

ENCOURAGING RESPONSIBLE DEVELOPMENT TODAY ~ FOR TOMORROW

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December 17, 2008

Bureau of Land Management, Casper Field Office  
Attn: Teresa Johnson  
2987 Prospector Drive  
Casper, WY 82604  
[casper\\_wymail@blm.gov](mailto:casper_wymail@blm.gov)

RE: Draft Environmental Impact Statement for South Gillette Area Coal Lease Applications

Dear Ms. Johnson,

Thank you for the opportunity to review the Draft Environmental Impact Statement (DEIS) and present our comments and concerns on the proposed South Gillette Area Coal Lease Applications.

The Powder River Basin Resource Council (PRBRC) has a long history of involvement working for responsible coal leasing and mining in the Powder River Basin. PRBRC was formed in 1973 by ranchers and concerned citizens of Wyoming to address the impacts of strip mining on rural people and communities. Today, we work for the preservation and enrichment of our agricultural heritage and rural lifestyle; the conservation of our unique land, mineral, water, and clean air resources, consistent with the responsible use of those resources to sustain the livelihood of present and future generations; and the education and empowerment of our citizens to raise a coherent voice in the decisions that will impact their environment and lifestyle. Our members live, work, and travel throughout the Powder River Basin near the various coal mines of the area. We write these comments on their behalf.

**I. BLM needs to determine the true purpose and need for this federal action.**

If approved, the South Gillette Area Coal Leases would include approximately 12,000 acres and almost 800 million tons of coal. DEIS at 3-255. Given the wide-ranging environmental impacts that will result from this action, it is imperative to first analyze whether an action of this magnitude is even needed.

The DEIS speaks only in general terms about how this coal “helps provide a stable supply of power” and does not appropriately demonstrate that these mine expansions are specifically needed to provide coal to existing or projected coal-fired power plants. DEIS at 1-19. The DEIS lacks a discussion about existing coal reserves and whether those existing and projected reserves will be sufficient (or not sufficient) to meet existing and projected power needs.

Without complete analysis of the project need, it is difficult for members of the public and consulting agencies to appropriately comment on the proposed alternatives and whether these alternatives could meet the project need. For instance, delaying the sale of the lease tracts, an alternative which was not analyzed in detail, could potentially meet the project need and provide environmental and socio-economic benefits (such as potential increase in royalty revenue, increased chance for contemporaneous reclamation, and improved local and regional air quality). Likewise, the no action alternative may be the most prudent choice at this time given the significant environmental and public health consequences of the other alternatives. However, given the lack of specific and detailed analysis in the DEIS about project need, it is almost impossible for a member of the public, or in fact the agency, to exercise their judgment to determine what alternative is best.

Additionally, some of the discussion in the purpose and need section is misleading. There seems to be an underlying assumption that the only way electric power companies will “meet increasing demand” is through coal-fired power and therefore “continued extraction of coal is essential to meet the nation’s future energy needs.” DEIS at 1-19. This idea runs counter to what decisions utilities are making to implement demand-side management programs and promote renewable energy.<sup>1</sup> In response to state renewable portfolio standards and imminent federal climate change legislation, many utilities are shifting away from coal as a future source of power. In direct contrast to the statement on page 1-19, utilities and government regulators are wary that electricity costs for individuals and businesses will substantially increase under a carbon tax or cap and trade scenario.<sup>2</sup> It is likely that the future outlook for coal will change dramatically in the time before these coal tracts will be developed, if not even before the time they are leased. Merely stating some overly broad policy goals in favor of coal development does not replace the agency’s need to assess the public purpose and need of this specific agency action.

