



***Bureau of Land Management
Protest Resolution Report***

**Miles City Final Supplemental
Environmental Impact
Statement and Proposed
Resource Management Plan
Amendment**

November 13, 2024

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Acronyms

Term	Definition
BLM	Bureau of Land Management
AR6	Sixth Assessment Report
BLM	Bureau of Land Management
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
DEIS	Draft Environmental Impact Statement
DNRC	Department of Natural Resources and Conservation
E.O.	Executive Order
EIS	environmental impact statement
EPA	Environmental Protection Agency
FLPMA	Federal Land Policy and Management Act
FR	<i>Federal Register</i>
FSEIS	Final Supplemental Environmental Impact Statement
GHG	greenhouse gas
HAP	hazardous air pollutant
IPCC	Intergovernmental Panel on Climate Change
IWG	Interagency Working Group
MATS	Mercury and Air Toxics Standards
MBMG	Montana Bureau of Mines and Geology
MCFO	Miles City Field Office
MLA	Mineral Leasing Act of 1920
NEPA	National Environmental Policy Act
NMA	National Mining Association
NSPS	New Source Performance Standards
OSMRE	Office of Surface Mining Reclamation and Enforcement
PRMPA	Proposed Resource Management Plan Amendment
RFD	reasonably foreseeable development
RMP	Resource Management Plan
RMPA	Resource Management Plan Amendment
ROD	Record of Decision
SC-GHG	social cost of greenhouse gases
SEIS	Supplemental Environmental Impact Statement
U.S.C.	United States Code

Introduction

The Bureau of Land Management (BLM) Miles City Field Office released the Miles City Final Supplemental Environmental Impact Statement and Proposed Resource Management Plan Amendment (FSEIS/PRMPA) on May 17, 2024. The BLM received eight unique protest letter submissions during the subsequent 30-day protest period.

The planning regulations at 43 Code of Federal Regulations (CFR) 1610.5-2 outline the requirements for filing a valid protest. The BLM evaluated all protest letters to determine which protest letters were complete and timely, and which persons have standing to protest. One of the letters was not complete and the letter only contained comments; therefore, this letter is not addressed further in this report. The remaining seven letters were complete and timely and were from parties who had standing to protest. All seven of these letters contained valid protest issues. The BLM documents the response to the valid protest issues in this protest resolution report. The protest decision is recorded in writing along with the reasons for the decision in this protest resolution report.

After careful review of the report by the BLM's Assistant Director for Resources and Planning, the Assistant Director concluded that the BLM Montana State Director followed the applicable laws, regulations, and policies and considered all relevant resource information and public input. The Assistant Director addressed the protests and issued a Protest Resolution Report to protesting parties and posted the report on the BLM's website; no changes to the Miles City FSEIS/PRMPA were necessary. The decision was sent to the protesting parties by certified mail, return receipt requested. Resolution of protests is delegated to the BLM Assistant Director for Resources and Planning whose decision on the protest is the final decision of the U.S. Department of the Interior (43 CFR 1610.5-2(b)) consistent with the BLM Delegation of Authority Manual (MS-1203 Delegation of Authority).

The report is divided into sections each with a topic heading, excerpts from individual protest letters, a summary statement of the valid protest issues raised by the protesting parties, and the BLM's response to the protest issues.

Protesting Party Index

Letter Number	Protester	Organization	Determination
PP-MT-MC-EIS-24-01	George Harris	Montana Coal Council	Denied
PP-MT-MC-EIS-24-02	Nathan Descheemaeker	Landmark Resource Firm	Denied
PP-MT-MC-EIS-24-03	John Fahlgren	Montana Natural Resource Coalition of Counties	Denied
PP-MT-MC-EIS-24-04	George Harris	Montana Coal Council	Denied
	Jeremy Cottrell	Westmoreland Mining LLC	
PP-MT-MC-EIS-24-05	Erin Weisgerber	Montana Department of Natural Resources & Conservation	Denied
PP-MT-MC-EIS-24-06	Katie Sweeney	National Mining Association	Denied
PP-MT-MC-EIS-24-07	Ken Pearson	Navajo Transitional Energy Company	Denied
	Ryen Godwin	Schwabe, Williamson & Wyatt, P.C. representing Navajo Transitional Energy Company	
PP-MT-MC-EIS-24-08	Steve Daines	U.S. Senate	Dismissed: incomplete and comments only

FLPMA: Withdrawals

Montana Natural Resource Coalition of Counties

John Fahlgren

Issue Excerpt Text: We believe that shutting 11.7 million acres of leasable federal coal estate in the Montana powder river basin, not to mention the Wyoming side, constitutes a withdrawal under FLPMA. The studies, reports and analyses required to be submitted to Congress by the Secretary under 43 U.S.C. § 1714 (c) are in addition to the NEPA and CEQ requirements. Agency land and mineral withdrawal proposals that are longer than two years in duration; greater than 5,000 acres in area; that would effectively eliminate a Principal Use; or that would affect a preexisting Act of Congress are required by statute to be submitted to Congress for action.

Montana Coal Council & Westmoreland Mining LLC

George Harris & Jeremy Cottrell

Issue Excerpt Text: Alternative D unequivocally constitutes a withdrawal under the FLPMA as it removes any pending or new development of the coal resource within the MCFO's boundaries. But BLM has not complied with any of the statutory prerequisites to properly effectuate a withdrawal. The same analysis applies to both Alternatives B and C. BLM must elect no action, or at minimum Alternative A, because the selection of any other alternative will be an invalid withdrawal without the legal process required by the FLPMA.

Summary:

Protestors stated that the BLM has violated the Federal Land Policy and Management Act (FLPMA) by not complying with the requirements to properly effectuate a withdrawal of coal resources within the Miles City Field Office's boundaries for its proposed decision to make certain areas unavailable for coal leasing, namely by not complying with the statutory requirements including submitting the action to Congress under 43 United States Code (U.S.C.) 1714(c).

Response:

43 U.S.C. 1714(c) is related to withdrawals of lands greater than 5,000 acres. The closure or restriction of public lands to mineral leasing through the land use planning process pursuant to Section 202 of FLPMA does not constitute a withdrawal under FLPMA. Withdrawals are pursued in a decision-making process outside of the planning process by the Office of the Secretary pursuant to the procedures and requirements in Section 204 of FLPMA; they are specifically defined by Section 103(j) of FLPMA as follows:

"...the term 'withdrawal' means withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land . . . from one department, bureau or agency to another department, bureau or agency" (43 U.S.C. 1702(j)).

The terms "settlement," "sale," "location," or "entry" are all terms contemplating transfer of title to the lands in question, particularly the patenting, or potential patenting, of lands out of Federal ownership into the hands of private parties based on the provisions of the General Mining Law of 1872, as amended, the various Homestead Acts, and other general land law. It is inapplicable to mineral leasing occurring under the Mineral Leasing Act of 1920 (MLA). A Federal mineral lease sale is not a "sale" of public land under Section 203 of FLPMA, and a land use planning decision

closing an area to leasing under Section 202 of FLPMA is not a “withdrawal” as described in Section 204 of FLPMA.

The BLM is not required to complete the procedures associated with a withdrawal when it proposes to close or restrict public lands in the planning area to mineral leasing in the Miles City FSEIS/PRMPA. The FSEIS/PRMPA does not improperly withdraw public lands from mineral development. Accordingly, this protest issue is denied.

NEPA: Best Available Science

Montana Coal Council & Westmoreland Mining LLC George Harris & Jeremy Cottrell

Issue Excerpt Text: it is arbitrary for the agency to fail to address relevant considerations, and these many challenges to the validity and reliability of the IWG 2021 SC-GHG are relevant considerations which the agency must address before deciding to rely on those estimates.

