

# Alton Coal Tract Lease by Application Record of Decision



August 2018

DOI-BLM-UT-C040-2015-0011-EIS



**U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT**

**ALTON COAL TRACT LEASE BY APPLICATION  
RECORD OF DECISION**

**Bureau of Land Management**  
Utah State Office

Prepared by  
**Bureau of Land Management**  
Kanab Field Office

August 2018



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Assistant Secretary, Land and Minerals Management



## CONTENTS

<b>1</b>	<b>Approval.....</b>	<b>1</b>
<b>2</b>	<b>Summary .....</b>	<b>2</b>
<b>3</b>	<b>The Decision .....</b>	<b>2</b>
3.1	What the Decision Includes .....	2
3.2	What the Decision Does Not Include .....	4
<b>4</b>	<b>Purpose and Need .....</b>	<b>4</b>
<b>5</b>	<b>Conformance with BLM Land Use Plans, Laws, and Policy.....</b>	<b>5</b>
5.1	Consistency with Other Plans, Statutes, and Objectives .....	5
<b>6</b>	<b>Other Alternatives Considered in the Final Environmental Impact Statement.....</b>	<b>6</b>
6.1	Alternative A: No Action .....	6
6.2	Alternative B: Proposed Action.....	7
6.3	Alternative C: Reduced Tract Acreage and Seasonal Restrictions .....	7
6.4	Alternatives Considered but Eliminated from Detailed Analysis.....	8
<b>7</b>	<b>Consultation and Coordination.....</b>	<b>8</b>
7.1	Cooperating Agencies.....	8
7.2	Air Resources Stakeholder Group .....	8
7.3	Night Sky Impact Assessment and Mitigation Working Group .....	9
7.4	Greater Sage-Grouse Mitigation Planning Working Group .....	9
7.5	Other Working Groups .....	10
7.6	NHPA Section 106 Consultation and Government-to-Government Consultation .....	10
7.7	Endangered Species Act Section 7 Consultation.....	11
<b>8</b>	<b>Public Involvement.....</b>	<b>11</b>
8.1	Public Scoping .....	11
8.2	Draft Environmental Impact Statement .....	12
8.3	Supplemental Draft Environmental Impact Statement .....	13
8.4	Final Environmental Impact Statement .....	14
<b>9</b>	<b>Literature Cited.....</b>	<b>14</b>

## Appendices

Appendix A. Map

Appendix B. Lease Stipulations

## Tables

Table 1. Public Scoping Meeting Dates, Times, and Locations .....	11
Table 2. Draft Environmental Impact Statement Public Meeting Dates, Times, and Locations .....	12
Table 3. Supplemental Draft Environmental Impact Statement Public Meeting Dates, Times, and Locations.....	13

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# 1 APPROVAL

I approve the Alton Coal Tract Lease by Application (LBA) as described in Section 3 of this record of decision (ROD) and as depicted in the map of the Selected Alternative (Alternative K1) in Appendix A of this ROD. My approval is also subject to the lease stipulations in Appendix B of this ROD; to the air quality adaptive management strategy, as summarized in Appendix B of this ROD and included in Section 4.3.1.1 of the Alton Coal Tract LBA final environmental impact statement (FEIS) (BLM 2018)<sup>1</sup>; to the programmatic agreement (Appendix N of the FEIS); and to the greater sage-grouse mitigation plan (Appendix E of the FEIS).

Approved By:



**AUG 29 2018**

Joseph R. Balash  
Assistant Secretary, Land and Minerals Management

Date

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<sup>1</sup> The *Alton Coal Tract Lease by Application Final Environmental Impact Statement* (FEIS) is referred to frequently throughout the ROD, and therefore the author-date citation is provided here at first mention only.

## 2 SUMMARY

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA) (42 United States Code 4331), the U.S. Bureau of Land Management Kanab Field Office (BLM-KFO) has prepared an FEIS, which analyzes the impacts of proposed leasing of the Alton Coal Tract (tract) (see Map A-1 in Appendix A). The tract is in Kane County, Utah, approximately 0.10 mile south of the town of Alton and 2.9 miles east of U.S. Highway 89 (US-89). In November 2004, Alton Coal Development (ACD) filed an LBA to mine federal coal in the tract, using primarily surface-mining methods (Case Number UTU 081895). This application was filed under the regulations at 43 Code of Federal Regulations (CFR) 3425, Leasing on Application. This original application included nearly 2,683 surface acres.

To process an LBA, the BLM must establish the fair market value of the coal in the tract by evaluating many factors, including the quantity and quality of the coal reserves. The Division of Lands and Minerals, Solid Minerals Branch at the BLM Utah State Office reviewed the application filed by ACD and determined that it met the regulatory requirements. The BLM reconfigured the tract delineation within the LBA to include approximately 898 additional acres (3,581 acres total). Acreage added to the tract during tract reconfiguration was based on additional surface acreage deemed necessary for mine operations and some additional recoverable reserves. As analyzed in the FEIS, the tract consists of approximately 2,280 acres of BLM-administered land and 1,296 acres of private land, totaling 3,581 acres and containing approximately 44.9 million tons of recoverable coal (considered as Alternative B in the FEIS). Alternatives C and K1 (discussed below in Section 6.4 and Section 3.1, respectively) analyze tract configurations that are a smaller subset of Alternative B. Under Alternative C, the tract consists of approximately 3,173 acres (2,280 acres of BLM-administered land and 893 acres of private land). Under Alternative K1, the tract consists of approximately 2,114<sup>2</sup> acres (1,227 acres of BLM-administered land and 887 acres of private land).

Chapter 1 and Chapter 2 of the FEIS include a detailed discussion of the application process and the alternatives considered within the FEIS, comprising Alternative A (No Action), Alternative B (Proposed Action), Alternative C (Reduced Tract Acreage and Seasonal Restrictions), and Alternative K1 (Reduced Tract Acreage) (BLM Preferred Alternative).

## 3 THE DECISION

The BLM has determined that the analysis contained in the FEIS is adequate for the purposes of reaching an informed decision regarding the approval of the Alton Coal Tract LBA. The successful lessee must obtain federal, state, and local permits, along with any applicable licenses, easement agreements, and other authorizing actions to proceed with all tract-related development (see FEIS Chapter 1, Section 1.5).

### 3.1 What the Decision Includes

The decision is hereby made to allow the competitive lease sale of approximately 2,114 acres (approximately 40.9 million tons of in-place coal and an estimated 30.8 million tons of recoverable coal) associated with the BLM's Selected Alternative, Alternative K1(Reduced Tract Acreage). The Selected

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<sup>2</sup> Acreages are approximate and are largely a result of the disparate sources for boundary data (BLM GIS shapefiles of coal ownership, ACD hardcopy map, and U.S. Geological Survey 7.5-minute quadrangles). Additionally, the ownership lines from the map provided by ACD do not align well in all locales with the BLM boundary. The Utah BLM Cadastral Chief has identified the correct legal platted acreage for the tract under Alternative K1 as 2,108.71 acres.



Alternative is described in detail in Section 2.5 of the FEIS and summarized here in Section 3.1.1. The Selected Alternative includes the stipulations and design features, which are provided in Appendix B.