## **II. BLM should not lease new tracts without first ensuring compliance with SMCRA’s reclamation mandates for existing tracts.**

SMCRA requires the operator to restore the affected land to a condition capable of supporting pre-mining uses or “higher or better uses.” Additionally, SMCRA requires that reclamation of mined land be “as contemporaneous as possible.” 30 U.S.C. § 1202(e). However, contemporaneous reclamation is not happening at mines throughout the Powder River Basin according to OSM reports and other information. For instance,

the rate at which lands are being reclaimed in Wyoming compared to the rate of disturbance...is about 3 to 1... Ideally the ratio should be 1 to 1... The gap between the acres disturbed versus reclaimed is widening, thereby creating a backlog of lands

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<sup>1</sup> The analysis in this section also runs to counter to analysis in other sections of the EIS: “If public sentiment results in changed electrical demand, or if CO2 emissions are ultimately regulated, the demand forecast for coal for electric generation could change.” DEIS at 4-110. The DEIS further notes that an Electric Power Research Institute “study predicts that national policy that forces a reduction of CO2 emissions to 1990 levels would promote increased energy efficiency, and the growth of ‘non carbon’ sources” of fuel. DEIS at 4-11.

<sup>2</sup> See, e.g. Innovest Strategic Value Advisors, *Tri-State: Coal Expansion Poses Risks to Electricity Consumers*, November 2008, available at [http://www.innovestgroup.com/images/innovest\\_tristate\\_%20report\\_110608.pdf](http://www.innovestgroup.com/images/innovest_tristate_%20report_110608.pdf).

available for reclamation, contributing to a delay in contemporaneous reclamation and subsequent bond release.<sup>3</sup>

This lack of contemporaneous reclamation has contributed to significant environmental problems, including the spread of invasive vegetative species and noxious weeds, increased fugitive dust and other air pollution problems, and longer periods of wildlife and livestock habitat loss. BLM and OSM must assess reclamation goals and achievements prior the lease of any new coal tracts. If contemporaneous reclamation is not occurring, BLM and OSM must delay the lease of these new tracts until reclamation consistent with SMCRA objectives and requirements occurs at these mines.

Additionally, the BLM provides no analysis or information on reclamation at the four mines for which leasing would expand operations. At a minimum, the agency must analyze compliance with existing reclamation requirements at the four mines prior to the creation of additional leasing for expanded operations.

BLM has a legal obligation to “prevent unnecessary or undue degradation of the lands.” FLPMA § 1732(v). This provision has been interpreted to require BLM “to prevent, not only unnecessary degradation, but also degradation that, while necessary to [mineral activity], is undue or excessive.” *Mineral Policy Center v. Norton*, 229 F.Supp.2d 30, 42 (D.D.C. 2003). Permanent alteration of the land as a result of untimely or failed reclamation is unnecessary and undue degradation, which BLM can prevent by delaying or preventing the lease of these federal coal tracts.

### **III. BLM should not lease new tracts without first ensuring compliance with SMCRA’s hydrologic balance protection requirements.**

The coalbed in the Powder River Basin is itself an aquifer. As mentioned in the DEIS, the Tongue River Member of the Fort Union Formation “serves as a regional aquifer...coal water is used throughout the region as a source of stock water and occasionally for domestic use.” DEIS at 3-13. Mining and nearby coalbed methane development has significantly impacted these water resources, creating a “continuous cone of depression” near the South Gillette coal tracts. DEIS at 3-82. “Roughly 30 years of surface mining and the more recent CBNG development has resulted in complete dewatering of the coal aquifer in localized areas...” *Id.*

The agency’s EIS acknowledges that coal mining is resulting in material damage to the hydrologic balance of ground and surface water and “complete dewatering” of certain aquifers. In fact, the agency analysis indicates that compliance with SMCRA’s statutory requirement to restore the regional Wyodak coal aquifer to “pre-mining conditions” and due to complete dewatering may in fact be impossible. ES-29. BLM also acknowledges that “groundwater quality would be different from pre-mining conditions after reclamation” and “[d]eep to

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<sup>3</sup> Office of Surface Mining Reclamation and Enforcement, Annual Evaluation Summary Report, Administered by the Land Quality Division of the Wyoming Department of Environmental Quality for Evaluation Year – 2005 (July 1, 2004 to June 30, 2005) August 24, 2005, *available at* <http://www.osm.gov/oversight/wyoming04.pdf>. *See also* Table 5 of the 2007 Report, attached to these comments.

groundwater would increase in an area extending further to the west and south of the existing mines.” DEIS at 3-252.

