

Record of Decision

**NARO North LBA
USDA Forest Service
Douglas Ranger District, Medicine Bow-Routt National Forest,
Thunder Basin National Grassland
Campbell County, Wyoming**

T.42N., R.70W., Section 29: Lots 5 through 16;
Section 30: Lots 11 through 20;
T.42N., R.71W., Section 25: Lots 5 through 15; Section 26: Lots 7, 8;
Section 35: Lots 1, 2, 7 through 10, 15 and 16;
6th P.M., Campbell County, Wyoming

A. Decision:

1. Background

Powder River Coal Company filed an application with the Bureau of Land Management (BLM) to lease the Federal coal included in the NARO North LBA Tract as a maintenance tract for the North Antelope/Rochelle Complex on March 10, 2000. The NARO North coal lease application was assigned case file number WYW150210. Powder River Coal Company, is a subsidiary of the Peabody Holding Company, Inc., and operates the North Antelope/Rochelle Complex.

BLM administers the federal coal leasing program under the Mineral Leasing Act of 1920, as amended and the Federal Coal Leasing Amendments Act of 1976. If any proposed lease tract contains lands the surface of which is under the jurisdiction of any agency other than the Department of Interior (USDI), that agency must consent to the issuance of the lease and prescribe the terms and conditions to be imposed on that lease. [43 CFR 3400.3-1 and 3420.4-2] In this case, the NARO North LBA, as configured under Alternative 2 (BLM Preferred Alternative) includes 1,718.6 acres of National Forest System (NFS) lands in Thunder Basin National Grassland administered by the Forest Service. Consequently, the Forest Service must provide consent and prescribe terms and conditions for the NARO North LBA tract to be leased.

The BLM was the lead agency in preparing the South Powder River Basin Coal Environmental Impact Statement (EIS) to evaluate the impact of leasing five tracts of Federal coal, including the NARO North LBA Tract, in the Wyoming Powder River Basin. The tract was applied for under the authority of 43 Code of Federal Regulations (CFR) 3425-Leasing on Application. The Forest Service (USDA-FS) is a cooperating agency on the EIS because three of the five Federal coal tracts that are analyzed in the South Powder River Basin Coal EIS include portions of the Thunder Basin National Grassland, which is administered by USDA-FS.

2. Decision

Based upon my review of all alternatives, I have decided to consent to lease the lands with NFS surface in the NARO North LBA (BLM case File No. WYW150210) described in Alternative 2,

the Proposed Action, which authorizes the following: To allow BLM to offer for sale a lease in accordance with the BLM decision (NARO North Federal coal tract WYW150210), as applied for, to the successful qualified high bidder if the highest bid received at a competitive lease sale meets or exceeds the fair market value (FMV) of the tract, as determined by the BLM and if all other leasing requirements are met. The competitive lease sale will be held under the regulations at 43 CFR 3422-Lease Sales, and 43 CFR 3425-Leasing on Application. Under the Selected Alternative, Federal coal tract WYW150210 includes approximately 2,369.38 acres, more or less, of which 1,718.6 acres are located on National Forest System land.

The NARO North Tract is located in southern Campbell County, Wyoming, approximately 13 miles southeast of Wright, Wyoming. Under the Selected Alternative, the lands that were applied for in the NARO North LBA Tract (Final EIS Pages 2-5 through 2-9), as described in Table 1, will be offered for lease at a competitive sale.

Table 1: Description of National Forest System lands to be offered for competitive sale under the Selected Alternative

T.42N., R.70W.,	Section 29:	Lots 5 through 16	6 th P.M., Campbell County, Wyoming
	Section 30:	Lots 11 through 20	
T.42N., R.71W.,	Section 25:	Lots 5 through 15	
	Section 26:	Lots 7,8	
	Section 35:	Lots 1, 2, 7 through 10, 15, and 16	
Total:		1,718.6 acres	

Land descriptions and acreage are based on the BLM Status of Public Domain Land and Mineral Titles approved Coal Plats, as of February 12, 2003 and May 13, 2003. Under the Selected Alternative, the NARO North LBA Tract includes approximately 1,718.6 acres of Thunder Basin National Grassland, which are shown in Table 1 and in Figure 3-11 in the Final EIS. No lands in the NARO North LBA Tract were found to be unsuitable for mining.