### **3.1.1 The Selected Alternative: Alternative K1**

The Selected Alternative includes the following primary components:

- The tract will encompass approximately 2,114 acres, of which approximately 1,227 acres are federal surface and mineral estate and 887 acres are split estate (private surface and federal mineral estate) (see Map A-1 in Appendix A). Private surface owners may be qualified to give consent to mine federal minerals under the private surface owner's estate according to 43 CFR 3400.0-5. The surface owner consent process has been completed for the tract.
- Recoverable portions of in-place coal reserves will be mined over approximately 16 years using surface-mining methods where the depth of overburden is approximately 200 feet, and using underground methods (development mining, auger mining, highwall mining, longwall mining, and/or room and pillar mining) where the depth of overburden exceeds approximately 200 feet.
- Some reclamation will be concurrent during mining over the estimated 16-year life of the mine. At closure, a 10-year reclamation and revegetation monitoring period for the entire disturbed area is expected to occur.
- The tract includes approximately 40.9 million tons of in-place coal, and an estimated 30.8 million tons of coal will be recoverable. The BLM estimates that in areas where coal will be mined by surface-mining methods, approximately 90% of the estimated in-place coal reserves will be recoverable. However, in those portions of the tract that must be mined by underground mining methods, approximately 50% of the in-place coal reserves will be recoverable.
- It is anticipated that approximately 1,012 acres of surface disturbance will occur on the tract under the Selected Alternative. Of this, 869 acres will be the result of surface-mining operations (pit disturbance). Centralized facilities associated with mining activities on the tract will occupy 36 acres. Approximately 92 acres of dispersed facilities will be needed under the Selected Alternative. Underground mining will occur on approximately 613 acres in the northeast section of the tract.
- Portions of KFO Route 116 in the tract will need to be relocated so that no surface disturbance occurs within 100 feet on either side of the outside line of the road.

Several factors led to Alternative K1 being identified as the Selected Alternative. Alternative K1 was selected primarily because the tract configuration under this alternative provides for maximum economic recovery of the coal resources present in the tract while staying within the legal and policy limits applicable to the potential impacts. These legal and policy limits relate to the Clean Water Act (CWA), Greater Sage-Grouse (*Centrocercus urophasianus*), and environmental justice regarding potential aesthetic (visual and noise) and air quality impacts on the town of Alton. These legal and policy limits are described in more detail in the following paragraphs.

Section 404 of the CWA regulates the discharge of dredged or fill material into waters of the United States, including wetlands. The BLM must also comply with Executive Order (EO) 11990 (Protection of Wetlands [May 24, 1977]), which directs federal agencies to provide leadership and act to minimize the destruction, loss, or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands. Of the action alternatives analyzed in the FEIS, the Selected Alternative affects less than 0.10 acre of delineated wetlands.

The BLM-KFO resource management plan, as amended (BLM 2008, 2015), includes a variety of required measures to protect Greater Sage-Grouse and its habitat. Species-specific limitations include a lek buffer

requirement and a disturbance cap requirement. The Selected Alternative will create less surface disturbance in sage-grouse habitat than the other action alternatives and will completely avoid surface disturbance within 0.5 mile of the only lek on the tract.

The FEIS identifies the town of Alton as an environmental justice community that will experience disproportionate impacts. Though some potential for environmental justice effects may occur under the Selected Alternative, this alternative will result in fewer disproportionate impacts than the other action alternatives. The Selected Alternative will be the least visible and audible action to the town of Alton of all action alternatives. In addition, the Selected Alternative will not result in exceedances of the Clean Air Act's National Ambient Air Quality Standards or have disproportionate air resources impacts to the town of Alton. See Table 4.12.8 of the FEIS for a comparison of environmental justice effects from all alternatives.

Regulations under 40 CFR 1505.2(b) require that, in cases where an EIS has been prepared, the ROD must identify all alternatives that were considered, "specifying the alternative or alternatives which were considered to be environmentally preferable." The environmentally preferable alternative is the alternative that will promote the national environmental policy as expressed in the NEPA. Within the FEIS, the BLM also identifies preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. The BLM has identified and discussed all factors including any essential considerations of national policy, which were balanced by the agency in reaching this decision. Of the alternatives considered in the EIS, the selection of Alternative K1 meets the BLM's requirement to address all practicable means to avoid or minimize environmental harm and is therefore considered the environmentally preferable alternative.

## **3.2 What the Decision Does Not Include**

### **3.2.1 *Site-Specific Permits***

This decision does not directly authorize any mining of federally owned minerals, site-specific permits, or the construction of any facility on BLM-administered lands. Rather, the successful lessee is required to obtain additional federal, state, and local approval to develop, mine, and operate facilities on the affected public lands. Sections 1.5 and 1.6 of the FEIS include a detailed discussion of the further approvals necessary.

## **4 PURPOSE AND NEED**

The Selected Alternative meets the BLM's purpose and need and regulatory responsibilities, and it is in accordance with EO 13783 and Secretarial Order 3348. The purpose of the federal action is to respond to an LBA for federal coal reserves on up to 3,581 acres of BLM-administered and private surface in Kane County, Utah, near the town of Alton. The need for the federal action is established by the BLM's responsibilities under the Federal Land Policy and Management Act (FLPMA) and the Mineral Leasing Act (MLA), as amended by the Federal Coal Leasing Act Amendments of 1976. Private development of federal coal reserves is integral to the BLM coal leasing program under FLPMA and the MLA. Further, a primary goal of the Energy Policy Act of 2005 is to add energy supplies from diverse sources, including domestic oil, gas, and coal, as well as hydropower and nuclear power.

## 5 CONFORMANCE WITH BLM LAND USE PLANS, LAWS, AND POLICY

The Alton Coal Tract LBA was submitted, processed, and evaluated under BLM statutory mandates and authority governing federal coal leasing and other federal laws. These include the following:

- MLA, as amended by the Federal Coal Leasing Act Amendments of 1976
- Multiple-Use Sustained Yield Act of 1960
- NEPA, as amended
- FLPMA (BLM's multiple-use mandate)
- Surface Mining Control and Reclamation Act (SMCRA) of 1977
- Energy Policy Act of 2005

Chapter 1 of the FEIS includes a detailed discussion of conformance with applicable BLM land use plans, laws, regulations, and policies.

FLPMA and the Federal Coal Leasing Act Amendments require that lands considered for leasing be included in a comprehensive land use plan and that leasing decisions conform to that plan. The BLM-KFO RMP currently governs and addresses the leasing of federal coal in KFO, including portions of Kane County and Garfield County (BLM 2008). Coal leasing is addressed in the RMP under Management Actions, Mineral Resources Decision MA-MR-18, which states that “the BLM will determine whether a lease application area is ‘unsuitable’ for all or certain coal mining methods pursuant to 43 CFR, Part 3461.5” (BLM 2015:2-30). Decisions in the RMP do not allow mining where coal unsuitability criteria apply unless the lessee can show that mining would not adversely affect the value that is to be protected. Following a federal decision to lease and having secured a federal lease, the successful bidder would also be required to comply with the Utah Division of Oil, Gas and Mining’s (DOGM’s) coal mine permitting process, as well as to obtain mining plan approval from the U.S. Department of the Interior Assistant Secretary for Land and Minerals Management.

The RMP includes a final *Coal Unsuitability Report* indicating that the tract does not meet any of the coal unsuitability criteria under 43 CFR 3461 and is therefore available for further coal leasing consideration (following decision MIN-9) (BLM 2008). However, site-specific unsuitability determinations for some criteria (Criteria Nos. 2, 3, 9, 15, 16, 18, and 19) were deferred until the filing of an application to lease (following decision MIN-10). The above-listed criteria were assessed during the EIS process, and the BLM determined that the tract met all suitability criteria for leasing and mining. With application of the coal unsuitability criteria and conditions to protect the environment (determined through the FEIS, Section 1.7.2), the decision to lease coal under the action alternatives analyzed in the FEIS would be in conformance with the RMP.