That said, it is incumbent upon the agency to analyze how additional leasing (and subsequent coal development) would serve to minimize disturbance to ground and surface water, restore the recharge capacity of both the mined and leased area and restore the aquifer to pre-mining conditions. At a minimum, the agency must analyze aquifer recharge capacity, what engineering techniques would be used to restore the aquifer to pre-mining capacity and water quality conditions, and what timetable and costs would be involved with such reclamation. The same must be done for surface water. This analysis is important to “insure the professional integrity, including scientific integrity, of the discussions and analyses” in this NEPA document. 40 C.F.R. § 1502.24.

Additionally, the ongoing damage to ground and surface water by current coal mining operations warrants additional bonding in an amount that covers mine-wide restoration of the hydrologic balance of the surface and ground water to pre-mining conditions --and for each of the four mines which would gain additional leased acreage. Under the Federal Coal Leasing Act Amendments, the need for additional bonding for each of the four mines must be evaluated by the agency during the NEPA process prior to leasing and any analysis should be re-noticed to the public. 30 U.S.C. § 201 et al.

#### **IV. BLM must consider the significance of climate change impacts of the new lease tracts and should consider alternatives to mitigate these impacts.**

During coal mining operations, methane that was previously trapped within the coalbed may be released (i.e. gob gas). Methane is a powerful greenhouse gas – an estimated 20 times as potent as carbon dioxide. The EIS provides no estimate of methane released into the atmosphere from ongoing coal mining at the four existing mines or what that impacts would be from additional leasing and coal mining development. The waste of methane is also the waste of a valuable commodity, and BLM has specifically directed agency staff to “prevent avoidable waste of the public’s resources” and “mitigate environmental impacts” resulting from resulting from coalbed methane and coal mining conflicts. BLM Instruction Memorandum No. 2006-153.

Despite the damaging global warming impacts from the methane to be released, and the wanton waste of a much sought-after non-renewable natural resource, the BLM and Interior Department are approving additional mine leasing and expansion without analyzing the potential for capturing and using the methane. Nor did these agencies analyze the alternative of flaring – i.e., burning – the methane to drastically reduce the project’s global warming impacts. The agencies failed to examine these alternatives despite the fact that methane is routinely captured at working coal mines in the United States and around the world, and despite the fact that methane is flared at working mines in Europe and Australia. The federal agencies’ failure to even consider these reasonable alternatives, and failure to account for the impacts of methane venting on climate change all violate NEPA.

Further, PRBRC notes that a recent IBLA decision provides the BLM with authority to authorize the coal lessee to capture methane as part of coal mining. *Vessels Coal Gas, Inc.*, 175 IBLA 8 (2008).

Additionally, the global climate change impacts of mining in the Powder River Basin are significant. Coal mining requires considerable amounts of power. According to the U.S. Department of Energy, 97% of energy generated in Wyoming comes from coal-fired power plants, and extractive industry consumes 57% of the power used in the state. As detailed in the DEIS, as a result of fuel, electricity, and mining processes, the four expanded mines will emit over one million tons of CO<sub>2</sub> each year. DEIS at 3-255.

Additionally, mined coal will be sent via train to coal-fired power plants. Coal-fired power plants are the leading emitter of carbon dioxide. BLM must analyze, and consider reasonable mitigation alternatives for, these reasonably foreseeable impacts in this EIS.

Global warming, or climate change, is widely acknowledged to pose “serious and well recognized” impacts to the human environment and is a pollutant under the Clean Air Act. *Massachusetts v. EPA*, 127 S. Ct. 1438, 1455 (2007).