My consent decision is conditioned on application of the Notice for Lands of the National Forest System under Jurisdiction of the Department of Agriculture (FS Notice) on the NARO North Federal Coal Lease Tract (BLM Case File No.WYW150210), when and if the tract is leased. The FS Notice is included in this document as Appendix A, with noted corrections to the Notice presented in Appendix D of the Final EIS (p. D-6 through D-7). This notice addresses compliance with basic requirements of environmental statutes and BLM and Forest Service special requirements.

This alternative assumes that the applicant would be the successful bidder on the NARO North LBA Tract and that the coal would be mined, processed and sold by the North Antelope/Rochelle Complex. If the tract is mined, it would be environmentally preferable to mine and reclaim the NARO North Tract as a maintenance lease in logical sequence with the ongoing mining and reclamation at the North Antelope/Rochelle Complex (the Selected Alternative), rather than as part of a new mining operation.

The NARO North coal lease application was submitted, processed, and evaluated by the BLM under the following authorities:

- Approved Resource Management Plan for Public Lands Administered by the BLM Buffalo Field Office (April 2001).
- Thunder Basin National Grassland Land and Resource Management Plan Revision (2002)
- Mineral Leasing Act of 1920, as amended (MLA).
- Multiple-Use Sustained Yield Act of 1960.
- National Environmental Policy Act of 1969.
- Endangered Species Act of December 28, 1973 (87 Stat. 884) P.L. 93-205, as amended
- National Historic Preservation Act
- Federal Coal Leasing Amendments Act of 1976 (FCLAA).
- National Forest Management Act of 1976 (NFMA)
- Federal Land Policy Management Act of 1976 (FLPMA).
- Surface Mining Control and Reclamation Act of 1977.
- Executive Order 11990 – Protection of Wetlands 42 FR 26961, (signed May 25, 1977), and Executive Order 11988 – Floodplain Management 42 FR 26951, (signed May 25, 1977).

3. Mitigation, Compliance, and Monitoring

The Surface Mining Control and Reclamation Act of 1977 gives the Office of Surface Mining Reclamation and Enforcement authority to administer programs that regulate surface coal mining operations. In Wyoming, the Wyoming Department of Environmental Quality (WDEQ) regulates surface coal mining activities in the state. The approved North Antelope/ Rochelle Complex Permit 569 Term T5 include monitoring and mitigation measures for the North Antelope/Rochelle Complex that are required by Surface Mining Coal Reclamation Act (SMCRA) and Wyoming State Law. If the NARO North LBA Tract is acquired by Powder River Coal Company, these monitoring and mitigation measures would be extended to cover operations on the tract when the coal mining permit is amended. This amended permit would have to be approved before mining operations could take place. These monitoring and mitigation measures are considered to be part of the Selected Alternative, because they are regulatory requirements.

If the successful qualified high bidder does not operate an adjacent mine, but proposes to open a new mine, a new mining and reclamation plan must be approved before mining the coal in the tract. Mitigation measures and monitoring plans specific to the approved mining and reclamation plan will be attached to any mining and reclamation plan revision or new mining and reclamation plan for WYW150210 before the tract is mined. All regulatory compliance, mitigation, and monitoring measures discussed in Section 4.3 and Table 4-17 of the Final EIS (pages 4-92 through 4-98) become part of this decision. FEIS Appendix D (Bureau Of Land Management Special Coal Lease Stipulations, U.S. Forest Service Special Stipulations) and FEIS Appendix E (Cumulative Air Quality Impact Technical Support Document) also contain mitigations and stipulations that are included in this decision.

All practicable means to avoid or minimize environmental harm have been adopted as leasing stipulations or, consistent with normal practices, will be expected to be adopted as conditions of

the mining permit prior to mining the proposed lease. The revised mining and reclamation plan must be approved before mining can begin on the NARO North LBA Tract.