### 5.1 Consistency with Other Plans, Statutes, and Objectives

No other federal land use plans apply to the Selected Alternative.

The Selected Alternative is consistent with the State of Utah Public Lands Policy and Coordination Office’s support for 1) uses of public lands for multiple-use, sustained-yield, and natural resource extraction; 2) the specific plans, programs, processes, and policies of state agencies and local governments; and 3) the development of the solid mineral resources of the state as an important part of the state economy and of local regions in the state (Utah Code Section 63-38d-401). The State of Utah also manages Greater Sage-Grouse in accordance with the *Conservation Plan for Greater Sage-Grouse in*

*Utah* (conservation plan) (UDWR 2013). By providing measures to protect high-quality habitat, enhance impaired habitat, and restore converted habitat, the conservation plan is designed to support the Utah portion of the range-wide population of Greater Sage-Grouse necessary to eliminate threats to the species and negate the need for the listing of the species under the Endangered Species Act (ESA).

Kane County has a land use ordinance (Kane County 2013) in place that dictates allowable land uses in designated zones. According to the land use ordinance, most of the Alton Coal Tract is on lands zoned by Kane County as agricultural. The land use ordinance indicates that surface and underground mines are not allowed in agriculturally zoned areas; however, zone modifications are not needed to access federal coal. Surface and underground mining on the tract would be consistent with the position of the Kane County Commission supporting natural resource extraction in the county. Further, the “Environment” section of the *Kane County, Utah General Plan* (Kane County 2011:24) indicates an objective to “[p]romote the development of the county’s mineral, water, manpower, industrial, historical, cultural, and other resources.” Finally, the Kane County Commission has submitted a formal letter to ACD and DOGM expressing support for ACD’s proposed operation for adjacent fee coal at the North Fee Area Mine. The *Garfield County General Plan* and general plan amendment (Five County Association of Government [FCAOG] 2007) indicate that the county economy is based largely on government, tourism, manufacturing, and agriculture (ranching). The county supports “aggressively pursuing coal and other mineral resource development,” including “the highest economically allowable development” of the Alton Coal Field and other regional coal reserves (FCAOG 2007).

The Town of Alton completed a master plan in 1981 (FCAOG 1981) in which development of the Alton Coal Field, including the tract analyzed in the FEIS, is recognized as a likely future scenario. The plan notes that coal development could result in a significant increase in the local population and that this could have an adverse effect on the quality of life in Alton. Goals and policies described in the plan do not specifically reference coal development; however, the plan indicates a desire to attract light industry of a low polluting or nonpolluting nature. Alton’s town council generally looks favorably on coal development in the area, as evidenced by a formal letter of support for mining operations on fee coal lands adjacent to the tract (Coal Hollow Mine and North Fee Area Mine) and by the council’s willingness to work with ACD on implementing these mining operation plans (e.g., leasing water rights and working cooperatively on a regular basis to assist with components of the proposed operation such as road relocations and the construction of short haul routes around the town of Alton).

Chapter 1 of the FEIS includes a detailed discussion of conformance with applicable plans, statutes, and objectives.

## **6 OTHER ALTERNATIVES CONSIDERED IN THE FINAL ENVIRONMENTAL IMPACT STATEMENT**

### **6.1 Alternative A: No Action**

Under Alternative A, the Alton Coal Tract would not be offered for competitive lease sale, and the coal included in the tract would not be mined at this time. Mining on private land adjacent to the tract (i.e., the Coal Hollow Mine and North Fee Area Mine) would continue. The Coal Hollow Mine consists of approximately 635 acres of land and approximately 5 million short tons of recoverable coal leased from private surface and mineral owners. The North Fee Area Mine is on private lands adjacent to the proposed tract to the north, which ACD began mining in February 2016. The North Fee Area Mine is expected to disturb approximately 378 acres over the life of the mine.

## 6.2 Alternative B: Proposed Action

Under the Proposed Action, the Alton Coal Tract would be offered for lease at a sealed-bid, competitive lease sale, subject to lease stipulations developed for the tract. Recoverable portions of in-place coal reserves would be mined over approximately 25 years using 1) surface-mining methods where the depth of overburden would be less than approximately 200 feet, and 2) underground methods (development mining, auger mining, highwall mining, longwall mining, and/or room and pillar mining; see Appendix D of the FEIS) where the depth of overburden would exceed approximately 200 feet. Approximately 2 million tons of coal per year would be mined once topsoil stockpiling and initial overburden removal have occurred. Some reclamation would be concurrent with mining over the course of the estimated 25-year life of the mine. At closure, a potential 10-year reclamation and revegetation monitoring period for the entire disturbed area would be anticipated.

The BLM independently evaluated the coal resources in the tract under this alternative. The BLM estimates that the tract under the Proposed Action consists of approximately 59.6 million tons of in-place coal and that an estimated 44.9 million tons of coal could be recoverable from the tract. BLM estimates that in areas where coal would be mined by surface-mining methods, approximately 90% of the estimated in-place coal reserves could be recoverable. However, in those portions of the tract that must be mined by underground mining methods, approximately 50% of the in-place coal reserves could be recoverable. These percentage recovery estimates are based on assumptions about the depth to which the use of surface-mining methods is feasible and the extent of the areas of the tract without coal. Section 2.3 of the FEIS (Alternative B: Proposed Action) includes a detailed discussion of Alternative B and its proposed mining methods.

## 6.3 Alternative C: Reduced Tract Acreage and Seasonal Restrictions

Under Alternative C, the Alton Coal Tract would be modified to remove 403 acres to exclude mining activities. Further, certain mining activities in the south portion of the tract would be subject to seasonal restrictions to reduce impacts to the local Greater Sage-Grouse population. Under Alternative C, the modified tract would be offered for a competitive lease sale, subject to lease stipulations developed for the tract. Recoverable portions of in-place coal reserves would be mined over approximately 21 years using surface-mining methods where the depth of overburden is approximately 200 feet or less, and using underground methods (development mining, longwall mining, and/or room and pillar mining) where the depth of overburden exceeds approximately 200 feet. Approximately 2 million tons of coal per year would be mined once topsoil stockpiling and initial overburden removal have occurred. Some reclamation would be concurrent with mining over the course of the estimated 21-year life of the mine. At closure, a potential 10-year reclamation and revegetation monitoring period for the entire disturbed area would be anticipated.

The BLM independently evaluated the coal resources included in the tract under this alternative. The BLM estimates that under Alternative C, the tract includes approximately 52.1 million tons of in-place coal and that an estimated 39.2 million tons of coal could be recoverable from the tract. The BLM estimates that in areas where coal would be mined by surface-mining methods, approximately 90% of the estimated in-place coal reserves could be recoverable. However, in those portions of the tract that must be mined by underground mining methods, approximately 50% of the in-place coal reserves could be recoverable. These percentage recovery estimates are based on assumptions regarding the depth to which the use of surface-mining methods is feasible and the extent of the areas of the tract without coal. Section 2.4 of the FEIS (Alternative C: Reduced Tract Acreage and Seasonal Restrictions) includes a detailed discussion of Alternative C.

## **6.4 Alternatives Considered but Eliminated from Detailed Analysis**

The BLM considered 19 other alternatives but eliminated them from detailed analysis. Section 2.7 of the FEIS discusses each of these alternatives and the rationales for why they were eliminated from detailed analysis.

