud estimates that there is about 1.9 million tons of recoverable coal (based on modeling using expected coal thickness and quality) that will not be mined in T2N, R38E, Section 12.

Following the completion of mining operations, Westmoreland Rosebud will return the land to its approved postmining land uses (grazing, wildlife habitat, pastureland, and cropland) by adhering to the Reclamation Plan and approved postmining topography in state operating permit C2011003F.

OTHER ALTERNATIVES CONSIDERED

Three alternatives were analyzed in detail in the Final SEIS: Alternative 1 – No Action, Alternative 4 – Proposed Action (Current Federal Mining Plan), and Alternative 5 – Partial Mining Alternative. Two other alternatives from the 2018 Final EIS were not analyzed in detail in the Final SEIS but were incorporated by reference: Alternative 2 – 2018 Final EIS Proposed Action and Alternative 3 – Proposed Action Plus Environmental Protection Measures. The key differences among the three Final SEIS alternatives are (1) total surface disturbance, (2) tons of coal mined, and (3) the duration of mining in the project area.

Alternative 1 – No Action

Under Alternative 1 – No Action, the Federal coal remaining within MTM 082186 as of October 7, 2025, would not be recovered by Westmoreland Rosebud and it is assumed that Westmoreland Rosebud also would cease to mine private coal leases 1001 and 1001a. Westmoreland Rosebud would be required to apply for and receive all appropriate approvals to fully reclaim any disturbed areas according to its current approved mining and reclamation permit, but no additional coal removal would be allowed from Federal coal lease MTM 082186. Aside from impacts related to reclaiming areas within Federal coal lease MTM 082186 that have already been disturbed by mining, the No Action alternative would not cause additional adverse environmental effects from ground disturbances or coal removal, including effects on topography, geology, mineral resources, paleontology, air quality, hydrology, soil, vegetation, wildlife, cultural resources, visual resources, or noise unless Westmoreland Rosebud applies for and is granted a revision to its state operating permit C2011003F that would allow the company to mine private coal only (see Final SEIS **Section 2.4.2**). Under this scenario, some disturbance to the Federal surface shown on **Figure 2** could be expected. Similarly, because additional mining would not be allowed in the Federal coal lease MTM 082186, the No Action alternative would also be the only alternative that would not contribute to additional global emissions from the removal or combustion of additional Federal coal lease MTM 082186 coal.

Alternative 1 – No Action was not selected for OSMRE's recommendation decision because it does not meet the purpose and need, it does not align with current national policy to encourage energy exploration and production on Federal lands and waters (see additional rationale below for Alternative 5 – Partial Mining Alternative that also applies to Alternative 1), and it may be contrary to Section 50204 of the OBBB.

Alternative 5 – Partial Mining Alternative

Under Alternative 5 – Partial Mining Alternative, ASLM approval of the mining plan modification for Federal coal lease MTM 082186 would end after an approximate 5-year term (beginning with the issuance of a new MPDD and ending in 2030). If Westmoreland Rosebud would like to continue mining beyond the 5-year term, the operator would be required to apply for an additional mining plan modification (see the full description of Alternative 5 in the Final SEIS **Section 2.6**). Under Alternative 5 – Partial Mining Alternative, about 37.1 million tons of coal would be mined from Federal and private coal leases and approximately 2,495 acres would be disturbed in Area F over an approximately 11-year mine life that began in 2020 and would end in 2030 (see Final SEIS **Tables 2.3-1** and **2.3-2**).

Alternative 5 – Partial Mining Alternative was not selected for OSMRE’s recommendation decision because it does not meet the purpose and need, it does not align with current national policy to encourage energy exploration and production on Federal lands and waters, and it may be contrary to Section 50204 of the OBBB. EO 14154 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 Alternative 5 – 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 MTM 082186 to 5 years, create significant uncertainty for Westmoreland Rosebud about whether and how it could continue mining beyond the 5-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 DOI to focus on improving energy permitting, development, and production by removing regulatory impediments. As such, OSMRE finds that Alternative 5 – Partial Mining Alternative is inconsistent with EO 14154 and SO 3418, and it would create uncertainty for Westmoreland Rosebud about whether it would be authorized to continue mining beyond the initial 5-year approval period. OSMRE has decided not to select Alternative 5 – Partial Mining Alternative as its recommendation to ASLM.