B. Rationale For My Decision

Based in large part on the issues identified and analyzed as documented in the EIS, and the possible beneficial and adverse effects to the resources, I have decided to approve Alternative 2, the proposed action. Alternative 2 allows the BLM to offer the lands applied for in a competitive sale package. It has also been shown to be consistent and in compliance with Grassland Plan Management Direction for Management Area 8.4 Mineral Production and Development, and other applicable laws, regulations and policies.

My Decision meets the requirements of the National Environmental Policy Act (NEPA) by responding to the Purpose and Need, and responding to the issues identified in the analysis process. A primary goal of the National Energy Policy is to add energy supplies from diverse sources, including domestic oil, gas, and coal as well as hydropower and nuclear power. The Forest Service and BLM recognize that the continued extraction of coal is essential to meet the nation’s future energy needs.

As a result, private development of Federal coal reserves is integral to the Forest Service and BLM coal leasing programs under the authority of the MLA, as well as FLPMA and FCLAA. The coal leasing program, managed by the Forest Service and BLM, encourages the development of domestic oil, gas, and coal reserves and reduction of the U.S. dependence on foreign sources of energy. As a result of the leasing and subsequent mining and sale of Federal coal resources in the Powder River Basin, the public receives lease bonus payments, lease royalty payments, and a supply of low cost, low sulfur coal for power generation.

1. Threatened and Endangered Species

A Biological Assessment for the NARO North LBA Tract was included in Appendix G in the Final South Powder River Basin EIS. BLM’s determinations are shown in Table 2. BLM formally requested consultation with the U.S. Fish and Wildlife Service on these determinations in a letter dated December 31, 2003. U.S. Fish and Wildlife Service concurred with these findings in a letter dated February 14, 2004.

Table 2 Effects Evaluation of Federal Threatened, Endangered, Proposed, and Candidate Species in the Area of the NARO North LBA Tract.

Status	Species Common Name	Potential Effects
Threatened:	Bald eagle	May affect ¹
	Ute ladies’-tresses	May affect ¹
Endangered:	Black-footed ferret	No effect
Candidate:	Black-tailed prairie dog	No Effect

¹ Not likely to adversely affect individuals or populations.

The BLM will attach a special stipulation addressing protection of Threatened and Endangered species to the lease for the NARO North LBA Tract if one is issued.

My decision includes the requirement that a lease notice for Threatened and Endangered species for NFS lands be attached to the lease. (Appendix A, Notice for Lands of the National Forest System Under Jurisdiction of Department of Agriculture.) This notice is required on all leases with NFS surface, and consequently would be applied to any lease issued under any of the action alternatives. With respect to threatened and endangered species, the notice alerts the lessee/operator that he/she is subject to provisions of the Endangered Species Act, which could result in restrictions to the operator's plans or even disallow use and occupancy. It also specifies requirements for assessment of the leased lands for threatened and endangered species.

Surveys of potentially suitable T&E species habitat have been conducted on the NARO North LBA Tract during times of flowering of the known population. Ute ladies'-tresses orchid individuals were not identified during these surveys.

Bald eagles have recently been observed in the vicinity of each of the five LBA tracts during wildlife surveys conducted for the applicant mines. Bald eagle roosts and unique or concentrated sources of carrion or prey have not been documented in the study areas for any of the LBA tracts. Black-footed ferrets are rare and very unlikely to occur in the vicinity of any of the LBA tracts.

On September 9, 2003, USFWS published a withdrawal of the proposed rule to list the mountain plover as threatened (USFWS 2003).

Mountain plovers may also be associated with prairie dog colonies. There have been occasional sightings of mountain plovers in the vicinity of the NARO North LBA Tract

2. Sensitive Species

Leasing and mining the NARO North LBA Tract is not expected to impact any of the Region 2 sensitive fish species.

Boss Draw and Corder Creek do not support fisheries under natural conditions. Antelope Creek and an adjacent buffer zone would not be disturbed as a result of this leasing action or any leasing actions included in the EIS. Surface runoff sediment from the mined lands, which could affect water quality in Antelope Creek, would be deposited in ponds or other sediment control devices located inside the North Antelope/Rochelle Complex mine permit area.

Leasing and mining are not expected to impact either the black-tailed prairie dog or swift fox. There are not black-tailed prairie dog colonies located on the NARO North LBA Tract, and swift fox do not appear to inhabit the lease area.