## **7 CONSULTATION AND COORDINATION**

Council on Environmental Quality regulations implementing NEPA require that federal agencies provide meaningful opportunities for the public and stakeholders to provide input and to identify their concerns during an EIS process. Federal laws such as the ESA, the CWA, and the National Historic Preservation Act (NHPA) mandate public involvement and consultation with agencies or federally recognized tribal governments. This section discusses the specific consultation and coordination efforts undertaken by the BLM throughout the entire process of developing the FEIS. A detailed discussion of the consultation and coordination efforts is included in Chapter 5 of the FEIS.

### **7.1 Cooperating Agencies**

In fall 2006, the BLM invited the Office of Surface Mining Reclamation and Enforcement (OSMRE) to participate in the EIS process as a cooperating agency. Following the scoping process, cooperating agency status was also extended to the State of Utah (including its agencies). After publication of the Alton Coal Tract LBA draft environmental impact statement (DEIS), the following entities were added as formal cooperating agencies for the EIS process pursuant to NEPA: U.S. Environmental Protection Agency (EPA), National Park Service (NPS) (Bryce Canyon National Park), and Kane County. The offer of cooperating agency status was extended to the U.S. Fish and Wildlife Service (USFWS), U.S. Army Corps of Engineers (USACE), and Garfield County, but the BLM received no formal responses to confirm acceptance. Although not formal cooperators, the USFWS, USACE, and Garfield County have had the opportunity to participate in stakeholder and working group processes as well as to review the analysis in the administrative DEIS version prior to public release (in addition to having had the opportunity to provide scoping comments and public comments on the DEIS and Alton Coal Tract LBA supplemental draft environmental impact statement (SDEIS) during their respective public comment periods). All cooperating agencies were encouraged to participate in the processes and reviews.

### **7.2 Air Resources Stakeholder Group**

In November 2008, the BLM created an Air Resource Stakeholder Group. This group included participants from the EPA, OSMRE, State of Utah (DOGM, State Attorney General's Office, Public Lands Policy Coordination Office, and Utah Division of Air Quality), NPS, ACD (including its contractors), and the BLM. Third-party contractor representatives also participated in the stakeholder group as the members of the analysis team. This stakeholder group provided input into the development of the air resources analysis protocol that was used as the basis for the emissions inventory and the analysis of potential air resources impacts in the FEIS. Section 4.3 of the FEIS contains the results of the analysis, whereas the technical support document, which provides additional details on methodologies and results, can be found in Appendix L of the FEIS.

The group was reconvened following publication of the DEIS to determine which changes should be made to the air resources modeling, analysis, and approach in the SDEIS to adequately address public and

agency comments on the DEIS. From December 2012 through June 2013, the group worked on a revised approach for the technical report and SDEIS, mitigation measures, and monitoring plans. Modifications to the air resources analysis are detailed in Sections 3.3 and 4.3 of the FEIS and in the *Supplement to Air Resources Impact Assessment Technical Report for the Alton Coal Lease by Application*, found in Appendix L of the FEIS. Project design features, the adaptive management strategy (including monitoring), and potential mitigation measures can be found in Sections 4.3.1, 4.3.1.1, and 4.3.5 of the FEIS, respectively. Section 5.4 of the FEIS provides a full listing of participants and contributors to the Air Resources Stakeholder Group. The resulting air quality adaptive management strategy is summarized in Appendix B of this ROD and included in Section 4.3.1.1 of the FEIS.

## **7.3 Night Sky Impact Assessment and Mitigation Working Group**

In September 2008, the BLM engaged the NPS Night Sky Program Manager, Chad Moore, to assist with the impact analysis for night sky. A night sky analysis contractor, Dark Sky Partners (an LLC based in Arizona), was also engaged in this process as a subconsultant to the BLM's third-party contractor (SWCA Environmental Consultants [SWCA]). Together, the BLM, NPS, ACD, Dark Sky Partners, and SWCA agreed on the impact analysis approach for the DEIS, including observation points and model inputs. The impact analysis for the DEIS was evaluated by NPS, and the results are detailed in Section 4.2 of the FEIS and Appendix K of the FEIS.

In May 2012, the BLM reconvened this group, adding Kane County, to address comments on the Alton Coal Tract LBA DEIS and to address issues requiring agency coordination regarding impacts to dark skies. In response to comments on the DEIS, the primary objectives of the group were to update the modeling and technical analyses and approach and update the technical report for publication in the SDEIS and FEIS. The updated technical report was completed in early 2014 (see Appendix K of the FEIS). Because of group discussions and addressing comments received, the group produced a mitigation memorandum outlining strategies for avoiding and reducing impacts, where possible, to the region's dark skies because of leasing and mining the Alton Coal Tract. The results of this memorandum are reflected in the mitigation strategies presented in Section 4.2.5 of the FEIS. A list of the working group participants is included in Section 5.4 of the FEIS.

## **7.4 Greater Sage-Grouse Mitigation Planning Working Group**

Many comments were received on the DEIS concerning potential impacts to the Greater Sage-Grouse because of leasing and mining the tract. The BLM decided to address public and agency concerns regarding sage-grouse by a formal working group process that began in April 2012. The working group was directed to produce a plan describing a strategy for avoiding and reducing impacts, where possible, to the sage-grouse population potentially affected by leasing and mining the Alton Coal Tract. A formal sage-grouse mitigation plan was developed for inclusion in the SDEIS (see Appendix E of the FEIS). Updates to the SDEIS sage-grouse analysis were also made because of the working group process and can be found in Sections 3.18 and 4.18 of the FEIS and in Appendix E of the FEIS. See Section 5.4 of the FEIS for a list of working group participants and contributors to the plan.

## 7.5 Other Working Groups

The BLM also established working groups to address other resource concerns during the NEPA process. These groups included a Noise Modeling Working Group, a Socioeconomics and Environmental Justice Working Group, and a Water Resources Working Group. Detailed discussions of these working groups are included in Sections 5.2.8, 5.2.9, and 5.2.10 of the FEIS.

## 7.6 NHPA Section 106 Consultation and Government-to-Government Consultation

Section 106 of the NHPA and its implementing regulations (36 CFR 800) require that federal agencies consider the potential effects of their actions on historic properties. Historic properties under the NHPA are properties that are included in the National Register of Historic Places (NRHP) or that meet the criteria for the NRHP. Section 106 of the NHPA requires that a federal agency, upon determining that activities under its control could affect historic properties, consult with the Advisory Council on Historic Preservation, the appropriate state historic preservation office (SHPO) officer and/or tribal historic preservation officer, and with consulting parties as defined by 36 CFR 800.2.

The BLM and OSMRE, in consultation with the Utah SHPO, developed a programmatic agreement (Appendix N of the FEIS) pursuant to 36 CFR 800.14 that would provide for a comprehensive consideration of possible effects to historic properties. The BLM, in consultation with SHPO, developed a plan to involve the public and identified potential consulting parties. Potentially interested consulting parties were contacted by a letter dated March 6, 2012, and were invited to participate in the development of the agreement. Meetings with consulting parties were held on March 22, 2012; May 16, 2012; October 4, 2012; December 13, 2012; and February 21, 2013 to discuss details of the programmatic agreement.

The programmatic agreement developed for the Alton Coal Tract LBA

- requires ongoing consultation with Indian tribes;
- defines the area of potential effects and provides processes for identification of historic properties;
- details reporting requirements and report review periods for historic property inventories and mitigation reports;
- specifies that a historic property treatment plan be developed that addresses adverse effects to historic properties and that provides measures to avoid, minimize, or mitigate those effects; and
- provides for ongoing involvement of consulting parties.

