



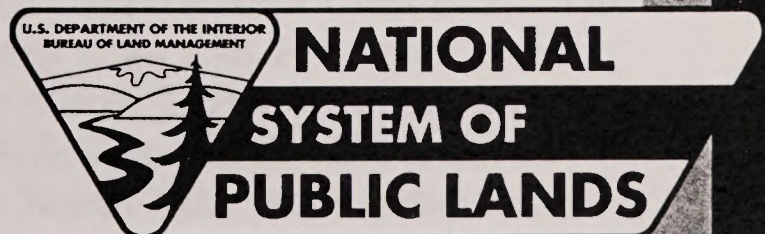
RECORD OF DECISION for the Belle Ayr North Lease by Application Campbell County, Wyoming WYW161248

Wyoming State Office -- High Plains District Office



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**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
RECORD OF DECISION
BELLE AYR NORTH LEASE BY APPLICATION
WYW161248
CAMPBELL COUNTY, WYOMING**

INTRODUCTION

On July 6, 2004, RAG Coal West, Inc. filed an application with BLM to lease Federal coal reserves in a tract north of and immediately adjacent to the Belle Ayr Mine in Campbell County, Wyoming, approximately 10 miles south-southeast of Gillette, Wyoming (Appendix 1, Figure 1). This tract, originally referred to as the Belle Ayr Mine North Extension LBA tract, was renamed the Belle Ayr North LBA tract. The Federal coal reserves were applied for as a maintenance tract for the Belle Ayr Mine. 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 WYW161248, is referred to as the Belle Ayr North Lease by Application (LBA) tract.

In August 2004, RAG Coal West, Inc. finalized the sale of the Belle Ayr Mine to Foundation Coal West, a directly held subsidiary of Foundation Coal Holdings, Inc. In August of 2009, Foundation Coal West merged with Alpha Natural Resources to become Alpha Coal West (ACW).

ACW has applied to lease Federal coal reserves in order to extend the life of the Belle Ayr 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 Belle Ayr North LBA tract includes a total of approximately 1,578.74 acres (Appendix 1, Figure 2). ACW estimates that, as applied for, the tract includes approximately 208.1 million tons of minable Federal coal in Campbell County, Wyoming.

The Belle Ayr North LBA has been evaluated in a group environmental impact statement (EIS) containing the Belle Ayr North LBA and three other LBAs adjacent to one another in the middle group of mines in the Powder River Basin, Wyoming. The group EIS is the *South Gillette Area Coal Lease Applications EIS* (hereafter referred to as the South Gillette Area Coal EIS). The Proposed Action analyzed in the South Gillette Area Coal EIS is to hold one competitive sealed-bid lease sale for the Belle Ayr North LBA and issue one lease for the Federal coal lands included in the Belle Ayr North LBA tract as applied for by ACW. As applied for, the Belle Ayr North LBA tract consists of

one contiguous block 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 Belle Ayr mine. According to the applicant, the Belle Ayr Mine needs the Federal coal included in the Belle Ayr North coal lease tract 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 Belle Ayr Mine coal leases. ACW anticipates that, if they acquire a lease for the Belle Ayr North LBA tract, it would extend the mine life by approximately 6.4 years if Bishop Road is moved.

The Belle Ayr Mine has a permit to conduct mining operations approved by the Wyoming Department of Environmental Quality Land Quality Division (WDEQ/LQD) and the Mineral Leasing Act (MLA) of 1920, as amended, and a 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 45 million tons of coal per year. In the environmental impact statement the estimated production by the year 2015 at the Belle Ayr Mine has been assumed to increase to 30 million tons of coal per year and remain at that rate through the year 2020.

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 the Interior (USDI) or are occupied by a qualified surface owner, that agency or individual must consent to the issuance of the lease, and in the case of the Federal agency prescribe the terms and conditions to be imposed on that lease (43 CFR 3400.3-1 and 3420.4-2 and 3427.1). The Belle Ayr North LBA, as configured does not include any surface held in Federal ownership or held by any qualified surface owner.

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 South Gillette Area Coal EIS to evaluate and disclose potential impacts of leasing the Federal coal included in the Belle Ayr North coal lease application. Although leasing the Belle Ayr North LBA tract would not authorize mining operations on the tract, the EIS evaluates the potential impacts of mining the Belle Ayr North tract because mining is a logical consequence of issuing a lease for a maintenance tract of Federal coal.

The Office of Surface Mining Reclamation and Enforcement (OSM) is a cooperating agency on the South Gillette Area Coal Lease EIS because 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 Wyoming Department of Environmental Quality (WDEQ), and the Wyoming Department of Transportation (WDOT) are also cooperating agencies on this EIS. WDEQ 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 regulates air borne emissions in Wyoming and administers the air quality standards developed by the Environmental Protection Agency (EPA). The responsibilities of the WDOT include, but are not limited to, management, planning, and oversight of state roads and highways.

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 the fair market value of the coal as determined by BLM's economic evaluation.

ACW filed the Belle Ayr North LBA because the area applied for is adjacent to their existing approved mining operations at the Belle Ayr Mine and the Federal coal can be mined using their existing mine facilities, equipment, and employees. As shown in Appendix 1, Figure 1, the Caballo Coal mine and related Caballo West LBA are adjacent to the Belle Ayr Mine and the Belle Ayr North LBA tract. In the South Gillette Area Coal 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 surface 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 Belle Ayr North 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 Belle Ayr North 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 Belle Ayr Mine and the Belle Ayr North 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 Belle Ayr North LBA area is described in Figure 3-36 and Table 3-14 of the Final EIS. Federal oil and gas lessees and private interests identified by the applicant were included on the mailing list for the South Gillette Area Coal EIS.

The EIS discusses energy development in and around the Belle Ayr North 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 there are no active conventional oil or gas wells on lands included in the Belle Ayr North study area, the Proposed Action, or Alternatives 1 and 2. All wells have been permanently abandoned. The Belle Ayr Mine has obtained mine-over rights for all oil and gas installations within the tract area.

The EIS also includes a summary of the results of the BLM WSO-RMG analysis of the coal bed natural gas (CBNG) resources in the area. At the Belle Ayr Mine, the mineable coal seams are the Wyodak-Anderson coal zone. In this area, CBNG has been produced from the Wyodak-Anderson zone since the late 1980s. The WSO-RMG analysis indicated that in the Wyodak-Anderson zone underlying the Belle Ayr Mine, CBNG depletion had already occurred before accelerated CBNG development began in the region in the late 1990s. The coals in the Belle Ayr North LBA will be essentially demethanized by the CBNG operators before mining occurs, thus reducing the amount of available methane to be released into the atmosphere by the coal's exposure. The EIS identifies CBNG wells on lands included in the BLM study area of the Belle Ayr North LBA and the operating status of those wells. The remaining CBNG wells will operate in advance of the coal mining operation, removing any remaining methane, until the wells become prepared for mine-over.

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 Belle Ayr North coal tract being leased (Appendix 2). The Belle Ayr Mine has obtained mine-over rights to the oil and gas leases included in this tract for any remaining oil and gas operations within the tract area.
- 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. In addition, 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 Belle Ayr North 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 Belle Ayr North 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 Wygen III coal-fired power plant at the Black Hills Corporation energy complex near the Wyodak Mine site in Gillette, Wyoming (being constructed); the Dry Fork Station coal-fired power plant proposed by Basin Electric Power Cooperative near the Dry Fork Mine, north of Gillette (being constructed); 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 a 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 the operation to a different location.

Methane production from in situ low temperature methanogenesis is occurring in the PRB. LUCA Technologies Inc. has developed a method of producing biogenetic methane through methanogenesis using coal as a hydrogen source. This process uses predominantly anaerobic microorganisms that metabolize the complex organic molecules in hydrocarbon deposits and produce methane gas as a waste product. The company transforms uneconomically producing CBNG wells and uses the existing infrastructure for its coal methanogenesis operations, which are handled by their directly owned subsidiary, Patriot Energy Resources. The Belle Ayr North LBA is not projected to conflict with in situ low temperature methanogenesis methane farming during the life of the lease. None of the CBNG wells on the Belle Ayr North LBA are being used for methane farming. The Belle Ayr Mine has mine-over rights to all CBNG wells on the Belle Ayr North LBA tract area.

