

# **RECORD OF DECISION**

## **Environmental Impact Statement for the West Antelope II Coal Lease Application**

**WYW163340**



Wyoming State Office – High Plains District Office



**March 2010**

The BLM manages more land – 253 million acres – than any other Federal agency. This land, known as the National System of Public Lands, is primarily located in 12 Western States, including Alaska. The Bureau, with a budget of about \$1 billion, also administers 700 million acres of sub-surface mineral estate throughout the nation. The BLM's multiple-use mission is to sustain the health and productivity of the public lands for the use and enjoyment of present and future generations. The Bureau accomplishes this by managing such activities as outdoor recreation, livestock grazing, mineral development, and energy production, and by conserving natural, historical, cultural, and other resources on public lands.

**U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
RECORD OF DECISION  
WEST ANTELOPE II LEASE BY APPLICATION  
WYW163340  
CAMPBELL AND CONVERSE COUNTIES, WYOMING**

**INTRODUCTION**

On April 6, 2005, Antelope Coal Company (ACC), the operator of the Antelope Mine, filed an application with the BLM for Federal coal reserves in a tract located west of and immediately adjacent to the mine in Campbell and Converse counties, Wyoming, approximately 20 miles southeast of the town of Wright (Appendix 1, Figure 1). The application was made pursuant to the Leasing on Application regulations found in the Code of Federal Regulations at 43 CFR Subpart 3425.1. The application, which was assigned case file number WYW163340, is referred to as the West Antelope II lease by application (LBA) tract.

ACC has applied to lease Federal coal reserves in order to extend the life of the Antelope Mine. The BLM refers to these types of applications as maintenance tracts. A maintenance tract is a tract of Federal coal that is adjacent to, and can be mined by, an existing active coal mine. As applied for, the West Antelope II LBA tract includes a total of approximately 4,109 acres (Appendix 1, Figure 2). ACC estimates that, as applied for, the tract includes approximately 429.7 million tons of in-place Federal coal in Campbell and Converse counties, Wyoming.

The Proposed Action analyzed in the *West Antelope II Coal Lease Application Environmental Impact Statement* (EIS) is to hold one competitive sealed-bid lease sale and issue a lease for the Federal coal lands included in the West Antelope II LBA tract as applied for by ACC. As applied for, the West Antelope II LBA tract consists of two non-contiguous blocks of Federal coal. The Proposed Action assumes that the applicant would be the successful bidder on the tract, and that the tract would be mined as a maintenance lease for the existing mine. According to the applicant, the Antelope Mine needs the Federal coal included in the West Antelope II coal lease area in order to extend the life of the mine. The applicant would recover the Federal coal using the same methodology, machinery, and facilities that are currently being used to recover the coal in the existing Antelope Mine coal leases. ACC anticipates that, if they acquire the lease for the West Antelope II LBA tract, it would take approximately nine to eleven years to recover the Federal coal included in the tract.

The Antelope Mine has a permit to conduct mining operations approved by the Wyoming Department of Environmental Quality Land Quality Division (WDEQ/LQD) and a Mineral Leasing Act (MLA) of 1920, as amended, mining plan approved by the Secretary of the Interior to conduct surface coal mining operations on their existing coal leases. The mine complies with the requirements of the Clean Air Act (CAA) through an air quality permit approved by the Air Quality Division of the Wyoming Department of Environmental Quality (WDEQ/AQD) which currently allows mining of up to 42 million tons of coal per year.

BLM administers the Federal Coal Leasing Program under the MLA as amended and the Federal Coal Leasing Amendments Act of 1976. If any proposed lease tract contains surface lands which are under the jurisdiction of any Federal agency other than the Department of Interior (USDI), that agency must consent to the issuance of the lease and prescribe the terms and conditions to be imposed on that lease (43 CFR 3400.3-1 and 3420.4-2). The selected configuration for the West Antelope II South Tract (Appendix 1, Figure 3) includes 237.2 acres of National Forest System lands in the Thunder Basin National Grassland (TBNG) administered by the USDA-Forest Service (FS). The FS provided consent to BLM to lease the FS-administered lands that were included in the West Antelope II LBA study area. The FS signed their Record of Decision on July 9, 2009. Their prescribed terms and conditions for the West Antelope II South Tract (WYW177903) are included in Appendix 2.

## **BACKGROUND**

### **Lease by Application Process**

In the Powder River Basin (PRB), maintenance tracts are nominated for leasing by companies operating adjacent existing mines. To process an LBA, the BLM must evaluate the quantity, quality, maximum economic recovery (MER), and fair market value (FMV) of the Federal coal. The BLM must also evaluate the environmental and socioeconomic impacts of leasing and mining the Federal coal in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA). BLM prepared the West Antelope II LBA EIS to evaluate and disclose potential impacts of leasing the Federal coal included in the West Antelope II coal lease application. Although leasing the West Antelope II LBA tract would not authorize mining operations on the tract, the EIS evaluates the potential impacts of mining the West Antelope II because mining is a logical consequence of issuing a lease for a maintenance tract of coal.

The Office of Surface Mining Reclamation and Enforcement (OSM) is a cooperating agency on the West Antelope II EIS. OSM is the Federal agency with the primary responsibility to administer programs that regulate surface coal mining in accordance with Section 503 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM also recommends approval, approval with conditions, or disapproval of the MLA mining plan to the Assistant Secretary of the Interior, Lands and Minerals Management. The FS is a cooperating agency since a portion of the West Antelope II proposed lands for leasing lie within the TBNG.

The WDEQ/LQD, WDEQ/AQD, and the Converse County Board of Commissioners are also cooperating agencies on this EIS. WDEQ/LQD has a cooperative agreement with the Secretary of the Interior to regulate surface coal mining operations on Federal and non-Federal lands within the State of Wyoming. WDEQ/AQD regulates air borne emissions in Wyoming and administers the air quality standards developed by the EPA. The responsibilities of the Converse County Board of Commissioners include but are not limited to management and oversight of county roads, facilities, and planning and zoning rules in the county.

By law and regulation, the LBA process is an open, public, competitive sealed-bid process. Bidding at any potential sale is not restricted to the applicant. In order for BLM to award and issue a coal lease, the highest bid received must meet or exceed fair market value of the coal as determined by BLM's economic evaluation.

ACC filed the West Antelope II LBA because the area applied for is adjacent to their existing approved mining operations at the Antelope Mine and the Federal coal can be mined using their existing mine facilities, equipment, and employees. None of the other existing surface coal mines in the PRB are immediately adjacent to the West Antelope II LBA tract (Appendix 1, Figure 1). In the West Antelope II LBA EIS, the alternatives that are analyzed in detail assume that the applicant will be the successful bidder if a competitive sale is held.