Alternatives Considered but Eliminated from Further Analysis

For the SEIS, OSMRE also reviewed all alternatives that were analyzed in the 2018 Final EIS to determine if additional analysis was warranted. Two alternatives (Alternatives 2 and 3) did not receive additional analysis in the SEIS but were carried forward for consideration.

Alternative 2 was described and analyzed in the 2018 Final EIS. The alternative was based on the eighth-round PAP submitted by Western Energy (now Westmoreland Rosebud) to DEQ and certified as complete (August 8, 2012) and acceptable (October 5, 2018) by DEQ. As described in the Final SEIS **Section 2.2.2.2, Area F Operations and Development**, on-the-ground conditions and operational needs have necessitated several minor permit revisions since Westmoreland Rosebud began development of Area F in 2019 (production began in 2020); as such, Alternative 2 cannot be selected and implemented as described in the 2018 Final EIS. Alternative 2 was included in the Final SEIS as a basis of comparison for other alternatives.

Alternative 3 – Proposed Action Plus Environmental Protection Measures was previously described in the 2018 Final EIS, and impacts of the alternative were analyzed. See **Section 2.5** in the 2018 Final EIS for the full description of the alternative. The Alternative 3 environmental protection measures were conceptual in nature and were designed to minimize environmental effects of the Proposed Action and to address key issues identified during the scoping process (see 2018 Final EIS **Section 1.5.2.1, Key Issues Identified During Scoping for Detailed Analysis**). The analysis in the 2018 Final EIS indicated that the benefits of the environmental protection measures were marginal and that the Proposed Action would be sufficiently protective of resources in the project area and the general vicinity of the project area. Any of the environmental protection measures outlined in Alternative 3 could be included as required mitigation for any of the Final SEIS alternatives, if warranted.

BASIS FOR DECISION

Environmental Considerations

OSMRE's decision considered the environmental effects of each alternative. Based on the environmental analysis in the Final SEIS, Alternative 1 would cause the least impact on the biological and physical environment but would not meet the purpose and need of the proposed action and may be contrary to Section 50204 of the OBBB. OSMRE determined that implementation of Alternative 5 – Partial Mining Alternative would not significantly reduce the intensity of the environmental effects as compared to Alternative 4 – Proposed Action, would not meet the purpose and need, and may be contrary to Section 50204 of the OBBB. While Alternative 4 – Proposed Action would result in some direct and indirect environmental impacts, the proposed mining plan modification is designed to avoid and minimize those impacts where practicable; this alternative best meets the purpose and need of the proposed action and is not contrary to Section 50204 of the OBBB. All direct and indirect impacts, including their intensities, are described fully in **Chapter 4** of the Final SEIS, and cumulative impacts are described in **Chapter 5** of the Final SEIS.

Finding

OSMRE finds that the decision to select Alternative 4 – Proposed Action considers the environmental analysis described in **Chapters 4** and **5** of the Final SEIS. While Alternative 4 – Proposed Action will result in some direct, indirect, and cumulative environmental impacts, Alternative 4 – Proposed Action is the alternative that best meets the project's purpose and need, as well as current national policy considerations.

Economic Considerations

OSMRE's decision considered the economic effects of each alternative. Alternative 4 – Proposed Action will provide continued employment for current employees and extend the economic benefits related to mining the Federal coal, including both state and Federal revenues. Alternative 5 – Partial Mining Alternative would extend the employment and economic benefits for the 5-year term of approval, but beyond that term, economic impacts would be uncertain. Alternative 1 – No Action would not result in the employment or economic benefits associated with Westmoreland Rosebud's coal mining operations in the Federal coal lease MTM 082186.

Finding

Direct and indirect socioeconomic impacts are described in **Section 4.15** of the Final SEIS, and cumulative socioeconomic impacts are described in **Section 5.3.14** of the Final SEIS. OSMRE finds that the decision to select Alternative 4 – Proposed Action was based in part on the information contained in these sections on the direct, indirect, and cumulative socioeconomic impacts of Alternative 4 – Proposed Action as compared to the other alternatives.

