

**UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT**

**Colowyo Coal Mine
South Taylor/Lower Wilson Permit Expansion Area Project
Federal Mining Plan Modification**

Finding of No Significant Impact

Moffat and Rio Blanco Counties, Colorado

August 2015

Prepared in cooperation with the
Bureau of Land Management,
State of Colorado's Department of Natural Resources,
and Moffat County

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ENFORCEMENT**

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Colowyo Coal Mine, South Taylor/Lower Wilson Permit Expansion Area Project
Federal Leases COC 29225, COC 29226, and COC 012347601
Federal Mining Plan Modification Decision Document

A. Introduction

The Colowyo Coal Mine is located approximately 26 miles (42 km) southwest of Craig, Colorado and 22 miles (35 km) north-northeast of Meeker, Colorado in Moffat and Rio Blanco Counties. The Colowyo Coal Mine, South Taylor/Lower Wilson Permit Expansion Area Project (the Project) was originally proposed by the Colowyo Coal Company (Colowyo) on July 3, 2006, to extend existing mining operations on federal leases COC 29225 and COC 29226 (approved under previous permit revisions and mining plan modifications) into the remainder of those federal coal leases. The Project also included undeveloped federal coal lease COC 012347601, along with additional private lands, within the Lower Wilson Area. However, no specific mining proposal for this area has been submitted, and Colowyo has indicated that it has no plans to submit such a proposal. The Office of Surface Mining Reclamation and Enforcement (OSMRE) initially prepared a supplemental Environmental Assessment (EA) for the Project and based on that EA, reached a Finding of No Significant Impact (FONSI) on May 8, 2007.

The Colorado Division of Reclamation Mining and Safety (CDRMS) approved Colowyo's Mine Permit Revision 02 (PR02) for the Project, which became final on June 8, 2007, in accordance with its responsibilities under the federal Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Department of the Interior (DOI) Assistant Secretary for Land and Minerals Management (ASLM), in accordance with the Mineral Leasing Act (MLA) of 1920, initially approved Colowyo's mining plan modification for the Project on June 15, 2007, based on a recommendation from the OSMRE. In 2008, Colowyo commenced mining in the Project Area in accordance with its state mine permit and federal mining plan modification approvals. To date, mining and reclamation operations under PR02 have been ongoing in the approved permit area.

Because of a recent court decision issued on May 8, 2015, *WildEarth Guardians v. U.S. Office of Surface Mining et al.*, Case 1:13-cv-00518-RBJ (D. Colo. 2015), which required OSMRE to conduct additional environmental analysis, a new EA, released for public comment on July 27, 2015, reevaluated the environmental impacts resulting from a mining plan modification for the South Taylor/Lower Wilson Permit Expansion Area.

B. Statement of Environmental Significance of Alternative B (PR02 as Revised)

Pursuant to 30 CFR Part 746, OSMRE is recommending selection and approval of Alternative B (see Section C.). The undersigned person has determined that approval of a federal mining plan modification authorizing continuation of mining operations for approximately four more years and additional surface disturbance of approximately 20 acres of federal leases COC 29225 and COC 29226 during reclamation operations would not have a significant impact on the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 USC 4332(2)(C); therefore, an Environmental Impact Statement is not required.

C. Reasons

OSMRE prepared the *Colowyo Coal Mine, South Taylor/Lower Wilson Permit Expansion Area Project, Federal Mining Plan Modification Environmental Assessment* (hereafter the EA) to satisfy OSMRE's requirements under NEPA. OSMRE prepared this EA to re-evaluate the environmental effects resulting from the currently approved mining plan modification for the South Taylor/Lower Wilson Permit Expansion Area, PR02, pursuant to the requirements of NEPA, the Council on Environmental Quality (CEQ), DOI, and OSMRE regulations and guidance regarding implementing NEPA. As part of the re-evaluation process, OSMRE must make a recommendation to the ASLM on a new decision to approve, disapprove, or approve the mining plan modification with conditions. The need for the re-evaluation in accordance with NEPA was established by a May 8, 2015, court order issued by the federal District Court, the District of Colorado. See *WildEarth Guardians v. U.S. Office of Surface Mining et al.*, Case 1:13-cv-00518-RBJ (D. Colo. 2015).