The proposed power plants, the DM&E railroad line, coal conversion projects, methanogenesis, and the ongoing and proposed oil, gas, and CBNG operations are separate projects being developed independently of leasing the Belle Ayr North LBA tract. If these other projects are developed as proposed and the Belle Ayr North lease application area is leased and mined as proposed, there would potentially be some overlap between the environmental and economic impacts of constructing and operating some of those projects and the environmental and economic impacts of mining the Belle Ayr North LBA tract. The cumulative effects of these projects are described in chapter 4 of the South Gillette Area 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

DECISION

As BLM Wyoming State Director, my decision is that it is in the public interest to offer the Belle Ayr North LBA tract 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 for the Belle Ayr North LBA, as described in Chapter 2 of the *South Gillette Area Coal EIS*, has been selected. Under Alternative 2, the Federal coal lands included in the Belle Ayr North LBA tract, has been modified by BLM to include all lands in the study area, and to exclude the applied for area in section 24, T48N,R72W.

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

In the event that the highest bid submitted at the competitive lease sale of the Belle Ayr North LBA tract does 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.

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 1985 with an RMP Plan Update in 2001 and an RMP Plan Amendment in 2003.

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

Under Alternative 2, it is assumed that the applicant would be the successful bidder on the Belle Ayr North LBA tract and that the Federal coal would be mined to extend the life of the adjacent Belle Ayr Mine. The tract would be mined and contemporaneously 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.

REASONS FOR DECISION

Denying this proposed coal leasing is not likely to affect current or future domestic coal consumption used for electric generation. Not offering the Belle Ayr North tract is unlikely to affect changes in the national electric generation portfolio. The rationale for this conclusion is summarized below.

Various commenters on the South Gillette Area Coal 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 considered this comment/issue thoroughly in our decision.

BLM agrees that movement toward electric generation capacity not reliant on hydrocarbon fuels is positive. Hydrocarbon fuels are a finite resource and will become more costly and rare. Having more non-hydrocarbon (instead of hydrocarbon 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 the global climate system.

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 Belle Ayr North 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, by R. James, Carnegie-Mellon University, November 2007).

Both studies projected the electric generation portfolio to 2030 (slightly beyond the time the proposed Belle Ayr North 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 the Belle Ayr Mine.

The Belle Ayr North 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, and denying this lease offer would not cease currently approved mining operations. Rather, a denial would require the mine to stop operations only after the current lease reserves are depleted. This would deny the mine operator the ability to compete with other operators for a future coal demand that is expected to last until at least 2035. The inability of the Belle Ayr 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-hydrocarbon electrical generation facilities.

The effect of denying the Belle Ayr North LBA would be that the existing mine would cease operations after the current reserves are depleted (currently estimated at 8 years), and the Belle Ayr 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 to 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 denying the 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 more residual environmental impacts.

Many other factors, listed below, were considered in the decision to lease the Belle Ayr North LBA:

- 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, and 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).
- Alpha Coal West applied for the Belle Ayr North LBA Federal coal in order to extend the life of the Belle Ayr Mine by allowing them to acquire access to a continuing supply of low sulfur compliant coal that will be sold to power plants for generating electricity. Continued leasing of low sulfur PRB coal assists coal-fired power plants to meet the Clean Air Act requirements for sulfur emissions.
- The leasing and subsequent mining of Federal coal reserves provides 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 the 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 Belle Ayr North LBA tract (totaling 1,671.03 acres more or less and containing approximately 221.7 million tons of mineable Federal coal reserves as estimated by the BLM) is responsive to the coal lease application received on July 6, 2004.
- The decision to offer the Belle Ayr North coal tract 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 *South Gillette Area Coal EIS* was prepared in response to applications BLM received to lease tracts of Federal coal adjacent to existing mines in Wyoming. The environmental impacts of this decision were fully disclosed in the EIS. Public comment was addressed in the Final EIS.
- The BLM's preferred 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 Belle Ayr North tract pursuant to section 7(a)(2) of the Endangered Species Act of 1973, as amended (Appendix 3). Suitable habitats for Ute Ladies'-tresses were surveyed during the known flowering periods in 2006, and 2007. One golden eagle/ferruginous hawk nest was identified outside the tract but still within the general analysis area. Twenty-three bird species on the "Coal Mine List of 40 Migratory Bird Species of Management Concern in Wyoming" have historically been observed in the South Gillette Area combined general analysis area at least once. Additional surveys and mitigation will be completed at the permitting for mining stage of the process for each individual LBA.

- No greater sage-grouse leks occur within the Belle Ayr North LBA tract as applied for, or within lands added under Alternative 2. Only one sage-grouse lek (Lynde) has been documented within 2 miles of the Belle Ayr North wildlife general analysis area. The Lynde Lek was last active in 1999. Three additional sage-grouse leks are present approximately 2.5 miles south of the Belle Ayr North wildlife general analysis area: Belle Ayr I, Belle Ayr II, and Stowe. All three leks have essentially been inactive since 2004. The Belle Ayr II and Stowe leks are classified as unoccupied/destroyed. Occupied leks are protected through prescribed management actions during surface disturbing activities. Additional surveys and mitigation will be completed at the permitting for mining stage of the process for the Belle Ayr North LBA.
- Consultation with the appropriate Native American tribes was initiated by the BLM on May 29, 2008. No tribes indicated concerns with the disturbance of cultural sites in the Belle Ayr North general analysis area. Twelve archaeological sites have been located on the Belle Ayr North LBA. Of the 12 sites, none are recommended as NRHP eligible.
- National Historic Preservation Act consultation with the Wyoming State Historic Preservation Office will be completed as required during the permitting process prior to any disturbance of the tract.
- Issuing a Federal coal lease for the Belle Ayr North LBA tract would not result in the creation of new sources of human-caused GHG or mercury emissions. The Belle Ayr Mine would produce the Belle Ayr North coal at currently permitted levels using existing production and transportation facilities. If the Belle Ayr North tract is leased and mined, site-specific GHG emission rates from the Belle Ayr Mine are anticipated to increase slightly compared to current emission rates due to increased strip ratios and added hauling distances.
- If the Belle Ayr North LBA Federal coal is leased and mined at the currently permitted levels and is used to generate electricity by coal-fired power plants, the emissions of GHG and mercury attributable to the coal produced at the Belle Ayr Mine would be extended for approximately five to seven additional years. The rate of anthropomorphic CO₂ and mercury emissions would depend upon the permitted levels at the coal combustion facilities where the coal is burned and the potential emission limits that may be applied to those facilities in the future by regulation or legislation.
- 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, Belle Ayr Mine has competed very well in the national coal market.

PUBLIC INVOLVEMENT

BLM received the Belle Ayr North coal lease application on July 6, 2004. A notice announcing the receipt of the Belle Ayr North coal lease application was published in the Federal Register on March 8, 2005. The Powder River Regional Coal Team (PRRCT) was notified that ACW had filed an application for the Belle Ayr North coal lease and presented with the Belle Ayr North LBA for review on April 27, 2005. At the April 27, 2005 public meeting, the PRRCT reviewed the Belle Ayr North coal lease application. ACW presented information about their existing mine, the history of the Belle Ayr North LBA, and the current pending Belle Ayr North lease application to the PRRCT at that meeting. The PRRCT recommended that the BLM process the application. On March 14, 2007, BLM notified the Governor of Wyoming. BLM published a Notice of Intent to Prepare an Environmental Impact Statement and Notice of Public Meeting in the Federal Register on March 29, 2007. 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 published public scoping meeting notice in the local newspapers. On April 11, 2007, a public scoping meeting was held in Gillette, Wyoming. The scoping period extended from March 29 on June 10, 2007, during which time BLM received written, e-mailed, and telephoned comments from six entities.

A notice announcing the availability of the *South Gillette Area Coal Lease Application Draft EIS* was published in the Federal Register by the EPA on October 24, 2008. Parties on the distribution list were sent copies of the Draft EIS at that time and the Draft EIS became available on the Wyoming BLM webpage. A 60-day comment period on the Draft EIS commenced with publication of the EPA's Notice of Availability and ended on December 24, 2008. The BLM published a Notice of Availability/Notice of Public Hearing in the Federal Register on October 17, 2008. The BLM's Federal Register notice announced the date and time of the formal public hearing, which was held on November 19, 2008, in Gillette, 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 tract. One individual presented statements on the draft EIS during the hearing and written comments were received from 18 individuals, agencies, or organizations during the comment period.

A notice announcing the availability of the *South Gillette Area Coal Lease Application Final EIS* was published in the Federal Register by the EPA on August 17, 2009; parties on the distribution list were sent copies of the Final EIS at that time. The comment period for the Final EIS ended on September 16, 2009. The review period was open for 30 days after the EPA's Notice of Availability published in the Federal Register.