### **History of Coal Leasing Activity in the Wyoming Portion of the Decertified Powder River Coal Region**

Since decertification of the Powder River Federal Coal Region in 1990, 20 Federal coal leases in Campbell and Converse counties, Wyoming, have been issued under the LBA process with competitive sealed-bid sales. These leases include approximately 49,183 acres and 5.781 billion tons of mineable coal. Nineteen of the new leases were issued to the following existing mines for the purpose of extending operations at those mines: Jacobs Ranch (2), Black Thunder (3), North Antelope Rochelle (5), Eagle Butte (2), Antelope (3), Buckskin (1), Cordero/Rojo (2), and the former North Rochelle (1). The remaining lease, the West Rocky Butte, was issued to Northwestern Resources Company in 1992. They planned to start a new mine to recover the coal included in the Rocky Butte and West Rocky Butte leases, but the new mine was never developed. The Rocky Butte and West Rocky Butte leases are now held by Caballo Coal Company, a subsidiary of Peabody Holding Company, Inc. and are included in the Caballo Mine.

### **Pending Coal Leasing Applications and Other Proposed Projects in the Wyoming Powder River Basin**

There are 12 pending maintenance lease applications in the Wyoming portion of the PRB, including the West Antelope II LBA tract (Appendix 1, Figure 1). As applied for, the pending coal lease applications include approximately 35,605 acres and 4.474 billion tons of Federal coal. In addition to the West Antelope II LBA, the pending coal lease applications and applicant mines are: Belle Ayr North (*Belle Ayr Mine*), North Hilight Field (*Black Thunder Mine*), South Hilight Field (*Black Thunder Mine*), West Hilight Field (*Black Thunder Mine*), West Coal Creek (*Coal Creek Mine*), Caballo West (*Caballo Mine*), Hay Creek II (*Buckskin Mine*), West Jacobs Ranch (*Jacobs Ranch Mine*), Maysdorf II (*Cordero Rojo Mine*), South Porcupine (*North Antelope Rochelle Mine*), and North Porcupine (*North Antelope Rochelle Mine*).

Oil and gas leasing and development have occurred in this area in addition to coal leasing and mining. Both conventional and coalbed natural gas (CBNG) wells have been drilled in and around the Antelope Mine and the West Antelope II LBA area. Conventional and CBNG resources are currently being recovered from Federal and private oil and gas leases in the application area. Federal oil and gas lease ownership in the West Antelope II LBA area is described in detail in the Final EIS. Federal oil and gas lessees and private interests identified by the applicant were included on the mailing list for the *West Antelope II Coal Lease Application EIS*.

The EIS discusses energy development in and around the West Antelope II LBA tract. The discussion includes a summary of the results of an analysis of the conventional oil and gas drilling that has occurred in the area, prepared by the BLM Wyoming Reservoir Management Group (WSO-RMG). The analysis found that two conventional oil wells were permitted and drilled on lands included in the West Antelope II BLM study area. Both wells were permanently abandoned. No other producing conventional oil and gas wells were found on the West Antelope II LBA tract under the Proposed Action or Alternatives 1 and 2.

The EIS also includes a summary of the results of the BLM WSO-RMG analysis of the CBNG resources in the area. At the Antelope Mine, the two mineable coal seams are referred to locally as the Anderson and Canyon. The United States Geological Survey refers to these coal seams as the Wyodak-Anderson zone. In this area, CBNG has been produced from the Wyodak-Anderson zone since the late 1980s. The WSO-RMG analysis indicates that in the Wyodak-Anderson zone underlying the existing coal mine, CBNG depletion had already occurred before accelerated CBNG development began in the region in the late 1990s. The EIS identifies 40 completed CBNG wells on lands included in the BLM study area of the West Antelope II LBA. Of those, 30 wells are capable of producing.

Several mechanisms can be used to facilitate recovery of the conventional oil and gas and CBNG resources prior to mining if the Federal coal in the tract is leased:

- BLM will attach a Multiple Mineral Development stipulation in the Federal coal lease which states that BLM has the authority to withhold approval of coal mining operations that would interfere with the development of mineral leases that were issued prior to the West Antelope II coal tract being leased (Appendix 2).
- Conventional oil and gas wells must be abandoned while mining and reclamation operations are in progress. If the value of the remaining oil and gas reserves justifies the expense of reestablishing production, the wells could be recompleted or redrilled following mining. There are currently no producing conventional oil and gas wells on this LBA tract. The analysis prepared by WSO-RMG indicates that there has been little conventional exploration and development in this area in recent years.
- BLM has a policy in place regarding CBNG-coal development conflicts (BLM Washington Office Instruction Memorandum (IM) No. 2006-153). The IM directs BLM decision-makers to optimize the recovery of both CBNG and conventional resources and to ensure that the public receives a reasonable return. This policy offers royalty incentives to CBNG operators to accelerate production in order to recover the natural gas while simultaneously allowing uninterrupted coal mining operations. The IM also states that it is the policy of the BLM to encourage oil and gas and coal companies to resolve conflicts between themselves and, when requested, BLM will assist in facilitating agreements between the companies.
- Mining of the West Antelope II LBA tract would not be authorized until: 1) the coal lessee obtains a permit approved by the WDEQ/LQD to mine the tract, and 2) the MLA

mining plan is approved by the Secretary of the Interior. Before the MLA mining plan can be approved, BLM must approve a Resource Recovery and Protection Plan (R2P2). Prior to approving the R2P2, BLM can review the status of CBNG and conventional oil and gas development on the tract and the mining sequence proposed by the coal lessee. Because the permit approval process generally takes the coal lessee several years to complete, CBNG resources on the coal tract could continue to be recovered during that time period.

- Prior to mining the Federal coal, the coal lessee can negotiate an agreement with the oil, gas, and pipeline owners and operators regarding the removal of their existing facilities on the West Antelope II tract.

Other proposed projects in the Wyoming PRB that have advanced to the planning, permitting, or construction stages and that would reasonably be expected to be completed in the foreseeable future include: the potential Wygen III coal-fired power plant at the Black Hills Corporation energy complex near the Wyodak Mine site in Gillette, Wyoming; the Dry Fork Station coal-fired power plant proposed by Basin Electric Power Cooperative near the Dry Fork Mine north of Gillette; the Two Elk coal-fired Unit 1 and Unit 2 power plants proposed by the North American Power Group (NAPG) which would be located east of the Black Thunder Mine; and a railroad line from the PRB to Minnesota proposed by the Dakota, Minnesota, and Eastern Railroad Corporation (DM&E). In September, 2007, Canadian Pacific Railway Ltd. announced acquisition of the DM&E and its subsidiaries. The transaction was reviewed and approved by the Surface Transportation Board in October, 2008.

