

# United States Department of the Interior Bureau of Land Management

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**DECISION RECORD**  
**Environmental Assessment**  
**DOI-BLM-UT-G020-2018-0051-EA**

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**February 2019**

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## **Emery Deep Mine Access Right-of-Way**

***Location:***

T. 23 S., R. 6 E. Section 5  
Salt Lake City Meridian  
Emery County, Utah

***Applicant/Address:***

Bronco Utah Operations, LLC  
PO Box 527  
Emery, Utah 84522  
(435) 286-2447  
Fax (435) 286-2382

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U.S. Department of the Interior Bureau of Land Management  
Price Field Office  
Green River District  
125 South 600 West  
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**Decision Record**  
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Emery Deep II Mine Access Right-of-Way

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## **Introduction**

The Bureau of Land Management (BLM) Price Field Office (PFO) prepared an environmental assessment (EA) (DOI-BLM-UT-G020-2018-0051-EA) analyzing and disclosing the potential environmental impacts of a proposed underground right-of-way (ROW) to Bronco Utah Operations, LLC (Bronco) for access through unleased federal coal. This access would allow for mining of Bronco-owned coal, then underground coal owned by the State of Utah, administered by the School Institutional Trust Lands Administration (SITLA). The mining of coal on SITLA will be for Lease ML-51745-OBA.

Bronco submitted an application for the proposed underground ROW on July 21, 2018. The BLM manages the surface and mineral estate of the area that would be crossed by the ROW.

## **Decision**

It is my decision to approve the proposed underground ROW as described in Alternative A: Proposed Action in the Environmental Assessment (DOI-BLM-UT-G020-2018-0051-EA) for the Emery Deep II Mine Access ROW. This ROW is located at T. 23 S., R 6 E., Section 5, Salt Lake Meridian in Emery County, Utah. The ROW is contained within 31.5 acres. The underground ROW would be approximately 340-feet wide and 3,700-feet in length, plus panel necks, with an average height of 6.5 to 7 feet. The term of the underground ROW grant could be up to 20 years.

## **Rationale for Decision**

After considering the environmental impacts identified under all analyzed alternatives, the decision has been made to approve the proposed underground ROW. As stated in the associated Finding of No Significant Impact (FONSI) for this project, implementation of the selected alternative would not result in significant impacts; thus, an Environmental Impact Statement is not necessary. Furthermore, this decision is in conformance with and consistent with the appropriate land use plan.

## **Plan Conformance and Consistency**

The lands managed by the BLM PFO are managed in accordance with the 2008 Approved Resource Management Plan (RMP). The RMP states that the Lands and Realty goals and objectives of the Price Field Office are as follows (Page 115):

- Make public lands available through ROWs or leases for such purposes as transportation routes, utilities, transmission lines, and communication sites, in coordination with other resource goals.
- Maintain availability of public lands to meet the habitation, cultivation, trade, mineral development, recreation, and manufacturing needs of external customers and the general public.

Applicable Lands and Realty management decisions of the Price Field Office are as follows:

- **LAR-28:** Additional ROWs will be granted consistent with RMP goals and objectives (Page 120).

The approved RMP states that the Minerals goals and objectives of the Price Field Office are as follows (Page 123):

- Provide opportunities for mineral exploration and development under the mining and mineral leasing laws subject to legal requirements to protect other resource values.
- Support the need for domestic energy resources by managing and conserving the mineral resources without compromising the long-term health and diversity of public lands.
- Maintain coal leasing, exploration, and development within the planning area while minimizing impacts to other resource values.

Coal management decision MLE-2 in the PFO RMP states that Map R-24 shows areas that will be available for further coal leasing considerations. The area at question under the proposed action is located within an area identified as available.

### **Alternatives Considered**

Two alternatives were considered and analyzed in the EA: the proposed action (Alternative A) and a no action alternative (Alternative B). Under the National Environmental Policy Act (NEPA), an EA should analyze an alternative or alternatives to a proposed action that avoids or reduces impacts of the proposed action while still addressing the stated purpose and need for it. In this instance, no unresolved conflicts associated with the proposed action were identified.

There were, however, some alternatives considered, but not analyzed in detail. The need for a precise location for the proposed underground ROW meant that there would not be other feasible alternatives; thus, no alternatives other than the proposed action and the no action alternative were considered. No larger or smaller underground ROW or other orientation for the proposed underground ROW would allow for the efficient removal of coal during construction of the ROW. In addition, no alternative-driving impacts have been identified through this analysis. No reconfiguration of the proposed underground ROW or alteration of the mining methods would avoid or reduce the potential impacts disclosed in this EA. Moreover, there are no competitive interests in the relevant coal reserves; and absent Emery Deep Mine's proximity and in-place infrastructure, these reserves would be by-passed. The only other way the coal could be removed without the proposed underground ROW would be uneconomical and necessitate building and using new surface facilities (shafts) with accompanying surface impacts.