Comments that BLM received on the Draft EIS and how BLM considered these comments during the preparation of the Final EIS were included in Appendix I of the Final EIS. BLM received eight comment letters regarding the Final EIS. Of the 8 letters, 6 letters were individual and 2 were form letters. Of the form letters, Form Letter 1 was received from 423 individuals and Form Letter 2 was received from 14,427 individuals. Within Form Letter 1, 4 individuals modified their letter to include additional comments. Within Form Letter 2, 665 individuals modified their letter to include additional comments. The 6 individual letters were from: Dorsey and Whitney LLP, Crook County Land Use Planning and Zoning Commission, WildEarth Guardians, Clean Energy Action, Rio Tinto Energy America, and Powder River Basin Resource Council/Center for Biological Diversity. The issues of greatest concern were: Power plant greenhouse gas emissions from Powder River Basin coal combustion, Powder River Basin air quality, wanting greater emphasis on renewable energy development from the BLM, concern about the success of the mining reclamation process, concern about water resources in the Powder River Basin, and concern for adequate protection of plant and animal species. Comments that BLM received on the Final EIS have been reviewed and evaluated, and comment letters and a consolidated BLM response, are available at <http://www.blm.gov/pgdata/content/wy/en/info/NEPA/HighPlains/SouthGillette.html>. Written comments and the transcript of the formal hearing are also on the South Gillette Area Coal EIS webpage. All comments that were received were considered in the preparation of the Final EIS and in this Record of Decision.

SUMMARY OF THE PROPOSED ACTION AND ALTERNATIVES

The EIS analyzed the proposed action and two alternatives in detail for the Belle Ayr North LBA tract. Chapter 2 of the EIS contains a full description of each. Summarized descriptions are presented below.

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

Under the Proposed Action, the lands applied for in the Belle Ayr North application by Alpha Coal West would have been offered for lease at a competitive sealed-bid sale. As applied for, the tract included approximately 1,578.74 acres (Appendix 1, Figure 2). The applicant estimated that the lands contained approximately 208.1 million tons of mineable Federal coal if Bishop Road is moved. This alternative assumed that the applicant would be the successful bidder and that the coal would be mined, processed, and sold by the Belle Ayr Mine.

Alternative 1: The No Action Alternative

Under Alternative 1 the ACW application to lease the coal included in the Belle Ayr North LBA tract would be rejected. The tract would not be offered for competitive sale at this time, and the coal included in the tract would not be mined. Under this alternative, the Belle Ayr Mine would mine its remaining 235.8 million tons of recoverable coal reserves on the existing Belle Ayr leases in nearly 8 years at an average production rate of approximately 30 mmtpy.

Rejection of the application would not affect permitted mining activities or employment the Belle Ayr Mine during the remaining life of the mine.

Alternative 2 (Selected Alternative): 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 Alpha Coal West, BLM identified and analyzed an additional 175.06 acres of unleased Federal coal adjacent to the northern edge of the application land. 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.

Under the selected configuration, the Belle Ayr North LBA modified tract includes approximately 1,671.03 acres and BLM estimates that it contains approximately 221.7 million tons of mineable coal if Bishop Road is moved.

The legal descriptions of the lands to be offered for competitive sale under Alternative 2, BLM's selected tract configuration, for the Belle Ayr North LBA tracts are:

Belle Ayr North LBA Tract

T. 48 N., R. 71 W., 6th P.M., Campbell County, Wyoming

Section 17: Lots 13, 14;	82.53 acres
Section 18: Lots 17, 18, 19;	123.82 acres
Section 19: Lots 5 through 19;	606.93 acres
Section 20: Lots 3 through 7, 9 through 16;	532.62 acres
Section 21: Lots 13, 14;	81.52 acres
Section 28: Lots 3 through 6;	161.98 acres
Section 29: Lots 1, 6.	81.63 acres
Total:	1,671.03 acres

The land descriptions and acreage are based on the BLM Status of Public Domain Land and Mineral Titles Approved Master Title Plat as of April 10, 2006 and Coal Plat as of March 8, 2006. The coal estate in the tracts described above is Federally owned. Surface ownership consists entirely of privately owned lands.

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 and Alternative 2, BLM would hold a competitive coal lease sale and issue a lease for the lands included in the Belle Ayr North LBA tract. Alternative 4 assumes, however, that the successful qualified bidder would be someone other than the applicant and that this bidder would plan 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 the 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 by the lease of this tract. The total

amount of coal included in the tract is not sufficient to consider opening a new mine. 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 new mine starts in the PRB.

Alternative 5

Under Alternative 5, the BLM would have delayed the sale of the Belle Ayr North 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 Belle Ayr North lands.

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 for Public Lands Administered by the BLM Buffalo Field Office (RMP)*, which was completed in 1985 with an RMP Plan Update in 2001 and an RMP Plan Amendment in 2003, governs and addresses the leasing of Federal coal in Campbell County.

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, and other evaluations, and 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 Belle Ayr North 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 Belle Ayr North LBA tract and surrounding lands.

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 Bishop Road crosses BLM's selected configuration for the Belle Ayr North LBA tract (Appendix 1, Figure 3). BLM has determined that the portion of the Belle Ayr North tract that includes this road, the ROW, and the 100-foot buffer zone on either side of the ROW must be considered unsuitable for mining at this time under Criterion Number 3.

There are certain exceptions to Criterion Number 3. One of the exceptions which would potentially allow for surface coal mining in a public road ROW and buffer zone is 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, 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 Belle Ayr North application was filed, the applicant did not have approval from the appropriate county road authority (Campbell County Commission) to relocate the road. At this time, there are no proposals to relocate Bishop Road. Therefore, this exception does not presently apply. If a permit to relocate the road within the Belle Ayr North tract is approved at some point in the future, then it would allow for recovery of the coal that underlies the public road ROW 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 Belle Ayr North 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 ROW 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 Belle Ayr North tract were found to be unsuitable for mining during the application of the unsuitability criteria for BLM's 2001 Buffalo RMP update. 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 South Gillette Area Coal 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 Belle Ayr North tract configuration does 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 Belle Ayr North lands is discussed above in the "Pending Coal Leasing Applications and Other Proposed Projects in the Wyoming Powder River Basin" section of this record of decision.

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. 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. For the lands in the selected alternative for the Belle Ayr North LBA, the Belle Ayr Mine is the sole surface owner.

In summary, the lands in the Belle Ayr North tract 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 Belle Ayr North Federal coal lands is in conformance with the current BLM Buffalo RMP.

MITIGATION, COMPLIANCE, AND MONITORING

If the Belle Ayr North LBA tract is leased, the lease 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 and/or gas and coal resources, resource recovery and protection, and/or public land survey. No additional special stipulations were identified in Appendix D of the Final EIS. The final special stipulations are attached to this decision and will become part of the Federal coal lease records and pertain to all lands 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 Alpha Coal West is the successful, qualified high bidder for the Federal coal included in the Belle Ayr North LBA tract, a permit revision must then be approved by the WDEQ/LQD. An 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 Belle Ayr North tract. The mining permit would be amended to include the new mitigation requirements.

If the successful bidder on the Belle Ayr North coal lease sale does not currently operate a mine that is adjacent to WYW161248, 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 tract.

Prior to mining the 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.

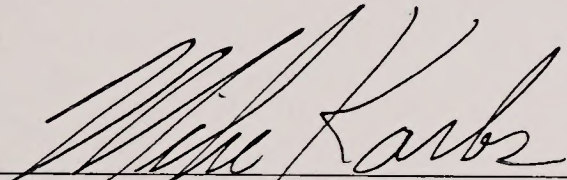
To ensure that the revised plan is in compliance with the leasing stipulations, BLM has a responsibility to review the R2P2 prior to approval of the mining

plan. Before any mining operations can begin on the Belle Ayr North LBA tract (WYW161248), R2P2s applicable to the tract must be approved by the BLM, a permit or permit revision must be approved by WDEQ/LQD, and an 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 WYW161248, with its associated 1,671.03 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.

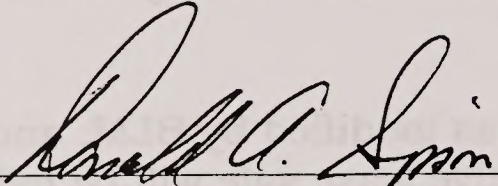
This is Alternative 2 for the Belle Ayr North LBA, as modified by BLM, and as described in this record of decision. The competitive lease sale will be held in accordance with the requirements at 43 CFR Subpart 3422. The lease will be subject to the attached BLM special lease stipulations (Appendix 2).


Assistant District Manager for Solid Minerals
Wyoming High Plains District Office

7/21/2010
Date

APPROVAL

I agree with the recommendation of the Assistant District Manager for Solid Minerals, and I approve the decision to offer Federal coal tract WYW161248 for competitive lease sale.



BLM Wyoming State Director

Date 7/22/10

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:

Figure 1. General Location Map with Federal Coal Leases and LRA Tracts

- 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.