In addition, several coal conversion projects have been proposed. Based on status and available information, only one, the KFx Coal Beneficiation Project, was considered to have a high enough likelihood of proceeding to include it in the PRB Coal Review. The KFx (now Evergreen Energy) coal beneficiation plant produced commercially viable product in 2007 until the plant was idled down in 2008. Since then, Evergreen Energy Inc. and its strategic partner, Bechtel Power Cooperation, decided to relocate operations to a different location.

The proposed power plants, the DM&E railroad line, coal conversion projects, and the ongoing and proposed oil, gas, and CBNG operations are separate projects being developed independent of leasing the West Antelope II LBA tract. If these other projects are developed as proposed and the West Antelope II lease application area is leased and mined as proposed, there would potentially be some overlap between the environmental and socioeconomic impacts of constructing and operating some of those projects and the environmental and socioeconomic impacts of mining the West Antelope II LBA tract. The cumulative effects of these projects are described in Chapter 4 of the *West Antelope II Coal Lease Application EIS*. The cumulative impact discussion in the EIS is based on the analyses done for the PRB Coal Review, which can be viewed on the BLM website at: [http://www.blm.gov/wy/st/en/programs/energy/Coal\\_Resources/PRB\\_Coal/prbdocs.html](http://www.blm.gov/wy/st/en/programs/energy/Coal_Resources/PRB_Coal/prbdocs.html).

## DECISION

As BLM Wyoming State Director, my decision is to offer the West Antelope II LBA tracts as described below for competitive sale so that these reserves are available to compete for sale in the open coal market to meet the national coal demand that is expected to exist until at least 2035.

Under this decision, Alternative 2, as described in Chapter 2 of the *West Antelope II Coal Lease Application EIS*, has been selected. Under Alternative 2, the Federal coal resource included in the West Antelope II LBA tract, as modified by BLM, will be divided into two tracts. BLM is dividing the tract because the northern tract would potentially be of competitive interest to more than one mine.

Under Alternative 2, the BLM modified the West Antelope II LBA tract (WYW163340) into two distinct tracts of Federal coal. The north tract includes 2,837.63 acres, more or less, and the BLM estimates that the tract contains approximately 350,263,000 tons of mineable Federal coal resources in Campbell County, Wyoming. The south tract includes 1,908.60 acres, more or less, and the BLM estimates that the tract contains approximately 56,356,000 tons of mineable Federal coal resources in Converse County, Wyoming. The north tract will retain the original case number assigned to the West Antelope II LBA tract, WYW163340. The south tract is assigned case number WYW177903.

Each tract will be offered for lease at separate competitive sealed-bid sales. If the highest bid received at each sale meets or exceeds the FMV as determined by the BLM and if all other leasing requirements are met, leases will be issued to the successful qualified high bidder(s). The competitive lease sales will be held as described in Federal regulations found at 43 CFR Subpart 3422, Lease Sales.

In the event that the bid or bids submitted at the competitive lease sales of the West Antelope II LBA tracts do not meet or exceed the FMV as determined by BLM, the BLM may, but is not obligated to, re-offer the coal tract for leasing at a later date.

Under Alternative 2, it is assumed that the applicant would be the successful bidder on the West Antelope II LBA tracts and that the Federal coal would be mined to extend the life of the adjacent Antelope Mine. The tracts would be mined and reclaimed in a logical sequence in concert with ongoing mining and reclamation operations at the adjacent existing mine. This would be consistent with the analysis of the impacts described in the EIS.

This decision is in conformance with the *Approved Resource Management Plan for Public Lands Administered by the BLM Buffalo Field Office (RMP)*, which was completed in 2001 and amended in 2003. This decision is also in conformance with the *Approved Resource Management Plan for Public Lands Administered by the BLM Casper Field Office (RMP)* completed in 2007, as well as the 2002 *Land and Resource Management Plan for the Thunder Basin National Grassland*.



This decision incorporates by reference the standard coal lease stipulations which address compliance with basic requirements of the environmental statutes and additional BLM special stipulations (Appendix 2).

The West Antelope II South Tract includes Federal coal lands located within the TBNG administered by FS. Therefore, FS must consent and prescribe terms and conditions in order for the south tract to be leased. FS provided BLM their consent to lease the lands in the West Antelope II South Tract in the FS Record of Decision signed on July 9, 2009. The FS consent decision is conditioned on application of the Notice for Lands of the National Forest System under Jurisdiction of the Department of Agriculture (FS Notice) on the West Antelope II Federal coal lease tract (WYW177903), when and if the tract is leased (Appendix 2).

### **REASONS FOR DECISION**

Denying the proposed coal leasing is not likely to affect current or future domestic coal consumption used for electric generation. Not offering the West Antelope II Federal coal for lease is unlikely to affect changes in the national electric generation portfolio. The rationale for this conclusion is summarized below.

Various commenters on the West Antelope II EIS asserted that by not leasing this LBA, and, in a cumulative sense, by denying proposed coal leasing in the Wyoming Powder River Basin (PRB), BLM would slow global climate change and would push the national electric generation portfolio to contain only non-carbon fuel alternatives. BLM has thoroughly considered this comment in our decision.

BLM agrees that movement toward electric generation capacity not reliant on carbon fuels is positive. Carbon fuels are a finite resource and will likely become more costly and rare. Having more non-carbon instead of carbon-based electric generation would assist in decreasing human-caused greenhouse gas (GHG) emissions. Reducing human-caused GHG emissions would help to lessen any harmful effects that they may be causing to global climate.

BLM reviewed two independent studies that determined the ability of the domestic electric generation industry to alter the present portfolio (mix of electric generation technologies) corresponding to the time period that the West Antelope II reserves would be leased and produced. The first study was done by the Department of Energy (Annual Energy Outlook 2008 Report, Energy Information Administration, April 2008) and the second was by the domestic electric generation industry's research arm, the Electric Power Research Institute (Electricity Technology in a Carbon Constrained Future, R. James, Carnegie-Mellon University, November 2007).

Both studies projected the electric generation portfolio to 2030 (slightly beyond the time the proposed West Antelope II lease reserves would be produced) and both studies recognized the likelihood of carbon regulation. While there were differences in each study related to the mix of renewable sources, nuclear, and energy conservation, both studies were consistent in finding that

coal-fired electric generation would represent 52-58 percent of the electric generation portfolio by 2030, as compared to the current 51 percent.