OSMRE is the lead federal agency responsible for development of the EA because it has the decision-making authority regarding a recommendation for the proposed mining plan modification under the MLA. As such, this EA follows the CEQ's, DOI's, and OSMRE's regulations and guidance for implementing NEPA. The EA analyzed the potential impacts associated with two action alternatives and the No Action alternative. Alternative A – Proposed Action, PR02 as Approved in 2007, would modify the mining plan to authorize mining of approximately 43 million tons (mt) of federal coal at a maximum rate of 6 million tons per year (mtpy) and with a surface disturbance of 1,562 acres, including 1,181 acres of previously undisturbed land. This mining plan modification reflects what Colowyo originally proposed to the CDRMS in PR02 in 2006 and was subsequently approved by CDRMS and ASLM in 2007. Mining, based on PR02 as Approved in 2007, began in 2008 and continues to date.

The EA also analyzed the impacts of another action alternative: Alternative B (PR02 as Revised). This alternative included minor and technical revisions made to PR02 subsequent to its approval in 2007 and more accurately reflects the anticipated mining plan as it would be expected to occur through the end of the life of the mine. Alternative B would have a reduced final disturbance footprint of 1,250 acres, including 809 acres of previously undisturbed land, reduced total tonnage mined of 23.3 mt, and reduced maximum production rate of 4 mtpy. Of the 809 acres of previously undisturbed land within the total disturbance footprint, 789 acres have already been disturbed as a result of mining activities since 2008 under the prior approvals for PR02 as Revised; thus, only 20 additional acres of previously undisturbed land would be disturbed, for reclamation purposes, under Alternative B.

Both action alternatives include design features to reduce or eliminate potential adverse impacts to the environment, and similar reclamation plans. Several permit revisions approved by CDRMS since 2007 have added or modified several previous design features to enhance environmental protection. However, in addition to the differences noted above, due to the reduced maximum mining production rate under Alternative B, mine production would extend to 2019, rather than 2017 as predicted under Alternative A. Under all alternatives, once mining has ceased, closure of the South Taylor Pit will commence and reclamation will be completed.

The No Action alternative would vacate the 2007 approval of the mining plan modification included in PR02 and require immediate cessation of mining previously authorized under PR02. Reclamation operations for the Project Area would commence and continue until Colowyo fulfills its obligations for reclamation under SMCRA and its federal lease terms. As noted above, the majority of the disturbance (789 acres of the 1,562 authorized acres in PR02 as Approved in 2007) has already occurred between 2008 and the present and approximately 10 mt of coal have been mined. Under the No Action Alternative, mining that has already been conducted from 2008 to present incorporated the Alternative B design features to reduce or eliminate potential adverse impacts to the environment and would use the same reclamation plan as the action alternatives; however, the reclamation would occur sooner than under Alternatives A or B, respectively.

The attached EA considers a reasonable range of alternatives to the Proposed Action, discloses the potential environmental effects of the alternatives, and provides sufficient evidence and support for this FONSI. The EA was prepared by a third-party consulting firm, at the direction of OSMRE. During the development of the EA, OSMRE independently reviewed the document to ensure compliance with 43 CFR Part 46, Subpart D and all relevant provisions of CEQ regulations, and other program requirements. This independent review included OSMRE's evaluation of all environmental issues disclosed in the EA and also those identified in comments received from the public. OSMRE takes full responsibility for the accuracy, scope, and the content of this document.

The undersigned has determined that per the CEQ's, DOI's, and OSMRE's regulations and guidance, the public involvement requirements have been met. OSMRE conducted public outreach and received comment for the Project from May 21 through June 15, 2015. On June 10, 2015, OSMRE conducted a public outreach meeting at the Moffat County Fairgrounds in Craig, Colorado. The EA and unsigned FONSI were made available to the public for review during a 19-day comment period prior to the final decision ending on August 14, 2014. All public comments received to date have been fully considered in the EA and in reaching this FONSI.