Mining and associated activities have the potential to destroy nests and impact the reproductive success of ferruginous hawks and other raptors nesting in the area. However, PRCC has been diligent about avoiding and mitigating such impacts in the past through a variety of means. PRCC has monitored nesting raptor populations, maintained and implemented current U.S. Fish

and Wildlife Service (USFWS) approved Raptor Mitigation Plans, adjusted operations to provide temporal and spatial buffers around raptor nests, and ensured that new power transmission lines at the mine conform to the Avian Powerline Interaction Commission guidelines (EEI/RRF 1996). Direct effects to ferruginous hawks and other raptors may occur if any nests are destroyed or moved; however, the established practices discussed above will reduce the impacts of these actions. Indirect impacts, such as the temporary loss of foraging habitat during active mining, are not expected to negatively affect the survival or reproductive success of any hawks.

Disturbance of habitats during mining could impact individual burrowing owls, loggerhead shrikes, and upland sandpipers, but is not likely to cause a trend to federal listing or loss of viability. PRCC can avoid direct impacts to burrowing owls by continuing to monitor nesting raptor populations, maintaining and implementing current USFWS approved Raptor Mitigation Plans, and taking precautions to provide adequate temporal and spatial buffers around nests. Assuming active shrike nests are not removed during the breeding season, direct impacts on that species should be minimal. Suitable sandpiper habitat exists on the LBA Tract that could be eliminated by mining, but direct impacts to individuals are unlikely. Given the paucity of past observations and the marginal habitats available in the area, impacts to the long-billed curlew are unlikely.

Mining the NARO North Tract may impact individuals but is not likely to result in the loss of viability on the USDA-FS Planning Area or cause a trend toward federal listing or loss of species viability range-wide for any of the USDA-FS Sensitive Species

Cumulative impacts to wildlife are primarily in the form of habitat disturbance. Both oil and gas development and mining activities have requirements for reclamation of disturbed areas as resources are depleted; however, the net area of energy disturbance in the Wyoming PRB has been increasing. In the short term, this means a reduction in the available habitat for sensitive species. In the long term, habitat will be gradually restored as reclamation proceeds.

No critical habitat for any USDA-FS Sensitive Species has been delineated in the LBA tracts. Any losses that do occur will eventually be mitigated for most species by reclamation with native seed mixes, which may improve habitat quality by reducing the presence of non-native plants. Leasing the NARO North will not conflict with the current Forest Plan, or any future objectives to manage the area and provide habitat for Sensitive Species.

3. Management Indicator Species

Table 3-128 of the *Final EIS for the Northern Great Plains Management Plans Revision for the TBNG (USDA-FS 2001b)* lists three MIS species that were selected by the USDA-FS for the TBNG. These three species are sage grouse, black-tailed prairie dog, and plains sharp-tailed grouse.

Appropriate year-round habitat for the plains sharp-tailed grouse is not available in the vicinity of the NARO North. Sharp-tailed grouse have occasionally been observed in the General Analysis Area, but not on any of the LBA tracts.

There are currently no active sage grouse leks on the NARO North. The four known sage grouse leks that comprise the Rochelle lek complex are located near the NARO North LBA Tract. Two of those leks are active (Payne and Kort) and two have not been attended since at least 1999 (Wilson and Rochelle),

Because of its proximity to two active leks, development of the NARO North LBA Tract has the most potential to directly affect sage grouse. Potential impacts include: the destruction of active nests during topsoil removal, mortalities caused by additional vehicle traffic, and displacement of grouse from their core home range. Collectively, those factors could diminish the survival and reproductive success of grouse, resulting in a decline of the Rochelle sage grouse population. If precautions are taken to avoid direct mortalities and disturbances to nests and leks during the breeding season, grouse will have the opportunity to disperse away from mine activities.

The black-tailed prairie dog is a “candidate” for possible federal listing. Leasing or mining is not expected to impact the black-tailed prairie dog as there are no black-tailed prairie dog colonies located on the NARO North LBA Tract. The sage grouse and black-tailed prairie dog would be monitored as part of the ongoing mining activities if these tracts are leased and incorporated into a mining and reclamation plan.