The Annual Energy Outlook 2010 Report (Energy Information Administration, December 2009) represents a forecast to the year 2035. This most recent report incorporates the 2009 downturn in electric demand which resulted from lowered electric demand for manufacturing in the depressed domestic economy of 2009. This forecast lowered the percentage of coal-fired electric generation in the domestic electric generation portfolio to 44 percent by 2035, based on a slowing in electric demand through 2035, and a doubling, to 17 percent, of renewable electric generation in the domestic electric generation portfolio by 2035.

Based on these studies, even with a considerably more optimistic projection for renewable sources, coal use continues to be projected as the largest portion of the domestic electric fuel mix. The factors affecting change in the electric generation portfolio are time and cost of alternate technologies, infrastructure, and increasing electric demand. BLM concludes that during the time that the proposed Federal coal lease reserves would be produced, the demand for coal-fired electric generation in the United States will not change substantially compared to present day demand.

Further, BLM disagrees with the comment that denying the proposed Federal coal leasing application would reduce the rate of coal consumption by domestic electric generators. Numerous mines located outside of the Powder River Basin (PRB) are extracting and producing coal in the United States. In order to supply reliable power for the country's electrical needs, many mines outside of the PRB have the capacity to replace the coal production generated by Antelope Mine.

The West Antelope II coal reserves, if leased and approved for mining, would allow the coal mining operator to continue to compete for coal sales in an open, diverse supply and demand market. PRB mines have been selling coal in this market for decades. A rejection of offering the lease would not cease currently approved mining operations. If BLM rejected offering the lease, the mine would cease operations only after the current lease reserves were depleted. The inability of the Antelope Mine, or any other existing PRB producer, to sell in the coal market will not cause electric generators to stop burning coal. Utility companies will operate existing coal-burning facilities until either cost or regulatory requirements make them ineffective, or until they are replaced by non-carbon generation capacity.

The effect of rejecting the West Antelope II LBA would be that the existing mine would cease operations after the current reserves are depleted (currently estimated at 11 years), and the Antelope Mine would not be competitive in the national coal market to meet the future coal demand in the U.S. that is expected to last until at least 2035. Other national coal producers have the capacity to produce coal and replace the production from this existing mine.

Lastly, PRB coal has competed for an increasing share of coal sales in the market primarily because it is lower cost, environmentally compliant, and successful post-mining reclamation has been thoroughly demonstrated. For these reasons, over the past several decades, PRB coal has

been replacing other domestic coals in the open market, and would be expected to compete similarly in the future.

Cumulatively, the effect of rejecting the coal leasing proposed throughout the PRB would be that many of the existing mines would cease operations once current reserves are depleted (ranging from 8 to 16 years). Those mines would then not be able to compete with other mines to meet the future coal demand that is expected to last until at least 2035. When current reserves are depleted at these mines, their production would likely be replaced by other domestic and, potentially, international coal producers with coal that is more costly, less environmentally compliant, and has greater residual environmental impact.

Many other factors, listed below, were considered in the decision to lease the West Antelope II LBA tracts:

- The BLM coal leasing program encourages the development of domestic coal reserves and the reduction of the United States' dependence on foreign sources of energy. BLM recognizes that the extraction of coal is currently necessary in order to meet the nation's energy needs. A primary goal of the National Energy Policy is to add energy supplies from diverse sources including domestic oil, gas, and coal. Private development of Federal coal reserves is integral to the BLM coal leasing program under the authorities of the Mineral Leasing Act of 1920, the Federal Land Policy and Management Act of 1976 (FLPMA) and the Federal Coal Leasing Amendments Act of 1976 (FCLAA).
- Antelope Coal Company applied for the West Antelope II LBA tracts to extend the life of the Antelope Mine by acquiring access to a continuing supply of low sulfur compliance coal that will be sold to power plants for generating electricity. Continued leasing of low sulfur PRB coal enables coal-fired power plants to meet Clean Air Act requirements without constructing new power plants or revamping existing plants. Generally, the expenses associated with constructing new power plants, retrofitting or revamping existing plants, or substituting alternative fuels would increase energy costs to customers and consumers.
- The leasing and subsequent mining of Federal coal reserves provide the United States, the State of Wyoming, and its affected counties with income in the form of lease bonus payments, lease royalty payments, and tax payments. Production of Federal coal also provides the public with a supply of cost-efficient, low sulfur coal for power generation. The Wyoming Governor, the Wyoming legislature, and other state and local officials support Federal coal leasing.
- The BLM is the lead agency responsible for leasing Federal coal lands under the MLA as amended. When an application to lease Federal coal is submitted, the BLM is obligated to respond to the application in a timely manner. In order to process an LBA, BLM must fulfill the requirements of NEPA by preparing environmental analyses. In this case, an EIS was prepared to provide agency decision-makers and the public with a complete and objective evaluation of the environmental impacts of leasing and mining the Federal coal.

BLM then makes a decision on whether or not to offer the Federal coal for lease. In either case, BLM must notify the applicant in a timely fashion of its decision.

- Offering the West Antelope II LBA tracts (totaling 4,746.23 acres containing approximately 406,619,000 tons of mineable Federal coal reserves) is responsive to the coal lease application received on April 6, 2005. The decision to offer the West Antelope II coal tracts for leasing is in conformance with the BLM land use plan decisions covering this area (see section entitled “Conformance with Existing Land Use Plans”).
- The *West Antelope II Coal Lease Application EIS* was prepared in response to an application BLM received to lease a tract of Federal coal adjacent to an existing mine in Wyoming. The environmental impacts of this decision were fully disclosed in the EIS. Public comments were addressed throughout the NEPA process.
- The BLM’s selected tract configuration under Alternative 2 provides for maximum economic recovery of the coal resource.
- The U.S. Fish and Wildlife Service has provided written concurrence for leasing the West Antelope II tracts pursuant to Section 7(a)(2) of the Endangered Species Act of 1973, as amended (Appendix 3). No sage-grouse leks are known to occur within three miles of the West Antelope II general analysis area and there are no large expanses of contiguous sagebrush in the EIS study area. Suitable habitats for Ute Ladies’-tresses were surveyed during the known flowering periods in 2006, 2007, 2008, and 2009. Two golden eagle nests were identified in the general analysis area. Nineteen bird species on the “Coal Mine List of 40 Migratory Bird Species of Management Concern in Wyoming” have historically been observed at least once in the West Antelope II general analysis area. In concert with USFWS, wildlife mitigation measures will be prescribed at the permitting stage.
- Consultation with the appropriate Native American tribes was initiated by the BLM on May 29, 2008. Two tribes indicated concerns with the disturbance of cultural sites in the West Antelope II general analysis area. Communications with the tribal representatives continue. A field trip was scheduled but has not yet taken place. Given that tribal consultation is ongoing, a lease stipulation is assigned stating that no surface disturbance will occur in the four site areas of interest (48CA3929, 48CO2934, 48CO2996, and 48CO2997) until the consultation process is complete and appropriate mitigation plans are implemented. Eleven sites have been determined NRHP eligible (48CA2892, 48CA4342, 48CA4343, 48CA4998, 48CA5800, 48CO480, 48CO2834, 48CO3075, 48CO3076, 48CO3077, and 48CO3078). Six sites are currently unevaluated or have undetermined eligibility (48CA3929, 48CA4718, 48CO0047, 48CO0154, 48CO0159, and 48CO1724).
- National Historic Preservation Act consultation with the Wyoming State Historic Preservation Office will be completed as required during the permitting process prior to any surface disturbance of the tracts.