Montana Department of Natural Resources & Conservation Erin Weisgerber

Issue Excerpt Text: Use of the SC-GHG in this context (Chapter 3.4) as the basis for selecting Alternative D violated NEPA and FLPMA because the tool does not provide a developed standard to determine the significance.

Summary:

Protestors stated that the BLM violated the National Environmental Policy Act (NEPA) and FLPMA by using the Interagency Working Group (IWG) 2021 social cost of greenhouse gases (SC-GHG) tool without addressing relevant considerations, including the validity and reliability of the tool.

Response:

The Council on Environmental Quality’s (CEQ) regulations implementing NEPA require that agencies use “high quality information” (40 CFR 1500.1(b)). NEPA regulations require the BLM to “ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (42 U.S.C. 4332(d)). The BLM NEPA Handbook also directs the BLM to “use the best available science to support NEPA analyses and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed” (BLM Handbook H-1790-1, p. 55). Under the BLM’s guidelines for implementing the Information Quality Act, the BLM applies the principle of using the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

The BLM considered impacts on climate change, greenhouse gas (GHG) emissions, and public health from combustion of fossil fuels (coal, oil, gas) under all alternatives. The climate change and SC-GHG discussion in Section 3.4.2 and the public health discussion in Section 3.3.2 were updated in the Miles City FSEIS/PRMPA to better explain the BLM’s considerations and analysis (Miles City FSEIS/PRMPA p. F-27).

As discussed in Miles City FSEIS/PRMPA Section 3.4.1 (p. 3-84), the social cost of carbon, social cost of nitrous oxide, and social cost of methane—together, SC-GHG—are estimates of the monetized damages associated with incremental increases in GHG emissions in a given year. Consistent with Executive Order (E.O.) 13990, the CEQ rescinded its 2019 Draft NEPA Guidance on Considering Greenhouse Gas Emissions and issued interim NEPA Guidance on Consideration of Greenhouse Gas

Emissions and Climate Change. This guidance builds upon and updates the CEQ’s 2016 Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews. While the CEQ works on updated guidance, it has instructed agencies to consider and use all tools and resources available to them in assessing GHG emissions and climate change effects, including recommending that agencies provide additional context for GHG emissions through the use of SC-GHG estimates (Miles City FSEIS/PRMPA p. 3-84).

The 2016 GHG Guidance noted that NEPA does not require monetizing costs and benefits. However, Section 5 of E.O. 13990 emphasized how important it is for Federal agencies to “capture the full costs of GHG emissions as accurately as possible, including by taking global damages into account” and established the IWG. In February 2021, the IWG published *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide: Interim Estimates under Executive Order 13990* (IWG 2021). This is an interim report that updated previous guidance from 2016 (Miles City FSEIS/RMPA p. 3-85).

For Federal agencies, the best currently available estimates of the SC-GHG are the interim estimates of the social cost of carbon dioxide, methane, and nitrous oxide developed by the IWG on the SC-GHG. The IWG’s SC-GHG estimates are based on complex models describing how GHG emissions affect global temperatures, sea level rise, and other biophysical processes; how these changes affect society through, for example, agricultural, health, or other effects; and monetary estimates of the market and nonmarket values of these effects (Miles City FSEIS/PRMPA p. 3-85).

The Miles City FSEIS/PRMPA (p. 3-85) acknowledges that, as expected with such a complex model, there are multiple sources of uncertainty inherent in the SC-GHG estimates. Some sources of uncertainty relate to physical effects of GHG emissions, human behavior, future population growth and economic changes, and potential adaptation. The IWG method, to better understand and communicate the quantifiable uncertainty, generates several thousand estimates of the social cost for a specific gas, emitted in a specific year, with a specific discount rate. These estimates create a frequency distribution based on different values for key uncertain climate model parameters. The shape and characteristics of that frequency distribution demonstrate the magnitude of uncertainty relative to the average or expected outcome (Miles City FSEIS/PRMPA p. 3-85).

The IWG recommends, to further address uncertainty, reporting four SC-GHG estimates in any analysis. Three of the SC-GHG estimates reflect the average damages from the multiple simulations at each of the three discount rates. The fourth value represents higher-than-expected economic impacts from climate change. Specifically, it represents the 95th percentile of damages estimated, applying a 3-percent annual discount rate for future economic effects. This is a low-probability but high-damage scenario that represents an upper bound of damages within the 3-percent discount rate model (Miles City FSEIS/PRMPA p. 3-85).

Such analysis should not be construed to mean a cost determination is necessary to address potential impacts of GHGs associated with specific alternatives. These numbers were monetized; however, they do not constitute a complete cost-benefit analysis, nor do the SC-GHG numbers present a direct comparison with other impacts analyzed in the Miles City FSEIS/PRMPA. SC-GHG is provided only as a useful measure of the benefits of GHG emissions reductions to inform agency decision-making (Miles City FSEIS/PRMPA p. 3-90).

The BLM relied on high-quality information and the best available data in preparation of the Miles City FSEIS/PRMPA. The BLM complied with CEQ regulations, NEPA, and BLM regulations using the high-quality information and best available science and explaining the tool and its validity to estimate impacts. Accordingly, this protest issue is denied.

NEPA Violation: Environmental Justice

Montana Coal Council & Westmoreland Mining LLC George Harris & Jeremy Cottrell

Issue Excerpt Text: BLM’s evaluation of environmental justice factors within the SEIS/RMPA is arbitrary and capricious. Although an agency is not required to select the course of action that best serves environmental justice, it must take a “hard look” at environmental justice issues. *Sierra Club v. FERC*, 867 F.3d 1357, 1368 (D.C. Cir. 2017). This requires reasonable and adequately explained analysis and use of reasonable methodologies. See *id.* at 1369 (acknowledging the sufficiency of an EIS that “discussed the intensity, extent, and duration of the [project’s] environmental effects, and also separately discussed the fact that those effects will disproportionately fall on environmental-justice communities”). A sufficient environmental-justice analysis requires the agency’s recognition and discussion of the proposed action’s impacts on predominantly minority communities. *Id.* at 1370. An analysis lacking a rational connection between the facts identified and the decision made is arbitrary.

Summary:

Protestors stated that the BLM violated NEPA by failing to take a hard look at environmental justice issues as determined in *Sierra Club v. FERC*, 867 F.3d 1357, 1368 (D.C. Cir. 2017) and therefore its decision is arbitrary and capricious. The protester notes the BLM has failed to adequately explain and use reasonable methodologies for a sufficient environmental justice analysis of the proposed action’s impacts on predominantly minority communities as required.

Response:

NEPA directs that data, and an environmental analysis, must be commensurate with the importance of the impact (40 CFR 1502.15). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Miles City FSEIS/PRMPA, including impacts on environmental justice communities. The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (i.e., impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

In the spring of 2023, Congress amended NEPA as part of the Fiscal Responsibility Act in tandem with E.O. 14096, which defined environmental justice to mean the “just treatment and meaningful involvement of all people” in agency decision-making and actions “regardless of income, race, color, national origin, Tribal affiliation, or disability.” NEPA provides a procedural framework by which agencies may consider the environmental effects of their actions and, through E.O. 14096, agencies are encouraged to include effects that relate to environmental justice. In the court decision stemming from *Sierra Club v. FERC*, 867 F.3d 1357, 1368 (D.C. Cir. 2017), agencies are required to make “educated assumptions” in quantifying GHG emissions, which includes sufficient information on the downstream effects of GHG emissions, where the agency possesses information allowing for reasonable forecasting.