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 the following EOs and executive branch guidance.

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, 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.

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 EO, summarized above, withdrew any guidance, instruction, recommendation, or document issued by the IWG.

As discussed above, the 2022 Court Order directed OSMRE to quantify the economic costs of GHG emissions from Area F because OSMRE quantified the economic benefits, in the form of economic outputs from continued employment, tax revenue, royalty payments, and support of local businesses, or risk having the mining plan modification approval vacated by the Court. In response, the Draft SEIS and Final SEIS 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 SEIS, in reaching the decision in this ROD, OSMRE gave the SCC analysis in the Final SEIS the appropriate consideration based on its analytical flaws that were identified in EO 14154.

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 Draft SEIS included a discussion on environmental justice. However, because such EO and Presidential Memorandum repeal EO 12898 (February 11, 1994) and EO 14096 (April 21, 2023), evaluation of environmental justice is not legally required or necessary to make a reasoned decision, and discussion of this topic was removed from the Final SEIS. To reach its recommendation decision, OSMRE considered only the applicable statutory and regulatory requirements necessary for approval of the mining plan modification.

Declaring a National Energy Emergency

EO 14156, *Declaring a National Energy Emergency* (January 20, 2025) declared that the energy (including coal) and critical minerals identification, leasing, development, production, transportation, refining, and generation capacity of the United States are too inadequate to meet U.S. domestic needs. It directs agencies to “identify and exercise any lawful emergency authorities available to them, as well as all other lawful authorities they may possess, to facilitate the identification, leasing, siting, production, transportation, refining, and generation of domestic energy resources, including, but not limited to, on Federal lands.”

Reinvigorating America’s Beautiful Clean Coal Industry

EO 14261, *Reinvigorating America’s Beautiful Clean Coal Industry and Amending Executive Order 14241* (April 8, 2025) declared “a national priority to support the domestic coal industry by removing Federal regulatory barriers that undermine coal production, encouraging the utilization of coal to meet growing domestic energy demands, increasing American coal exports, and ensuring that Federal policy does not discriminate against coal production or coal-fired electricity generation.”

Finding

OSMRE finds that the selection of Alternative 4 – Proposed Action was made in consideration of, and is the alternative most consistent with, EO 14154, EO 14156, EO 14261, SO 3418, and the Presidential Memorandum (*Ending Illegal Discrimination and Restoring Merit-Based Opportunity*).

National Environmental Policy Act

NEPA, 42 U.S.C. §§ 4321 *et seq.* declares a national environmental policy and promotes consideration of environmental concerns by Federal agencies in decision making. CEQ repealed its NEPA regulations on February 25, 2025, and directed that, while agencies review their own NEPA-implementing regulations for consistency with EO 14154, agencies could voluntarily consider CEQ’s 2020 NEPA regulations as guidance (90 *Federal Register* 10610). On July 3, 2025, DOI partially rescinded its regulations implementing NEPA and published a separate *NEPA Handbook* containing DOI’s revised NEPA procedures that apply to the internal processing of NEPA analyses but advised that ongoing NEPA analyses do not have to immediately comply with the new NEPA guidance and can instead rely on the prior NEPA regulations and guidance to avoid unnecessary delay.

Finding

OSMRE finds that the Rosebud Area F Final SEIS complies with the procedural and analytical requirements of NEPA. Because this NEPA analysis was substantially completed prior to the recent changes to DOI’s NEPA regulations and guidance, this analysis retains some elements, such as SCC and a cumulative effects analysis, that are no longer required by regulation or considered the best available science. However, this analysis was not removed because a draft of this NEPA analysis containing this unnecessary and excessive information was already published for public comment, it ensures compliance with the Court’s order in *Montana Environmental Information Center* (even though that order preceded *Seven County*), and removal of the unnecessary material would be an inefficient use of agency resources and cause unnecessary delay given the complexity of the analysis, especially in light of the need to quickly address the Nation’s energy supply (see, e.g., EO 14156, “Declaring a National Energy Emergency”). See the **Executive Summary** of the SEIS for a more detailed analysis of OSMRE’s response to recent changes to NEPA implementation.