In particular, the EIS must discuss not only projected global impacts but the anticipated dramatic local impacts in Wyoming and other Western states. Numerous studies have documented that climate change will dramatically impact states like Wyoming. For instance, the National Wildlife Federation estimates that “Global warming is likely to alter essential habitat in the Greater Yellowstone Ecosystem” and impact plant and animal species across the state.<sup>4</sup> Global warming could also impact industries that depend on snow and water resources, such as skiing, tourism, and agriculture. In a report released in May 2008, even the U.S. Department of Agriculture found “climate change is already affecting U.S. water resources, agriculture, land resources, and biodiversity, and will continue to do so.” Some findings of the report include:

Grain and oilseed crops will mature more rapidly, but increasing temperatures will increase the risk of crop failures, particularly if precipitation decreases or becomes more variable.

Higher temperatures will negatively affect livestock. Warmer winters will reduce mortality but this will be more than offset by greater mortality in hotter summers. Hotter temperatures will also result in reduced productivity of livestock and dairy animals.

Weeds grow more rapidly under elevated atmospheric CO<sub>2</sub>. Under projections reported in the assessment, weeds migrate northward and are less sensitive to herbicide applications.

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<sup>4</sup> National Wildlife Federation, *Global Warming and Wyoming*, available at <http://www.nwf.org/GlobalWarming/pdfs/Wyoming.pdf>.

Invasion by exotic grass species into arid lands will result from climate change, causing an increased fire frequency. Rivers and riparian systems in arid lands will be negatively impacted.<sup>5</sup>

State Climatologist, Steve Gray, has warned that global warming could dramatically impact Wyoming, especially water supplies in the state. (See attached article). Communities in Wyoming, including the City of Gillette, are already facing water shortages and climate change impacts caused by increased coal mining could intensify those impacts. The DEIS needs to assess both local and global climate change impacts caused by mining these coal tracts.

## V. Air quality Concerns

Particulate matter emissions are a serious health threat that can cause significant respiratory damage as well as premature death:

[E]ven at very low levels of exposure, there exists a strong link between PM<sub>2.5</sub> air pollution and many adverse health effects. These include premature death, primarily from heart attacks, strokes and other cardiovascular causes. These conclusions are substantiated by similar work done by the U.S. EPA and the World Health Organization and endorsed by the Health Effects Institute and medical associations. Every increase of 10 micrograms per cubic meter of PM<sub>2.5</sub> creates a ten percent increase in risk of premature death to a person exposed.<sup>6</sup>

Air pollution levels in Campbell County are of special concern to our members. As noted in the DEIS, several of the larger mines in the Powder River Basin have experienced multiple air quality violations. Although the DEIS notes that “estimated average overburden thickness is generally greater in each of the LBA tracts than within the current leases” and “mining of the LBA tracts by the applicant mines could result in an increase in fugitive emissions per ton of coal mined,” DEIS at 3-37, BLM fails to determine the significance of these increased emissions on public health and the environment. As these coal tracts are in close proximity to public roads and the city of Gillette, public health is of particular concern.

FLPMA requires that BLM manage federal lands according to federal and state air quality standards.<sup>7</sup> The Mineral Leasing Act also mandates that the agency insert in each coal lease provisions that require compliance with the Clean Air Act (as well as the Clean Water Act). 30 USC sec. 201. That said, current leases have similar provisions which, because of compliance issues, are not being met.

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<sup>5</sup> USDA, *US Climate Change Science Program Releases Report on the Effects of Climate Change on Agriculture, Land and Water Resources, and Biodiversity*, Press Release, May 27, 2008. The report is available at <http://www.climatescience.gov/Library/sap/sap4-3/default.php>.

<sup>6</sup> California Air Resources Board, at [http://www.arb.ca.gov/research/health/pm-mort/pm-mort\\_fs.pdf](http://www.arb.ca.gov/research/health/pm-mort/pm-mort_fs.pdf)

<sup>7</sup> See 43 C.F.R. § 2920.7(b)(3) (requiring that BLM “land use authorizations shall contain terms and conditions which shall . . . [r]equire compliance with *air . . . quality standards* established pursuant to applicable Federal or State law”) (emphasis added); see also 43 U.S.C. § 1712(c)(8) (requiring BLM in land use plans—which would therefore require implementation in daily management—to “provide for compliance with applicable pollution control laws, including State and Federal air . . . pollution standards or implementation plans”).

