

United States Department of the Interior
Bureau of Land Management

Finding of No Significant Impact
Environmental Assessment
DOI-BLM-WY-P000-2018-0002-EA

Wright Area Coal Leasing Tenth Circuit Court Remand
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INTRODUCTION:

On September 15, 2017, the United States Tenth Circuit Court of Appeals issued a decision in *WildEarth Guardians v. Bureau of Land Management*, Case No. 15:8109, finding error in the analysis of the “no action” alternative in the Wright Area Final Environmental Impact Statement (“FEIS”). The court did not vacate the coal leases at issue, nor the Records of Decision (“RODs”), but it remanded the FEIS and RODs to the United States District Court for the District of Wyoming, which in turn ordered BLM to revise the RODs and the FEIS, in particular, the No Action Alternative where BLM had found “no real world difference between issuing the Wright Area leases and declining to issue them” given the supply of other available coal.

In response to the court’s order, BLM prepared the Wright Area Coal Leasing Tenth Circuit Court Remand Environmental Assessment (“EA”) to provide additional clarification and analysis of the FEIS No Action Alternative to address legal deficiencies identified by the Circuit Court pertaining to coal supply and demand suppositions and associated carbon dioxide emissions.

The EA is tiered to and incorporates by reference the FEIS and RODs. The court order remanded the FEIS and RODs to BLM to address very specific issues; therefore, this EA focuses on GHG emissions and energy market relationships and does not re-analyze the effects on other resources fully analyzed in the broader FEIS.

PROPOSED ACTION

The Proposed Action is to provide additional clarification and analysis of the FEIS No Action Alternative to address legal deficiencies identified by the Circuit Court pertaining to coal supply and demand suppositions and associated carbon dioxide emissions. Given the narrow scope of the court’s remand order, which upheld the analysis of all other alternatives in the FEIS, no other alternatives are analyzed in the EA.

PUBLIC INPUT

Public involvement was provided for by: 1) posting a press release that BLM was preparing an EA for the Wright Area Coal Leasing Tenth Circuit Court Remand, 2) posting the EA on August 2, 2018 to BLM’s public website, and 3) providing a 60 day public comment period from August 2 to October 4, 2018. BLM considered all comments it received in revising the EA and prepared responses addressing the comments.

FINDING OF NO SIGNIFICANT IMPACT:

On the basis of the additional information contained in the EA, supporting documents, and all other information available to me, it is my determination that:

1. The implementation of the proposed action will not have any significant environmental impacts beyond those already disclosed in the FEIS and RODs,
2. The proposed action is in compliance with the court order and applicable federal laws, regulations, and policies,
3. The proposed action does not constitute a major federal action having a significant effect on the human environment.

Therefore, a new environmental impact statement (EIS) for the Wright Area coal project is not necessary and the analysis in the EA supports affirming the decisions in the RODs.

This finding is based on my consideration of the Council on Environmental Quality's (CEQ) criteria for significance (40 CFR 1508.27), both with regard to the context and to the intensity of the impacts described in the EA.

RATIONALE FOR FINDING OF NO SIGNIFICANT IMPACT

As defined in 40 CFR 1508.13, the Finding of No Significant Impact (FONSI) is a document that briefly presents the reasons why an action will not have a significant effect on the human environment. The regulations further define "significantly" in 40 CFR 1508.27 and require that the context and intensity of impacts be considered in analyzing significance. The following provides an analysis of the significance of impacts of the EA in terms of context and intensity as defined by the regulations.

"a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of the site-specific action, significance would usually depend upon the effects in the locale rather than the world as a whole. Both short-term and long-term effects are relevant." (40 CFR 1508.27(a)).

"b) Intensity. This refers to the severity of the impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity." (40 CFR 1508.27(b))

I have considered the potential intensity and severity of the impacts anticipated from the EA relative to each of the ten areas suggested for consideration by the CEQ. With regard to each:

1. Impacts may be both beneficial and adverse.

Many potential environmental effects of leasing and subsequent development of the leases were considered and disclosed in the FEIS. None of the environmental effects of the Proposed Action analyzed in the EA rise to a level of significance beyond what was disclosed in the FEIS. Selection of the FEIS No Action Alternative would not impact coal combustion for electricity generation or GHG emissions in any significant way as an approximate ten-year supply of similar-composition, similar-price Powder River Basin coal exists to replace the coal that would not be mined.

Within that ten years, BLM could receive and approve other coal LBAs as the area is open to coal leasing under the Approved Resource Management Plan (RMP) for Public Lands Administered by the Bureau of Land Management Buffalo Field Office (2001) (Buffalo RMP). Future development of these coal resources likely would result in the emission of direct and indirect GHGs and would contribute to cumulative GHG emissions at the state, regional, national, and global scales. Adverse effects could result from the contribution of these GHG emissions to increased atmospheric concentrations of CO₂ and associated impacts to global climate change.

The effects of production of the coal resource were discussed in the FEIS. These include the production of coal to contribute to the national, state, and local supply; to support a dependable and affordable electricity supply; and economic activity within local, state, regional and national economies, which may be perceived as either positive or negative, depending on the standpoint of the stakeholder.