National Historic Preservation Act

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 effects of Federal actions on cultural resources eligible for or listed in the National Register of Historic Places (NRHP). Traditional cultural properties (TCPs) are also protected under Section 106 of the NHPA.

Impacts on cultural resources were assessed within the 8,280-acre area of potential effects (APE) during two Class III cultural resource surveys completed in 2010 (PAP, **Appendix A-1**) and 2012 (PAP,

Appendix A-2). The APE was defined as the entirety of the project area or the proposed permit boundary. A total of 105 cultural resources were documented in the APE. Eighty-one (81) of the sites have been evaluated as not eligible for listing in the NRHP. Sixteen sites are recommended eligible for listing in the NRHP. Both historic districts intersecting the APE—the Castle Rock Historic District and Lee Historic District—have been recommended eligible for listing in the NRHP. Adverse effects on four archaeological properties (24RB958, 24RB2334, 24RB2339, and 24RB2438) will potentially occur within the first 5 years (60 months) of project operations. A Memorandum of Agreement (MOA) was entered into by Western Energy, the State Historic Preservation Office, DEQ, BLM, and OSMRE to cover the first 5 years (60 months) of project operations. Mitigation measures from the MOA were implemented for four archaeological properties (see below in **Tribal Consultation**). A Programmatic Agreement (PA) was also developed among the same parties and was officially executed on March 27, 2017 (see 2018 FEIS, **Appendix H**). Adverse effects on potential historic properties as a result of mining in the project area will be resolved through the executed PA. The PA provides for continuing compliance with Section 106 of the NHPA over the life of mining operations. The PA also includes stipulations to address unanticipated discoveries during mining operations.

Under Alternative 4 – Proposed Action, surface disturbance from mining and wetland mitigation activity may result in disturbance or destruction of historic properties located in the analysis area, and these impacts will be long-term, major, and adverse. Adverse impacts will be resolved through both the MOA and PA stipulating measures for continued Section 106 compliance (see Final SEIS **Appendix H**).

Finding

OSMRE finds that the Section 106 process is complete and Alternative 4 – Proposed Action complies with the NHPA based on coordination with the SHPO and tribes (described below in **Tribal Consultation**). The MOA and PA adequately mitigate impacts on any unanticipated cultural discoveries during mining operations conducted pursuant to Alternative 4 – Proposed Action.

Tribal Consultation

In compliance with Section 106 of the NHPA of 1966, as amended, and its implementing regulations under 36 C.F.R. part 800, OSMRE initiated formal tribal consultation with the Northern Cheyenne Tribe, Fort Peck Assiniboine and Sioux Tribes, and Crow Tribe regarding the identification and effects on TCPs and archaeological sites of significance to the tribes. Consultation was initiated through letters sent to the leaders and Tribal Historic Preservation Offices (THPOs) for the three tribes on April 14, 2014. OSMRE did not receive any communications in response to these letters. Each tribe also was contacted during the two formal public scoping periods. None of the tribes provided comments during either public scoping period.

OSMRE contacted the Northern Cheyenne Tribe, Fort Peck Assiniboine and Sioux Tribes, and Crow Tribe again via letter on January 6, 2015, to inform the tribes of potential adverse effects on four archaeological properties (24RB958, 24RB2334, 24RB2339, and 24RB2438) that will potentially occur within the first 5 years (60 months) of project operations. The letters informed the tribes that a MOA will be prepared for standard data recovery for the four affected sites and invited tribal participation in the MOA. The letter also informed the tribes that a PA will be developed for the project to implement mitigation measures for effects on known sites and stipulations to treat unanticipated discoveries during mining operations. Comments on the affected sites were solicited, and information was requested regarding traditional uses, ethnographic resources, and TCPs in the project area. OSMRE did not receive any responses to these letters.

On June 2, 2015, OSMRE notified the Northern Cheyenne Tribe, Fort Peck Assiniboine and Sioux Tribes, and Crow Tribe via letter that the Black Hank Site (24RB2339) had been determined eligible for listing in the NRHP under Criterion D. Comments on the affected site, as well as the other three sites covered by the MOA, were solicited and information was once again requested regarding traditional uses, ethnographic resources, and TCPs in the project area. OSMRE did not receive any responses to these letters.