1) The relative harm to the party if a stay is granted or denied;
2) The likelihood of the applicant's success on the merits;
3) The presence of irreparable harm if the stay is not granted;
4) Whether the public interest favors granting a stay.

BELLE AYR NORTH


M.M. Wyoming State Director

APPENDIX 1

7/23/05
Date

Figures

APPEAL OF STATE DIRECTOR DECISIONS

This decision may be appealed to the Federal Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR Subpart 4 and the section 1812-1 (Appendix A). If an appeal is filed, your notice of appeal must be filed in this office (MLM, Wyoming State Director, PO Box 1828, Cheyenne, WY 82001) within thirty (30) days from the date of publication of the Notice of Availability (NOA) of the Record of Decision (ROD) in the Federal Register. The applicant has the burden of showing that the decision appealed is in error.

If you wish to file a petition (request pursuant to 43 CFR 4.212(a)(2)) for a stay (suspension) of the effectiveness of the decision during the time your appeal is being reviewed by the board, the petition for a stay must show to the satisfaction of the board that a stay is warranted. A petition for a stay is granted only if the applicant shows 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 the decision and to the Federal Board of Land Appeals and to the appropriate Office of the Solicitor. 43 CFR 4.212(b) requires that 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 a clear justification based on the following standards:

Figure 1. General Location Map with Federal Coal Leases and LBA Tracts

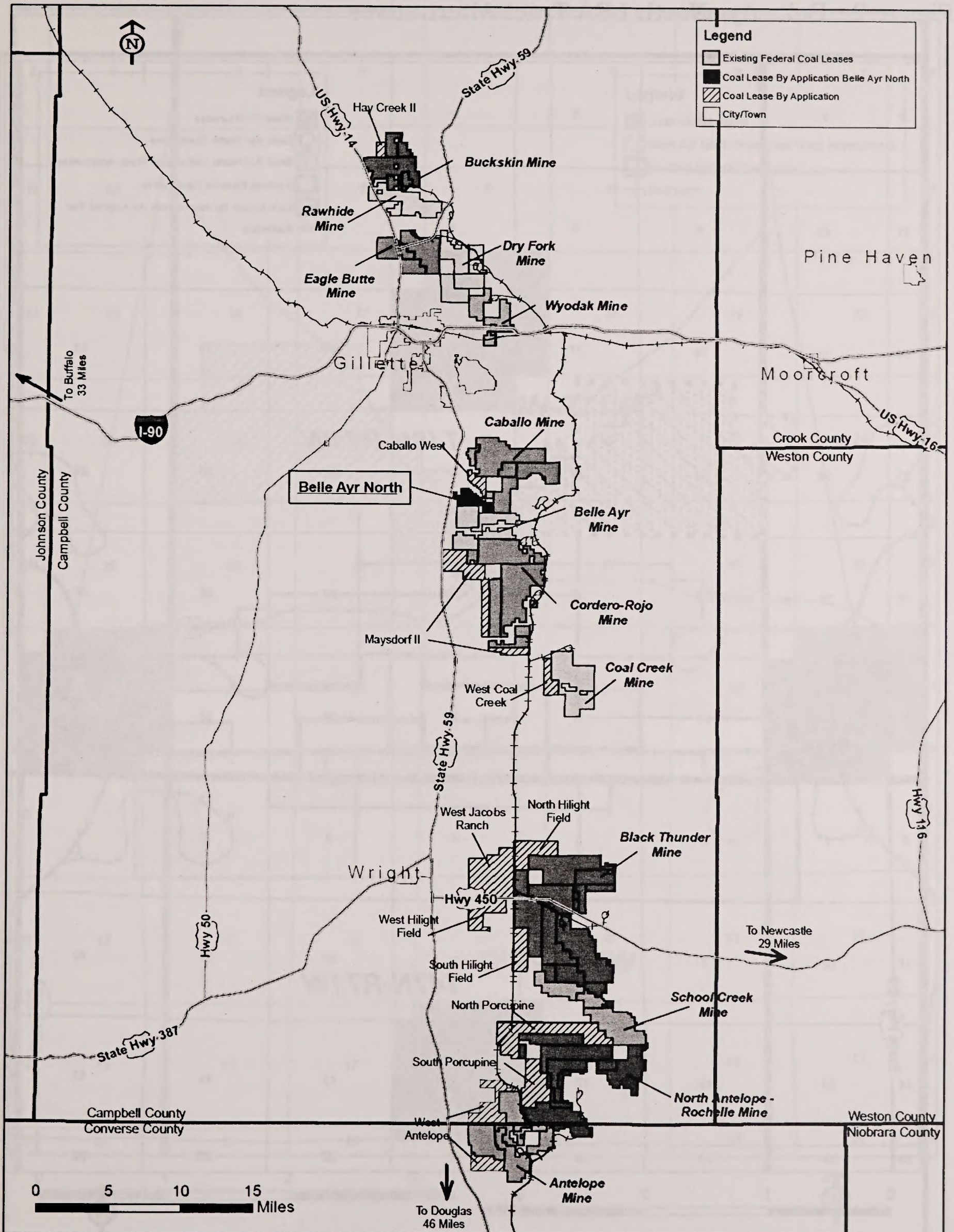


Figure 2. Belle Ayr North LBA Tract Alternatives

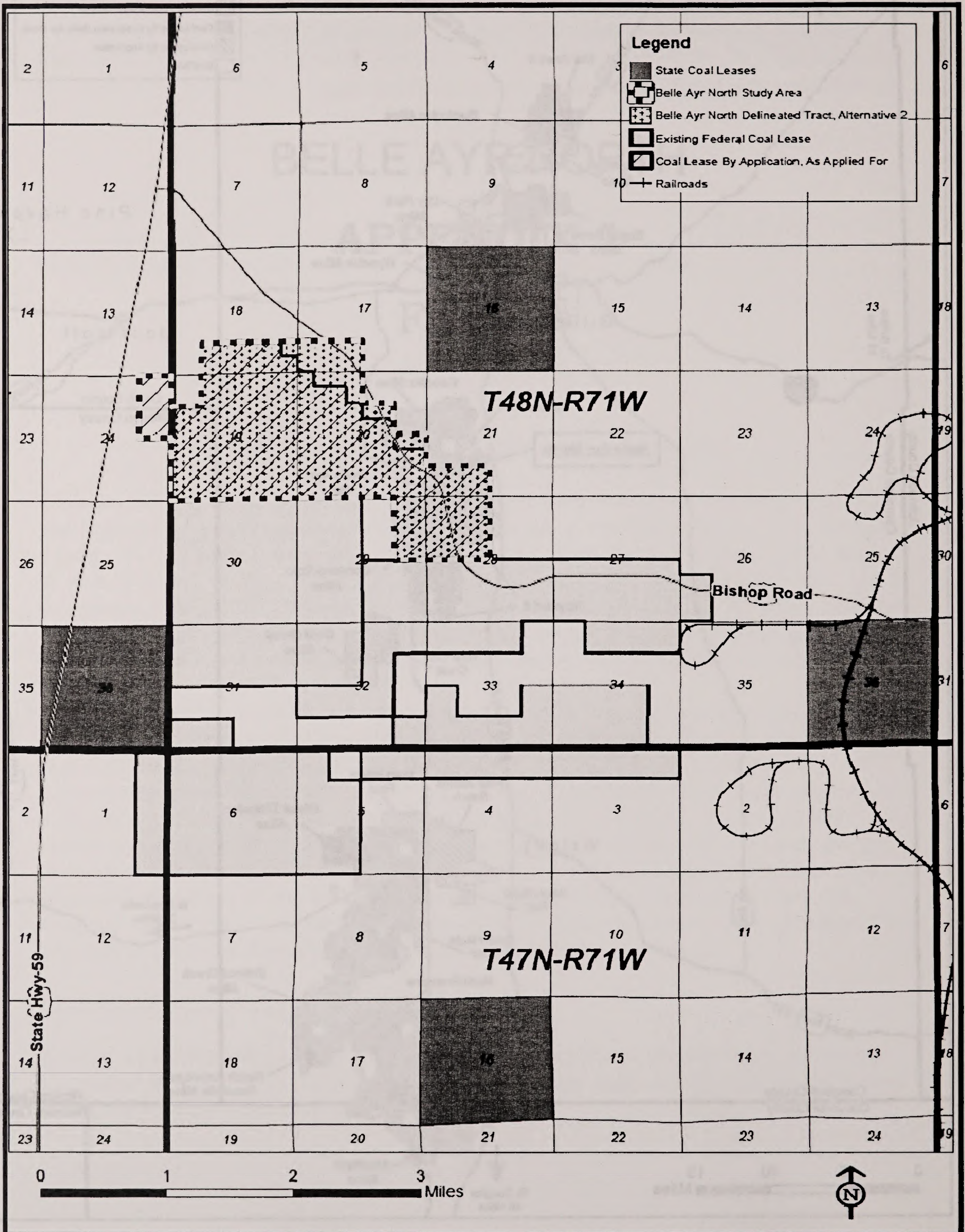
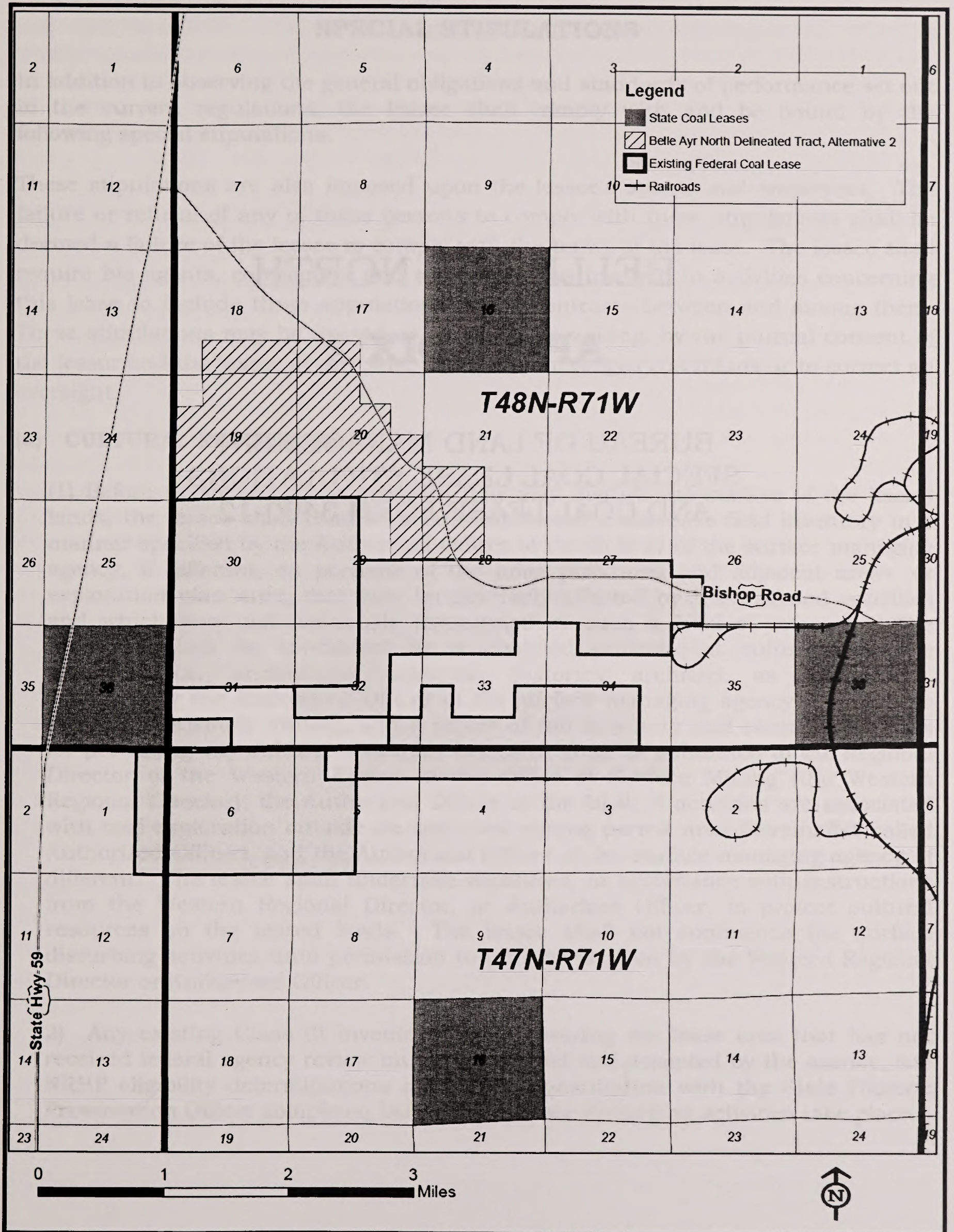


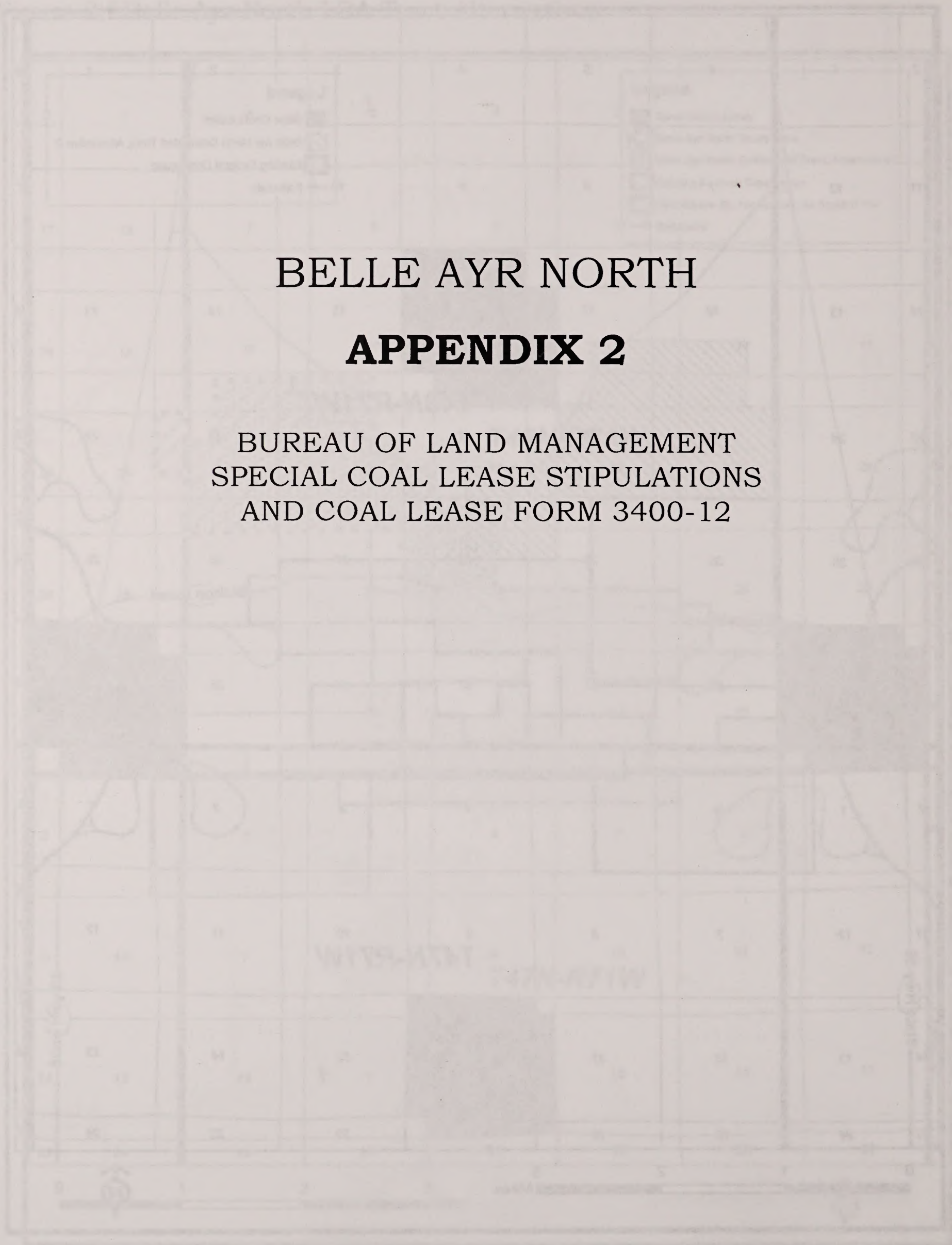
Figure 3. Belle Ayr North Selected Tract Configuration



BELLE AYR NORTH

APPENDIX 2

BUREAU OF LAND MANAGEMENT
SPECIAL COAL LEASE STIPULATIONS
AND COAL LEASE FORM 3400-12



SPECIAL STIPULATIONS

In addition to observing the general obligations and standards of performance set out in the current regulations, the lessee shall comply with and be bound by the following special stipulations.