### **Public Involvement**

The BLM PFO created an ePlanning website (<https://go.usa.gov/xP6CG>) on August 8, 2018 for the public to view. As a result of this website creation, the BLM PFO received one comment from WildEarth Guardians with the following concerns:

- The BLM will need to address the climate consequences associated with the right-of-way, including direct and indirect greenhouse gas emissions;
- The BLM will need to address direct and indirect air and water quality impacts;

- The BLM will need to address the indirect impacts of coal combustion resulting from approval of the right-of-way;
- The BLM must demonstrate compliance with applicable right-of-way regulations as part of any EA;
- We actually believe an Environmental Impact Statement is warranted given the potentially significant impacts of the proposed action and the fact that there has never been an EIS prepared documenting and disclosing the impacts of mining at the Emery Deep or Emery Deep II mines;
- The BLM must address connected and cumulative actions, including impacts related to new federal coal leasing and other actions related to the development of the Emery Deep II mine.

Each of these concerns have been addressed in the EA or this decision record.

A 30-day public comment period for the EA was provided to the public from December 10, 2018 through January 10, 2019. No comments were received.

Native American tribes were notified of the project via letter. One response was received from the Southern Ute Tribe indicating that there would be no adverse effect to eligible sites for listing in the National Register.

No surface disturbance is proposed for this undertaking; therefore, no direct impacts can be expected on significant cultural resources on the land surface above the proposed underground ROW. The “No Potential to Effect” determination does not require a review by the Utah State Historic Preservation Office.

## **Authorities**

The regulation governing federal coal resources is found at 43 CFR 3400 under authority of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 186). 43 CFR 3431.0-1 states “The purpose of this subpart is to provide procedures for the sale of coal that is necessarily removed in the exercise of a right-of-way issued under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 *et seq.*)” 43 CFR 3431.2(d) states “All terms and conditions of the sale shall be terms and conditions of the right-of-way and shall be administered under the provisions of Group 2800 of this title.”

Under the Federal Land Policy and Management Act (FLPMA), BLM is obligated to review ROW proposals associated with mineral material sales.

The authority for this decision is contained in CFR 3601: It is BLM’s policy “to make mineral materials available unless it is detrimental to the public interest to do so.”

## **Terms and Conditions**

### **1. Standard**

- a. This grant is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations part 2800.
- b. Each grant issued for a term of 10 years or more shall, at a minimum, be reviewed by the authorized officer at the end of the 10th year and at regular intervals thereafter not to exceed 10 years. Provided, however, that a right-of-way granted herein may be reviewed at any time deemed necessary by the authorized officer.
- c. The maps, set forth in the DOI-BLM-UT-G020-2018-0051-EA Decision Record, are incorporated into and made a part of this grant instrument.
- d. Failure of the holder to comply with applicable laws or any provision of this right-of-way grant shall constitute grounds for suspension or termination thereof. Your failure to use your right-of-

way for its authorized purpose for any continuous 5-year period creates a presumption of abandonment.

- e. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.
- f. The holder shall conduct all activities associated with the operation of the right-of-way within the authorized limits of the right-of-way.

## **2. Applicable Laws**

- a. The holder shall comply with all Federal, State, and local regulations whether or not specifically mentioned within this grant.
- b. The holder of this right-of-way grant or the holder's successor in interest shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and the regulations of the Secretary of the Interior issued pursuant thereto.
- c. The holder shall meet Federal, State, and local emission standards for air quality.
- d. The holder shall comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated. In any event, the holder(s) shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, et seq.) with regard to any toxic substances that are used, generated by or stored on the right-of-way or on facilities authorized under this right-of-way grant. (See 40 CFR, Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 761.1-761.193.) Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR, Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 102b. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any toxic substances shall be furnished to the authorized officer concurrent with the filing of the reports to the involved Federal agency or State government.
- e. The holder agrees to indemnify the United States against any liability arising from the release of any hazardous substance or hazardous waste (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq. or the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq.) on the right-of-way (unless the release or threatened release is wholly unrelated to the right-of-way holder's activity on the right-of-way. This agreement applies without regard to whether a release is caused by the holder, its agent, or unrelated third parties.
- f. The holder is prohibited from discharging oil or other pollutants into or upon the navigable waters of the United States, adjoining shorelines, or the waters of the contiguous zone in violation of Section 311 of the Clean Water Act as amended, 33 U.S.C. 1321, and the regulations issued there under, or applicable laws of the State and regulations issued there under. Holder shall give immediate notice of any such discharge to the authorized officer and such other Federal and State officials as are required by law to be given such notice.