Here, and at a minimum, BLM in coordination with the Wyoming Department of Environmental Quality must analyze compliance with the prevention of significant deterioration (PSD) requirements of the CAA for NO<sub>x</sub>, PM and SO<sub>2</sub>. In particular, BLM must determine how much (if any) the existing increment is available for additional and expanded coal mining and development. Similarly, the BLM in coordination with U.S. Environmental Protection Agency must determine, prior to leasing, how the agencies will address regulation of CO<sub>2</sub> from mining operations as well as implementation of new standards for ozone. Even if some of this analysis will be conducted during DEQ's air quality permit process,<sup>8</sup> BLM must include this information as part of this NEPA process. NEPA requires complete analysis of environmental impacts prior to taking agency action.

Lastly, the BLM must discuss and require enforceable mitigation measures through this EIS and Record of Decision to ensure that compliance with air quality standards is ensured both now and in the future and as a result of cumulative increases of particulates and NO<sub>x</sub> from these four mines.

## **VI. BLM must discuss alternatives to mitigate impacts to greater sage-grouse populations.**

The greater sage-grouse is identified as a common breeder on or in the vicinity of these coal tracts, Appendix I, and “[e]ighteen known or potential sage-grouse leks have been identified in the combined evaluation area for the four LBA tracts.” DEIS at 4-74. Additionally, the proposed West Coal Creek LBA tract is located adjacent to a BLM Sage-Grouse Focus Area. Figure 3-29.

Coal and CBM activity appears to already be having an impact on these sage-grouse populations as many of the active leks within 3 miles of the analysis area “have experienced declines in peak male attendance in recent years.” DEIS at 3-169. In order to prevent or reduce future impacts, BLM needs to ensure compliance with its Sensitive Species Policy. The “[i]ntent of the sensitive species designation is to ensure actions on BLM administered lands consider the welfare of these species and do not contribute to the need to list any other Special Status Species under the provisions of the ESA.” BLM Wyoming Sensitive Species Policy and List at 1.<sup>9</sup> BLM management decisions must “avoid or minimize adverse impacts and maximize potential benefits to [sensitive] species” *Id.* at 2. In order to properly “avoid or minimize adverse impacts,” BLM must consider the latest scientific literature and specifically recommendations from the Wyoming Game and Fish Department and attached guidance from the Western Association of Fish and Wildlife Agencies (WAFWA) that interpreted sage-grouse research published between 2003 and 2008. Memorandum from Tom Christiansen and Joe Bohne, Wyoming Game and Fish Department, to Terry Cleveland and John Emmerich (Jan. 29, 2008), with attached report *Using the Best Available Science to Coordinate Conservation Actions that Benefit Greater Sage-*

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<sup>8</sup> See discussion on page 3-251. The DEIS also notes that “BLM is now planning to update the [air quality] model and conduct an impact analysis for the year 2015. DEIS at 4-33. Complete analysis of air quality impacts must be conducted prior agency action pursuant to this EIS.

<sup>9</sup> Of course, BLM's actions in the Basin do not operate in a vacuum; it should be viewed as unfortunate and of little surprise given the findings of these scientific studies to note that the U.S. Fish & Wildlife Service is now considering emergency-room protection for sage-grouse by listing sage-grouse pursuant to the Endangered Species Act. See 73 Fed. Reg. 23172, announcing the Fish and Wildlife Service's current, ongoing “status review” which will determine if the Service will pursue listing the sage-grouse.

*Grouse Across States Affected by Oil & Gas Development in Management Zones I-II (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming)*. Although focused on oil and gas development, the memorandum is instructional in documenting that extensive buffers need to be present around sage-grouse leks and current protective measures are not effectively mitigating impacts. Since coal mines produce more noise and dust than CBM activity, the need for increased buffers around leks and nesting and breeding grounds, including winter habitat, and other mitigation measures is even more prevalent during coal mining.<sup>10</sup> “[A]ccurate scientific analysis...[is] essential to implementing NEPA,” 40 CFR § 1500.1, and BLM must consider the most updated and accurate scientific literature in describing site-specific and cumulative impacts to sage-grouse populations.