The BLM discusses potential impacts on environmental justice communities in Section 3.6 and Appendix E of the Miles City FSEIS/PRMPA. Additional text was added to Section 3.6.2 of the FSEIS/PRMPA that outlined the economic connection between the planning area mines and the Navajo Transitional Energy Company as a result of coordination and consultation with the public, cooperating agencies, and Tribes. Pages 3-136 through 3-142 of the Miles City FSEIS/PRMPA detail

and explain the assumptions, indicators, and potential impacts across alternatives on environmental justice communities from direct, indirect, and cumulative impacts that could potentially result from the alternatives. Within those pages, the BLM has cited numerous sources of references, as well as the analysis and interpretation from using the Environmental Protection Agency (EPA) EJSCREEN environmental data. Miles City FSEIS/PRMPA Appendix E, Tables E-3 and E-4 present communities that could be predisposed to a higher risk of health impacts using a selection of the EPA Environmental Justice Index indicators compared to state and national averages and those that are proximal to downstream combustion points. In addition, Miles City FSEIS/PRMPA Appendix C, Figures 3-10 through 3-16 display non-attainment areas in association with the receiving power plants. Miles City FSEIS/PRMPA Section 3.6.1 identifies communities that meet criteria for consideration as an environmental justice community based on the best available information at the time of the Miles City FSEIS/PRMPA.

The Miles City FSEIS/PRMPA considered the effects of the alternatives when added to other past, present, and reasonably foreseeable (not highly speculative) future actions. This served as the determining factor for the level of analysis performed and presented. The analysis accounted for the relationship between the alternatives and these reasonably foreseeable actions. As such, the BLM complied with NEPA's requirement to analyze impacts on environmental justice communities in the Miles City FSEIS/PRMPA. Accordingly, this protest issue is denied.

NEPA Violation: Reasonably Foreseeable Impacts

Montana Coal Council

George Harris

Issue Excerpt Text: BLM Methods and Assumptions - Analytical Assumptions Page 3-2, 3.2.1: The BLM Final EIS states under the third bullet point: "Unless otherwise indicated, impact analyses assume a 17-year time horizon (2022-2038), also referred to as the analysis period. At the end of the planning period an RMP revision would reevaluate land use allocations." This is not consistent or correct with the BLM statement in 2.2.3 that additional coal leasing is unnecessary because operating mines in the planning area have existing leases with sufficient coal reserves to maintain existing mine production levels until 2035 for Spring Creek and 2060 for Rosebud. The BLM indicated on page B-12 that the average permit approval process takes ten years. By choosing option D the BLM is stating that Spring Creek Mine will be out of coal reserves four years prior to RMP is reevaluated in 2039. This places the BLM in a position to determine when a mine of necessity will close. The BLM lacks the authority and/or congressional approval to determine when a private mine will close. This is a complete overreach by the BLM which is subject to aggressive defense and potential litigation.

National Mining Association

Katie Sweeney

Issue Excerpt Text: BLM's failure to analyze the reliability impacts of the MCFO RMP violates the requirement of the National Environmental Policy Act (NEPA) to evaluate both direct and indirect foreseeable impacts. Uncertainty inherent in predicting the future - as BLM maintains in arguing that it does not have the tools to analyze reliability impacts - cannot serve as an excuse for agencies to completely avoid this obligation. While courts have agreed that the indirect impact analysis is bounded by what is reasonably foreseeable,⁷ they have similarly cautioned against agencies attempting to "travel the easy path and hastily label the impact of the [action] as too speculative and not worthy of agency review.

***Navajo Transitional Energy Company & Schwabe, Williamson & Wyatt, P.C.
Ken Pearson & Ryen Godwin***

Issue Excerpt Text: BLM is required to estimate the “physical, biological, economic, and social effects of implementing each alternative considered in detail.” If it is unable to estimate the effects precisely, it may give a probable range. 43 CFR 1610.4-6. Similarly, Federal agencies must disclose and consider the reasonably foreseeable effects of their proposed actions, including the reasonably foreseeable GHG emissions. 88 FR 1196, 1200. As noted in the RMPA, the Council on Environmental Quality has released interim guidance to assist agencies with estimating GHG emissions and climate change effects. 88 FR 1196 (Jan. 9, 2023) (the “Interim Guidance”). In short, under the Interim Guidance, agencies should quantify proposed actions’ GHG emissions and place GHG emissions in appropriate context.

***Navajo Transitional Energy Company & Schwabe, Williamson & Wyatt, P.C.
Ken Pearson & Ryen Godwin***

Issue Excerpt Text: Therefore, the RMPA must consider how the alternatives that end mining at Spring Creek Mine may cause mining and extraction-and accompanying GHG emissions-elsewhere. BLM cannot simply ignore these downstream emissions, it must account for sources that would substitute for the coal not produced in the analysis area.

Summary:

Protestors stated that the BLM violated NEPA by claiming it does not have the tools to analyze reliability impacts. Protesters also stated the BLM did not evaluate both direct and indirect reasonably foreseeable impacts from coal or the downstream GHG emissions and did not provide sources. In addition, protestors stated that the BLM violated NEPA by indicating that the Spring Creek Mine will be out of coal reserves by 2035, prior to the next anticipated Resource Management Plan (RMP) revision in 2039, thereby resulting in the BLM determining closure of that mine, which protestors stated is an overreach of its authority.

Response:

The BLM is required to estimate the “physical, biological, economic, and social effects of implementing each alternative considered in detail” and may give a probable range of those effects if it is unable to give precise numbers (43 CFR 1610.4-6). Similarly, Federal agencies must disclose and consider the reasonably foreseeable effects of their proposed actions, including the reasonably foreseeable GHG emissions (88 *Federal Register* [FR] 1196, 1200).

The Miles City FSEIS/PRMPA is a land use-level review specific to the Miles City Field Office and is responsive to the Federal district court’s order in *Western Organization of Resource Councils, et al. v. Bureau of Land Management*, Civil Action No. CV-00076-GF-BMM (D. Mont. 2022). Major findings from the Intergovernmental Panel on Climate Change’s (IPCC) Sixth Assessment Report (AR6) (2021) and the 2021 Special Report of the Montana Climate Assessment on Climate Change and Human Health in Montana (Adams et al. 2021) are summarized in a climate conditions and trends section within Section 3.4.1 of the Miles City FSEIS/PRMPA. The BLM analyzed the three main GHGs (carbon dioxide, methane, and nitrous oxide) associated with the production, transport, and downstream combustion of coal, oil, and gas in the planning area. GHG emissions are also summarized in terms of carbon dioxide equivalents using the global warming potential of each GHG from the AR6 of the IPCC (IPCC 2021). Emissions in carbon dioxide equivalents are calculated using 20-year and 100-year time horizon global warming potentials from the AR6 (IPCC 2021). Emissions by individual GHG and as 100-year carbon dioxide equivalents are presented in Miles City FSEIS/PRMPA Appendix C, Section 2.1.2. Similarly, the Miles City FSEIS/PRMPA

includes an analysis of the direct, indirect, and cumulative GHG emissions from coal (and oil/gas) from the planning area. The downstream emissions tables and associated analysis in Miles City FSEIS/PRMPA Sections 3.3.1 and 3.3.2 were updated to use the most up-to-date published data (2020 National Emissions Inventory data). GHG emissions from coal were considered through 2088 and an analysis of the social costs were quantified and disclosed using the most recent estimates developed by the IWG on SC-GHG under E.O. 13990. These analyses are consistent with the White House Council on Environmental Quality updated 2016 Guidance on Consideration of Greenhouse Gas Emissions and Climate Change.

The BLM must disclose and discuss the cumulative effects of the proposed action and the alternatives when preparing an environmental impact statement (EIS) (BLM Handbook H-1790-1, Section 6.8.3). The CEQ regulations define cumulative effects as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions” (40 CFR 1508.7).