## **3. Miscellaneous**

- a. All design, material, and construction, operation, maintenance, and termination practices shall be in accordance with safe and proven engineering practices.
- b. The holder shall designate a representative who shall have the authority to act upon and to implement instructions from the authorized officer. The holder's representative shall be available for communication with the authorized officer within a reasonable time when construction is underway.

- c. The holder shall inform the Field Manager at (435) 636-3600 within 48 hours of any reportable accidents on federal lands.
- d. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the holder.
- e. The holder shall protect all survey monuments found within the right-of-way. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey Corners, reference corners, witness points, U.S. Coastal and Geodetic benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. In the event of obliteration or disturbance of any of the above, the holder shall immediately report the incident, in writing, to the authorized officer and the respective installing authority if known. Where General Land Office or Bureau of Land Management right-of-way monuments or references are obliterated during operations, the holder shall secure the services of a registered land surveyor or a Bureau cadastral surveyor to restore the disturbed monuments and references using surveying procedures found in the Manual of Surveying Instructions for the Survey of the Public Lands in the United States, latest edition. The holder shall record such survey in the appropriate county and send a copy to the authorized officer. If the Bureau cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monument, the holder shall be responsible for the survey cost.
- f. Subsidence – Except at locations specifically approved by the Authorized Officer (AO), underground tunneling operations shall be conducted in a manner so as to prevent surface subsidence that would: (1) cause the creation of hazardous conditions such as potential escarpment failure and landslides, (2) cause damage to existing surface structures, and (3) damage or alter the flow of perennial streams. The holder shall provide specific measures for the protection of escarpments, and determine corrective measures to assure that hazardous conditions are not created. (e.g. first mining only to create tunnels.)
- g. Underground Mining – The coal contained within, and authorized for removal under this ROW, shall be extracted only by underground methods. Only the removal of coal necessary to access the SITLA lands is authorized to be removed.
- h. Replacement of Affected Surface Water – The holder, at its expense, will be responsible to replace any surface and/or developed ground water sources identified for protection, that may be lost or adversely affected by mining operations, with water from an alternate source in sufficient quantity and quality to maintain existing riparian habitat, fishery habitat, livestock and wildlife use, or other land uses (authorized by 36 CFR 251).
- i. Recoverable Coal – Only coal necessary to access the SITLA lands is authorized to be removed. The BLM reserves the right to seek damages against the holder in the event the holder is determined to have removed more coal than authorized. Damages shall be assessed on the value, for the removed coal. BLM accepts that the projected mine entry dimensions and orientations are subject to standard operating practice variances for underground coal mining.
- j. Material removed in the construction of the tunnels (coal and non-coal) in connection with this right-of-way must be sold on the open market to maximize the value of the material. The point-of-sale revenue will be reported to BLM monthly on a tonnage sold basis. If the material is

blended with other coal(s), the value of the tunnel material will be determined and reported.

- k. Direct mining costs of developing the tunnels will be reported to BLM monthly on a total and cost per ton basis. The monthly tonnage and quality of the material mined for the tunnels will be reported along with the actual direct cost per ton for the month. The revenue and direct mining costs will be reported in detail in a detailed cash flow analysis (cost of labor, roof support materials, etc). Actual sales prices and operating costs will be reported with no inflation adjustments (nominal dollars).
- l. Waste Certification – The holder shall provide upon abandonment and/or sealing off a mined area and prior to ROW termination/relinquishment, certification to the holder that, based upon a complete search of all the holders records for the mine and upon their knowledge of past operations, there has been no hazardous substances per (40 CFR 302.4) or used oil as per Utah State Management Rule R-315-15, deposited within the ROW, either on the surface or underground, or that all remedial action necessary has been taken to protect human health and the environment with respect to any such substances remaining on the property. The back-up documentation to be provided shall be described by the holder prior to the first certification and shall include all documentation applicable to the Emergency Planning and Community Right-to-know Act (EPCRA, Public Law 99-499), Title III of the Superfund Amendments and Reauthorization Act of 1986 or equivalent.
- m. Abandonment of Equipment – The holder is responsible for compliance with reporting regarding toxic and hazardous material and substances under federal law and all associated amendments and regulations for the handling of such materials on the land surface and in underground mine workings.

The holder must remove mine equipment and materials not needed for continued operations, roof support and mine safety from underground workings prior to abandonment of mine sections. Exceptions can be approved by the AO (BLM) in consultation with the surface management agency. Creation of a situation that would prevent removal of such material and by retreat or abandonment of the ROW without prior authorization would be considered a noncompliance with ROW terms and conditions and subject to appropriate penalties under the ROW.