In response to public comments on the Draft SEIS, OSMRE initiated consultation with additional tribes, including the Apache, Blackfeet Nation, Eastern Shoshone, Kiowa, and Oglala Sioux. The purpose of continuing consultation was to inform the tribes of Stipulation 10 in the PA that allows new stakeholders to request consulting status at any time (see Final SEIS **Appendix H**). The PA was entered into by Western Energy, SHPO, DEQ, BLM, and OSMRE and was officially executed on March 27, 2017. No tribes signed the PA.

For the SEIS process, OSMRE reinitiated formal tribal consultation with the Northern Cheyenne Tribe, Fort Peck Assiniboine and Sioux Tribes, and Crow Tribe. Consultation was reinitiated through letters sent to each of the potentially impacted tribes on December 6, 2024. A comment letter was received during the Draft SEIS public comment period from the Northern Cheyenne Tribe on January 13, 2025 (see Correspondence #0013 in Final SEIS **Appendix 5**); no other tribes responded to OSMRE's letter. The following consultation and coordination have occurred between the Northern Cheyenne Tribe and OSMRE for the SEIS:

- January 28, 2025 – OSMRE responded to the Northern Cheyenne Tribe's January 13, 2025, comment letter and invited the tribe to consider government-to-government consultation.
- March 25, 2025 – OSMRE and the Northern Cheyenne Tribe consulted in a Microsoft Teams meeting.
- March 27, 2025 – OSMRE provided the executed PA to the THPO for the Northern Cheyenne Tribe and again invited the tribe to consult regarding cultural resources.
- April 15, 2025 – Teanna Limpy, the Northern Cheyenne Tribe THPO emailed OSMRE requesting copies of the cultural resource survey documentation. In accordance with the PA, OSMRE will continue consultation with the THPO pursuant to stipulation #10 of the PA that allows for ongoing consultation with any Indian tribe.
- April 28, 2025 – Gene Small, President of the Northern Cheyenne Tribe submitted a comment letter to OSMRE as part of the ongoing consultation and coordination process between the Northern Cheyenne Tribe and OSMRE. OSMRE will document how each of the comments were addressed in a response letter.
- June 11, 2025 – OSMRE submitted a response letter to President Gene Small of the Northern Cheyenne Tribe documenting how each of the Tribe's comments from the April 2025 letter were addressed.

Finding

OSMRE finds it has made a good faith and reasonable effort to invite and consult with 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 4 – Proposed Action.

Endangered Species Act

The ESA (16 U.S.C. §§ 1531 *et seq.*) provides a means for conserving the ecosystems upon which threatened and endangered species depend and a program for the conservation of such species. Section 7(a)(2) of the 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. Section 7 of the ESA outlines the procedures for Federal interagency cooperation to conserve federally listed species and designated critical habitats; Federal agencies are required to confer with the USFWS on any agency action that is likely to jeopardize the continued existence of any species proposed for listing or result in the adverse modification of critical habitat proposed to be designated.

Five federally listed species potentially occur or are affected by projects in Rosebud, Treasure, Big Horn, and Powder River Counties, as shown in **Table 1**.

The Section 7 consultation that previously occurred for this project is described in **Section 6.1.2** of the 2018 Final EIS, beginning on page 709. When work began on the Draft SEIS in 2022, OSMRE contacted the USFWS Ecological Services Montana Field Office in Helena to discuss the project. In December 2022, OSMRE staff and contractors met with USFWS staff to discuss the need to prepare a BA for the project.

On May 22, 2024, OSMRE staff and contractors held a virtual BA strategy meeting to discuss the Proposed Action and potential impacts for the SEIS with USFWS staff. Discussions indicated that the BA prepared for the project should address northern long-eared bat, pallid sturgeon, and monarch butterfly since other listed and candidate species are not likely to occur in the action area.