This finding is based on the context and intensity of the Project that would be conducted as proposed under Alternative B as described in the following paragraphs.

Context: Colowyo proposes to meet demand for coal and continue mine operations through approximately 2019 by:

1. Securing a federal mining plan modification approval authorizing mining of leased federal coal in a previously-authorized expanded permit boundary (i.e., the South Taylor/Lower Wilson Permit Expansion Area [PR02]); and,
2. Continuing to mine, process, and ship (via rail) coal from the mine.

Approval of Alternative B is a site specific action that would acknowledge the 789 acres of disturbance that occurred between 2008 to date as a result of the previous 2007 approval of PR02, and authorize Colowyo to disturb approximately 20 additional acres of previously undisturbed federal coal lands during reclamation operations. Relative to the No Action Alternative, mining would continue for an additional four years (until 2019) and about 13.3 million more tons of coal would be recovered at a maximum rate of 4 mtpy. The effects of the action have been analyzed at the local and regional scale.

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

1. Impacts that may be both beneficial and adverse:

Beneficial and adverse impacts of Alternative B are described in the attached EA. Environmental design features to reduce potential short-term and long-term impacts to topography, air quality, water resources, vegetation, fish and wildlife, threatened and endangered species, cultural resources, visual resources, and soils are incorporated into the design of Alternative B; additionally, mitigation measures related to air quality, migratory birds, special status species, cultural resources, and paleontological resources are required by the state-approved mine permit and stipulations to the federal coal lease permit, and approved mining plan.

The Project would contribute insignificant particulate emissions, gaseous emissions, and hazardous air pollutants in comparison to the Colorado and U.S. totals. Further, the contribution of the Project to greenhouse gas emissions (GHG), both to Colorado and U.S. totals, would be insignificant. The direct impacts on air and climate resources from a state and U.S. comparison are considered negligibly adverse. Regionally (Garfield, Moffat, Rio Blanco, and Routt Counties), the comparative emissions are higher (moderate to high impact), but the region has and is expected to remain in attainment. Indirectly, the Project would contribute to criteria emissions and GHG emissions through the combustion of coal at the Craig Generating Station and potentially elsewhere. The emissions impacts resulting from the combustion of Colowyo Mine coal under Alternative B would represent insignificant impacts relative to U.S. emissions and moderate impacts relative to Colorado emissions. The indirect impacts on air and climate resources are considered negligibly adverse. The direct and indirect effects to topography, geology, water resources, vegetation, fish and wildlife, special status species, visual resources, recreation, noise, livestock grazing and soils are considered negligible to minor, short-term, and adverse.

Alternative B would result in moderate to major beneficial impacts to socioeconomics in the area of influence. There would be an extension of employment for approximately 220 employees in Moffat, Rio Blanco, and Routt Counties of up to four years. When compared to Alternative A and the No Action Alternative, Alternative B represents an economic benefit to this area of approximately \$70 million and \$140 million, respectively. The socioeconomic benefits are derived from payroll, insurance, retirement contributions, local expenditures, taxes, and federal coal royalty payments.

None of the environmental effects discussed in the EA are considered to be significant.

2. The degree to which Alternative B affects public health or safety:

Activities under Alternative B are designed to control the limited public traffic that may occur in the Project Area. Public access to the areas affected by mining is limited and strictly controlled by the mine. All mine activities with potential public exposure would also be subject to state mine permit approval and review by the Mine Safety and Health Administration, which include safety standards. Precautions for public health and safety would also be implemented during transport of equipment along public roads to and from the Project Area. Construction and operation of road crossings associated with the Project would be subject to County approval. Emissions and effluent limits are within approved standards, as required by State permits, thereby limiting potential impacts to public health. Noise levels at the nearest residences would be well below levels that would affect human health. Potential risks to public health and safety would be negligible and would occur over limited, brief periods.

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

There are no park lands, prime farmlands, wild and scenic rivers, wetlands, or ecologically critical areas within the Project Area. Inventories of historic or cultural resources have been completed for the Area of Potential Effect and no eligible sites have been identified. Three potential historic or cultural resources sites requiring further testing were identified within the Project Area. These three sites would not be disturbed by the Project.