This latest scientific literature must also be used to develop mitigation alternatives to protect sage-grouse populations. There is no discussion either in Section 3.10.5 or in Appendix I of mitigation measures that will be implemented. BLM must describe and implement effective mitigation measures in this EIS and the Record of Decision, including larger buffers between sage-grouse habitat and surface activity, protecting sage-grouse nesting and winter habitat, changing the lease boundary, reducing infrastructure, requiring underground power lines to minimize raptor perching sites, or preventing new development until existing mine lands are fully reclaimed to replace lost sage-grouse habitat. Without doing so, BLM will abrogate its responsibilities under NEPA to discuss and take a “hard look” at measures that are needed to mitigate adverse environmental impacts of proposed actions. 40 C.F.R. §§ 1502.14(f), 1502.16(h), 1508.25(b).

Additionally, for the area adjacent to the focus area, development must be shown to “have no negative effects on sage-grouse.” Although the DEIS mentions this policy requirement, there is no analysis of whether impacts can be mitigated or avoided. In particular, there is no analysis of whether the acknowledged permanent loss of some sagebrush habitat will result in negative impacts to sage-grouse populations. This analysis is particularly important given the Buffalo Field Office’s current efforts to revise its Resource Management Plan in part because of sage-grouse concerns (see section below).

## **VII. Hazardous and Solid Waste**

The EIS needs to disclose whether coal combustion wastes (CCWs) will be disposed of in these mines. If so, please discuss the regulatory framework for this disposal and in particular current regulatory efforts by OSM and EPA. Please consider the following excerpt from the National Research Council of the National Academies’ report *“Managing Coal Combustion Residues in Mines”* (2006):

... Coal combustion residue (CCRs) often contain a mixture of metals and other constituents in sufficient quantities that they may pose public health and environmental concerns if improperly managed. In a mine setting, subsurface water flow is the primary mechanism for transporting contaminants from CCRs to potential human and ecological receptors. Risks to human health and ecosystems may occur when CCR-derived contaminants enter drinking

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<sup>10</sup> The agency acknowledges that “The Noise associated with mining operations may also disrupt sage-grouse breeding and nesting activities.” DEIS at 4-74.

water supplies, surface water bodies, or biota. Impacts on downgradient water quality will depend on the concentration of the contaminant, the flow rate and volume of contaminated water entering the flow system, and the ability of the aquifer or receiving water body to dilute or attenuate the contamination. The concentration, volume, and flow rate of contaminated water, in turn, depend on the leachable mass of toxic constituents in the CCR, the emplacement design, and the local hydrogeologic setting. Of the three methods currently available for disposal of CCRs (surface impoundments, landfilling, and minefilling), comparatively little is known about the potential for minefilling to degrade the quality of groundwater and/or surface waters particularly over longer time periods.

(NCR report at 3-4). The DEIS acknowledges that “There can potentially be risks of contamination of drinking water supplies and surface water bodies by coal combustion residue.” DEIS at 4-117. The EIS needs to disclose whether these impacts will be caused by the disposal of CCWs in any of these four mines.

### **VIII. Socio-economic & transportation concerns**

Current roads and highways are already heavily impacted by energy development in Campbell County. For instance, earlier this year a bridge on Highway 450 collapsed because it was struck underneath by a coal haul truck.<sup>11</sup> The state has put considerable public resources into improving roads and infrastructure to support energy development. We urge BLM to comply with buffer requirements and prevent the lease of coal within 100 feet of public roads. The state has made significant and costly improvements to Highway 59 and reportedly plans to divert some severance tax revenue for additional improvements. It does not make sense to make these improvements and then move the road. As noted in the DEIS, Highway 59 is a main thoroughfare from the eastern part of the state to the southern part and is needed for residents and industry. The process of moving the road will create considerable logistical impacts to local residents and these impacts need to be considered prior to authorization.

