

Bureau of Land Management

Analysis and Response of Public Comments Received

on the

Wright Area Coal Leasing Tenth Circuit Court

Remand Environmental Assessment

June, 2019

INTRODUCTION

To comply with the United States District Court's November 27, 2017 order, the Bureau of Land Management (BLM) prepared the Wright Area Coal Leasing Tenth Circuit Court Remand Environment Assessment (EA) to revise the Wright Area EIS' analysis of the "No Action Alternative" and further clarify potential changes in national carbon dioxide emissions that may have taken place if BLM had rejected the Wright Area Lease-By-Application (LBA) coal tracts. The Remand Final EA's additional analysis and clarifications improve and revise the Wright Area EIS, RODs, administrative record, and fulfill the District Court's November 27, 2017 order. The Remand Final EA's analysis, additional information, and public comments have all been included in the Wright Area project's administrative record.

WRIGHT AREA REMAND EA PUBLIC INVOLVEMENT

The Wright Area Coal Leasing Tenth Circuit Court Remand Draft EA was made available for public review from August 2 through October 4, 2018. During this 60-day public comment period, numerous wide-ranging issues were identified, presented, and expressed by the public, as well as submission of additional technical information.

During the official public comment period, BLM received the following hand-signed comment letters:

- The State of Wyoming Office of the Governor, signed by Matthew H. Mead, Governor;
- Campbell County Board of Commissioners, signed by Mark A. Christensen, Chairman;
- Thunder Basin Coal Company, signed by Lecia R. Craft, Environmental Supervisor;
- Powder River Basin Resource Council, signed by Shannon Anderson, Staff Attorney; and
- National Mining Association, signed by Katie Sweeney, General Counsel.

During the comment period, BLM further received four voluminous comment packages from the following entities:

- Western Organization of Resource Councils;
- Sierra Club;
- joint submission by Sierra Club/WildEarth Guardians; and
- joint submission by the Institute for Policy Integrity at New York University School of Law/Montana Environmental Information Center/Natural Resources Defense Council/Sierra Club/Union of Concerned Scientists.

To date, BLM has received over 6,000 Wright Area Coal Lease comment emails similar to form letters with variants. Numerous emails appear to have been generated from the following website email address: action@wildearthguardians.org. Since the spring of 2018, BLM has received letters and Remand EA comment emails outside the project's official public comment period. BLM continues to receive comments nearly every day concerning this project.

BLM has made substantial revisions to the Remand EA based on public comment. Although many of the comments received pertained to issues beyond the narrowly focused court remand, all comments were considered in preparing the Wright Area Remand Final EA. The Remand Final EA is posted at the following BLM public website: <https://go.usa.gov/xntFJ>. Letters and other comments received during the 60-day public review period for the Wright Area Remand Draft EA are also available at that link. Issues, comments, and concerns that were raised are summarized below, in bullet points, along with BLM's response.

COMPREHENSIVE ISSUES/CONCERNS RAISED

- **concerns, doubts, and demands regarding BLM’s coal leasing authority, responsibility, and regulations**

Response: BLM is a multiple use land management agency that is responsible for administering federal minerals, including federal coal reserves. BLM administers public lands and minerals under the policy and practice of multiple use management. The Bureau’s responsibility for multiple use involves balancing an extensive diversity of resources and the potential use or development of those resources and lands as administered by BLM.

Throughout the Wright Area project, BLM has described their decision-making authority to lease coal on federal lands and BLM’s mission under various mineral leasing laws. The Wright Area coal lease applications were analyzed, processed, and evaluated under the following federal authorities: Mineral Leasing Act of 1920 as amended, Multiple Use Sustained Yield Act of 1960, National Environmental Policy Act of 1969 as amended, Federal Coal Leasing Amendments Act of 1976, Federal Land Policy Management Act of 1976, and the Surface Mining Control and Reclamation Act of 1977. In addition to the Federal acts, further guidance and regulations regarding coal lands are set forth in 40 Code of Federal Regulations (CFR) 1500, 43 CFR 1601, and 43 CFR 3400.