The BLM has complied fully with the requirements of 40 CFR 1508.7 and prepared a cumulative impact analysis based on the broad nature and scope of the proposed management options under consideration at the land use planning level. The cumulative impact analysis considered the effects of the planning effort when added to other past, present, and reasonably foreseeable (not highly speculative) Federal and non-Federal actions. Miles City FSEIS/PRMPA Appendix B identifies all actions that were considered in the cumulative impacts analysis, and Table B-1 provides a summary of the reasonably foreseeable development (RFD) scenario by alternative. Miles City FSEIS/PRMPA Appendix B Section B.4 (pp. B-19 through B-20) lists the sources the BLM used when developing this scenario. The RFD scenario was updated from both the 2015 EIS/RMP and the 2019 FSEIS/Proposed Resource Management Plan Amendment (PRMPA) due to the change in market conditions since then. Appendix B was updated to further clarify coal markets and clearly show power plant closures and their relation to the national energy grid. While the BLM does not have a model suitable to perform an analysis for reliability impacts, discussion was added to Miles City FSEIS/PRMPA Section 3.5.3 to discuss energy substitution considerations.

When estimating the remaining reserves in the Spring Creek Mine, the BLM used the RFD scenario presented in Miles City FSEIS/PRMPA Appendix B to further clarify coal markets and the data were updated from the Draft Supplemental Environmental Impact Statement (SEIS) to provide information on land patterns around the Spring Creek Mine and continuity of mining operations. Miles City FSEIS/PRMPA Appendix B further provides the baseline data (pp. B-7 through B-11) used for the Spring Creek Mine to present the RFD scenario for it on pages B-12 through B-13. For the No Leasing Alternative (A), coal is produced through 2041, providing for the fore-casted energy needs and allowing alternative technologies to advance while their allotted coal persists. Discussion of alternative coal uses has been added to the coal affected environment section. When those potential uses identified (or other uses not yet conceptualized) mature enough to need Federal coal, the BLM may amend the RMP.

The analysis presented in Chapter 3 of the Miles City FSEIS/PRMPA as it affects coal leasing considered the relationship between the proposed action and the RFD scenario, and presented the sources used. The information presented in the Miles City FSEIS/PRMPA fulfills the NEPA requirements for disclosing direct and indirect reasonably foreseeable impacts. Accordingly, this protest issue is denied.

NEPA Violation: Socioeconomics Impacts

State of Montana Department of Natural Resources and Conservation

Erin Weisgerber

Issue Excerpt Text: Appendix D (Economic Technical Support Document) fails to consider the loss of potential future royalties to private and State trust lands as a result of sterilizing federal coal tracts throughout the entire MCFO. By placing a moratorium on federal coal tract leasing, nearly all potential future interest in exploring or developing coal within the MCFO will be extinguished due to the vast federal coal estate surrounding nearly all State and private coal tracts throughout the MCFO.

In Appendix F, the BLM makes the incorrect assumption that sterilization of federal coal through a moratorium on federal coal leasing will only impact federal coal mineral estate (Appendix F, BLM Comment Responses in Rows #16, #21, #24, #46, #103, #105, & #108). However, due to the expansive nature of coal mining, which requires several contiguous sections of land, sterilization of the checkerboard federal coal tracts throughout the MCFO also restricts coal development on surrounding State and private coal mineral estate.

The RMPA/SEIS fails to include the revenues generated from State coal lease royalties in the Affected Environment and Environmental Consequences chapter. In Fiscal Year 2023 State trust land generated nearly \$46 million dollars in royalties for the State trust land beneficiaries from coal produced on just five tracts. According to Montana Bureau of Mines and Geology (MBMG) Report 122 entitled “Coal Resources of Montana,” Alternative D will sterilize up to 37.8 billion short tons of potentially strip-mineable coal out of the total 42.9 billion short tons of mineable coal within the MCFO² (this total number includes federal, state, and private coal reserves). Utilizing a MBMG Report on Coal Resources of Montana, the DNRC calculated the total mineable coal reserves in strippable coal deposits within the MCFO to be 1.82 billion tons of coal underlying DNRC Trust Land coal estate. The MBMG study indicated that 280 million tons of mineable coal existed in the Otter Creek coal tracts. These tracts were transferred to the State of Montana by the BLM in exchange for estimated revenues lost to Montana by the federal moratorium on mining near Yellowstone National Park, which was anticipated to affect the proposed New World Gold Mine. The Otter Creek coal tracts were later determined unavailable and sterilized to mining due to a subsequent alluvial valley floor determination. Thus, the remaining amount of mineable coal on State trust land within the MCFO is calculated to be 1.54 billion tons. The average coal price received from Powder River Basin coal over the last 12 months is \$22.40/ton and DNRC Trust Land coal leases have a royalty rate of 12.5 percent for coal strip mines. Therefore, the total royalty value lost to the State of Montana School Trust beneficiaries due to sterilized coal within the MCFO area that results from the BLM selection of Alternative Dis approximately \$4.32 billion (current dollars).

Landmark Resource Firm

Nathan Descheemaeker

Issue Excerpt Text: The SEIS also failed to consider the socio-economic impacts on counties that currently have leasable coal estate within their boundaries.⁸ The agency analyzed current mining operations and active leases, but the proposed alternative contemplates a no-leasing decision which impacts counties with potential for leasable coal within their jurisdictions. The SEIS acknowledges this on p. ES-8 “Montana environmental justice populations would likely be adversely impacted from loss of economic revenue and social programs funded from coal production, unless a new RMP allocates additional coal for leasing consideration in the future.”

Montana Natural Resources Coalition of Counties

John Fahlgren

Issue Excerpt Text: The DEIS socio-economic analysis study area only considers 4 Montana counties and 1 Wyoming county, 3 of which are almost entirely outside the planning region (see DEIS p. 3-106). The study area excludes 9 counties within the planning region that have subsurface coal estate currently available for lease within their jurisdictions. Because the RMPA is limited to amending decisions regarding lands acceptable for further consideration for leasing, BLM failed take a hard look at the down-stream economic impacts associated with totally prohibiting federal leasing within multiple counties?

Montana Coal Council & Westmoreland Mining LLC

George Harris & Jeremy Cottrell

Issue Excerpt Text: The SEIS/RMPA arbitrarily assesses the costs of the various alternatives under consideration.³⁹ In recognition of the District of Montana’s 2022 order, BLM accounts for various indirect impacts of coal mining, such as emissions associated with downstream combustion. Yet BLM arbitrarily fails to account for or even acknowledge the indirect positive effects of coal, including cheaper and more dependable energy, both of which also come with positive health effects, and the indirect health impacts of higher living standards and better healthcare throughout the community benefitting from the mine and powerplant’s operations. It is arbitrary to only list indirect negatives, without even acknowledging the concomitant indirect benefits.

National Mining Association

Katie Sweeney

Issue Excerpt Text: BLM’s refusal to evaluate the impacts to reliability and affordable electricity is arbitrary and capricious under the Administrative Procedure Act. One consideration in determining the lawfulness of agency actions, is whether an agency “failed to consider an important aspect of the problem.”³³ In attempting to focus its impacts analysis solely on impacts within the MCFO planning area, BLM is failing to consider an important aspect of the problem and is also arbitrarily limiting its analysis. As discussed above, the impacts of BLM’s adoption of a no future leasing alternative on reliable and affordable electricity is an important aspect the agency was required to analyze.

Summary:

Protestors stated the BLM violated NEPA, the Administrative Procedure Act, and the District of Montana’s 2022 order by failing to consider the impacts outside the Miles City Field Office planning area and therefore limiting its analysis of an important aspect of the problem. In addition, the BLM limited the indirect effects analysis to only providing the adverse impacts associated with coal mining and failed to take a hard look at downstream beneficial economic impacts from making areas unavailable to Federal leasing such as the effects from the loss of economic revenue and programs funded from coal production. Alternative D effectively eliminates Montana’s ability to lease the vast mineable trust land coal reserves within the planning area, resulting in the sterilization of nearly every trust land coal tract located within this area. The RMPA/SEIS fails to include the revenues generated from State coal lease royalties in the Affected Environment and Environmental Consequences chapter.