An unofficial list of federally listed species and designated critical habitat in the action area was obtained from the USFWS Information for Planning and Conservation (IPaC) website on June 10 and September 18, 2024, and updated on January 17, 2025. Using this list, in addition to informal discussion with USFWS staff on May 22, 2024, OSMRE determined which species and critical habitats had potential to occur in the analysis area. Two species were added to the BA based on the September 2024 and January 2025 IPaC updates: western regal fritillary was proposed for listing as threatened in August 2024, and Suckley's cuckoo bumble bee was proposed for listing as endangered in December 2024.

ERO Resources Corporation and GEI, on behalf of OSMRE, prepared a BA. OSMRE submitted the draft BA to the USFWS for consultation on August 19, 2024; a second Draft BA on October 8, 2024; a third draft on December 4, 2024; and a fourth draft on January 28, 2025. OSMRE submitted the final BA to USFWS for consultation on May 1, 2025. The BA determined that the project may affect, but is not likely to adversely affect, the northern long-eared bat and the pallid sturgeon, and will not jeopardize the continued existence of the monarch butterfly, western regal fritillary, and Suckley's cuckoo bumble bee.

Upon review of the final BA (OSMRE 2025), the USFWS issued a concurrence letter on May 15, 2025, agreeing with OSMRE's effect determinations (USFWS 2025b). Based on the ESA Section 7 consultation, the following reasonable and prudent measures would be required (USFWS 2025b):

- Clearing and grubbing activities would occur from September 1 through June 1, avoiding the monarch butterfly and western regal fritillary active season from June through August.
- Noxious weeds would be controlled and managed to reduce their spread by timing weed spraying to avoid the monarch butterfly and western regal fritillary breeding season (June through August), when feasible, and conducting spot spraying to limit impacts on flowering nectar plants.

- As agreed to among the three parties and documented in the BA, Westmoreland Rosebud (or any subsequent owner), OSMRE, and USFWS will meet at least once every four years to discuss any changes in the status of pallid sturgeon and other listed species, any changes in power plant or mine operations, and any other new information that might warrant an update to this effects analysis. Any of the parties may also request an ad hoc meeting if the party becomes aware of new information warranting discussion.

The Final BA and USFWS concurrence letter are provided in the SEIS in **Appendix 7 – ESA Section 7 Consultation Documentation**.

Table 1. Federally Endangered Species Potentially Occurring in the Analysis Area.

Common Name	Scientific Name	Status* Federal/State	General Habitat Affinity	Habitat in Analysis Area
Mammals				
Northern long-eared bat	<i>Myotis septentrionalis</i>	T	Winter hibernation occurs in caves; summer roosts occur under loose tree bark or in tree cavities. Rarely roosts in structures.	Yes
Fish				
Pallid sturgeon	<i>Scaphirhynchus albus</i>	E	Large turbid rivers, including accessible reaches of the Yellowstone River, with diverse habitat and natural hydrographs.	Yes
Insects				
Monarch butterfly	<i>Danaus plexippus</i>	C	Requires milkweed (<i>Asclepias</i> spp.) as larval host plants; meadow and riparian habitats support spring/summer breeding and late-season migration.	Yes
Western regal fritillary	<i>Argynnis idalia occidentalis</i>	PT	Tallgrass prairies, including dry upland, mesic, and wet areas. Requires violet species (<i>Viola</i> sp.) as a larval host plant. The range of western regal fritillary only overlaps the action area in a small area at the southern edge of the action area.	Yes
Suckley's cuckoo bumble bee	<i>Bombus suckleyi</i>	PE	Various habitats including prairies, grasslands, meadows, and woodlands between 6,000 and 10,500 feet in elevation where host species are present.	Yes

*E = Endangered; T = Threatened; C = Candidate for listing; PE = Proposed Endangered; PT = Proposed Threatened.

Source: USFWS 2025.