### **IX. BLM fails to take a “hard look” at cumulative impacts.**

The EIS lacks proper analysis of combined or programmatic impacts of the four tracts. In many parts of Section 3 of the EIS, impacts of the four coal tracts are treated as separate. Although this separation may be necessary to some degree for initial analysis, BLM must consider the cumulative impacts of this programmatic action. CEQ regulations require “cumulative” actions to be considered in a single EIS, particularly when actions “have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography.”<sup>40</sup> C.F.R. § 1508.25.

Given the extensive industrial development throughout the Powder River Basin, our members have been especially impacted by cumulative impacts resulting from coal mining. BLM must consider cumulative impacts to and mitigation alternatives to protect air, land, and water resources. For instance, extensive groundwater drawdown resulting from CBM development leads BLM to conclude that groundwater quantity impacts from these mine expansions will be

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<sup>11</sup> Dustin Bleizeffer, *Bridge Damaged by Coal Truck Must Be Replaced*, CASPER STAR TRIBUNE, May 15, 2008, available at <http://www.casperstartribune.net/articles/2008/05/17/news/wyoming/doc482c8d0f4913c876272046.txt>.

“negligible.” Even if this was true, which we contend it is not, BLM does not discuss reasonable alternatives that could be put in place to prevent or mitigate cumulative impacts to groundwater.

In short, the BLM’s discussion of cumulative impacts fails to take a “hard look” at cumulative impacts resulting from the expansion of these four mines and other past, current, and reasonably foreseeable development. Although BLM lists a multitude of development activities in the first part of Section 4, there is little tie-in in the analysis of projected environmental impacts in the second part.

**X. BLM needs to ensure compliance with Buffalo RMP and not cut-off decision-space for new RMP.**

Section 1.5 of the DEIS details conformance with existing land use plans. However, the BLM’s Buffalo Field Office is currently undertaking a complete revision to its resource management plan (RMP). The RMP revision process is expected to be completed prior to the time these coal tracts will be needed. Nevertheless, the action taken by BLM at this time may limit what decisions the agency can make. Therefore it is important that BLM does not prejudice future decisions or limit alternatives that could be taken in the RMP process. 40 C.F.R. § 1506.1.

In particular, as mentioned above, the West Coal Creek tract is located adjacent to an identified focus area for sage-grouse populations. It is imperative that BLM analyzes impacts to sage-grouse populations as a result of leasing this tract as the focus area system was specifically designed to provide interim guidance during the RMP revision process. If it is found that leasing this tract will irreversibly impact populations in the focus area, BLM must withdraw the lease until the RMP process is complete. Otherwise, this action may limit alternatives BLM can take to protect sage-grouse populations in the RMP revision. We plan on submitting extensive comments on sage-grouse through the scoping process for the RMP revision, and we will submit those comments to the Casper Office as a supplement to these EIS comments.

**X. BLM needs to ensure compliance with Mineral Leasing Act and Federal Coal Leasing Act Amendments.**

The agency has failed to demonstrate compliance with the Mineral Leasing Act (MLA) and Federal Coal Leasing Act (FCLAA).

Among other things, the MLA requires that the agency ensure that no person or corporation (including subsidiaries thereof) hold or control at one time “coal leases or permits on an aggregated of more than 75,000 acres in any one State and in no case greater than an aggregated of 150,000 acres in the United States.” 30 U.S.C.A. sec. 184.


In this case, the BLM has a statutory obligation to ensure that the nominating companies (who have filed applications in an effort to expand their existing operations) are in compliance with this provision prior to any lease sale of the federal coal tracts. Compliance with these statutory provisions must be evaluated based on an evaluation of the holdings of parent companies. In this case, RAG Coal West (Bell Ayr Mine) is a subsidiary of Foundation Coal, Ark Land Company (Coal Creek Mine) is a subsidiary of Arch Coal, Caballo Coal Company (Caballo Mine) is a

subsidiary of Peabody Energy Corporation, and Cordero Mining Company (Cordero Rojo Mine) is a subsidiary of Rio Tinto Energy America.