Response:

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly

significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts in the Miles City FSEIS/PRMPA.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provide the necessary basis to make informed land use plan-level decisions.

Miles City FSEIS/RMPA Section 3.5.2, *Environmental Consequences – Direct and Indirect Economic Impacts* (pp. 3-119 through 3-125), provides an analysis and discussion of economic impacts from each alternative. Miles City FSEIS/PRMPA Section 3.5.3, *Cumulative Impacts*, discusses the analysis of direct and indirect cumulative socioeconomic impacts from the reasonably foreseeable future actions. Tables 3-94, 3-95, 3-98, and 3-99 of the Miles City FSEIS/PRMPA demonstrate the socioeconomic impacts from coal production. The RFD scenario was used as the basis for analysis. Miles City FSEIS/PRMPA page 3-125 and Appendix B identify only two active coal mines in the foreseeable future. Sheridan and Yellowstone Counties were added to the socioeconomic analysis area because of intercounty commuting patterns for regional coal employment, and much of the workforce lives and spends its earnings in Sheridan County.

Although a protester states that the BLM did not evaluate the impacts on reliable and affordable electricity and therefore the Miles City FSEIS/PRMPA is arbitrary and capricious, the BLM does discuss energy substitution considerations (see Miles City FSEIS/PRMPA Section 3.5.3) and acknowledges that substitution across energy sources or locations may not fully meet the energy needs that would otherwise have been realized through production from the Federal mineral estate. Price effects may lower the market equilibrium quantity demanded for some fuel sources. Furthermore, energy markets are complex, and the net effects of production changes in one location or one sector are affected by multiple factors in the broader energy market. In general, reductions in oil, natural gas, or coal produced from Federal leases may be partially offset by non-Federal production (state and private) in the United States or by overseas production (i.e., geographic substitution). See Appendix F of the Miles City FSEIS/PRMPA for a more detailed discussion by the BLM on energy markets.

Additionally, the Miles City FSEIS/PRMPA is a land use planning-level review specific to the Miles City Field Office and is responsive to the Federal district court’s order in *Western Organization of Resource Councils, et al. v. Bureau of Land Management*, Civil Action No. CV-00076-GF-BMM (D. Mont. 2022). The court specifically ordered the BLM to consider No Leasing and Limited Leasing Alternatives. In addition, NEPA requires agencies to analyze a No Action Alternative. See Section 2.2, *Alternatives Development*, for details and Section 3.5.2 for economic impacts by alternative in the Miles City FSEIS/PRMPA.

The Miles City FSEIS/PRMPA analyzed economic contributions associated with Federal coal development. It includes impacts on non-Federal coal by comparing alternative impacts. Economic contributions, associated with Federal coal leasing and development, are disclosed for Alternatives A and B for the Spring Creek Mine continuity of operations to 2088. Changes to economic contributions from Alternative C were compared to those of Alternatives A and B. Similarly, changes to economic contributions from Alternative D were compared to those of Alternative C but limited to 2035. As stated on page 3-125 in the FSEIS/PRMPA, “Under Alternative D, Spring Creek Mine federal production would end by 2035, with associated impacts on mineral revenue-supported services (as

noted for Alternative C) occurring after this time. In the absence, or lag, of economic diversification of the surrounding region, estimated revenues from federal coal production presented in Table 3-109 would be foregone.”

The landownership around Spring Creek Mine is approximately 85 percent Federal coal estate. As shown in Appendix B, Map B-2, and discussed in Section B.1.2, there are 760 acres of non-Federal land (including 640 acres of State land) immediately adjacent to the Office of Surface Mining Reclamation and Enforcement (OSMRE) Federal mine plan boundary. Due to predominantly Federal coal ownership, there is no other non-Federal coal within 1.5 miles of the Spring Creek OSMRE Federal mine permit (excluding the Decker Permit area). The BLM recognizes that logical mining is most efficient when large blocks of land are available to mine continuously and restricting adjacent lands causes a setback from the property line to prevent trespass of the adjacent mineral owner. However, the BLM has not identified any pending or proposed State leases that would be affected by Alternative D within the planning period. Specific to Spring Creek Mine, as disclosed in Appendix B in the FSEIS/PRMPA, the mine identified 1,262 acres pending leases and 1,300 acres of potential subsequent Federal coal leases but did not identify any pending or proposed State coal leases that may be developed in the future. Even though the DNRC states there would be 82 percent of State coal mineral estate that would be sterilized under Alternative D, these lands may not have development potential or are not expected to be leased or mined within the planning period. This is due to no new mines projected, the Rosebud Mine having sufficient coal reserves from existing leases, and the Spring Creek Mine projecting needs only from pending Federal leases and subsequent 1,300 acres of Federal coal leases.

Even though non-Federal coal is present in limited quantities in the area, and in consideration that non-Federal coal was not identified for future development, the BLM assumes all 1,300 acres of subsequent future leasing would come from Federal coal. The Spring Creek Mine would have limited options to expand without additional Federal coal leases; however, the State section adjacent to existing leases and mining operations at Spring Creek Mine may be developed under Alternative D, but it was not made known to the BLM. It would be speculative for the BLM to include analysis of lost State revenue in consideration of predominant Federal coal estate and that it historically takes 10+ years to lease and permit a mine expansion. The Proposed RMPA does acknowledge the mineral ownership pattern and that non-Federal mining would likely be affected. While the historical nature of large strip mines would not be feasible for non-Federal mining, the BLM decision would have no impact on the management decision for State trust lands and would not preclude the State’s authority to manage, permit, and bill other uses of DNRC lands accordingly to meet its fiduciary responsibility. The BLM recognizes a potential future decrease, but this is further expected from the current decline in the demand for coal.

The BLM relied on current information in preparation of the Miles City FSEIS/PRMPA and complied with NEPA’s requirement to analyze socioeconomic impacts. Accordingly, this protest issue is denied.

No Action Alternative

Montana Coal Council & Westmoreland Mining LLC George Harris & Jeremy Cottrell

Issue Excerpt Text: Notably, the alternative BLM now calls the “no-action” Alternative A, is in fact Alternative B from the 2019 SEIS RMPA. By contrast, the actual “no-action” alternative representing the current status quo (given the vacatur of the 2021 ROD) should be Alternative A in the 2019 SEIS RMPA, which merely “brought forward management decisions from the coal screens performed for the Powder River and Big Dry RMPs into the 2015 Proposed RMP/Final

EIS.” BLM’s relabeling of the 2019 SEIS RMPA Alternative B as if it is now a no-action Alternative A, is a sleight of hand that violates the statutorily required consideration of a true no-action alternative, and conceals the fact that this new Alternative A bakes in many changes from the status quo established by the 2015 RMP, including for example, Alternative A’s proposed automatic 300 foot buffers around any water resources.

Summary:

The BLM has violated NEPA by not considering a true no-action alternative. The protester notes that the current no-action Alternative A in the Miles City FSEIS/PRMPA is the same as Alternative B from the 2019 Miles City FSEIS/PRMPA when it should be Alternative A from that document.

Response:

When preparing an EIS for a land use plan amendment, NEPA requires an agency to rigorously explore and objectively evaluate all reasonable alternatives including a No Action alternative (40 CFR 1502.14). The no action alternative represents what would happen if the Federal agency continued to operate and maintain the approved RMP with no changes. In other words, the no action alternative is a projection of current and reasonably foreseeable future conditions, including the continuation of preexisting, ongoing plans, programs, and operations, without any new alternatives being implemented.