4. Other Wildlife

No crucial big game habitat or migration corridors are recognized by the WGFD in the General Analysis Area. In the short term, wildlife would be displaced from the LBA tracts in areas of active mining. Habitat would be disturbed in parcels, with reclamation progressing as new disturbance occurs. In the long term, following reclamation, carrying capacity and habitat diversity may be reduced due to flatter topography, less diverse vegetative cover, and reduction in sagebrush density.

Upland game birds known to occur include mourning doves, wild turkey, gray partridge, sharp-tailed grouse, and sage grouse. The primary upland game species within the area is the sage grouse. Three currently inactive and two active sage grouse leks have been surveyed in the vicinity of the LBA tracts, but none of these active or inactive sage leks are located on any of the LBA tracts.

Raptor species that commonly nest in the NARO North LBA area are the golden eagle, ferruginous hawk, red-tailed hawk, Swainson’s hawk, great horned owl, and burrowing owl. Each of the four applicant mines annually monitors territorial occupancy and nest productivity on and around their existing leases. Raptor nesting activity has frequently occurred in active mining and construction areas and the four applicant mines have successfully executed state-of-the-art mitigation techniques to protect nest productivity. There is an approved raptor mitigation plan for the existing applicant mine. These monitoring and mitigation plans would be amended to include the NARO North LBA Tract if it is leased. The amended raptor mitigation plans would be subject to review and approval by USFWS before the amended mining plan is approved.

5. Soils

Consequences to soil resources from mining each LBA tract that is leased would include changes in the physical, biological, and chemical properties. Following reclamation, the soils would be unlike premining soils in texture, structure, color, accumulation of clays, organic matter, microbial populations, and chemical composition. The replaced topsoil would be much more uniform in type, thickness, and texture. It would be adequate in quantity and quality to support planned post mining land uses (i.e., wildlife habitat and rangeland).

6. Air Quality

Air quality impacts are monitored to determine if mining operations are meeting annual ambient air quality standards. All of the mines are utilizing BACT measures to control particulate emissions and complying with the increased monitoring frequency. The PM₁₀ 24-hour NAAQS has not been exceeded at the North Antelope/Rochelle Complex. If the North Antelope/Rochelle Complex acquires the NARO North and NARO South LBA Tracts, an increase in emissions is anticipated due to increased average annual production, increased overburden movement, and increased blast frequency. EIS figures ES-8 through ES-11 show the results of dispersion modeling of PM₁₀ that was conducted for each mine to demonstrate that BACT is utilized to control emissions and that the proposed mining activities will not cause or significantly contribute to an exceedance of annual ambient air quality standards.

7. Watershed Concerns

State and federal regulations require that surface runoff from mined lands be treated to meet effluent standards, so sediment control structures would be used to manage discharges of surface water from the mine permit areas. After mining and reclamation are completed on each tract, surface water flow, quality, and sediment discharge would approximate premining conditions.

Mining the NARO North LBA Tract would enlarge the area of lowered groundwater levels in the coal and overburden aquifers associated with the existing mining operations, as well as the area where the existing coal and overburden aquifers would be removed and replaced by mine backfill. At each mine, drawdown in the adjacent continuous coal aquifer would be expected to increase roughly in proportion to the increase in area affected by mining and would extend farther than drawdown in the discontinuous overburden aquifers. The data available indicate that hydraulic properties of the backfill would be comparable to the premining overburden and coal aquifers. TDS concentration levels of groundwater in the backfill would initially be expected to be higher than in the premining overburden and coal aquifers, but would be expected to meet Wyoming Class III standards for use as stock water.

Formal wetlands delineations will be completed prior to mining, as part of the mining permit and approval process, if some or all of the LBA tracts are leased. A maximum of 62.16 acres of jurisdictional and 51.58 acres of non-jurisdictional wetlands would be disturbed if all five LBA tracts are leased and subsequently mined. COE requires replacement of all impacted jurisdictional wetlands in accordance with Section 404 of the Clean Water Act.