- 2. The degree to which the proposed alternative affects public health or safety.** Public health and safety were addressed in the FEIS. These issues were not included in the scope of analysis to be addressed per the Court ordered remand. No new impacts beyond those already analyzed in the FEIS are expected from the Proposed Action.

- 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.**

Unique characteristics were addressed in the FEIS. These issues were not included in the scope of analysis to be addressed per the Court ordered remand. No new impacts beyond those already analyzed in the FEIS are expected from the Proposed Action.

- 4. The degree to which the effects on the quality of the human environment are likely to be highly controversial.**

As a factor for determining whether or not to prepare a detailed environmental impact statement, “controversy,” within 40 CFR 1508.27(b)(4), is not “the existence of opposition to a use.” *Town of Cave Creek v. FAA*, 325 F.3d 320, 331 (D.C. Cir. 2003) (“controversial” refers to situations where “substantial dispute exists as to the size, nature, or effect of the major federal action”) (quoting *Found. for N. Am. Wild Sheep v. U.S. Dep’t of Agric.*, 681 F.2d 1172, 1182 (9th Cir.1982); see also *Fund for Animals v. Frizzell*, 530 F.2d 982, 988 n.15 (D.C. Cir. 1975) (*per curiam*) (“certainly something more is required” for a highly controversial finding “besides the fact that some people may be highly agitated and be willing to go to court over the matter.”).

Though there is opposition to the use of public lands for coal mining, the use is not unique nor unusual. For decades, public lands coal leasing has provided an ongoing, primary fuel source for this country’s reliable and inexpensive electricity supply. The BLM has extensive experience managing the coal resource and implementing similar actions in similar areas.

The FEIS analyzed and disclosed the size, nature, and effects of the proposed Wright Area coal project and the court upheld that analysis with the exception of the FEIS No Action Alternative. The EA provided additional clarification and analysis of the FEIS No

Action Alternative to address legal deficiencies identified by the Circuit Court. This analysis supports the conclusion that if BLM were to select the FEIS No Action Alternative, such a decision would have minimal effect upon the quality of the human environment. Though not all will agree with this determination, the analysis of the No Action Alternative in the EA provides support for such a conclusion and therefore the effects of the Proposed Action are not highly controversial.

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

Public lands coal leasing is not unique or unusual. Coal leasing and post-lease development have been ongoing for decades, and the BLM has experience implementing similar actions in similar areas.

The EA and FEIS analyses disclose the uncertainties in predicting GHG emissions from mining coal and coal combustion as well as the uncertainties surrounding the effect of future GHG emission policies, initiatives, and regulations.

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

Selection of the FEIS No Action Alternative would neither establish a precedent nor represent a decision in principle about future considerations. Under the Proposed Action, BLM considered the FEIS No Action Alternative within the context of past, present, and reasonably foreseeable future actions, and the analysis did not reveal any interactions with present or future projects that would have significant impacts beyond those already disclosed in the FEIS and RODs. Regardless whether the coal is leased or not leased in response to the current proposal, the decision would not limit later resource management decisions for areas open to development nor preclude other uses of those lands in accordance with the Federal Land Policy and Management Act and regulation at 43 Code of Federal Regulations, Part 3000.

7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.

The FEIS contained a detailed cumulative impacts analysis that considered connected actions on federal and non-federal lands. The Buffalo RMP considered the direct, indirect, and cumulative effects of coal leasing when determining what areas should be open for development of coal resources. Decisions on areas open to coal development are made at the RMP level in order to look at the impacts at a landscape scale. No new impacts beyond those already disclosed in the FEIS and EA are expected from this action.

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 potential for effects to listed or eligible cultural properties, or the degree to which the subject leases may cause loss or destruction of significant scientific, cultural, or historic properties was addressed in the FEIS. These issues were not included in the scope of analysis to be addressed per the Court ordered remand. No new impacts beyond those already analyzed in the FEIS are expected from the Proposed Action.

- 9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973, or the degree to which the action may adversely affect: 1) a proposed to be listed endangered or threatened species or its habitat, or 2) a species on the BLM sensitive species list.**

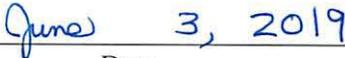
All future projects are required to comply with the Endangered Species Act, and potential impacts of the proposed coal leases on threatened, endangered, and sensitive species and their habitats were analyzed in the FEIS. These issues were not included in the scope of analysis to be addressed per the Court ordered remand. No new impacts beyond those already analyzed in the FEIS are expected from the Proposed Action.

- 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 Proposed Action would not violate or threaten to violate federal, state, local or tribal laws or requirements imposed for the protection of the environment. In addition, the Proposed Action would be consistent with applicable land management plans, policies, and programs, and development of the coal resource would be conditioned on compliance with all applicable laws and regulations. All Federal lease contracts are issued contingent upon compliance with all Federal laws and regulations.



BLM Wyoming State Director



Date