Upon information and belief and upon review of publicly available information, PRBRC believes that Foundation Coal, Arch Coal, Peabody and Rio Tinto hold or control aggregated coal leases in excess of the acreages allowed for the in MLA. Compliance with this statutory provision must be analyzed by the agency and needs to be included as part of the NEPA process.

Thank you for your time and consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannon Anderson", with a long horizontal line extending to the right.

Shannon Anderson  
Organizer, Powder River Basin Resource Council

## Attachment A

TUESDAY SEPTEMBER 23, 2008 :: Last modified: Tuesday, September 23, 2008 6:51 AM MDT

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Scientists: Global warming seriously affects Wyoming

By PHIL WHITE  
Star-Tribune correspondent

LARAMIE -- Citizens of Wyoming and the West wrongly believe global warming is something that will only seriously affect people on the coasts or other areas, state climatologist Steve Gray said.

Gray spoke at the Stroock Forum on Wyoming Lands and People at the University of Wyoming on Monday.

A recent poll, he said, found that 57 percent of Wyoming residents and 51 percent of Westerners think global warming is a bigger threat to others. Gray said Wyoming is instead "extremely vulnerable to climate change, no matter the cause." He added that it represents "a real and serious threat to Wyoming's water."

Seemingly small average temperature increases can generate serious consequences for Wyoming's water resources and economy, Gray said.

Even if precipitation levels in Wyoming do not decline as temperatures increase, he said, higher average temperatures of only 1 to 2 degrees Celsius could reduce the amount of water available in the latter part of the growing season. This scenario would create earlier and faster runoff of water stored as snow in the high mountains and cause more of the state's precipitation to fall as rain instead of snow.

Gray said Wyoming is the fifth-driest state in the nation. Most of its water comes from snowpack stored on 7 percent of the state's land -- the high mountains. Thus, "we have all our eggs in one basket," he said.

Wyoming sits at the top of major watersheds such as the Colorado River Basin, which means, Gray said, a drought has greater impact on the state because shortages here cannot be buffered by excess precipitation elsewhere in the watershed.

Brad Udall, director of the Colorado University-National Oceanic and Atmospheric Agency's Western Water Assessment, told about 40 people attending the 11th annual forum that the "vast majority" of the world's scientists agree that human activity has played a significant role in global warming.

Udall said current carbon emissions into the atmosphere are turning out to be greater "than the worst-case scenario" used in one major study.

Both Udall and Gray said today's management systems are based on the assumption that climate changes will not vary significantly from historical patterns. Udall said it would be a mistake to continue to assume climate "stationarity," because "we know those records from the past are less and less true."

Udall showed photos of Lake Mead that indicated storage has dropped by a half in recent years. He said the mean annual temperature in the Lower Colorado River states has risen 2 degrees Fahrenheit since 1970, and he predicted that the heat will cause Arizonans to move to Colorado and Wyoming in the near future.

Udall and Gray also agreed that climate change is playing a role in the pine bark beetle epidemic. Gray presented maps showing large areas of tree kill in British Columbia and northern Colorado and said it was moving into Wyoming. Higher temperatures allow more beetles to survive the winter, then have a second life cycle in the summer, Udall said.

The tree kill and warmer temperatures create more fires, and the loss of the forests leads to faster runoff with more sediment, Gray said.

Larry MacDonnell of Boulder, Colo., a visiting professor in the UW College of Law this semester, noted that the legal system for regulating water use is based on "first in time, first in right," without giving major significance to the question of how the water is being used.

He said the North Platte River is fully appropriated already and is being impacted by decreasing runoff and increasing demand.

"The best thing we can do in water management is reduce new demands for water," he said.

One way to help address the water shortage problem is to store water underground -- to avoid evaporation loss -- in wet years, then reserve that water for drought years, he said.

Another event in the Stroock Forum will occur in Pinedale later this fall.