These stipulations are also imposed upon the lessee's agents and employees. The failure or refusal of any of these persons to comply with these stipulations shall be deemed a failure of the lessee to comply with the terms of the lease. The lessee shall require his agents, contractors and subcontractors involved in activities concerning this lease to include these stipulations in the contracts between and among them. These stipulations may be revised or amended, in writing, by the mutual consent of the lessor and the lessee at any time to adjust to changed conditions or to correct an oversight.

(a) CULTURAL RESOURCES

(1) Before undertaking any activities that may disturb the surface of the leased lands, the lessee shall conduct a cultural resource intensive field inventory in a manner specified by the Authorized Officer of the BLM or of the surface managing agency, if different, on portions of the mine plan area and adjacent areas, or exploration plan area, that may be adversely affected by lease-related activities and which were not previously inventoried at such a level of intensity. The inventory shall be conducted by a qualified professional cultural resource specialist (i.e., archeologist, historian, historical architect, as appropriate), approved by the Authorized Officer of the surface managing agency (BLM, if the surface is privately owned), and a report of the inventory and recommendations for protecting any cultural resources identified shall be submitted to the Regional Director of the Western Region of the Office of Surface Mining (the Western Regional Director), the Authorized Officer of the BLM, if activities are associated with coal exploration outside an approved mining permit area (hereinafter called Authorized Officer), and the Authorized Officer of the surface managing agency, if different. The lessee shall undertake measures, in accordance with instructions from the Western Regional Director, or Authorized Officer, to protect cultural resources on the leased lands. The lessee shall not commence the surface disturbing activities until permission to proceed is given by the Western Regional Director or Authorized Officer.

2) Any existing Class III inventory report covering the lease area that has not received federal agency review must be reviewed and accepted by the agency, site NRHP eligibility determinations made, and consultation with the State Historic Preservation Officer completed before any surface disturbing activities take place.

(3) The lessee shall protect all cultural resource properties that have been determined eligible or unevaluated to the National Register of Historic Places within the lease area from lease-related activities until the cultural resource mitigation measures or site evaluations can be implemented as part of an approved mining and reclamation or exploration plan unless modified by mutual agreement in consultation with the State Historic Preservation Officer.

(4) The cost of conducting the inventory, preparing reports, and carrying out mitigation measures shall be borne by the lessee.

(5) If cultural resources are discovered during operations under this lease, the lessee shall immediately bring them to the attention of the Western Regional Director or Authorized Officer, or the Authorized Officer of the surface managing agency, if the Western Regional Director is not available. The lessee shall not disturb such resources except as may be subsequently authorized by the Western Regional Director or Authorized Officer. Within two (2) working days of notification, the Western Regional Director or Authorized Officer will evaluate or have evaluated any cultural resources discovered and will determine if any action may be required to protect or preserve such discoveries. The cost of data recovery for cultural resources discovered during lease operations shall be borne by the lessee unless otherwise specified by the Authorized Officer of the BLM or of the surface managing agency, if different.

(6) All cultural resources shall remain under the jurisdiction of the United States until ownership is determined under applicable law.

(b) PALEONTOLOGICAL RESOURCES

If paleontological resources, either large and conspicuous, and/or of significant scientific value are discovered during mining operations, the find will be reported to the Authorized Officer immediately. Mining operations will be suspended within 250 feet of said find. An evaluation of the paleontological discovery will be made by a BLM-approved professional paleontologist within five (5) working days, weather permitting, to determine the appropriate action(s) to prevent the potential loss of any significant paleontological value. Operations within 250 feet of such discovery will not be resumed until written authorization to proceed is issued by the Authorized Officer. The lessee will bear the cost of any required paleontological appraisals, surface collection of fossils, or salvage of any large conspicuous fossils of significant scientific interest discovered during the operations.

(c) THREATENED, ENDANGERED, CANDIDATE, or OTHER SPECIAL STATUS PLANT and ANIMAL SPECIES

The lease area may now or hereafter contain plants, animals, or their habitats determined to be threatened or endangered under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*, or that have other special status. The Authorized Officer may recommend modifications to exploration and development proposals to further conservation and management objectives or to avoid activity that will contribute to a need to list such species or their habitat or to comply with any biological opinion issued by the Fish and Wildlife Service for the Proposed Action. The Authorized Officer will not approve any ground-disturbing activity that may affect any such species or critical habitat until it completes its obligations under applicable requirements of the Endangered Species Act. The Authorized Officer may require modifications to, or disapprove a proposed activity that is likely to result in jeopardy to the continued existence of a proposed or listed threatened or endangered species, or result in the destruction or adverse modification of designated or proposed critical habitat.

The lessee shall comply with instructions from the Authorized Officer of the surface managing agency (BLM, if the surface is private) for ground disturbing activities associated with coal exploration on federal coal leases prior to approval of a mining and reclamation permit or outside an approved mining and reclamation permit area. The lessee shall comply with instructions from the Authorized Officer of the Office of Surface Mining Reclamation and Enforcement, or his designated representative, for all ground disturbing activities taking place within an approved mining and reclamation permit area or associated with such a permit.

(d) MULTIPLE MINERAL DEVELOPMENT

Operations will not be approved which, in the opinion of the Authorized Officer, would unreasonably interfere with the orderly development and/or production from a valid existing mineral lease issued prior to this one for the same lands.

(e) OIL AND GAS/COAL RESOURCES

The BLM realizes that coal mining operations conducted on Federal coal leases issued within producing oil and gas fields may interfere with the economic recovery of oil and gas, just as Federal oil and gas leases issued in a Federal coal lease area may inhibit coal recovery. BLM retains the authority to alter and/or modify the resource

recovery and protection plans for coal operations and/or oil and gas operations on those lands covered by Federal mineral leases so as to obtain maximum resource recovery.

(f) RESOURCE RECOVERY AND PROTECTION

Notwithstanding the approval of a resource recovery and protection plan (R2P2) by the BLM, the lessor reserves the right to seek damages against the operator/lessee in the event (i) the operator/lessee fails to achieve maximum economic recovery (MER) (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 unmineable by the operation, the operator/lessee shall submit appropriate justification to obtain approval by the Authorized Officer to leave such reserves unmined. Upon approval by the Authorized Officer, 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 portion of the lease as authorized by statute and regulation.

In the event the Authorized Officer determines that the R2P2, as approved, will not attain MER as the result of changed conditions, the Authorized Officer will give proper notice to the operator/lessee as required under applicable regulations. The Authorized Officer will order a 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 reserves 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 Authorized Officer that the coal reserves have been rendered unmineable or at such time that the operator/lessee has demonstrated an unwillingness to extract the coal.

The BLM may enforce this provision either by issuing a written decision requiring payment of the Mineral Management Service 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.

(g) PUBLIC LAND SURVEY PROTECTION

The lessee will protect all survey monuments, witness corners, reference monuments, and bearing trees against destruction, obliteration, or damage during operations on the lease areas. If any monuments, corners or accessories are destroyed, obliterated, or damaged by this operation, the lessee will hire an appropriate county surveyor or registered land surveyor to reestablish or restore the monuments, corners, or accessories at the same location, using surveying procedures in accordance with the "Manual of Surveying Instructions for the Survey of the Public Lands of the United States." The survey will be recorded in the appropriate county records, with a copy sent to the Authorized Officer.

(h) PUBLIC ROAD RIGHTS-OF-WAY AND BUFFER ZONES

No mining activity of any kind may be conducted within the Campbell County Bishop Road right-of-way and its associated 100-foot buffer zone while the public road remains in the current (2010) location. The lessee shall recover all legally and economically recoverable coal from all leased lands not within the foregoing right-of-way and associated buffer zone. If a permit is obtained to relocate the public road and it is approved by the appropriate authority, the lessee shall recover all legally and economically recoverable coal from all leased lands within the foregoing right-of-way and associated buffer zone. The lessee shall pay all royalties on any legally and economically recoverable coal which it fails to mine without the written permission of the Authorized Officer.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

FORM APPROVED
OMB NO. 1004-0073
Expires March 31, 2010

Serial Number

COAL LEASE

PART 1. LEASE RIGHTS GRANTED

This lease, entered into by and between the UNITED STATES OF AMERICA, hereinafter called lessor, through the Bureau of Land Management (BLM), and
(Name and Address)

hereinafter called lessee, is effective (date) / / for a period of 20 years and for so long thereafter as coal is produced in commercial quantities from the leased lands, subject to readjustment of lease terms at the end of the 20th lease year and each 10-year period thereafter.

Sec. 1. This lease is issued pursuant and subject to the terms and provisions of the:

- Mineral Lands Leasing Act of 1920, Act of February 25, 1920, as amended, 41 Stat. 437, 30 U.S.C. 181-287, hereinafter referred to as the Act;
- Mineral Leasing Act for Acquired Lands, Act of August 7, 1947, 61 Stat. 913, 30 U.S.C. 351-359;

and to the regulations and formal orders of the Secretary of the Interior which are now or hereafter in force, when not inconsistent with the express and specific provisions herein.