In August 2005, the BLM sent tribal consultation letters to eight tribes that were determined to have cultural ties to the area affected by the proposed lease. Of those eight tribes, the Hopi, Zuni, and Paiute Indian Tribe of Utah responded in writing. They requested copies of the cultural resources survey reports and indicated that they will continue formal consultation if any prehistoric cultural resources are adversely affected by mining on the tract. As part of the government-to-government consultation process, the BLM also conducted a field visit with the Kaibab Band of Paiute Indians. Additionally, all eight tribes were invited to participate as consulting parties in development of the programmatic agreement by letter dated March 6, 2012, though none elected to participate.

A detailed discussion of NHPA Section 106 consultation and government-to-government consultation is included in Section 5.2.2 of the FEIS (Section 106 and Government-to-government Consultations).



## 7.7 Endangered Species Act Section 7 Consultation

Section 7 of the ESA requires federal agencies to ensure that their actions do not jeopardize the continued existence of threatened or endangered species or result in the destruction of their designated critical habitat. It also requires consultation with the USFWS in making that determination.

The BLM initiated consultation with the USFWS by informal email correspondence and teleconference meetings. The BLM obtained from the Utah Ecological Services Field Office of the USFWS a list of endangered or threatened species (or species proposed for listing) that may occur on the tract or that may be affected by mining on the tract. The BLM received a letter from the USFWS on October 6, 2017, concurring with the BLM's determination that the Selected Alternative was not likely to adversely affect threatened or endangered species and that a biological assessment was not needed (USFWS 2017).

## 8 PUBLIC INVOLVEMENT

### 8.1 Public Scoping

The public scoping process was initiated on November 28, 2006, when the BLM published a notice of intent (NOI) to prepare an EIS to offer the Alton Coal Tract for competitive leasing. Public scoping meetings were advertised in a variety of formats, at least two weeks prior to their scheduled dates. In each format, the advertisements explained the purpose of the public meetings, gave the schedule for the public comment (scoping) period, outlined additional ways to comment, and provided methods of obtaining additional information.

Five public scoping meetings were held at various locations and dates (Table 1). Each meeting was conducted in an open-house format, with BLM and ACD personnel present to answer questions and provide information. Other resources available at the public scoping meetings included informational display boards, one video explaining the conceptual mining and reclamation sequence, one video explaining a potential transportation route including truck details, and comment forms on which to submit comments at the meetings. Informational display boards and comment forms are available in the *Alton Coal Tract LBA EIS Public Scoping Report* (SWCA 2007) prepared following completion of the scoping process. Copies of the videos are available at the BLM-KFO. The 90-day scoping period closed on February 26, 2007.

**Table 1.** Public Scoping Meeting Dates, Times, and Locations

Date	Time	City	Address
January 30, 2007	5:00–8:00 p.m.	Alton	Alton Town Hall 11 South 100 West, Alton, Utah 84710
January 31, 2007	5:00–8:00 p.m.	Kanab	Kanab City Library 374 North Main Street, Kanab, Utah 84741
February 1, 2007	5:00–8:00 p.m.	Panguitch	Triple C Arena 50 East 900 North, Panguitch, Utah 84759
February 6, 2007	5:00–8:00 p.m.	Cedar City	Cedar City Library 303 North 100 East, Cedar City, Utah 84720
February 7, 2007	5:00–8:00 p.m.	Salt Lake City	Salt Lake City Public Library 210 East 400 South, Salt Lake City, Utah 84111

By the end of the public scoping period, 7,788 responses were received. The bulk of these (7,352) were form letters received by email. The remainder were unique emails (167); email form letters with additional text (178); and letters received by mail, facsimile, or at scoping meetings (91). For a complete listing of responses received and descriptions of the scoping comment analysis process and scoping comments received, a copy of the *Alton Coal Tract LBA EIS Public Scoping Report* (SWCA 2007) is available at the BLM-KFO, the BLM Utah State Office, and on the BLM's ePlanning website.

## 8.2 Draft Environmental Impact Statement

Concurrent with publication and release of the DEIS, the EPA and the BLM each published a notice of availability (NOA) for the DEIS in the *Federal Register* on Friday, November 4, 2011 (*Federal Register* 76:68501–68502). Public meetings were advertised in a variety of formats prior to their scheduled dates. The BLM NOA also included a notice of public hearing on the maximum economic recovery and fair market value associated with the proposed lease sale pursuant to 43 CFR 3425.4. This public hearing was held at the Festival Hall Convention Center public meeting in Cedar City, Utah, on December 6, 2011.

Five public meetings on the DEIS, including the public hearing on the maximum economic recovery and fair market value associated with the proposed lease sale, were held at various locations and dates (Table 2). The discussion at the public hearing was transcribed. Each meeting was conducted in an open-house format, with BLM personnel present to answer questions and provide information. Other resources available at the public meetings on the DEIS included 21 informational display boards used to help explain the NEPA process and describe the impacts of the Proposed Action in more detail. Handouts of these posters were also available for the public to review. Attendees were provided 1) comment forms on which to submit comments at the meetings, and 2) advice, based on BLM NEPA handbook guidance, on how to comment effectively on an EIS document. Hard copies and compact discs of the DEIS were available for review during the meeting and available to attendees upon request.

The original comment period on the DEIS of 60 days from NOA issuance was extended to 85 days because of public requests to extend the comment period. The comment period on the DEIS started November 4, 2011, and ended January 27, 2012.

**Table 2.** Draft Environmental Impact Statement Public Meeting Dates, Times, and Locations

Date	Time	City	Address
November 29, 2011	6:00–8:00 p.m.	Alton	Alton Town Hall 11 South 100 West, Alton, Utah 84710
November 30, 2011	6:00–8:00 p.m.	Kanab	Kanab City Library 374 North Main Street, Kanab, Utah 84741
December 1, 2011	6:00–8:00 p.m.	Panguitch	Panguitch City Hall and Library 25 South 200 East, Panguitch, Utah 84759
December 6, 2011 Included public hearing	6:00–8:00 p.m.	Cedar City	Festival Hall Convention Center 96 North Main, Cedar City, Utah 84720
December 7, 2011	6:00–8:00 p.m.	Salt Lake City	Salt Lake City Public Library 210 East 400 South, Salt Lake City, Utah 84111

During the 85-day comment period, the KFO received 154,194 comment submittals on the DEIS. The bulk of these (144,146) were form letters (seven types). The BLM received a total of 933 unique (nonform) submittals and 9,115 form letters that had additional unique text. Submittals were received by email, mail, facsimile, or written comment at public meetings. Submittals were also received by transcript

during the public hearing that took place on December 6, 2011, in Cedar City (see Section 5.1.2 of the FEIS).

In all, the 154,194 submittals received resulted in 15,053 comments, many of which were redundant. Approximately half of the comments (7,145) indicated general opposition to the lease, whereas 130 indicated general support of the lease. Of the 7,145 comments in general opposition to the lease, over half (4,391 or 61%) indicated that their opposition was primarily because of the proposed tract's proximity to Bryce Canyon National Park. Approximately 3,300 comments received (22%) were beyond the scope of the decision to be made by the BLM, primarily because many of these comments cited the need for renewable energy development on public land rather than further fossil fuel resource extraction. Substantive and nonsubstantive comments received by the BLM on various topics focused on either resource concerns or the BLM's decision process. All substantive public comments received on the DEIS were considered in the development of the SDEIS.