- n. Underground Inspection – All safe and accessible areas shall be inspected prior to being sealed. The holder shall notify the AO in writing 30 days prior to the sealing of any areas in the ROW and state the reason for closure. Prior to seals being put into place, the holder shall inspect the area and document for approval any equipment/machinery, hazardous substances, or used oil that is to be left underground.

The purpose of this inspection will be: (1) to provide documentation for compliance with 42 U.S.C. 9620 section 120(h) and State Management Rule R-315-15, and to assure that certification will be meaningful at the time of ROW relinquishment, (2) to document the inspection with a mine map showing location of equipment/machinery (model, type of fluid, amount remaining, batteries etc.) that is proposed to be left within the ROW. In addition, these items will be photographed at the holders expense and shall be submitted to the AO as part of the certification. The abandonment of any equipment/machinery shall be on a case by case basis and shall not be accomplished unless the AO has granted a written approval. .

- o. All Operation and Maintenance shall be completed pursuant to MSHA regulations.

#### **4. Construction / Maintenance**

- a. The holder shall conduct all activities associated with the construction, operation, and termination

of the right-of-way within the authorized limits of the right-of-way.

- b. The holder shall construct, operate, and maintain the facilities, improvements, and structures within this right-of-way in strict conformity with the plan of development which was approved and made part of this grant. Any relocation, additional construction, or use that is not in accord with the approved plan of development, shall not be initiated without the prior written approval of the authorized officer. A copy of the complete right-of-way grant, including all stipulations and approved plan of development, shall be made available on the right-of-way area during construction, operation, and termination to the authorized officer. Noncompliance with the above will be grounds for an immediate temporary suspension of activities if it constitutes a threat to public health and safety or the environment.
- c. The map and site plan drawings submitted with the original proposal shall be made a part of this right-of-way grant. All construction must conform to these drawings and maps.
- d. The ROW site shall be maintained in a sanitary condition at all times; waste materials at those sites shall be disposed of promptly at an appropriate waste disposal site. "Waste" means all discarded matter including, but not limited to, human waste, trash, garbage, refuse, oil drums, petroleum products, ashes, and equipment.
- e. Holder shall maintain the right-of-way in a safe, usable condition, as directed by the authorized officer.
- f. The holder shall provide for the safety of the public by restricting them from entering the right-of-way.

#### **5. Reclamation / Rehabilitation / Termination**

- a. Upon grant termination by the Field Manager or other authorized officer, all improvements shall be removed from the public lands within 90 days, or otherwise disposed of as provided in paragraph (4)(d) or as directed by the authorized officer.
- b. Ninety (90) days prior to termination of the right-of-way, the holder shall contact the authorized officer to arrange a pre-termination conference. This conference will be held to review the termination provisions of the grant.
- c. Mine support features may be left in place, all other structures will be removed prior to abandonment of the entries within the underground right-of-way and should the operator of the mine be able to move elsewhere in the mine other than areas accessed by the right of way, the area will be sealed off underground according to MSHA requirements and if BLM approved, according to BLM requirements for the surface access portals.

### **Appeals:**

This decision may be protested or appealed under the procedures outlined in 43 CFR Part 4. Public notification of this decision will be considered to have occurred on February 6, 2019. Within 30 days of this decision, a notice of appeal must be filed in the office of the authorized officer at the Utah State Office, Bureau of Land Management, 440 West 200 South, Suite 500, Salt Lake City, Utah 84104. If a statement of reasons for the appeal is not included with the notice, it must be filed with the Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy St., Suite 300, Arlington, VA 22203 within 30 days after the notice of appeal is filed with the authorized officer.

If you wish to file a petition for stay pursuant to 43 CFR 4.21(b) the petition for stay should accompany your notice of appeal and shall show sufficient justification based on the following standards:

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

If a petition for stay is submitted with the notice of appeal, a copy of the notice of appeal and petition for stay must be served on each party named in the decision from which the appeal is taken, and with the IBLA at the same time it is filed with the authorized officer.

A copy of the notice of appeal, any statement of reasons and all pertinent documents must be served on each adverse party named in the decision from which the appeal is taken and on the Office of the Regional Solicitor, U.S. Department of the Interior, 6201 Federal Building, 125 South State Street, Salt Lake City, Utah 84138-1180, not later than 15 days after filing the document with the authorized officer and/or IBLA.

### **Approval by Field Manager**

I hereby approve the decision to approve the proposed underground ROW for Bronco, subject to the conditions identified in this decision record.

**/s/ Chris Conrad**

Chris Conrad  
Field Manager  
Price Field Office  
Bureau of Land Management

**2/6/2019**

Date