Sec. 2. Lessor, in consideration of any bonuses, rents, and royalties to be paid, and the conditions and covenants to be observed as herein set forth, hereby grants and leases to lessee the exclusive right and privilege to drill for, mine, extract, remove, or otherwise process and dispose of the coal deposits in, upon, or under the following described lands:

containing _____ acres, more or less, together with the right to construct such works, buildings, plants, structures, equipment and appliances and the right to use such on-lease rights-of-way which may be necessary and convenient in the exercise of the rights and privileges granted, subject to the conditions herein provided.

PART II. TERMS AND CONDITIONS

Sec. 1. (a) RENTAL RATE - Lessee must pay lessor rental annually and in advance for each acre or fraction thereof during the continuance of the lease at the rate of \$ _____ for each lease year.

(b) RENTAL CREDITS - Rental will not be credited against either production or advance royalties for any year.

Sec. 2. (a) PRODUCTION ROYALTIES - The royalty will be _____ percent of the value of the coal as set forth in the regulations. Royalties are due to lessor the final day of the month succeeding the calendar month in which the royalty obligation accrues.

(b) ADVANCE ROYALTIES - Upon request by the lessee, the BLM may accept, for a total of not more than 10 years, the payment of advance royalties in lieu of continued operation, consistent with the regulations. The advance royalty will be based on a percent of the value of a minimum number of tons determined in the manner established by the advance royalty regulations in effect at the time the lessee requests approval to pay advance royalties in lieu of continued operation.
* 20 years [Public Law 109-58]

Sec. 3. BONDS - Lessee must maintain in the proper office a lease bond in the amount of \$ _____. The BLM may require an increase in this amount when additional coverage is determined appropriate.

Sec. 4. DILIGENCE - This lease is subject to the conditions of diligent development and continued operation, except that these conditions are excused

when operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee. The lessor, in the public interest, may suspend the condition of continued operation upon payment of advance royalties in accordance with the regulations in existence at the time of the suspension. Lessee's failure to produce coal in commercial quantities at the end of 10 years will terminate the lease. Lessee must submit an operation and reclamation plan pursuant to Section 7 of the Act not later than 3 years after lease issuance.

The lessor reserves the power to assent to or order the suspension of the terms and conditions of this lease in accordance with, inter alia, Section 39 of the Mineral Leasing Act, 30 U.S.C. 209.

5. LOGICAL MINING UNIT (LMU) - Either upon approval by the lessor of the lessee's application or at the direction of the lessor, this lease will become an LMU or part of an LMU, subject to the provisions set forth in the regulations.

The stipulations established in an LMU approval in effect at the time of LMU approval will supersede the relevant inconsistent terms of this lease so long as the lease remains committed to the LMU. If the LMU of which this lease is a part is dissolved, the lease will then be subject to the lease terms which would have been applied if the lease had not been included in an LMU.

(Continued on page 2)

Sec. 6. DOCUMENTS, EVIDENCE AND INSPECTION - At such times and in such form as lessor may prescribe, lessee must furnish detailed statements showing the amounts and quality of all products removed and sold from the lease, the proceeds therefrom, and the amount used for production purposes or unavoidably lost.

Lessee must keep open at all reasonable times for the inspection by BLM the leased premises and all surface and underground improvements, works, machinery, ore stockpiles, equipment, and all books, accounts, maps, and records relative to operations, surveys, or investigations on or under the leased lands.

Lessee must allow lessor access to and copying of documents reasonably necessary to verify lessee compliance with terms and conditions of the lease.

While this lease remains in effect, information obtained under this section will be closed to inspection by the public in accordance with the Freedom of Information Act (5 U.S.C. 552).

Sec. 7. DAMAGES TO PROPERTY AND CONDUCT OF OPERATIONS - Lessee must comply at its own expense with all reasonable orders of the Secretary, respecting diligent operations, prevention of waste, and protection of other resources.

Lessee must not conduct exploration operations, other than casual use, without an approved exploration plan. All exploration plans prior to the commencement of mining operations within an approved mining permit area must be submitted to the BLM.

Lessee must carry on all operations in accordance with approved methods and practices as provided in the operating regulations, having due regard for the prevention of injury to life, health, or property, and prevention of waste, damage or degradation to any land, air, water, cultural, biological, visual, and other resources, including mineral deposits and formations of mineral deposits not leased hereunder, and to other land uses or users. Lessee must take measures deemed necessary by lessor to accomplish the intent of this lease term. Such measures may include, but are not limited to, modification to proposed siting or design of facilities, timing of operations, and specification of interim and final reclamation procedures. Lessor reserves in itself the right to lease, sell, or otherwise dispose of the surface or other mineral deposits in the lands and the right to continue existing uses and to authorize future uses upon or in the leased lands, including issuing leases for mineral deposits not covered hereunder and approving easements or rights-of-way. Lessor must condition such uses to prevent unnecessary or unreasonable interference with rights of lessee as may be consistent with concepts of multiple use and multiple mineral development.

Sec. 8. PROTECTION OF DIVERSE INTERESTS, AND EQUAL OPPORTUNITY - Lessee must: pay when due all taxes legally assessed and levied under the laws of the State or the United States; accord all employees complete freedom of purchase; pay all wages at least twice each month in lawful money of the United States; maintain a safe working environment in accordance with standard industry practices; restrict the workday to not more than 8 hours in any one day for underground workers, except in emergencies; and take measures necessary to protect the health and safety of the public. No person under the age of 16 years should be employed in any mine below the surface. To the extent that laws of the State in which the lands are situated are more restrictive than the provisions in this paragraph, then the State laws apply.

Lessee will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor. Neither lessee nor lessee's subcontractors should maintain segregated facilities.

Sec. 15. SPECIAL STIPULATIONS

Sec. 9. (a) TRANSFERS

- This lease may be transferred in whole or in part to any person, association or corporation qualified to hold such lease interest.
- This lease may be transferred in whole or in part to another public body or to a person who will mine coal on behalf of, and for the use of, the public body or to a person who for the limited purpose of creating a security interest in favor of a lender agrees to be obligated to mine the coal on behalf of the public body.
- This lease may only be transferred in whole or in part to another small business qualified under 13 CFR 121.

Transfers of record title, working or royalty interest must be approved in accordance with the regulations.

(b) RELINQUISHMENT - The lessee may relinquish in writing at any time all rights under this lease or any portion thereof as provided in the regulations. Upon lessor's acceptance of the relinquishment, lessee will be relieved of all future obligations under the lease or the relinquished portion thereof, whichever is applicable.

Sec. 10. DELIVERY OF PREMISES, REMOVAL OF MACHINERY, EQUIPMENT, ETC. - At such time as all portions of this lease are returned to lessor, lessee must deliver up to lessor the land leased, underground timbering, and such other supports and structures necessary for the preservation of the mine workings on the leased premises or deposits and place all workings in condition for suspension or abandonment. Within 180 days thereof, lessee must remove from the premises all other structures, machinery, equipment, tools, and materials that it elects to or as required by the BLM. Any such structures, machinery, equipment, tools, and materials remaining on the leased lands beyond 180 days, or approved extension thereof, will become the property of the lessor, but lessee may either remove any or all such property or continue to be liable for the cost of removal and disposal in the amount actually incurred by the lessor. If the surface is owned by third parties, lessor will waive the requirement for removal, provided the third parties do not object to such waiver. Lessee must, prior to the termination of bond liability or at any other time when required and in accordance with all applicable laws and regulations, reclaim all lands the surface of which has been disturbed, dispose of all debris or solid waste, repair the offsite and onsite damage caused by lessee's activity or activities incidental thereto, and reclaim access roads or trails.

Sec. 11. PROCEEDINGS IN CASE OF DEFAULT - If lessee fails to comply with applicable laws, existing regulations, or the terms, conditions and stipulations of this lease, and the noncompliance continues for 30 days after written notice thereof, this lease will be subject to cancellation by the lessor only by judicial proceedings. This provision will not be construed to prevent the exercise by lessor of any other legal and equitable remedy, including waiver of the default. Any such remedy or waiver will not prevent later cancellation for the same default occurring at any other time.

Sec. 12. HEIRS AND SUCCESSORS-IN-INTEREST - Each obligation of this lease will extend to and be binding upon, and every benefit hereof will inure to, the heirs, executors, administrators, successors or assigns of the respective parties hereto.

Sec. 13. INDEMNIFICATION - Lessee must indemnify and hold harmless the United States from any and all claims arising out of the lessee's activities and operations under this lease.