- **concerns with public interest, fair return on federal coal, and coal exports**
- **concerns with coal revenues and using coal to meet the nation’s energy demands**

Response: As described throughout the Wright Area project, the mining of Federal coal reserves provides additional revenues to the United States in the form of coal lease bonuses, annual rentals, and production royalties. Local communities, counties, and states receive a variety of taxes and royalties on the production of Federal coal. Please review the Wright Area FEIS for more detailed information.

BLM coordinates with the Department of the Interior Office of Valuation Services on Federal coal Fair Market Value (FMV) determinations to ensure the public receives a fair return on Federal coal. Nearly all of the Federal coal mined in the Wyoming Powder River Basin (WY PRB) is transported by rail for domestic use in other states. If Federal coal were to be exported, an analysis of export market potential would be conducted in partnership with the Department of the Interior Office of Valuation Services as part of the federal coal FMV process.

The President signed and issued Executive Order (EO) 13783 “Promoting Energy Independence and Economic Growth” on March 28, 2017 with publication in the Federal Register on March 31, 2017. EO 13783 states, “It is in the national interest to promote clean and safe development of our Nation’s vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation. Moreover, the prudent development of these natural resources is essential to ensuring the Nation’s geopolitical security. It is further in the national interest to ensure that the Nation’s electricity is affordable, reliable, safe, secure, and clean, and that it can be produced from coal, natural gas, nuclear materials, flowing water, and other domestic sources, including renewables sources.”

Presidential Executive Order 13795, signed on April 28, 2017 and published in the Federal Register on May 3, 2017, further stated the following: “America must put the energy needs of American families and businesses first and continue implementing a plan that ensures energy security and economic vitality for decades to come. The energy and minerals produced from lands and waters under Federal management are important to a vibrant economy and to our national security. Increased domestic energy production

on Federal lands and waters strengthens the Nation's security and reduces reliance on imported energy. Moreover, low energy prices, driven by an increased American energy supply, will benefit American families and help reinvigorate American manufacturing and job growth. Finally, because the Department of Defense is one of the largest consumers of energy in the United States, domestic energy production also improves our Nation's military readiness."

- **concerns with water and air quality**
- **concerns with human health, coal dust, pollution, and burning coal**
- **concerns with coal combustion emissions and uncertainty caused by changes to federal regulations**
- **concerns with climate change, greenhouse gases (GHG), and weather uncertainties**

Response: BLM carefully considered, described, analyzed, and disclosed these issues in the Wright Area FEIS. Please review Volume 1 and Volume 2 of the Wright Area FEIS for more detailed information. The Wyoming Department of Environmental Quality (WDEQ) Land Quality Division (LQD) regulates the permitting of coal production in the state and in accordance with Federal Surface Mining Control and Reclamation Act and the Wyoming Environmental Quality Act. WDEQ Air Quality Division (AQD) issues air permits to control emissions from major and minor sources of air pollutants including coal mines under the authority delegated to them by the U.S. Environmental Protection Agency (EPA) and in accordance with the Clean Air Act. In addition, the WYDEQ's Water Quality Division and Solid and Hazardous Waste Division and the Industrial Siting Council all have authority for requiring permit terms and conditions to ensure the safety and ensure compliance with environmental regulations. Mining permits issued by the WDEQ identify mitigation measures that the permittee must implement in order to comply with the permit.

BLM does not develop, set, or enforce, state or national air and water quality standards nor does it issue air quality or water quality permits. In addition, BLM does not permit nor authorize mining operations and does not have the authority to regulate mining operations nor the burning of coal. Air pollution is controlled by state and federal air quality regulations and standards established under the Clean Air Act as administered by the EPA). EPA has the authority to regulate greenhouse gases (GHGs) and has developed regulations for reducing GHG emissions.

The greenhouse gas emissions associated with coal mining are analyzed in Chapter 4 of the Wright Area FEIS. GHG emissions analysis is one of the factors considered for each of the alternatives in the Wright Area FEIS and this analysis was upheld by the court for all alternatives except the No Action Alternative. GHG emissions for the No Action Alternative were analyzed in the Remand Draft EA and revised in the Remand Final EA.