The Miles City FSEIS/PRMPA is a land use–level review specific to the Miles City Field Office and is responsive to the Federal district court’s order in *Western Organization of Resource Councils, et al. v. Bureau of Land Management*, Civil Action No. CV-00076-GF-BMM (D. Mont. 2022). The court specifically ordered the BLM to consider No Leasing and Limited Leasing Alternatives. In addition, NEPA requires agencies to analyze a No Action alternative, which the BLM did under Alternative A (Miles City FSEIS/PRMPA pp. 2-2 through 2-5). The No Action Alternative for this effort brings forward the management decision from the 2021 Record of Decision and Approved RMPA, which was analyzed as Alternative B in the Miles City 2019 FSEIS/PRMPA.

As described in the 2024 Miles City FSEIS/PRMPA page 2-2, in the 2019 FSEIS/PRMPA, Alternative B applied a criterion for maintaining air quality standards as part of the multiple-use screen; however, existing data and modeling done for the 2015 EIS/RMP showed no air quality standards were exceeded based on the national ambient air quality standards under the Clean Air Act. Therefore, no geographic area of land was eliminated from further consideration for coal leasing because of air resources under the No Action Alternative in the 2024 Miles City FSEIS/PRMPA. However, Federal lands were eliminated under Screen 3’s multiple-use criterion because of conflicts with oil and gas wells; oil and gas units; perennial, riparian, and wetland resources; conservation easements; recreation areas; sport fishing reservoirs; areas of critical environmental concern; and cultural viewsheds (Miles City FSEIS/PRMPA p. 2-2).

Consistent with 40 CFR 1502.14, the BLM properly analyzed a No Action Alternative in the Miles City FSEIS/PRMPA. Accordingly, this protest issue is denied.

FLPMA and Mineral Leasing Act Violation: Proposed Alternative

***Montana Coal Council & Westmoreland Mining LLC
George Harris & Jeremy Cottrell***

Issue Excerpt Text: this rationale is arbitrary and capricious, and lacks any rational connection between the facts found and the choice made, given that selection of Alternative D involves denial

of pending leases. Indeed, BLM elsewhere makes a factual finding that Alternative D would directly lead to shutdown of the Spring Creek mine before it would otherwise close operations for any other reason. This fact alone demonstrates that there is a reasonably anticipated market need for continued coal lease availability that would be foreclosed by Alternative D. BLM's selection of Alternative D is thus arbitrary because it fails the requirement that "the agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" See *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U. S. 156, 168 (1962)).

***Montana Coal Council & Westmoreland Mining LLC
George Harris & Jeremy Cottrell***

Issue Excerpt Text: to the extent that BLM also intended to implicitly rely on the District of Montana court decision or the NEPA analysis included in the SEIS, such a rationale would also be arbitrary and capricious due to wrongly relying on lack of agency discretion rather than acknowledging that selection between alternatives is an agency act of discretion requiring specifically articulated and rational supporting grounds.

***Montana Coal Council & Westmoreland Mining LLC
George Harris & Jeremy Cottrell***

Issue Excerpt Text: The BLM's selection of Alternative D is arbitrary and capricious, because it departs from prior Agency policy and determinations without rationale.

***Navajo Transitional Energy Company & Schwabe, Williamson & Wyatt, P.C.
Ken Pearson & Ryen Godwin***

Issue Excerpt Text: Under the No Leasing Alternative, "pending federal lease applications would not be authorized. None of the future anticipated needs would be satisfied through federal authorizations." MCFO SEIS/RMPA, 2-15. As the BLM is well aware, the Powder River Basin (PRB) provides 85% of the federal coal in the United States, so the decision not to designate any lands outside of the existing leases as suitable for coal mining will effectively eliminating future mining of federally owned coal. That decision is directly contrary to the Mineral Leasing Act of 1920 (MLA) and the Mining and Minerals Policy Act of 1970 (MMPA), and the body of federal regulation implementing those statutes. Congress has specifically directed that coal leasing shall be available in those areas suitable for such activity. The Department of the Interior cannot render meaningless a body of federal legislation in a single executive action such as a resource management plan amendment.

***Navajo Transitional Energy Company & Schwabe, Williamson & Wyatt, P.C.
Ken Pearson & Ryen Godwin***

Issue Excerpt Text: Even though the court required BLM to evaluate the environmental impacts of those alternatives, BLM must still give a reasoned explanation for choosing the No Leasing Alternative. BLM has provided a data dump, summarizing what it claims are the foreseeable impacts of each alternative. However, BLM never takes the requisite next step of providing meaningful discussion about why it ultimately chose the No Leasing Alternative. Such discussion is required under FLPMA and NEPA.

***Landmark Resource Firm
Nathan Descheemaeker***

Issue Excerpt Text: The Final Environmental Impact Statement (EIS) for the Miles City Field Office adopting a no leasing alternative allowing zero acres of federal coal estate available for lease is an

abuse of agency discretion and not in accordance with applicable law. There is no lawful basis for the Department of Interior (DOI) acting through the Bureau of Land Management (BLM) to entirely close off access and development of one of the principal and major uses of federal lands. This decision fails to uphold statutory requirements for multiple use and sustained yield.

Montana Natural Resource Coalition of Counties

John Fahlgren

Issue Excerpt Text: There is no legal basis for Department of Interior (DOI) through the Bureau of Land Management (BLM) to entirely close off access and development of one of the principal and major uses of federal lands, and at the same time uphold statutory requirements for multiple use and sustained yield.

Montana Coal Council & Westmoreland Mining LLC

George Harris & Jeremy Cottrell

Issue Excerpt Text: Alternatives C and D violate the Department of the Interior’s statutory mandates under the Mineral Leasing Act (“MLA”) and Federal Land Policy and Management Act (“FLPMA”).

Montana Department of Natural Resources & Conservation

Erin Weisgerber

Issue Excerpt Text: The BLM’s preferred no-leasing alternative (d) is contrary to the Mineral Leasing Act of 1920, the Mining and Mineral Policy Act of 1970, the Fair Market Value Policy of Federal Coal Leasing of 1984, and the Federal Land Policy Management Act.

National Mining Association

Katie Sweeney

Issue Excerpt Text: BLM’s adoption of the no future coal leasing alternative is contrary to FLPMA’s multiple use mandate.

National Mining Association

Katie Sweeney

Issue Excerpt Text: concerns about BLM’s compliance with the MLA. In the MLA, the primary statute that governs the leasing of federal coal, Congress recognized the importance of this critical resource. In fact, the MLA is subtitled “an act to promote the mining of coal...” and mandates that “no mining operating plan shall be approved which is not found to achieve the maximum economic recovery of the coal within the tract.”⁴¹ BLM rebuffs the NMA’s arguments, once again asserting that neither the MLA or FLPMA require that leases within the allocation area be granted. In this protest, the NMA reiterates its MLA argument and points to the BLM’s 2006 policy as articulating how BLM can comply with FLPMA and the MLA without ending future coal leasing.

Navajo Transitional Energy Company & Schwabe, Williamson & Wyatt, P.C.

Ken Pearson & Ryen Godwin

Issue Excerpt Text: FLPMA requires the Secretary to manage public lands for multiple uses, including mineral development, and to develop comprehensive land use plans incorporating these various uses. 43 U.S.C. §§ 1701(a)(7), 1712(c). FLPMA directs the Secretary to “use and observe the principles of multiple use and sustained yield” in developing land use plans. 43 U.S.C. § 1712(c)(1). BLM’s ban on coal leasing fails to provide for “harmonious and coordinated management of the various resources without permanent impairment of the productivity of the lands and the quality of the environment[.]” 43 CFR 1601.0-5(i). A complete ban fails to balance multiple uses by simply elevating a single use or resource value over all other uses. It is antithetical to

principles of “multiple use and sustained yield” to impose a complete ban on the most significant revenue generating use of federal lands within the Powder River Basin like further coal leasing. 43 U.S.C. § 1712(c)(1). BLM’s application of the multiple use criteria in coal screening not only violates FLPMA’s multiple use mandate, it is also completely arbitrary.