Finding

OSMRE finds that the selection of Alternative 4 – Proposed Action complies with the ESA based on the analysis outlined above. OSMRE's determination and USFWS's concurrence that the Proposed Action

may affect, but is not likely to adversely affect, any listed species or designated critical habitats, and will not jeopardize the continued existence of any proposed species, satisfies OSMRE's obligations under the ESA. To ensure that effects on species do not exceed the effects analyzed by the USFWS, OSMRE recommends that the proposed action be approved with the following special conditions:

1. Clearing and grubbing activities would occur from September 1 through June 1, avoiding the monarch butterfly and western regal fritillary active season from June through August.
2. Noxious weeds would be controlled and managed to reduce their spread by timing weed spraying to avoid the monarch butterfly and western regal fritillary breeding season (June through August), when feasible, and conducting spot spraying to limit impacts on flowering nectar plants.
3. Westmoreland Rosebud (or any subsequent owner), OSMRE, and USFWS will meet at least once every four years to discuss any changes in the status of pallid sturgeon and other listed species, any changes in power plant or mine operations, and any other new information that might warrant an update to this effects analysis. Any of the parties may also request an ad hoc meeting if the party becomes aware of new information warranting discussion.

Clean Air Act

The State of Montana administers the Federal Clean Air Act. Montana Air Quality Permits (MAQP) are issued by DEQ. The limits in the approved Montana Air Quality Permit (MAQP) #1570-09 are necessary to ensure that all potential sources of air pollutants from mining Area F coal comply with the Clean Air Act of Montana. MAQP #1570-09 includes an Area F-specific production cap of 4 million tons per year. The emissions concentrations for all constituents created under Alternative 4 – Proposed Action are expected to fall below the National Ambient Air Quality Standards and Montana Ambient Air Quality Standards.

Finding

OSMRE finds that Alternative 4 – Proposed Action is within the production rate and emission limitations of Westmoreland Rosebud's MAQP #1570-09 and complies with the Clean Air Act.

Clean Water Act

DEQ is responsible for administering the Montana Water Quality Act, which prevents degradation of surface water and groundwater due to discharges of mine wastewater and storm water (implementing rules: ARM 17.30 Subchapters 11, 12, and 13). MT's nondegradation rule applies to any human activity resulting in a new or increased source that may cause degradation of high-quality waters.

DEQ also administers several sections of the Clean Water Act pursuant to an agreement between MT and EPA. DEQ developed water quality classifications and standards, as well as a permit system, to control discharges into state waters. Mining operations must comply with state regulations and standards for surface water and groundwater. A Montana Pollutant Discharge Elimination System (MPDES) permit is required for point discharges of wastewater to state surface water. MPDES permits regulate discharges of wastewater by establishing effluent limitations based on, when applicable, technology-based effluent limits, state surface water quality standards including numeric and narrative requirements, and nondegradation criteria. MPDES Permit MT-0031828, effective June 1, 2020 (expires May 31, 2025), regulates discharges of mine drainage from 55 outfalls associated with Area F. The receiving waters include Black Hank Creek, Donley Creek, Robbie Creek, McClure Creek, and Trail Creek. Westmoreland

Rosebud is in the process of renewing this MPDES permit (all effluent limits, monitoring requirements, and other conditions of the permit remain fully effective and enforceable during this process). Westmoreland Rosebud submitted the renewal application on November 2, 2024 and a deficiency response on February 24, 2025. On April 7, 2025, DEQ determined that the application is complete.

Mining operations in MT 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. Alternative 4 – Proposed Action prohibits mining in 74 acres of Federal coal in T2N, R38E, Section 12 to prevent material damage outside of the Area F permit area. MPDES Permit MT-0031828 has no changes associated with the proposed mining plan modification.

The Final SEIS analyzes the impacts on surface water and groundwater resources and water rights from the proposed mining plan modification (Final SEIS **Sections 4.7** through **4.9** and **Sections 5.3.6** through **5.3.8**) with supporting documentation in **Sections 3.7** through **3.9** and **Appendix 3**.

Finding

OSMRE finds that Alternative 4 – Proposed Action, under MPDES Permit MT-0031828, complies with the Clean Water Act.

APPROVAL

In consideration of the information presented above, I approve this OSMRE ROD and the selection of Alternative 4 – 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 Alternative 4 – Proposed Action. Accordingly, I recommend approval with conditions of the mining plan modification to the ASLM consistent with Alternative 4 – Proposed Action. This action can be implemented following approval of the mining plan modification by ASLM.

This ROD is effective on signature.

Ronald J. Gevry
Acting Regional Director
OSMRE Regions 5 and 7-11

Date