- **requests and demands related to reducing fossil fuel consumption, moving toward alternative cleaner energies, renewable resources, and lessening carbon emissions**

Response: We revised Chapter 4 in the Remand Final EA to include additional information regarding electric power systems, electric power generation trends and projections, and electricity market changes. Please also review the Wright Area FEIS as it describes the extent of BLM's decision-making authority on federal lands and BLM's mission under various mineral laws. BLM does not regulate GHG emissions, and does not set national standards for carbon fuel use. However, the mission of the Department of Energy (DOE) is to "ensure America's security and prosperity by addressing its energy, environmental and nuclear challenges through transformative science and technology solutions." Please contact the DOE for additional information.

- **concerns with coal tonnage differences between the Remand Draft EA and the Wright Area FEIS**

Response: The Wright Area FEIS describes that, as applied for, the six Wright Area coal lease-by-application (LBA) tracts contained approximately 2.570 billion tons of federal coal. Though the Wright Area FEIS analyzed six proposed tracts of Federal coal, BLM only issued Records of Decision to offer competitive lease sales for four of the six tracts. As described in the Wright Remand Final EA, these four tracts contain approximately 1.8 billion tons of coal. Please review the Wright Area RODs at the following link: <https://eplanning.blm.gov/epl-front-office/eplanning/legacyProjectSite.do?methodName=renderLegacyProjectSite&projectId=67033>

- **concerns with mine reclamation in Wyoming**

Response: As described throughout the Wright Area project, the Surface Mining Control and Reclamation Act of 1977 (SMCRA) is the federal law which regulates surface coal mining. SMCRA gives the Office of Surface Mining Reclamation and Enforcement (OSMRE) primary responsibility to administer programs that regulate surface coal mining operations and the surface effects of underground coal mining operations.

BLM has no authority under SMCRA to prescribe or enforce the reclamation of coal-mined lands in Wyoming. BLM does not authorize surface disturbance or permit mining operations, nor administer coal mining reclamation activities. Within the federal coal leasing program, BLM only has the authority to make decisions regarding the potential leasing of federal coal resources.

Reclamation laws for coal mining in Wyoming originate from the State of Wyoming's Open Cut Reclamation Act of 1969, the Wyoming State Environmental Quality Act of 1973, and SMCRA. These three acts together regulate coal mining. OSMRE and the Wyoming Department of Environmental Quality/Land Quality Division (WDEQ) are the reclamation authorities. The State of Wyoming enforces the federal and state acts through the WDEQ. Reclamation will be completed according to the applicant's WDEQ mine permit.

Finally, as described by the United States District Court ruling on August 14, 2015 regarding the Wright Area federal coal leasing case 12-CV-42-ABJ, "reclamation was considered by the agencies and NEPA's requirements and purposes have been satisfied."

- **concerns regarding the lawfulness of the Wright Area coal leases**
- **concerns with the Wright Area EIS and federal court ruling, remand, and use of an EA to meet court order**
- **concerns that BLM is not in compliance with court order and NEPA because no supplemental EIS was prepared**

Response: The Tenth Circuit Court did "remand with instructions to enter an order requiring the BLM to revise its EIS and RODs" (10th Cir 34), but "decline[d] to vacate the leases," stating that "because the Plaintiffs challenge a fairly narrow issue, the district court may vacate the entire FEIS and RODs, or it might fashion some narrower form of injunctive relief.... Id. In response, the District Court issued a narrow remand of the FEIS and RODs for revision pertaining to the assumption that there was no real world difference between issuing the Wright Area leases and declining them given the supply of other available coal that the BLM used in the analysis of the Wright Area FEIS No Action Alternative.

The targeted EA approach is a suitable way to further analyze, explain, and present information to the public and decision maker while also fulfilling the District Court's order to revise and improve the NEPA analysis of the Wright Area FEIS No Action Alternative and provide additional documentation for inclusion in the administrative record. This targeted EA provides additional clarity and information regarding complex NEPA analyses and presents additional data to further improve and revise the Wright Area FEIS No Action Alternative analysis, as ordered by the District Court. The targeted EA approach also provides the opportunity for public comment.