Summary:

Protestors stated that the BLM violated FLPMA, NEPA, the MLA, the Minerals Policy Act of 1970, and various court rulings by choosing the No Leasing Alternative and ultimately closing access to and mineral development of Federal land. Protestors stated that the BLM violated FLPMA by not upholding the multiple-use and sustained-yield mandate, and abused agency discretion by elevating a single-use resource value above all others. Protesters noted the BLM did not provide a reasoned explanation and a meaningful discussion for choosing the No Leasing Alternative, and therefore the selection is arbitrary and capricious.

Response:

Section 102(a)(7) of FLPMA declares that it is the policy of the United States that management of the public lands be based on “multiple use” and “sustained yield.” Section 103(c) of FLPMA defines “multiple use” as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people.

FLPMA’s multiple-use policy does not require that all uses be allowed on all areas of the public lands. Through the land use planning process, the BLM evaluates and chooses an appropriate balance of resource uses that involves tradeoffs between competing uses. Rather, the BLM has discretion to allocate the public lands to particular uses and to employ the mechanism of land use allocation to protect for certain resource values, or, conversely, develop some resource values to the detriment of others, short of unnecessary and undue degradation.

Locatable minerals are minerals for which the right to explore or develop the mineral resource on Federal land is established by the location (or staking) of mining claims and is authorized under the General Mining Law of 1872. The BLM can apply measures necessary to prevent unnecessary or undue degradation, as defined at 43 CFR 3809.5. Through the land use planning process, the BLM identifies any terms, conditions, or other special considerations needed to protect other resource values while conducting activities under the operation of the General Mining Law of 1872 (BLM Handbook H-1601-1, Appendix C, p. 25).

The Miles City FSEIS/PRMPA is responsive to the Federal district court’s order in *Western Organization of Resource Councils, et al. v. Bureau of Land Management*, Civil Action No. CV-00076-GF-BMM (D. Mont. 2022). The court specifically ordered the BLM to consider No Leasing and Limited Leasing Alternatives. In addition, NEPA requires agencies to analyze a No Action Alternative.

All alternatives considered in the Miles City FSEIS/PRMPA, as described in Section 2.2.1 of the Miles City FSEIS/PRMPA, provide an appropriate balance of uses on public lands. All alternatives allow some of level of all uses present in the planning area, in a manner that is consistent with applicable statutes, regulations, and BLM policy. Based on the BLM’s assessment of each alternative’s impacts on the sensitive resources in the planning area, the BLM selected Alternative D, No Leasing, as the PRMPA making no BLM-administered coal available for leasing within the planning area. It is important to note that the PRMPA does not affect the area with coal development potential (screen 1) or the area determined to be suitable for surface coal mining (screen 2), as identified in the rationale for selection of the No Leasing Alternative in Section 2.2.5 of the Miles City FSEIS/PRMPA.

The BLM has determined that additional leasing of Federal coal is not necessary based on the current analysis in the Miles City FSEIS/PRMPA. The analysis indicates that operating mines in the planning area have existing leases with sufficient coal reserves to maintain existing mine production levels until 2035 for Spring Creek Mine and 2060 for Rosebud Mine. The Miles City FSEIS/PRMPA identified terms, conditions, or other special considerations needed to protect resource values within the planning area in accordance with BLM policy in making this determination. As such, the Miles City FSEIS/PRMPA satisfies FLPMA’s multiple use policy. Accordingly, this protest issue is denied.

Public Involvement

Navajo Transitional Energy Company & Schwabe, Williamson & Wyatt, P.C. Ken Pearson & Ryan Godwin

Issue Excerpt Text: BLM violated FLPMA’s public participation process when preparing the RMPA. An important principle of FLPMA is public participation. FLPMA requires “procedures, including public hearings where appropriate, to give . . . the public, adequate notice and opportunity to comment upon and participate in formulation of plans[.]” 43 USC § 1712(f). Providing adequate notice and opportunity to comment means providing a draft of the resource management plan and an environmental impact statement analyzing certain plan alternatives. 43 CFR 1610.2(f). BLM failed to comply with its public notice and participation requirements because it never released a copy of the Resource Management Plan Amendment for public comment. It released a draft Supplemental Environmental Impact Statement in May of 2023, but the contents of the SEIS did not identify the proposed RMPA or analyze the coal screening criteria of the proposed RMPA. At best, the SEIS identified potential alternatives, but it did not even identify a single preferred alternative. Instead, BLM decided to identify two potential alternatives depriving the public of the opportunity to comment on the actual plan BLM intended to implement and the FLPMA land use planning criteria intended to support that decision.

Summary:

Protestors stated that the BLM violated FLPMA’s public participation process when preparing the RMPA by not providing adequate notice and opportunity to comment, by not identifying the proposed RMPA for public comment or a single preferred alternative in the Draft RMPA, and by not analyzing the coal screening criteria in the Draft RMPA.

Response:

Public involvement is an important part of the NEPA process. The level of public involvement varies with the different types of NEPA compliance and decision-making. The CEQ regulations require that agencies “make diligent efforts to involve the public in preparing and implementing their NEPA procedures” (40 CFR 1506.6(a)), but there is a wide variety of ways to engage the public in the NEPA process (BLM NEPA Handbook, H-1790-1, pp. 62–63).

CEQ regulations direct that an EIS “identify the agency’s preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference” (40 CFR 1502.14(e)). Additionally, the BLM’s planning regulations at 43 CFR 1610.4-7 direct the BLM to “identify a preferred alternative that best meets Director and State Director guidance. Nonetheless, the decision to select a preferred alternative remains the exclusive responsibility of the BLM.” The preferred alternative represents the alternative determined to best address the purpose and need and the issues considered at the Draft EIS stage of the process. While collaboration is critical in developing and evaluating alternatives, the final

designation of a preferred alternative remains the exclusive responsibility of the BLM. However, identifying preferred alternatives does not indicate any final decision commitments from the BLM. In developing the Miles City FSEIS/PRMPA, the decision maker may select various components from each of the alternatives analyzed in the Draft SEIS/RMPA. The FSEIS/PRMPA may also reflect changes and adjustments based on comments received on the Draft SEIS/RMPA, new information, or changes in BLM policies or priorities (Miles City Draft SEIS/RMPA pp. 2-17 through 2-18).

The BLM used the impact analysis, along with recommendations from cooperating agencies, consideration of planning criteria, and anticipated resolution of resource conflicts to identify Alternatives B and D in the Draft SEIS/RMPA as a co-preferred alternative (Miles City Draft SEIS/RMPA pp. 2-17 and 2-18). The coal screening criteria were also provided in the Draft SEIS/RMPA in Appendix A and analyzed under each alternative. As part of the land use planning process regulated under 43 CFR 1600, surface management agencies are charged with filtering lands overlying federally administered coal through four screens. These screens result in the allocation of lands as acceptable for further consideration for leasing and development, giving consideration to resource conflicts with coal development (43 CFR 3420.1-4(d)). The screening process informs potential land use decisions regarding coal leasing availability under the alternatives analyzed in the Miles City Draft SEIS/RMPA (Miles City Draft SEIS/RMPA Appendix A, p. A-1).

In the 2019 FSEIS/PRMPA, the BLM updated the coal screens from those used in the 2015 Miles City RMP/Record of Decision. The BLM did not update the coal screens for Alternative A, which are the 2019 coal screen results. Therefore, the acreages and data reported in Miles City Draft SEIS/RMPA Appendix A apply to each of the proposed alternatives, including the co-preferred alternative (Miles City Draft SEIS/RMPA p. A-1).