The BLM's original intent was that an FEIS would be prepared following the public comment and response period on the DEIS, in which all responses to comments on the DEIS would be published in table format. However, because of the nature of comments received on the DEIS, the BLM made the decision to issue a detailed SDEIS (which included a 90-day public comment period) followed by an FEIS. As a result, the BLM has addressed the substantive comments received on the DEIS in the text, content, and analyses presented in the SDEIS and has provided a summary of responses to comments on the DEIS and more formal responses to comments on the SDEIS in Appendix C of the FEIS.

### 8.3 Supplemental Draft Environmental Impact Statement

Concurrent with publication and release of the SDEIS, the EPA and BLM each published an NOA for the SDEIS in the *Federal Register* in June 2015. The BLM NOA would typically also include a notice of public hearing on the maximum economic recovery and fair market value associated with the proposed lease sale pursuant to 43 CFR 3425.4; however, the BLM fulfilled its obligation to do so as part of the DEIS public involvement process (see Section 5.1.2 of the FEIS). Public meetings on the SDEIS were held in the same locations as those that occurred for the DEIS: Alton, Kanab, Panguitch, Cedar City, and Salt Lake City, Utah (Table 3). The comment period on the SDEIS was initially scheduled to end 60 days from the NOA publication date; however, it was extended for an additional 30 days, ending on September 10, 2015.

**Table 3.** Supplemental Draft Environmental Impact Statement Public Meeting Dates, Times, and Locations

Date	Time	City	Address
July 14, 2015	6:00–8:00 p.m.	Cedar City	Heritage Center 105 North 100 East, Cedar City, Utah 84720
July 15, 2015	6:00–8:00 p.m.	Panguitch	Garfield County Courthouse Commission Chambers 55 South Main Street, Panguitch, Utah 84759
July 16, 2015	6:00–8:00 p.m.	Salt Lake City	Red Lion Hotel 161 West 600 South, Salt Lake City, Utah 84101
July 21, 2015	6:00–8:00 p.m.	Kanab	BLM Kanab Field Office 669 South Highway 89A, Kanab, Utah 84741
July 22, 2015	6:00–8:00 p.m.	Alton	Alton Town Hall 11 South 100 West, Alton, Utah 84710

During the 90-day comment period, the BLM-KFO received 39,846 comment submittals on the SDEIS. The bulk of these (39,102) were form letters (three types). The BLM received a total of 206 unique (nonform) submittals, two duplicate submittals, and 536 form letters that had additional unique text. Submittals were received by email, mail, facsimile, or written comment at public meetings.

In all, the 39,846 submittals received resulted in 1,495 comments. Substantive and nonsubstantive comments received by the BLM on various topics focused on either resource concerns or the BLM's decision process. Many commenters expressed similar or identical concerns. Because there were so many shared concerns among commenters, public concern statements were drafted to capture the similar or identical concerns in representative statements. Appendix C of the FEIS includes a list of all the public concern statements associated with the SDEIS, as well as the BLM's responses to those concerns. Appendix C of the FEIS also includes a list of all the comments submitted by consulting agencies, cooperating agencies, and the applicant, as well as the BLM's responses to those comments.

## 8.4 Final Environmental Impact Statement

The BLM published an NOA for the FEIS and made it available on its ePlanning website on July 13, 2018. The EPA published an NOA for the FEIS on July 20, 2018, which began a 30-day availability period. BLM received two comment letters during the availability period, one from the EPA and one from several environmental organizations. BLM evaluated and considered both comment letters including the exhibits submitted from the environmental organizations. BLM determined that neither submission raised any significant new circumstances or information relevant to the environmental effects that have bearing on the proposed action or its impacts. BLM has decided to hold a competitive lease sale for the federal coal in the tract as described under the Selected Alternative (Alternative K1) and issue this ROD.

## 9 LITERATURE CITED

*Please also refer to Chapter 6 of the FEIS (References).*

Bureau of Land Management (BLM). 2008. *Kanab Field Office Record of Decision and Approved Resource Management Plan*. BLM-UT-PL-09-006-1610, October 2008. Kanab, Utah: U.S. Department of the Interior, BLM, Kanab Field Office.

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U.S. Fish and Wildlife Service (USFWS). 2017. USFWS letter sent to BLM concurring with BLM determination that the Proposed Action is not likely to adversely affect Utah Prairie Dog, dated October 2017. On file at SWCA Environmental Consultants, Salt Lake City, Utah.

Utah Division of Wildlife Resources (UDWR). 2013. *Conservation Plan for Greater Sage-Grouse in Utah*. Available at: [http://wildlife.utah.gov/uplandgame/sage-grouse/pdf/greater\\_sage\\_grouse\\_plan.pdf](http://wildlife.utah.gov/uplandgame/sage-grouse/pdf/greater_sage_grouse_plan.pdf) as of December 17, 2013.

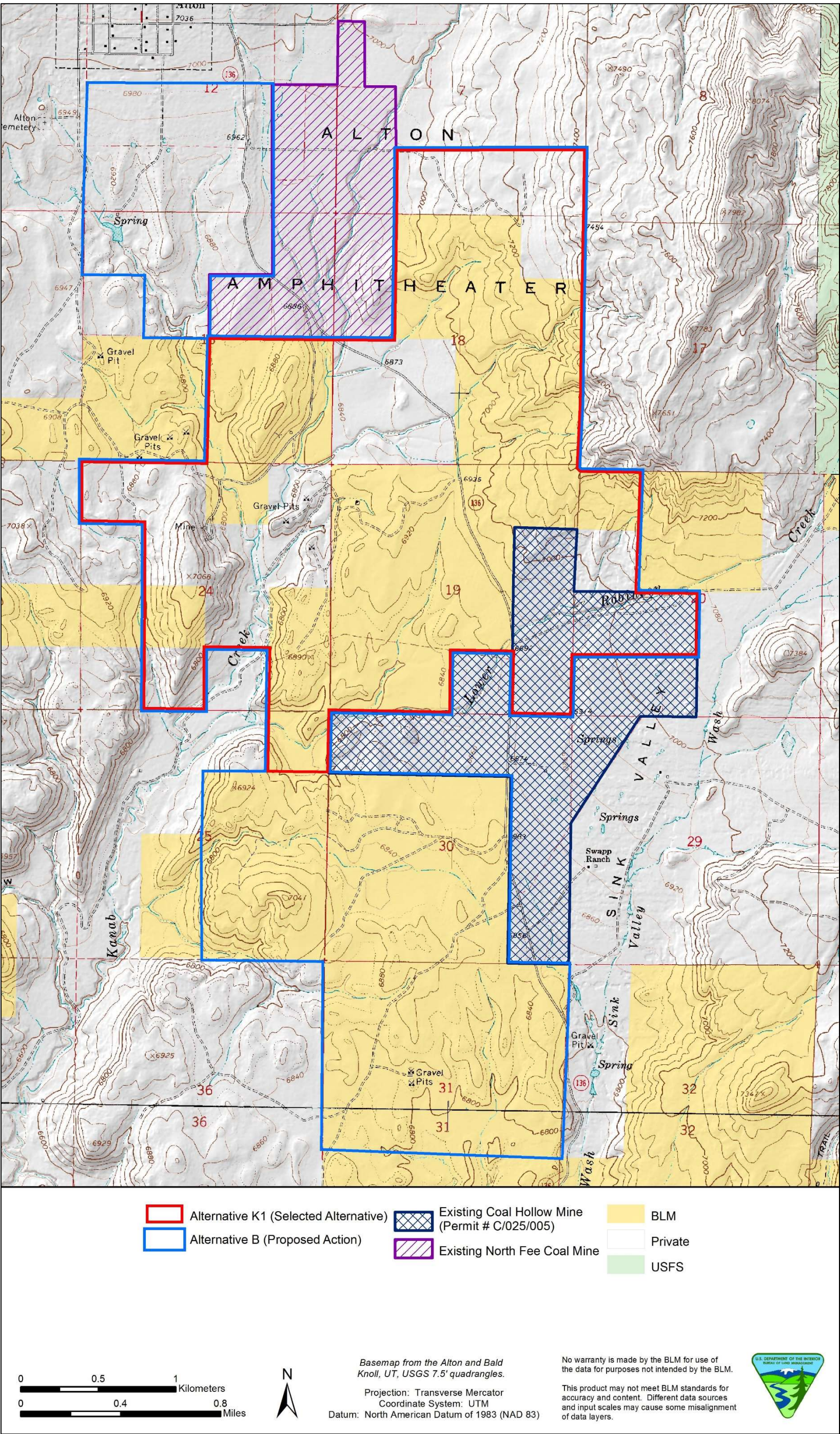
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## **Appendix A**