The EA addresses the scope of the District Court remand by revising the Wright Area FEIS No Action Alternative analysis and providing additional supporting documentation for inclusion in the administrative record. If the revised analysis of the Wright Area FEIS No Action Alternative had demonstrated significant impacts beyond those analyzed in the Wright Area FEIS, then a supplemental EIS would have been warranted. The revised analysis in the Remand Final EA demonstrates that the impacts from the Wright Area FEIS No Action Alternative did not rise to this level of significance; therefore, an SEIS is not warranted. As stated by the Tenth Circuit Court, the District Court had wide latitude to fashion a remand that would address the circuit court's concerns—ranging from “vacat[ing] the entire FEIS and RODs” to “some narrower form of injunctive relief.” (Tenth Cir. 4). The District Court did not vacate the Wright Area FEIS or the RODs, nor did it order a SEIS. Instead, the court ordered revision of the analysis and administrative record supporting the Wright Area FEIS No Action Alternative. The EA as prepared by the BLM satisfies the scope and intent of the remand.

- **concerns that the Remand Draft EA's Purpose and Need are too narrow in scope**
- **concerns that the Remand Draft EA did not consider all the alternatives that were analyzed in the Wright Area FEIS**
- **concerns that the Remand Draft EA did not develop additional new alternatives**

Response: The Remand Final EA has been revised to more clearly articulate the purpose and need. Please review Section 1.3 in the Remand Final EA as it describes the purpose, need, and decision to be made, which align with the court's direction to further analyze the Wright Area FEIS No Action Alternative and the potential effects on GHG emissions if the Wright Area coal leases had not been issued.

Sections 1.1, 1.2, 1.3, and Chapter 2 of the Remand Final EA discuss the background, purpose and need, and the proposed action. The Remand EA describes that its scope is limited to the remand from the Tenth Circuit Court of Appeals and the Federal District Court for the District of Wyoming: further analysis of the Wright Area FEIS No Action Alternative to clarify changes in coal supply and demand and associated national carbon dioxide emissions that may have taken place if BLM had rejected the Wright Area LBAs.

- **concerns that the Remand Draft EA did not provide “an honest accounting” of the environmental impacts**
- **concerns that the Remand Draft EA did not adequately address the direct, indirect, and cumulative impacts**

Response: Per the District Court's narrow remand, the Remand EA analyzes the Wright Area FEIS No Action Alternative to clarify changes in coal supply and demand and associated national carbon dioxide emissions that may have taken place if BLM had rejected the Wright Area LBAs. Chapter 4 of the Remand Final EA has been revised to provide a more robust analysis of electric power markets as it relates to coal markets and coal pricing (Sections 4.3 and 4.4), the economic theory of supply and demand (Section 4.2), the supply/demand of WY PRB coal (Section 4.4.2), and the impacts of the Wright

Area FEIS coal leasing decisions, in particular the No Action Alternative on GHG emissions (Section 4.5).

The Tenth Circuit Court upheld the Wright Area FEIS analysis of direct, indirect, and cumulative impacts and the District Court remand, as described above, was limited in scope. Please review the Remand Final EA for more information.

TECHNICAL ISSUES/CONCERNS RAISED

- **concerns that BLM did not use Social Cost of Carbon/Social Cost of GHG (SCC/SCGHG) metrics to disclose the actual climate consequences of the leasing actions**

Response: Appendix B in the Remand Final EA explains why the decision was made not to use SCC/SCGH metrics for this leasing decision. Specifically Appendix B discusses the approach taken in the Wright Area FEIS and the Remand Final EA that qualitatively discusses climate projections and the link to GHGs and quantifies GHG emissions for the various alternatives and how that effectively informs the decision-maker and the public of future climate effects at a variety of scales. Additionally, Appendix B explains that neither the Wright Area FEIS nor the Remand Final EA conducted an economic cost-benefit analysis so the full social benefits of energy production have not been monetized, and quantifying only the costs of GHG emissions but not the benefits would yield information that is both potentially inaccurate and not useful especially given that there are no current criteria or thresholds that determine a level of significance for SCC monetary values. Please see Appendix B in the Remand Final EA for more information.