Sec. 14. SPECIAL STATUTES - This lease is subject to the Clean Water Act (33 U.S.C. 1252 et seq.), the Clean Air Act (42 U.S.C. 4274 et seq.), and to all other applicable laws pertaining to exploration activities, mining operations and reclamation, including the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.).

Sec. 15. SPECIAL STIPULATIONS (Cont'd.) -

THE UNITED STATES OF AMERICA

(Company or Lessee Name)

(Signature of Lessee)

(Title)

(Date)

By _____

(BLM)

(Title)

(Date)

Title 18 U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction

NOTICES

The Privacy Act of 1974 and the regulation in 43 CFR 2.43(d) provide that you be furnished with the following information in connection with information required by this application
AUTHORITY: 30 U.S.C. 181-287 and 30 U.S.C. 351-359.
PRINCIPAL PURPOSE: BLM will use the information you provide to process your application and determine if you are eligible to hold a lease on BLM Land.
ROUTINE USES: BLM will only disclose the information according to the regulations at 43 CFR 2.56(d).
EFFECT OF NOT PROVIDING INFORMATION: Disclosing the information is necessary to receive a benefit. Not disclosing the information may result in BLM's rejecting your request for a lease.

The Paperwork Reduction Act of 1995 requires us to inform you that:
The BLM collects this information to authorize and evaluate proposed exploration and mining operations on public lands.
Response to the provisions of this lease form is mandatory for the types of activities specified.
The BLM would like you to know that you do not have to respond to this or any other Federal agency-sponsored information collection unless it displays a currently valid OMB control number.

BURDEN HOURS STATEMENT: Public reporting burden for this form is estimated to average one hour per response including the time for reading the instructions and provisions, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to U.S. Department of the Interior, Bureau of Land Management (1004-0073), Bureau Information Collection Clearance Officer (WC-630), 1849 C Street, Mail Stop 401 LS, Washington, D.C. 20240.



BELLE AYR NORTH

APPENDIX 3

CONCURRENCE LETTER FROM THE U.S. FISH AND WILDLIFE SERVICE

The U.S. Fish and Wildlife Service (USFWS) has reviewed the proposed project and concurs with the findings of the Biological Services (BS) report. The project is located in the Belle Ayr North area, which is a wetland area. The project involves the construction of a canal and the installation of a pump-out station. The project is expected to have a beneficial impact on the environment and the local economy. The USFWS has no objections to the project and concurs with the findings of the BS report. The project is expected to have a beneficial impact on the environment and the local economy. The USFWS has no objections to the project and concurs with the findings of the BS report.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
5353 Yellowstone Road, Suite 308A
Cheyenne, Wyoming 82009

SEP 17 2009

In Reply Refer To:
ES-61411/W.02, WY0910376

Memorandum

To: Assistant Field Manager of Resources, Bureau of Land Management, Buffalo Field Office, Buffalo, Wyoming

From: *for* Field Supervisor, U.S. Fish and Wildlife Service, Wyoming Field Office, Cheyenne, Wyoming
Scott Hickm

Subject: Informal Consultation for the South Gillette Coal Lease Application

The U.S. Fish and Wildlife Service (Service) received the Bureau of Land Management's (Bureau) request for initiation of informal consultation, pursuant to the Endangered Species Act (Act) of 1973 as amended (50 CFR §402.13), for the proposed South Gillette Coal Lease, on August 19, 2009. The environmental consequences of this competitive lease of approximately 8,162 acres of Federal coal located adjacent to the Belle Ayr, Coal Creek, Caballo, and Cordero-Rojo mines in Campbell County, Wyoming, are described in a Final Environmental Impact Statement (FEIS). Appendix E of the FEIS contains the biological assessment (BA) evaluating the potential effects of the proposed lease on federally listed threatened and endangered species.

The federally listed species addressed in the BA are the threatened Ute ladies'-tresses (*Spiranthes diluvialis*) and the endangered blowout penstemon (*Penstemon haydenii*). As stated in the BA, the Bureau made a 'no effect' for blowout penstemon and a 'may effect, not likely to adversely affect' determination for Ute ladies'-tresses. Our office has reviewed the BA and the potential effects of the South Gillette Coal Lease on the Ute ladies'-tresses, in accordance with section 7(a)(2) of the Act, and this letter transmits the Service's concurrence.

Concurrence with Effects to Ute ladies'-tresses

There are no historical records of Ute ladies'-tresses orchids occurring in this lease tract; however, there are areas of potentially suitable habitat. Potentially suitable habitats in the coal lease tract occur primarily along Duck Nest Creek, Coal Creek and the Belle Fourche River. As documented in the BA, all areas of potentially suitable habitat in the South Gillette lease area were surveyed for Ute ladies'-tresses during the known flowering period for this species. Surveys for Ute ladies'-tresses were also conducted in portions of potentially suitable habitat in the proposed coal lease area in 2006 and 2007. No Ute ladies'-tresses orchids were found during any survey.

Based on 1) the documentation that no Ute ladies'-tresses orchids were found during multiple years of comprehensive surveys in all areas of potentially suitable habitat, and 2) much of the potential habitat is underlain by saline and/or ephemeral dry soils, the Service concurs with the Bureau that the proposed coal lease in the South Gillette tract is not likely to adversely affect Ute ladies'-tresses.

No-effect Determination

The Service acknowledges that the Bureau determined that the lease of Federal coal on the South Gillette tract will have no effect on the endangered blowout penstemon. When the Bureau makes "no effect" determinations, concurrence from the Service is not required, although, we appreciate receiving a copy of the data you used to make those determination for our records.

This concludes informal consultation pursuant to the regulations implementing the Act. This project should be re-analyzed if new information reveals effects of the action that may affect listed or proposed species or designated or proposed critical habitat in a manner or to an extent not considered in this consultation; if the action is subsequently modified in a manner that causes an effect to a listed species or designated or proposed critical habitat that was not considered in this consultation; and/or, if a new species is listed or critical habitat is designated that may be affected by this project.

We appreciate the Bureau's Buffalo Field Office efforts to ensure the conservation of threatened and endangered species. If you have any questions regarding this letter, please contact Scott Covington at the letterhead address or phone (307) 772-2374 extension 246.

cc: WGFD, Lander, Non-Game Coordinator (B.Oakleaf)
WGFD, Cheyenne, Statewide Habitat Protection Coordinator (M. Flanderka)

BELLE AYR NORTH APPENDIX 4

APPEAL PROCEDURES

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
- AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

-
- 1. NOTICE OF APPEAL**..... A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the *Notice of Appeal* in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a *Notice of Appeal* in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).
-
- 2. WHERE TO FILE**
- NOTICE OF APPEAL**..... BUREAU OF LAND MANAGEMENT, 5353 YELLOWSTONE ROAD, CHEYENNE, WYOMING 82009 or
BUREAU OF LAND MANAGEMENT, PO BOX 1828, CHEYENNE, WYOMING 82003
- WITH COPY TO SOLICITOR**..... U.S. DEPARTMENT OF THE INTERIOR, OFFICE OF THE SOLICITOR, ROCKY MOUNTAIN REGION
755 PARFET STREET, SUITE 151, LAKEWOOD, CO 80215
-
- 3. STATEMENT OF REASONS** Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).
- WITH COPY TO SOLICITOR**..... U.S. DEPARTMENT OF THE INTERIOR, OFFICE OF THE SOLICITOR, ROCKY MOUNTAIN REGION
755 PARFET STREET, SUITE 151, LAKEWOOD, CO 80215
-
- 4. ADVERSE PARTIES**..... Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).
-
- 5. PROOF OF SERVICE**..... Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).
-
- 6. REQUEST FOR STAY**..... Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a *Notice of Appeal* (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your *Notice of Appeal* (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). 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 (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.
- Standards 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 the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that all communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

(Continued on page 2)

43 CFR SUBPART 1821—GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

STATE OFFICES AND AREAS OF JURISDICTION:

- Alaska State Office ----- Alaska
- Arizona State Office ----- Arizona
- California State Office ----- California
- Colorado State Office ----- Colorado
- Eastern States Office ----- Arkansas, Iowa, Louisiana, Minnesota, Missouri
and, all States east of the Mississippi River
- Idaho State Office ----- Idaho
- Montana State Office ----- Montana, North Dakota and South Dakota
- Nevada State Office ----- Nevada
- New Mexico State Office ----- New Mexico, Kansas, Oklahoma and Texas
- Oregon State Office ----- Oregon and Washington
- Utah State Office ----- Utah
- Wyoming State Office ----- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

(Form 1842-1, September 2006)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Casper Field Office
2987 Prospector Drive
Casper, WY 82604-2968

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