### **Map**







Map A-1. Alternative K1 (Selected Alternative) and Alternative B (Proposed Action).



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## **APPENDIX B**

### **Lease Stipulations**



# LEASE STIPULATIONS

In accordance with 40 Code of Federal Regulations (CFR) 1505.2(c) and all applicable laws, regulations, rules, and policies, all practical means to avoid or minimize environmental impacts associated with the selection of Alternative K1 have been adopted. This appendix provides a summary of measures that will reduce the identified impacts of Alternative K1 (the Selected Alternative).

Required regulatory compliance measures included in the Selected Alternative are extensive. These required measures are not described in this appendix but can be found in Section 2.6 of the Alton Coal Tract lease by application (LBA) final environmental impact statement (FEIS) (Bureau of Land Management [BLM] 2018<sup>1</sup>). FEIS Table 1.5.1 and FEIS Table 2.6.1 include a summary of mandatory permits, approvals, and regulatory compliance requirements incorporated into the Selected Alternative.<sup>2</sup> The Lessee and its agents and employees shall comply with and be bound by all required measures; regulatory compliance requirements; all applicable local, state, and federal laws, rules, regulations; and the stipulations described below.

- 1. Air resources.** Prior to the Lessee conducting surface-disturbing activities on the tract, an air monitoring plan must be submitted to the State of Utah for review and approval. The plan shall use the air monitoring adaptive management strategy found in Section 4.3.1.1 of the FEIS. The plan shall describe how the Lessee will conform to the provisions of the plan and the locations of where the activities will be conducted for plan compliance. The adaptive management strategy consists of the following three elements to be implemented in the order listed:

Element 1: Conduct targeted air monitoring to address potential impacts to air quality or air quality–related values (AQRVs) in Bryce Canyon National Park and the town of Alton.

Element 2: If monitoring shows episodic spikes in concentrations coupled with measured degradation in visibility or deteriorating air quality, refine air quality analyses and/or conduct modeling assessments needed to determine whether these spikes and degradations are reasonably attributable to mine operations.

Element 3: If elements 1 and 2 suggest that air quality degradation is reasonably attributable to mining activities, the Lessee will, with final approval by the BLM in consultation with the National Park Service (NPS) and the BLM Air Resources Technical Advisory Group (ARTAG), implement additional environmental protection and mitigation measures. Mitigation effectiveness will be assessed and demonstrated through the monitoring network.

Each element of this strategy will be funded and implemented by the lessee and will be approved by the BLM (in consultation with the NPS and ARTAG) upon issuance of the lease. To assess baseline conditions, monitoring operations will begin at least one year prior to any mining activities on the tract and will continue for a minimum of four years or longer if information indicates continuation of the strategy is necessary. The start date for monitoring will be contingent on the timing of the permitting process. Other air measures required, include the following:

- Use ultra–low sulfur diesel fuel (15 parts per million) for nonroad vehicles and generators.

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<sup>1</sup> The Alton Coal Tract Lease by Application Final Environmental Impact Statement (FEIS) is referred to frequently throughout this document, and therefore the author-date citation is provided here at first mention only.

<sup>2</sup> Design features, stipulations, and mitigation measures would be applied consistent with IM-2018-093 (Compensatory Mitigation).

- Use generators and nonroad diesel engines that meet Tier 4 final emission standards.
- Prepare a monitoring plan in time for the monitoring network to be fully implemented so that a full year of data can be collected before operations begin.
- Do not permit surface mining where overburden depths exceed an average of 200 feet.
- Conduct continuous ambient air monitoring for particulate matter of 10 micrometers or less (PM<sub>10</sub>), particulate matter of 2.5 micrometers or less (PM<sub>2.5</sub>), nitrogen dioxide (NO<sub>2</sub>), and visibility according to the adaptive management strategy (all other elements of the adaptive management strategy are also incorporated as design features).
- Install fencing to restrict public access to active mining areas.
- Require diesel oxidation catalysts on heavy equipment.
- Implement a dust control plan with the minimum requirements specified in Section 4.3.1 of the FEIS.
- Enclose most coal transfer points and processing activities during coal production to reduce fugitive dust emissions.
- Use post-combustion controls on nonroad vehicles.
- Use watering or a combination of chemical suppressants and watering to reduce fugitive dust from unpaved roads and disturbed areas.
- Use watering before predicted high-wind events to reduce windblown dust from portions of the tract, overburden storage piles, and coal storage piles.
- See Section 4.3.1 and Table 4.3.1 of the FEIS for tract-specific design assumptions and adhere to the applicable design assumptions described in this table.

2. **Cultural and historic resources programmatic agreement.** The Lessee shall comply with the programmatic agreement between the BLM Kanab Field Office (BLM-KFO), Office of Surface Mining Reclamation and Enforcement (OSMRE), Utah Division of Oil, Gas and Mining (DOGM), and Utah State Historic Preservation Officer regarding the Alton Coal Tract LBA (Appendix N of the FEIS).
3. **Noise.** The Lessee will abide by the DOGM-approved mining plan permit, which will include a blasting plan that addresses noise impacts on wildlife, residents of the town of Alton, and points in Bryce Canyon National Park. The BLM, U.S. Fish and Wildlife Service (USFWS), NPS, and Utah Division of Wildlife Resources (UDWR) will be allowed to comment on the plan before it is approved by the DOGM and before any blasting activity takes place.
4. **Night sky/mine lighting plan.** Subject to approval by the BLM Authorized Officer (AO), the Lessee will develop a detailed mine lighting plan as part of the mining plan. In developing the mine lighting plan, further consultation will be required with NPS to fully examine techniques, technology/equipment, and mitigation measures available to effectively minimize effects on night sky quality, realizing technology may be improved at the time a lighting plan is developed, carrying forward an adaptive management approach, including the following:
  - Light from all light sources (fixed position light poles, portable light towers, and equipment lighting) shall not exceed 3,150,000 initial lumens subject to approval by the BLM AO.
  - Use full shielding on fixed position light poles at centralized facilities.