- Issuing Federal coal leases for the West Antelope II LBA tracts would not result in the creation of new sources of human-caused GHG or mercury emissions. Antelope Mine would produce the West Antelope II coal at currently permitted levels using existing production and transportation facilities. If the West Antelope II tracts are leased and mined, site-specific GHG emission rates from the Antelope Mine are anticipated to increase slightly compared to current emission rates due to increased strip ratios and added hauling distances.
- If the West Antelope II LBA tracts are leased and mined at the currently permitted levels and the coal is used to generate electricity by coal-fired power plants, the emissions of GHG and mercury attributable to the coal produced at the Antelope Mine would be extended for nine to eleven additional years. The rate of human-caused CO<sub>2</sub> and mercury emissions would depend upon the burning of the coal and potential emission limits that may be applied in the future.
- The potential for regulation of GHG emissions as an air pollutant is recognized in this decision. Should such regulation be put in place, there may be an effect on coal demand depending on how the regulatory actions affect the demand for electric power and the mix of methods used to produce electricity. Effects to coal demand would be reflected through the coal market, coal pricing, and supply. If demand decreases, it is expected that less efficient coal producers, or those with reserves having less desired coal characteristics, may lose customers. Based on review of past performance, Antelope Mine has competed very well in the national coal market.

## **PUBLIC INVOLVEMENT**

BLM received the West Antelope II coal lease application on April 6, 2005. On April 13, 2005, BLM notified the Governor of Wyoming and the voting members of the Powder River Regional Coal Team (PRRCT) that ACC had made application for the West Antelope II Federal coal lands. Receipt of the West Antelope II LBA was announced at the Regional Coal Team meeting held on April 27, 2005, in Gillette, Wyoming.

At the April 27, 2005 public meeting, the PRRCT reviewed the West Antelope II coal lease application. Antelope Coal Company presented information about their existing mine and the pending lease application to the PRRCT at that meeting. The PRRCT recommended that the BLM process the application. BLM published a Notice of Intent to Prepare an EIS and Notice of Public Meeting in the Federal Register on October 17, 2006. Scoping notices were mailed to Federal, state, and local government agencies, conservation groups, commodity groups, and individuals who could be impacted by this LBA. BLM and the applicant jointly developed the distribution list. BLM also published public scoping meeting notices in the Gillette News-Record and Douglas Budget newspapers. On November 1, 2006, a public scoping meeting was held in Douglas, Wyoming. The scoping period ended December 18, 2006.

A notice announcing the availability of the *West Antelope II Coal Lease Application Draft EIS* was published in the Federal Register by the EPA on February 8, 2008. Parties on the

distribution list were sent copies of the Draft EIS at that time. A 60-day comment period on the Draft EIS commenced with publication of the EPA's Notice of Availability and ended on April 8, 2008. The BLM published a Notice of Availability/Notice of Public Hearing in the Federal Register on March 17, 2008. The BLM's Federal Register notice announced the date and time of the formal public hearing, which was held on March 24, 2008, in Douglas, Wyoming. The purpose of the public hearing was to solicit public comment on the Draft EIS, fair market value, maximum economic recovery, and the proposed competitive sale of Federal coal from the LBA.

A notice announcing the availability of the *West Antelope II Coal Lease Application Final EIS* was published in the Federal Register by the EPA on December 19, 2008; parties on the distribution list were sent copies of the Final EIS at that time. The comment period for the Final EIS ended on January 20, 2009. As explained on the first page of the Final EIS, the public review period was open for 30 days after the EPA's Notice of Availability published in the Federal Register.

The comments that BLM received on the Draft EIS and how BLM considered these comments in preparing the Final EIS were included in Appendix J of the Final EIS. BLM received comment letters and distinct comment emails regarding the Final EIS from Gary Goodman, U.S. Environmental Protection Agency, Powder River Basin Resource Council, Leslie Glustrom, and WildEarth Guardians in conjunction with Sierra Club. Additionally, 291 similar emails were received from various parties opposing the West Antelope II proposed coal leasing. Two other emails expressed their support for the proposed coal leasing project.

Comments that BLM received on the Final EIS have been summarized, responded to, and are available at [http://www.blm.gov/wy/st/en/info/NEPA/cfodocs/West\\_Antelope\\_II.html](http://www.blm.gov/wy/st/en/info/NEPA/cfodocs/West_Antelope_II.html). Written comments and the formal hearing transcript are also on file and can be reviewed at the BLM Wyoming High Plains District Office in Casper. All comments that were received in a timely manner were considered in the preparation of the Final EIS and Record of Decision (ROD).

## **SUMMARY OF THE PROPOSED ACTION AND ALTERNATIVES**

The EIS analyzed the proposed action and three alternatives in detail for the West Antelope II LBA tract. Chapter 2 of the EIS contains a full description of each. Summarized descriptions are presented below.

### **Proposed Action: Hold a competitive lease sale for the Federal coal lands as applied for and issue a maintenance lease to the successful bidder.**

Under the Proposed Action, the as applied for lands in the West Antelope II application, as submitted by the Antelope Coal Company, would have been offered for lease at a competitive sealed-bid sale. As applied for, the tract included approximately 4,108.60 acres (Appendix 1, Figure 2). The applicant estimated that the lands contained approximately 408.4 million tons of mineable Federal coal. This alternative assumed that the applicant would be the successful bidder and that the coal would be mined, processed, and sold by the Antelope Mine.