The BLM's planning regulations require a minimum 90-day public review period (43 CFR 1610.2(e)) for Draft RMPAs supported by an EIS. The BLM published the Miles City Draft SEIS/RMPA for a 90-day public review on May 5, 2023. In compliance with FLPMA and NEPA, the BLM followed the required public participation process. The specific opportunities for public involvement that were provided are described in the Miles City FSEIS/PRMPA, Chapter 4, *Coordination and Consultation*. Guidance for implementing public involvement under NEPA is codified in 40 CFR 1506.6, thereby ensuring Federal agencies make a diligent effort to involve the public in the NEPA process. The BLM notified and involved the public and other agencies via *Federal Register* notices, public and informal meetings, individual contacts, media releases, and the project's ePlanning website: <https://eplanning.blm.gov/eplanning-ui/project/2021155/510> (Miles City FSEIS/PRMPA p. 4-2).

The BLM properly identified preferred alternative(s) and provided the coal screening criteria in the Miles City Draft SEIS/RMPA and complied with NEPA and FLPMA's public participation process. Accordingly, this protest issue is denied.

Regulatory Framework Does not Consider Current Rules

Montana Coal Council & Westmoreland Mining LLC George Harris & Jeremy Cottrell

Issue Excerpt Text: it appears that BLM wholly failed to account for the impacts of the GHG NSPS on such downstream coal combustion emissions after 2032. This failure arbitrarily inflates the GHG emission estimates in the SEIS associated with Alternatives A, B, and C. Likewise, the MATS RTR would radically reduce particulate emissions associated with downstream coal combustion, as it cut filterable Particulate Matter (fPM) limits and analogous alternative metal HAP emission limits for existing coal-fired power plants by ~66% within 3 years. BLM's failure to consider the impact of the MATS when calculating the purported impacts of downstream coal combustion likewise arbitrarily inflates BLM's estimate from both particulate matter and metal

HAP for Alternatives A, B, and C. BLM's failure to account for these concurrent rulemakings renders the SEIS and reliance on it arbitrary and capricious.

Summary:

Protestors stated that the BLM failed to consider all relevant information when analyzing impacts on air quality and climate change from coal mining, including the new EPA GHG New Source Performance Standards (NSPS) rule and Mercury and Air Toxics Standards (MATS) rule. The protester states that the FSEIS does not consider all relevant information when analyzing the impacts of GHG NSPS on downstream coal combustion omissions after 2032 and the impact of the MATS for calculating the impacts of downstream coal combustion. These omissions arbitrarily inflate the estimate of both particulate matter and metal hazardous air pollutants (HAP) for Alternatives A, B, and C.

Response:

When new laws and rules are published, they become part of the regulatory framework that governs all Federal agencies, including the BLM. The NEPA process is designed to ensure that environmental considerations are integrated into the Federal decision-making process. When a new law or rule is published that affects this process, the BLM, like all Federal agencies, is required to adhere to it.

Under Section 111(b) of the Clean Air Act, EPA sets NSPS for GHG emissions from new, modified, and reconstructed fossil fuel-fired power plants. Under the MATS rule, EPA is further limiting the emission of non-mercury HAP metals from existing coal-fired power plants. EPA is also tightening the emission standard for mercury for existing lignite-fired power plants to a level that is aligned with the mercury standard that other coal-fired power plants have been achieving under the current MATS. However, the NSPS for GHG Emissions from New, Modified, and Reconstructed Electric Utility Generating Units final rule was published on April 24, 2024, and became effective on July 8, 2024 (89 FR 39798). The MATS Standards final rule was published on May 7, 2024, and also became effective on July 8, 2024 (89 FR 38508). The Miles City FSEIS/PRMPA was published on May 17, 2024, prior to when these rules became effective.

The BLM did consider the proposed version of these new rules in its analysis of air quality and GHG emissions as described in the *Regulatory and Policy Framework* subsection of Section 3.3.1, *Affected Environment*, for air quality (Miles City FSEIS/PRMPA p. 3-10) and in the *Regulatory and Policy Framework* subsection of Section 3.4.1, *Affected Environment*, for GHGs, including climate change (Miles City FSEIS/PRMPA p. 3-77). Although these rules set new standards for future GHG and HAP emissions, the FSEIS analyzes current conditions and recent trends, and took a "hard look" at potential environmental impacts of adopting the Miles City FSEIS/PRMPA under each alternative proposed, as required by NEPA. The BLM also analyzed potential cumulative impacts within this regulatory framework for air quality in Section 3.3.3 (Miles City FSEIS/PRMPA p. 3-72) and for GHGs, including climate change, in Section 3.4.3 (Miles City FSEIS/PRMPA pp. 3-100 through 3-102).

Therefore, the BLM adequately considered the current regulatory framework in the Miles City FSEIS/PRMPA. Accordingly, this protest issue is denied.

Surface Mining Control and Reclamation Act: Coal Leasing Suitability

Montana Coal Council & Westmoreland Mining LLC

George Harris & Jeremy Cottrell

Issue Excerpt Text: The MCFO SEIS/RMPA does not meet the requirements of the detailed statement necessary before designating a land area as unsuitable for surface coal mining operations under the Surface Mining Control and Reclamation Act of 1977.

Summary:

Protestors stated that the BLM violated the Surface Mining Control and Reclamation Act of 1977 by not detailing the reasons the area is unsuitable for surface coal mining and therefore closed for operations.

Response:

The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1271) outlines requirements for designating areas unsuitable for coal mining. These regulations identify certain lands as unsuitable for surface mining or surface mining operations because they contain significant values that conflict with coal development. Lands are considered unsuitable for certain types of surface coal mining operations if such operations will “(A) be incompatible with existing State or local land use plans or programs; or (B) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems; or (C) affect renewable resource lands in which such operations could result in a substantial loss or reduction of long range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas; or (D) affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology” (30 U.S.C. 1271(3)(a)). Furthermore, the act requires that “determinations of the unsuitability of land for surface coal mining, as provided for in this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at the Federal, State, and local levels” (30 U.S.C. 1271(a)(5)). As such, the BLM is required to provide rationale for its determination that areas in the Miles City FSEIS/PRMPA are unsuitable for surface coal mining operations.

The above regulations identify certain lands as unsuitable for surface mining operations because they contain significant values that conflict with coal development. Therefore, through the application of the coal screens in the Miles City FSEIS/PRMPA, areas were eliminated from further consideration for coal leasing where protection or use of the noncoal resource would be precluded by surface coal mining and where the noncoal resource or use is of greater value than coal. The *Coal Screening Process* subsection of Miles City FSEIS/PRMPA Section 1.5.2, *Regulatory Considerations*, and Appendix A, *Coal Screening Process*, include information on the multiple-use screen and its application in the Miles City FSEIS/PRMPA in accordance with the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1271). Specifically, the BLM outlines the coal screening methodology and results in Miles City FSEIS/PRMPA Appendix A, Sections A.2–A.3, including a detailed list of criteria, applicable resource constraints, and acreages in Table A-1.

The BLM provided adequate rationale and documentation describing how and why lands were not allocated as open for surface coal mining operations in the Miles City FSEIS/PRMPA. As such, the BLM properly complied with its obligation under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1271). Accordingly, this protest issue is denied.

References

- Adams A., R. Byron, B. Maxwell, S. Higgins, M. Eggers, L. Byron, and C. Whitlock. 2021. *Climate change and human health in Montana: a special report of the Montana Climate Assessment*. Montana State University, Institute on Ecosystems, Center for American Indian and Rural Health Equity, Bozeman. 216 p. Internet website: <https://doi.org/10.15788/c2h22021>.
- Interagency Working Group on the Social Cost of Greenhouse Gases (IWG). 2021. Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990.
- Intergovernmental Panel on Climate Change (IPCC). 2021. *Climate Change 2021: The Physical Science Basis*. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (Masson-Delmotte, V., P. Zhai, A. Pirani, S. L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M. I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J. B. R. Matthews, T. K. Maycock, T. Waterfield, O. Yelekçi, R. Yu, and B. Zhou (eds.)). Cambridge University Press, Cambridge, United Kingdom, and New York, New York, USA.