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

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

The EA has analyzed the direct, indirect, and cumulative effects of the Project on climate change and determined the effects to be negligible. No other anticipated effects have been identified that are scientifically controversial. Approvals of federal mining plans and mining plan

modifications have been made in the area for several decades. The design features and reclamation plan would reduce the effects on the environment; or, in some cases, would improve the current condition (e.g., soils, vegetation, and wildlife habitat).

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

There are no effects on the human environment under Alternative B that are highly uncertain or involve unique or unknown risks. OSMRE has experience implementing similar actions in similar areas.

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

This decision is not precedent setting. The issues considered in the EA were developed by the interdisciplinary team within the context of past, present, and reasonably foreseeable actions. Significant cumulative impacts are not anticipated.

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

The interdisciplinary team evaluated the possible issues in context of past, present, and reasonably foreseeable actions, including the entire Colowyo operation and other mining operations, the transport of coal from the mine, and the combustion of that coal at the Craig Generating Station, ranching, recreation, and oil and gas development. Both the indirect and cumulative effects of coal combustion at the Craig Generating Station and potentially elsewhere were disclosed in the EA. There were no significant cumulative effects identified.

8. The degree to which the action may adversely affect districts, sites, highways, structures, or other objects listed in or eligible for listing in the National Register of Historic Places (NRHP) or may cause loss or destruction of significant scientific, cultural, or historical resources:

The Project Area was surveyed for cultural and historic resources. No resources eligible for the NRHP have been documented. Three sites have been identified within the Area of Potential Effect that require additional testing to determine eligibility; none would be directly impacted by Alternative B. However, all three undetermined sites are adjacent to existing roads. Any impacts to these sites could constitute an adverse effect. Sites that are outside the 20-acre proposed additional disturbance area but within the permitted mine boundary would continue to be avoided. For the sites that occur outside the area of disturbance, there would be no adverse effect from the undertaking as currently proposed. If any of these sites cannot be avoided, a testing program would be initiated to determine their NRHP eligibility. OSMRE consulted with the State Historical Preservation Office and the Eastern Shoshone, Ute, Ute Mountain Ute, and Southern Ute tribes for the Project and no concerns were identified.

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

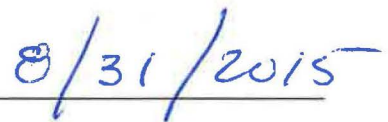
Four endangered Colorado River fish species (humpback chub [*Gila cypha*], Colorado pikeminnow [*Ptychocheilus lucius*], bonytail chub [*Gila elegans*], and razorback sucker [*Xyrauchen texanus*]), the threatened western yellow-billed cuckoo (*Coccyzus americanus*), and the greater sage-grouse [*Centrocercus urophasianus*] (a candidate species) were identified as being within the analysis area for the Project. Formal Section 7 consultation on the effects of coal combustion and subsequent mercury and selenium deposition on the Colorado River fish and western yellow-billed cuckoo in the Yampa River basin under Alternative B is complete (**EA Appendix D**). The final determination for the remaining potential impacts to the species is "Likely to Adversely Affect" the four Colorado River fish species, and "not Likely to Adversely Affect" the western yellow-billed cuckoo. Conservation measures were developed during the preparation of the biological assessment associated with this project and are described in the EA in Sections 4.9.4.1 and 4.9.4.2 and in the biological opinion (BO) (**EA Appendix D**). Those conservation measures would provide direct and indirect benefits to the Colorado River fish species and western yellow-billed cuckoo. In the BO issued by the USFWS, the determination was made that Alternative B would not jeopardize the continued existence of the Colorado River fish species, nor would it destroy critical habitat. In the BO, USFWS concurred with the no adverse impact determination for the cuckoo, therefore no jeopardy decision for this species is required.

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

The Project would not violate any known federal, state, local, or tribal law or requirement imposed for the protection of the environment. During the public and agency involvement for this EA, state, local, and tribal interests were given the opportunity to participate in the environmental analysis process. The Project is consistent with applicable plans, policies, and programs.



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Date