**Alternative 1: Reconfigure the tract and hold one competitive sale for Federal coal lands in the tract as modified by BLM and issue a lease to the successful bidder.**

Along with the Federal coal lands that were applied for by Antelope Coal Company, BLM identified and evaluated an additional area comprised of approximately 2,200.58 acres of unleased Federal coal adjacent to the northeastern, western, and southern edges of the application lands (Appendix 1, Figure 2). These additional lands and the as-applied-for tract were referred to as the BLM study area. The study area enabled BLM to evaluate and explore the potential of increasing competitive interest in the tract, allowing for more efficient recovery of Federal coal in the area, and reducing the likelihood of bypassed Federal coal.

**Alternative 2 (Selected Alternative): Divide the Federal coal lands, as modified by BLM, into two tracts and offer each tract at a separate competitive sale.**

As described in the Final EIS, BLM would divide the modified tract into two separate tracts and offer each one at a separate, competitive, sealed-bid sale. The northern tract would potentially be of competitive interest to more than one mine. It would also be administratively efficient to divide the tracts given that they are located in different counties. This alternative assumes that the applicant would be the successful bidder on both tracts if lease sales are held and the tracts would be mined as maintenance leases for the Antelope Mine.

BLM's selected tract configuration adds approximately 85 acres of additional lands in the BLM study area to the north tract, and approximately 554 acres of additional lands to the south tract. This configuration was selected because it allows for more efficient recovery of the Federal coal, may potentially increase competitive interest, and is administratively efficient (Appendix 1, Figure 3).

Under the selected configuration, the West Antelope II LBA modified north tract includes approximately 2,837.63 acres and BLM estimates that it contains approximately 350,263,000 tons of mineable coal. The West Antelope II modified south tract includes about 1,908.60 acres and BLM estimates that it contains approximately 56,356,000 tons of mineable coal.

The legal descriptions of the lands to be offered for competitive lease sale under Alternative 2, BLM's selected tract configuration, for the West Antelope II LBA tracts are as follows:

**North Tract (WYW163340):**

**T.41N., R.71W., 6th P.M., Campbell County, Wyoming**

Section 9: Lots 9 through 16:	330.68 acres
Section 10: Lots 11 through 16:	244.29 acres
Section 11: Lot 13:	42.34 acres
Section 14: Lots 3 and 4:	82.64 acres
Section 15: Lots 1 through 5, 12, and 13:	289.35 acres
Section 20: Lots 14 through 16:	122.89 acres
Section 21: Lots 1 through 16:	651.74 acres
Section 22: Lots 2, 7, 8, and 14 through 16:	252.93 acres

Section 27: Lots 6 through 11:	250.51 acres
Section 28: Lots 1 through 8:	322.50 acres
Section 29: Lots 1 through 3 and 6 through 8:	247.76 acres
<u>North Tract Total:</u>	<u>2,837.63 acres</u>

South Tract (WYW177903):

T.40N., R.71W., 6th P.M., Converse County, Wyoming

Section 5: Lot 18:	40.25 acres
Section 8: Lots 1 through 3, 6 through 11, 14 through 16:	478.14 acres
Section 9: Lots 2 through 16:	597.22 acres
Section 10: Lots 5, 6, and 11 through 14:	238.99 acres
Section 14: Lot 13:	39.99 acres
Section 15: Lots 2 through 7, and 10 through 16:	514.01 acres
<u>South Tract Total:</u>	<u>1,908.60 acres</u>

<u>West Antelope II North and South Tracts Total:</u>	<u>4,746.23 acres</u>
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The land descriptions and acreages are based on the BLM Status of Public Domain Land and Mineral Titles Approved Coal Plats as of April 15, 2004, and December 6, 2004. The coal estate in the tracts described above is Federally owned. Surface ownership consists of privately owned lands and Federal lands administered by the USDA-FS.

**Alternative 3 (Environmentally Preferable Alternative): Reject the application.**

Under this alternative, ACC's application to lease the Federal coal lands included in the West Antelope II LBA tracts would be rejected and the tracts would not be offered for competitive sale at this time. This is the No Action Alternative.

The applicant is presently mining existing leases that were previously acquired. Previously approved and permitted mining activity at the adjacent Antelope Mine will continue with or without leasing the West Antelope II LBA tracts. Assuming that the West Antelope II LBA tracts would never be leased and coal removal and the associated disturbance would never occur, this alternative would be the environmentally preferable alternative. However, selection of this alternative would not preclude future applications to lease all or part of the Federal coal included in the West Antelope II LBA tracts.

Rejection of the application would not cause mining operations to immediately cease at the Antelope Mine, nor would it immediately reduce production from this mine. Coal is mined in 27 states and is mostly used for generating electricity to support the country's demand for energy. If the West Antelope II application was rejected and, in the long term, the Antelope Mine was to close, other regional and national mining companies would replace the coal production that would have been lost due to Antelope Mine's closure.



## **ALTERNATIVES CONSIDERED BUT NOT ANALYZED IN DETAIL**

Further descriptions of these alternatives may be found in Chapter 2 of the Final EIS.

### **Alternative 4**

Under this alternative, as under the Proposed Action, Alternative 1, and Alternative 2, BLM would have held a competitive coal lease sale and issued a lease for the lands included in the West Antelope II LBA tracts. Alternative 4 assumed, however, that the successful qualified bidder would have been someone other than the applicant and that this bidder would have planned to open a new mine to develop the Federal coal resources. In BLM's current estimation, in order for a new mine to open in the Wyoming PRB, their first lease would need to contain approximately 500 to 600 million tons of coal.

This alternative was considered but was not analyzed in detail because it was unlikely that a new mine would start up and lease these two tracts even though the total amount of coal included in the tracts may be sufficient to consider opening a new mine. The two tracts are physically separate and could not be efficiently mined by themselves. Also, a new mine would create a new source of air quality impacts. The potential difficulty in obtaining an air quality permit is another issue that could discourage a new mine start in the PRB.

### **Alternative 5**

Under Alternative 5, the BLM would have delayed the sale of the West Antelope II LBA tract as applied for. Delaying the sale may have allowed CBNG resources to be more completely recovered prior to mining. If market prices increased in the future, bonus and royalty payments to the government would have been higher if the tract was offered for sale at a later date.

This alternative was not analyzed in detail because it would not produce substantially different impacts than other alternatives that were analyzed in detail. First, rental and royalty provisions in the proposed lease provide for the U.S. to benefit if coal prices increase by the time of mining. Royalty and tax payments are collected at the time the coal is sold. They increase as coal prices increase, which allows the United States to benefit if coal prices have increased by the time of mining. Second, as described in Chapter 2 of the EIS, several mechanisms are already in place to facilitate continued CBNG recovery prior to mining the West Antelope II lands.