- **concerns that the Remand Draft EA's economic analysis ignores basic market dynamics of supply and demand theory, in particular that a reduction in coal supply would increase prices thus discouraging coal consumption as would occur under the No Action Alternative**
- **concerns with coal price inelasticity and economic terminology**

Response: We revised Chapter 4 in the Remand Final EA to include more information and further clarification of terminology. Section 4.2 clearly defines terms used in supply and demand theory, including price elasticity and price inelastic. Section 4.2 further notes that when a good is price inelastic that it does not mean that there will be no change in the quantity demanded, but that the change in quantity demanded is less than the change in price. Chapter 4 of the Remand Final EA further describes the multiple factors that impact coal market demand and the resultant complexity and uncertainty in predicting the market. Chapter 4 also discusses the use of coal at electric generation facilities and the demand for coal at these facilities independent of market price fluctuations.

- **concerns with the Remand Draft EA's discussion of energy market effects of leasing**
- **concerns with the costs energy producers would incur if they substituted coal from outside the WY PRB for coal from the LBAs**
- **concerns that the Remand Draft EA did not discuss the different properties of coal inside and outside the WY PRB and how that could affect electric power markets under the Wright Area FEIS No Action Alternative**
- **concerns with energy market impacts related to the unprecedented influx of natural gas and retirements of coal-fired generators**

Response: We revised Chapter 4 of the Remand Final EA to include more information. BLM has expanded the discussion of the physical properties, locations, and costs associated with production of WY PRB coal and other coal available to meet demand if the Wright Area FEIS No Action Alternative had

been selected (see Section 4.4.2 in particular). The Remand Final EA also addresses transportation costs and reliability issues for WY PRB coal that can make higher priced coal located outside the WY PRB more competitive in certain electric power markets. The Remand Final EA acknowledges the role fuel costs can play in electricity generation as one of many factors that can influence planning and operation of the electric power system.

Section 4.6 has also been revised and expanded to address and further discuss public concerns associated with the increase in natural gas supplies resulting from hydraulic fracturing technology and retirements of coal-fired generators and the impact these had on electric power markets.

- **concerns with the Remand Draft EA's discussion of electricity market and fuel switching**
- **concerns that the Remand Draft EA did not adequately explain the relevance of fuel costs to generation use decisions both in the short-term and long-term**
- **concerns with the Remand Draft EA's focus on fuel switching for a single generator thereby ignoring the flexibility of a utility to use other non-coal generators in its fleet**
- **concerns that the Remand Draft EA did not discuss how increased cost of coal would disadvantage coal in relation to other energy sources for electricity generation thus resulting in decreased GHG emissions. For those areas dependent upon coal fueled power plants, an increase in coal cost would reduce overall electricity consumption.**

Response: Both the Remand Draft EA and the Remand Final EA acknowledge the role fuel costs can play in electricity generation as one of many factors that influence planning and operation of the electric power system. We revised the Remand Final EA and expanded the discussion in Section 4.3 specific to the various components of and complexities involved in the electric power system. The Remand Final EA further addresses transportation costs and reliability issues for WY PRB coal that can make higher priced coal located outside the WY PRB more competitive in certain electric power markets.

BLM further revised Chapter 4 of the Remand Final EA and provided an expanded discussion on the operation of the electric power system including factors that influence the dispatching of generation units. Additionally, Chapter 4 of the Remand Final EA provides a more detailed discussion on the unique nature of electricity as a commodity and that electricity consumption does not significantly change due to electricity price changes (demand/consumption is generally price inelastic).

Chapter 4 also addresses coal production trends and coal consumption trends for electric power generation as projected by the Energy Information Administration's (EIA) Annual Energy Outlook 2010. As noted in Section 4.4 of the Remand Final EA, according to the Annual Energy Outlook 2010, coal was projected to comprise the largest market share of total electricity generation in 2025 and 2035 under all five of the Annual Energy Outlook 2010 scenarios reviewed. Revised discussion of GHG emissions is also provided in Chapter 4. Please see Section 4.5 of the Remand Final EA for more information on GHG emissions.