In Wyoming, once wetland delineation is completed and verified by COE, it is made a part of the mine permit document. The reclamation plan is then revised to incorporate restoration of at least equal types and number of jurisdictional wetlands.

8. Revegetation

Re-established vegetation would be dominated by species mandated in the reclamation seed mixtures, which are approved by the WDEQ. The majority of these species would be native to the LBA tracts.

Estimates for the time it would take to restore sagebrush to premining density levels range from 20 to 100 years. An indirect impact associated with this vegetative change would potentially be a decreased big game habitat carrying capacity.

Permanent vegetative cover would be established on each LBA tract within about 10 years following reclamation, prior to release of the final reclamation bond. The decrease in plant diversity would not seriously affect the potential productivity of the reclaimed areas, and the proposed post mining land uses (wildlife habitat and rangeland) should be achieved even with the changes in vegetation composition and diversity. The reclamation plans for each LBA tract that is leased would also include steps to control invasion by weedy (invasive, nonnative) plant species.

9. Recreation

Active mining would preclude other land uses. Recreational use is severely limited during mining operations. Access to these lands would be restricted during mining and reclamation. Energy development in the PRB (primarily coal mining and oil and gas development) has and will continue to contribute to a reduction in hunting opportunities for some animals (pronghorn, mule deer, and sage grouse). Wildlife and livestock use would be displaced while the tracts are being mined and reclaimed. Access for recreational (hunting) and other (ranching, oil and gas development) activities would be restricted during mining operations.

10. Livestock Grazing

Leasing the LBA tracts would result in reductions of livestock grazing (cattle and sheep), loss of wildlife habitat (particularly big game), and curtailment of oil and gas development on the LBA tracts during coal removal and reclamation activities. This would include removal of all existing oil and gas surface and downhole production and transportation equipment and facilities.

11. Cultural Resources

Cultural resources would be impacted by mining, but adverse impacts would be mitigated through data recovery and/or avoidance of significant properties. Formal Wyoming SHPO consultation is required for concurrence with determination of the eligibility of sites for inclusion on the NRHP prior to mining. The eligible cultural properties on each LBA tract which cannot be avoided or which have not already been subjected to data recovery action would be carried forward in the mining and reclamation plan as requiring protective stipulations until a testing, mitigation, or data recovery program is developed in consultation with the SHPO.

12. Traditional Cultural Properties

No sites of Native American religious or cultural importance have been identified on the NARO North Antelope LBA Tract. If such sites or localities are identified at a later date, appropriate action must be taken to address concerns related to those sites.

13. Paleontological Resources

No unique or significant paleontological resources have been identified on the NARO North, LBA Tract, and the likelihood of encountering significant paleontological resources is small.

14. Visual Resources

No unique visual resources have been identified on or near any of the LBA tracts. The landscape character would not be significantly changed following reclamation.

15. Noise

Noise levels on the NARO North LBA Tract would be increased considerably by mining activities such as blasting, excavating, loading, and hauling. Because of the remoteness of the LBA tracts and because mining is already ongoing in the area, there would be few new off-site noise impacts. After mining and reclamation are completed, noise would return to premining levels.

16. Transportation

No new or reconstructed transportation facilities would be required if the NARO North LBA Tract is leased and subsequently mined.

17. Socioeconomic Impacts

Socioeconomic impacts resulting from the leasing and subsequent mining of the NARO North LBA Tract would include an increase in federal, state, and local revenues as a result of the coal bonus and royalty payments as well as severance and property taxes.

Royalty and bonus payments for the federal coal in the LBA tracts would be split with the state.

Economic stability would be maintained in the communities in this area without placing major additional demands on the existing infrastructure or services.

18. Environmental Justice

Potentially adverse impacts would not disproportionately affect minorities, low-income groups, or Native American tribes or groups. No tribal lands or Native American communities are included in the General Analysis Area, and no Native American treaty rights or Native American trust resources are known to exist for this area.

C. Public Involvement

The BLM published a notice of receipt of this lease application in the Federal Register on September 12, 2000. Copies of this notice were sent to voting and non-voting members of the Powder River Regional Coal Team, including the governors of Wyoming and Montana, the Northern Cheyenne Tribe and Crow Tribal Council, USDA-FS, OSM, U.S. Fish and Wildlife Service, National Park Service, U.S. Geological Survey, and others.