This alternative assumed that the tract could be developed later as either a maintenance tract or a new mine start, depending on how long the sale would have been delayed. The environmental impacts of mining the Federal coal at a later time as a maintenance tract would be expected to be similar to the Proposed Action and the Action Alternatives. If a new mine start was required to mine the coal in this tract, the environmental impacts would be expected to be greater than if it were mined as an extension of an existing mine.

## CONFORMANCE WITH EXISTING LAND USE PLANS

Under the requirements of FCLAA, lands that are being considered for Federal coal leasing must be included in a comprehensive land use plan and leasing decisions must be compatible with that plan. The *Approved Resource Management Plan (RMP) for Public Lands Administered by the Bureau of Land Management Buffalo Field Office*, completed in 2001 and amended in 2003, governs and addresses the leasing of Federal coal in Campbell County. The BLM *Record of Decision and Approved Casper Resource Management Plan*, completed in 2007, addresses the leasing of Federal coal in Converse County. The USDA-FS *Land and Resource Management Plan for the Thunder Basin National Grassland (TBNG), Medicine Bow-Routt National Forest, Rocky Mountain Region*, completed in 2001, guides resource management activities on the TBNG.

The major land use planning decision that BLM must make concerning Federal coal resources is a determination of which Federal coal lands are acceptable for further consideration for leasing. There are four coal screening procedures that BLM uses to identify these coal lands. The screening procedures require BLM to: 1) estimate development potential of the coal lands, 2) apply the unsuitability criteria listed in the regulations at 43 CFR 3461, 3) make multiple land use decisions that eliminate Federal coal deposits from consideration for leasing to protect other resource values, and 4) consult with surface owners who meet the criteria defined in the regulations at 43 CFR 3400.0-5 (gg) (1) and (2). The coal screens were developed for Federal decision-making and are utilized in environmental analyses associated with BLM RMPs, EISs, USDA-FS TBNG planning documents, evaluations, and other resource management activities.

Under the first coal screening procedure, a coal tract must be located within an area that has been determined to have coal development potential in order to receive further consideration for leasing [43 CFR 3420.1-4(e)(1)]. The West Antelope II coal lease application is within the area identified by BLM as having coal development potential.

The second coal screening procedure requires the application of the coal mining unsuitability criteria which are listed in the Federal coal management regulations at 43 CFR 3461. These criteria have been applied to high to moderate coal development potential lands in the Wyoming PRB, including the West Antelope II LBA tracts and surrounding lands.

Biological surveys conducted in the West Antelope II LBA general analysis area identified two golden eagle nests located on or near the tracts. Additionally, 19 of 40 species on the “Coal Mine List of 40 Migratory Bird Species of Management Concern in Wyoming” have been historically observed at least once in the general analysis area. As discussed with the USFWS, the Service will coordinate with the WDEQ to develop and prescribe wildlife mitigation measures as a component of the mining permit authorization process. The USFWS has provided written concurrence for leasing the West Antelope II LBA tracts pursuant to Section 7(a)(2) of the Endangered Species Act of 1973, as amended (Appendix 3).

The BNSF & UP railroad line crosses a portion of the West Antelope II North Tract. Lands within the railroad right-of-way (ROW) and associated 100-foot buffer zone were found to be

unsuitable for mining under Unsuitability Criterion 2. While lands within the railroad ROW and buffer zone have been determined to be unsuitable for mining, they are included in the north tract lease to allow for efficient recovery of all mineable coal adjacent to and outside of the ROW and its associated buffer zone. This determination also complies with coal leasing regulations which do not allow leasing in less than 10-acre aliquot parts. The lease will include a stipulation stating that no mining activity may be conducted in the portion of the lease within the railroad ROW or associated 100-foot buffer zone. This honors the finding of unsuitability for mining under Criterion 2 and will exclude mining within the ROW.

Unsuitability Criterion Number 3 states that lands within 100 feet of the outside line of the ROW of a public road shall be considered unsuitable for surface coal mining. A portion of Wyoming State Highway 59 crossed the West Antelope II South Tract's general analysis area, and a portion of Converse County Road 37 crosses BLM's selected configuration for the West Antelope II LBA South Tract (Appendix 1, Figure 3). BLM has determined that, at this time, Wyoming State Highway 59, Converse County Road 37, their ROWs, and the 100-foot buffer zones on either side of the ROWs are designated unsuitable for mining under Criterion Number 3. The lease will include a stipulation stating that no mining activity may be conducted within these two ROWs or their associated 100-foot buffer zones unless permits to move the roads are approved by the Wyoming Department of Transportation (WYDOT).

Surface coal mining could potentially occur within a public road ROW and buffer zone if the regulatory authority, or the appropriate public road authority designated by the regulatory authority, allows the public road to be relocated or closed after providing public notice and opportunity for a public hearing. A finding must be reached, and stated in writing, that the interests of the affected public and landowners will be protected [30 CFR 761.11(d) and 43 CFR 3461.5(c)(iii)]. When the West Antelope II application was filed, the applicant did not have approval from the appropriate public road authority to relocate these two roads. At this time, there are no proposals to relocate either Wyoming State Highway 59 or Converse County Road 37. If a permit to relocate one or both roads is approved at some point in the future, then it may allow for recovery of the coal that underlies the public road ROWs and associated buffer zones.

Although the lands that are within the ROWs and buffer zones have been determined to be unsuitable for mining, they are included in the south tract to allow for efficient recovery of all mineable coal adjacent to and outside of the ROWs and buffer zones. This determination also complies with the coal leasing regulations which do not allow leasing in less than 10-acre aliquot parts. If a lease is issued for this tract, it will include a stipulation stating that no mining activity may be conducted in the portion of the lease within the public road ROWs or associated 100-foot buffer zones unless a permit to move the roads is approved. The stipulation honors the finding of unsuitability for mining under Criterion 3.

No other lands included in the West Antelope II tracts were found to be unsuitable for mining during the application of the unsuitability criteria for BLM's 2001 Buffalo RMP update and the 2007 Casper RMP. Site-specific unsuitability determinations for some criteria were deferred until an application to lease was filed. These findings are included in Appendix B of the West Antelope II FEIS.

The third coal screening procedure, a multiple land use conflict analysis, must be completed to identify and “eliminate additional coal deposits from further consideration for leasing to protect resource values of a locally important or unique nature not included in the unsuitability criteria,” in accordance with 43 CFR 3420.1-4(e)(3). The 2001 Buffalo RMP update addresses two types of multiple land use conflicts: municipal/residential conflicts and multiple mineral development (coal versus oil and gas) conflicts.