5. **Wildlife and special status species.** Subject to approval by the BLM AO, the Lessee will implement a wildlife management plan as part of the mining plan that is in conformance with resource planning requirements in the BLM-KFO resource management plan, as amended (RMP) (BLM 2008), and the minimum requirements specified in Section 4.17.6 and 4.18.3 of the FEIS. This plan will also be part of the DOGM-approved mine permit for the operation. The DOGM permit plan will include the following:
- During all operations, inform and educate employees about wildlife protection issues.
  - Minimize new surface facility construction activities in big game crucial summer habitat from May 15 to July 15. Prior to surface-disturbing activities, develop a migratory bird and raptor conservation plan that includes a delivery schedule for surveys and monitoring. At a minimum, the plan shall outline nest surveys, avoidance, and minimization mitigation measures for impacts to migratory birds, birds of conservation concern, raptors, and their habitat.
  - Use barricades or fences where necessary to protect the wildlife, livestock, and the public.
6. **Sage-grouse mitigation plan.** Prior to the Lessee conducting surface-disturbing activities on the lease, a sage-grouse mitigation compliance plan must be submitted to the BLM AO for review and approval. The plan shall conform to the *Greater Sage-Grouse Mitigation Plan* as found in Appendix E of the FEIS. The Lessee shall use sage-grouse decisions identified in the BLM-KFO RMP, as amended. The plan shall describe how the Lessee will conform to the provisions of the plan and the locations of where the activities will be conducted for plan compliance.
7. **Aerial powerlines.** Aerial powerlines used on the tract in conjunction with the mining of coal from this lease shall be constructed to provide adequate protection for raptors and other large birds, incorporating USFWS Utah Field Office guidelines for raptor protection (Romin and Muck 2002). When feasible, powerlines will be located at least 100 yards from public roads.
8. **Surface subsidence.** Except at locations specifically approved by the BLM AO, highwall and or underground mining operations shall be conducted in such a manner 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 Lessee shall provide specific measures for the protection of escarpments, and determine corrective measures to assure that hazardous conditions are not created.
9. **Ventilation breakout portals.** To avoid surface disturbance on steep canyon slopes and to preclude the need for surface access, all surface breakouts for ventilation tunnels shall be constructed from inside the mine, except at specific locations approved by the BLM AO.
10. **Underground mine portal closures.** Or as determined acceptable by the BLM AO, the Lessee shall solid block masonry seal all underground mine portals and place 25 feet or more of non-combustible material.
11. **Highwall Mining openings.** All openings created for highwall mining activities will be sufficiently sealed with at least 25 feet of noncombustible fill measured from inside the openings. This can be part of the pit reclamation.
12. **Toxic – hazardous substances.** The Lessee 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 such materials on the land surface and in mine workings. The Lessee must remove mine equipment, materials, and liquids not needed for continued operations, roof support, and mine safety from surface and underground workings prior to abandonment for

underground or highwall sections or reclamation of surface operations. Exceptions can be approved in writing on a case-by-case basis by the BLM AO in consultation with the surface management agency/owner. Creation of a situation that would prevent removal of such material and by retreat or abandonment of mine sections without prior authorization would be considered noncompliance with lease terms and conditions and subject to appropriate penalties under the lease.

- 13. Hazardous substances – used oil.** The Lessee shall provide upon abandonment and/or sealing off a mined area and/or prior to lease termination/relinquishment, certification to the BLM AO that, based upon a complete search of all the Lessee's 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 lease, 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 lessor 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.
- 14. Underground inspections for sealing.** BLM access to underground workings and highwall entrances shall be timely provided for inspection prior to being sealed. The Lessee shall notify the BLM AO in writing 30 days prior to the sealing of any areas in the mine(s) and state the reason for closure. Prior to seals being put into place, the Lessee shall inspect the area and document any equipment/machinery, hazardous substances, and used oil that is to be left underground. If any equipment or machinery is left underground in a surface operation, an inspection will be required. The purposes of these inspections are 1) to provide documentation for compliance with 42 United States Code 9620 section 120(h) and State Management Rule R-315-15, and to assure that sufficient certification has been completed at the time of lease relinquishment; and 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 underground.
- 15. Surface facilities removal at end of use.** Support facilities, structures, equipment, and similar developments will be removed from the lease area within two years after the final termination of use of such facilities. This provision shall apply unless the requirement of Section 10 of the standard coal lease form is applicable. Disturbed areas and those areas previously occupied by such facilities will be stabilized and rehabilitated, drainages reestablished, and returned to the post-mining land use identified in the DOGM-approved mine permit.
- 16. Survey monuments.** The Lessee will identify and protect evidence of the Public Land Survey System (PLSS) and related Federal property boundaries prior to commencement of any ground-disturbing activity. Contact BLM Cadastral Survey to coordinate data research, evidence examination and evaluation, and locating, referencing, or protecting monuments of the PLSS and related land boundary markers from destruction. In the event of obliteration or disturbance of the Federal boundary evidence, the Lessee shall immediately report the incident, in writing, to the BLM AO. BLM Cadastral Survey will determine how the marker is to be restored. In rehabilitating or replacing the evidence, the Lessee will reimburse the BLM for costs or, if instructed to use the services of a Certified Federal Surveyor, procurement shall be per qualification-based selection.

All surveying activities will conform to the Manual of Surveying Instructions and appropriate State laws and regulations. Cadastral Survey will review local surveys before being finalized or filed in the appropriate State or county office. The Lessee will pay for all survey, investigation, penalties, and administrative costs.



**17. Water.** The Lessee, at Lessee expense, will be responsible to replace any surface or developed groundwater specifically identified in the DOGM-approved mine permit for protection with water from an alternative source in sufficient quantity and quality to maintain existing riparian habitat, livestock, wildlife, and other land uses.

**18. Maximum Economic Recovery (MER) – Resource Recovery Protection Plan (R2P2).**

Notwithstanding the approval of a resource recovery and protection plan (R2P2) by the BLM, lessor reserves the right to seek damages against the operator/Lessee in the event (i) the operator/Lessee fails to achieve maximum economic recovery [as defined at 43 CFR 3480.0-5(21)] of the recoverable coal reserves or (ii) the operator/Lessee is determined to have caused a wasting of recoverable coal reserves. Damages shall be measured on the basis of the royalty that would have been payable on the wasted or unrecovered coal.

The parties recognize that under an approved R2P2, conditions may require a modification by the operator/Lessee of that plan. In the event a coal bed or portion thereof is not to be mined or is rendered unminable by the operations, the operator shall submit appropriate justification to obtain approval by the AO to leave such reserves unmined. Upon approval by the AO, such coal beds or portions thereof shall not be subject to damages as described above. Further, nothing in this section shall prevent the operator/Lessee from exercising its right to relinquish all or a portion of the lease as authorized by statute and regulation.

In the event the AO determines that the R2P2 as approved will not attain MER as the result of changed conditions, the AO will give proper notice to the operator/Lessee as required under applicable regulations. The AO will order a new R2P2 modification if necessary, identifying additional reserves to be mined in order to attain MER. Upon a final administrative or judicial ruling upholding such an ordered modification, any reserve left unmined (wasted) under that plan will be subject to damages as described in the first paragraph under this section.

Subject to the right to appeal hereinafter set forth, payment of the value of the royalty on such unmined recoverable coal reserves shall become due and payable upon determination by the AO that the coal reserves have been rendered unminable or at such time that the Lessee has demonstrated an unwillingness to extract coal.

The BLM may enforce this provision either by issuing a written decision requiring payment of the Office of Natural Resource Revenue (ONRR) demand for such royalties, or by issuing a notice of non-compliance. A decision or notice of non-compliance issued by the lessor that payment is due under this stipulation is appealable as allowed by law.

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