The Powder River Regional Coal Team reviewed coal lease application WYW150210 at a public meeting on October 25, 2000, in Cheyenne, Wyoming, and recommended that the BLM process the application. The BLM published a Notice of Intent to Prepare an Environmental Impact

Statement and Notice of Scoping in the Federal Register on October 3, 2001 and in the Gillette News-Record on September 25, 2001 and October 2, 2001. Notices of scoping were mailed to Federal, state and local government agencies, conservation groups, commodity groups, and individuals. The mailing list was jointly developed by BLM, USDA-FS, and the applicants for the five LBA tracts considered in the EIS analysis, including Powder River Coal Company. A public scoping meeting was held in Gillette, Wyoming, on October 10, 2001.

The Draft South Powder River Basin Coal EIS was mailed to the public in late January, 2003. On February 7, 2003, the Environmental Protection Agency (EPA) published a Notice of Availability in the Federal Register for the draft EIS. BLM published a Notice of Availability and Notice of Public Hearing in the Gillette News Record and Douglas Budget on February 5 and February 12, 2003, respectively, and in the Federal Register on February 20, 2003. A formal public hearing was held on March 4, 2003, at the Tower West Lodge in Gillette, Wyoming, to solicit public comment on the draft EIS, the proposed sale, and the fair market value and maximum economic recovery of the Federal coal included in the five tracts being evaluated in the EIS. The 60-day comment period on the draft EIS started on February 7, 2003, with the publication of the EPA Federal Register Notice of Availability, and ended on April 11, 2003.

The Final South Powder River Basin Coal EIS was mailed to the public in December, 2003. BLM and EPA each published a 30-day Notice of Availability for the final EIS in the Federal Register on December 24, 2003, which ended on January 23, 2004.

BLM received 12 written comments and one oral comment during the scoping period for the South Powder River Basin Coal EIS, and 12 written comments on the draft EIS. The comments/written responses are included in the final EIS. Four parties commented during the public hearing held on March 4, 2003. Twenty written comments were received on the final EIS. The written comments and the transcript of the formal hearing are on file in the Casper and Cheyenne Offices of the BLM. All comments that were received during the process have been considered in the preparation of the draft and final EIS, and in this Record of Decision.

D. Alternatives Considered

In addition to the selected alternative, I considered one other alternative, which is discussed below. Alternative 1, the No Action Alternative, is the environmentally preferred alternative. A more detailed comparison of these alternatives can be found in the EIS in Chapter 2, tables 2-1 through 2-6, and Section 2-7.

No Action Alternative

Under the No Action alternative, current management plans would continue to guide management of the project area. Under this alternative, the NARO North lease (Final EIS Page 2-9) application would have been rejected, and the tract would not be offered for sale at this time. If the NARO North application had been rejected, currently permitted mining activity at the adjacent North Antelope/Rochelle Complex would continue and portions of the NARO North Tract adjacent to the North Antelope/Rochelle Complex would be disturbed to recover all of the coal in the adjacent existing coal leases at the mine. This alternative is the environmentally

preferable alternative if it is assumed this tract will never be leased. In that case, the disturbance associated with mining the Federal coal on the tract would not occur.

Rejection of the lease application at this time would not, however, preclude subsequent lease applications for all or part of the lands included in this tract. If the NARO North LBA Tract is leased in the future, the environmental impacts of mining it at that time could be similar to or greater than the impacts of the Selected Alternative, depending on who acquired the tract and whether it was mined as a maintenance lease for an existing mine or as part of a new mine.