- **concerns with the Remand Draft EA's discussion of coal availability, supply, and production**
- **concerns related to the availability of coal if the Wright Area LBA tracts had not been leased**
- **concerns that the data presented in the Remand Draft EA does not support the claim that there was enough coal in the WY PRB to equal the amount of coal that would not be mined under the Wright Area FEIS No Action Alternative**

- **concerns that the lack of coal supply under the Wright Area FEIS No Action Alternative would result in the loss of the largest U.S. coal mines producing the least expensive coal, thus causing an increase in coal prices and reduced coal consumption**
- **remarks indicating that the WY PRB has economically recoverable coal reserves that could be used in place of the LBA tracts**

Response: As described in Chapter 4 of the Remand Draft EA and the Remand Final EA, the volume of coal already leased and permitted for mining at the time of the Wright Area FEIS would allow mining to continue for approximately another ten years without any additional leasing or mining approvals. Thus the mining volume “status quo” could have continued for approximately 10 years regardless whether the LBAs were approved, meaning there would be no reduction in supply from the WY PRB in those ten years.

Further discussion is available in Section 4.4.2. in the Remand Final EA which clearly identifies that there are ample recoverable coal reserves in the WY PRB of the same coal rank that could be mined for similar cost if the subject LBA tracts were not issued. Furthermore, data indicates that there are considerable recoverable reserves available at the two subject mines that could replace the amount in the LBA tracts. In the short term, there appears to be no indication that rejecting these leases would impact the supply of coal produced due to the permitted reserves that were remaining at the mines. In the long run, it appears that there would be enough time for the mines in the WY PRB to adjust and lease other coal to meet demand if the market warranted it. Given the permitted reserves and the availability of other economically recoverable reserves, it is unlikely that the two subject mines would close if the LBA tracts were not leased.

Chapter 4 of the Remand Final EA further addresses how transportation costs and reliability issues for WY PRB coal that can make higher priced coal located outside the WY PRB more competitive in certain electric power markets. Both the Remand Draft EA and Remand Final EA discuss the availability of coal stockpiles that power plants often maintain in the event of unexpected short-term disruptions/changes in coal supplies and deliveries and thereby avoiding the use of a more expensive fuel.

Finally, Section 4.6 of the Remand Final EA provides more detail on coal production trends before and after the RODs were signed and trends in coal and natural gas prices in relation to the amount of PRB coal mined. The BLM acknowledges that as the cost of gas decreases compared to the cost of coal, more gas is anticipated to be used. However, as indicated and disclosed in Chapter 4 of the Remand Final EA, the cost of coal has not changed significantly, and it is unlikely to rise much within the PRB if these tracts were leased or not. The increased use of natural gas is due to technology and the cost of gas coming down to become more competitive with WY PRB coal. This is independent of any choice to lease coal or not.

- **concerns that the Remand Draft EA presents an inadequate economic analysis because it does not use NEMS or other economic model**

Response: The Remand Final EA explains the issues associated with using supply and demand theory to predict coal supply and demand and electricity power markets. Both the Remand Draft EA and Remand Final EA relied on EIA’s Annual Energy Outlook 2010 throughout the Chapter 4 analysis. Chapter 4 of the Remand Final EA incorporates a more robust analysis of supply and demand of coal and other fuel sources, capital, operational and maintenance costs of generation units, and the interacting components, owners, and regulations that influence electric power markets.

Both the Remand Draft EA and Remand Final EA explain why BLM did not use NEMS (see Appendix A). Also the Tenth Cir. Ct. upheld BLM’s decision not to use NEMS or other modeling in the Wright Area

Coal FEIS, stating: “NEPA does not require agencies to adopt any particular internal decision making structure. (Internal quotations and citation removed). Choosing not to adopt a modeling technique does not render the BLM’s EIS arbitrary and capricious.” Tenth Cir. Ct. at 29. In both the Remand Draft and Remand Final EA, BLM explained its rationale for how the NEMS and the EIA’s Annual Energy Outlook are utilized in the Chapter 4 analysis. Please see Appendix A in the Final EA for additional information.