The municipal/residential multiple land use conflict was addressed by applying buffers around the municipal planning boundaries for the major municipalities within the BLM Buffalo Field Office area including Gillette and Wright. BLM’s selected West Antelope II tract configurations do not extend into any of the municipal buffer zones.

BLM’s evaluation of the multiple mineral development conflicts related to issuing a lease for the West Antelope II lands is discussed above in the “Pending Coal Leasing Applications and Other Proposed Projects in the Wyoming Powder River Basin” section of this ROD.

The fourth coal screening procedure requires consultation with surface owners who meet the criteria defined in the regulations at 43 CFR 3400.0-5 (gg) (1) and (2). Under BLM’s selected alternative, surface ownership consists of privately owned lands and Federal land administered by the USDA-FS. If private surface owners are determined to be qualified under this CFR, then qualified surface owner consent is required before those lands can be included in a Federal coal lease. Jerry J. Dilts & Bridle Bit Ranch Company has been determined to be a qualified surface owner. For the lands described in the selected configuration, the BLM has received consent from the party and is in the process of verifying the consent documents.

In summary, the lands in the West Antelope II tracts have been subjected to the four coal planning screens and are determined to be acceptable for further consideration for leasing. Thus, a decision to lease the West Antelope II Federal coal lands is in conformance with the current BLM Buffalo and Casper RMPs and the Thunder Basin National Grassland LRMP.

## **MITIGATION, COMPLIANCE, AND MONITORING**

If the West Antelope II LBA tracts are leased, the leases will contain standard coal lease stipulations and also BLM Special Stipulations. BLM has applied special stipulations (Appendix 2) to avoid environmental damage or mitigate potential conflicts affiliated with cultural resources, paleontological resources, threatened and endangered species, multiple mineral development of oil, gas, and coal resources, resource recovery and protection, and/or public land survey. Special coal lease stipulations were identified in Appendix D of the Final EIS. The final special stipulations are attached to this decision, will become part of the Federal coal lease records, and will pertain to all lands as described in the Federal coal lease tract.

After Federal coal leases are issued, SMCRA gives the OSM authority to administer programs that regulate surface coal mining operations. The WDEQ regulates surface coal mining activities in Wyoming. If Antelope Coal Company is the successful, qualified high bidder for the Federal coal included in either or both of the West Antelope II LBA tracts, a permit revision must then

be approved by the WDEQ/LQD. A MLA mining plan revision must also be approved by the Assistant Secretary of the Interior before the coal in the tracts can be mined. The existing mitigation measures specific to the currently approved mine plan for the adjacent mine would then be revised to include the new mitigation measures specific to the West Antelope II tracts. The mining permit would be amended to include the new mitigation requirements.

If the successful bidder on the West Antelope II coal lease sales does not currently operate a mine that is adjacent to WYW163340 and WYW177903, then the bidder would likely propose to construct a new mine in order to recover these Federal coal reserves. Because this would be a new mine start, the proponent would then submit a new permit application package to WDEQ/LQD for approval. A new MLA mining plan would also need to be submitted and approved by the Assistant Secretary of the Interior before the tracts could be mined. The approved permit(s) would include mitigation measures and monitoring plans specific to mining the newly leased tracts.

Prior to mining a coal lease area, the lease must be permitted for mining by OSM and WDEQ. If a lease is permitted for mining, additional conditions and stipulations may be assigned by OSM and WDEQ. Please see Section 1.3 of the Final EIS for additional information regarding regulatory authority and responsibility in relation to coal mining in Wyoming.

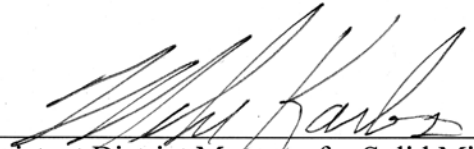
To ensure that the revised plan is in compliance with the leasing stipulations, BLM has a responsibility to review the R2P2 prior to approval of the mining plan. Before any mining operations can begin on the West Antelope II tracts (WYW163340 and WYW177903), R2P2s applicable to the tracts must be approved by the BLM, a permit or permit revision must be approved by WDEQ/LQD, and a MLA mining plan or plan revision must be approved by the Assistant Secretary of the Interior.

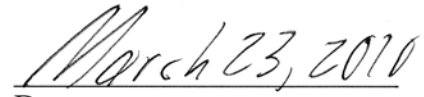
## RECOMMENDATION

I recommend that, after a competitive lease sale is held, Federal coal tract WYW163340, with its associated 2,837.63 acres more or less, be issued to the successful, qualified high bidder provided it is determined that the highest bid at the sale meets or exceeds the FMV of the tract as determined by the BLM and that all other leasing requirements are met.

I also recommend that, after a competitive lease sale is held, Federal coal tract WYW177903, with its associated 1,908.60 acres more or less, be issued to the successful, qualified high bidder provided it is determined that the highest bid at the sale meets or exceeds the FMV of the tract as determined by the BLM and that all other leasing requirements are met.

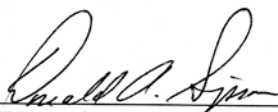
This is Alternative 2, offering two tracts, as modified by BLM, in separate sales, as described in this record of decision. The competitive lease sales will be held in accordance with the requirements at 43 CFR Subpart 3422. The leases will be subject to the attached BLM special lease stipulations (Appendix 2).

  
Assistant District Manager for Solid Minerals  
Wyoming High Plains District Office

  
Date

## APPROVAL

I agree with the recommendation of the Assistant District Manager for Solid Minerals, and I approve the decision to offer Federal coal tracts WYW163340 and WYW177903 for competitive lease sale.

  
\_\_\_\_\_  
BLM Wyoming State Director

\_\_\_\_\_  
Date 3/25/10

## APPEAL OF STATE DIRECTOR DECISION

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR Subpart 4 and the enclosed form 1842-1 (Appendix 4). If an appeal is filed, your notice of appeal must be filed in this office (BLM, Wyoming State Office, PO Box 1828, Cheyenne, WY 82003) within thirty (30) days from the date BLM published the Notice of Availability (NOA) of this Record of Decision in the Federal Register. The appellant has the burden of showing that the decision appealed is in error.

If you wish to file a petition (request) pursuant to regulations 43 CFR 4.21(a)(2) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

### Standard for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

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

- Appendix 1. Figures 1, 2, and 3
- Appendix 2. BLM Special Coal Lease Stipulations (WYW163340 and WYW177903), Notice for Lands of the National Forest System under Jurisdiction of the Department of Agriculture (WYW177903), and BLM Coal Lease Form 3400-12
- Appendix 3. U.S. Fish and Wildlife Service Concurrence Letter
- Appendix 4. Appeal Procedures