E. Coal and Oil/ Gas Development Conflicts

The oil and gas estate on the NARO North LBA Tract is both privately and federally owned, and the Federal oil and gas rights are leased (Final EIS Section 3.11, Figure 3-15 and Table 3-10). There are producing conventional and CBM wells on the tract. The BLM Reservoir Management Group reviewed all productive CBM wells within the ten-township area covering the General Analysis Area for the South Powder River Basin Coal EIS in June 2002 and evaluated the CBM resources on the LBA Tracts as of 2000. The BLM Reservoir Management Group estimated that, in 2000, the average gas content was approximately seven standard cubic feet of CBM per ton of coal and the estimated recoverable CBM resource was 2.261 billion cubic feet for the NARO North LBA Tract. The EIS summarizes the study conducted by the BLM Wyoming Reservoir Management Group (pages 4-13 through 4-16), which concluded that depletion of hydrostatic pressure and methane resources has occurred adjacent to mining areas since not long after mining began, that the effect will be enhanced as mining continues to proceed toward the LBA Tracts and will continue whether or not they are leased, and that wells completed early could recover substantial portions of the remaining reserves prior to any mining within the LBA Tracts.

BLM policy on conflicts between CBM and coal development, as outlined in Washington Office IM No. 2003-253 (August 21, 2003), is to encourage oil/gas and coal companies to resolve conflicts between themselves, to optimize the recovery of both resources, and to endeavor to secure the maximum return to the public in revenue and energy production.

F. Air Quality Impacts Related to Blasting

There is public concern over the releases of nitrogen oxides (NO_x) from overburden blasting, which can form a low-lying, gaseous orange cloud that can be transported by wind (Executive Summary page ES-24, EIS pages 1-25, 3-28,3-29, 4-25-28, 4-31, 4-95). Exposure to NO_x can cause adverse health effects. In the Powder River Basin, concern has been expressed that NO_x levels in some blasting clouds may be sufficiently high at times to cause human health effects.

There have been no reported events of public exposure to NO_x from blasting activities at the North Antelope/Rochelle Complex. In recent years, the North Antelope/Rochelle Complex has modified blasting agent blends and started using borehole liners. According to WDEQ/LQD, this has resulted in reducing NO_x by more than 75 percent during cast blasting. The mine has also initiated voluntary blasting restrictions to avoid NO_x impact to the public. These voluntary measures include:

- phone notification of neighbors and workers in the general area of the mine prior to large blasts;
- monitoring weather and atmospheric conditions prior to the decision to detonate a large blast;
- minimizing blast size to the extent possible; and
- posting signs on major public roads that enter the general mine area, and on all locked gates accessing the active mine area.

G. Findings Required by Other Laws and Regulations

The decision to lease the NARO North LBA Tract as stated in Alternative 2 is consistent with the intent of the long term goals and objectives listed on Chapter 1 pages 1-1 to 1-31 of the Grassland Plan. The project was designed to conform with Grassland Plan standards and incorporates appropriate guidelines for Mineral and Energy Resources (Chapter 1, page 1-11 Section D), Hilight Bill Geographic Area (Chapter 2, page 1-21), and 8.4 - Mineral Production and Development Management and Direction (Chapter 3, page 3-26) of the Thunder Basin National Grassland Land and Resource Management Plan of 2002, (Grassland Plan).

To the best of my knowledge, this decision complies with all applicable laws and regulations. In the following, I have summarized the association of my decision to some pertinent legal requirements.

Executive Order 13212 of May 18, 2001. This Order called the federal agencies to expedite their review of permits for energy-related projects while maintaining safety, public health, and environmental protections. My decision is consistent with this Order.

National Forest Management Act of 1976: The Revised Grassland Plan was approved in 2002, as required by this Act. This long-range land and resource management plan provides guidance for all resource management activities in the Grassland. The National Forest Management Act requires all projects and activities to be consistent with the Forest (Grassland) Plan. The Grassland Plan has been reviewed in consideration of this project (EIS, Section 1.4). This decision is consistent with the Grassland Plan.

Mining and Minerals Policy Act of 1970. This Act declared it would be the continuing policy of the federal government and in the national interest to foster and encourage private enterprise in the development of economically sound and stable domestic mining industries, and the orderly and economic development of domestic mineral resources. This decision is consistent with this Act.

Mineral Leasing Act of 1920, as Amended by the Federal Coal Leasing Amendments Act of 1975. This Act, as amended, authorizes the federal agencies to lease coal reserves and prescribe conditions for protection of non-coal resources. It requires the BLM to secure consent from the surface management agency prior to leasing federal coal lands. This decision is consistent with this Act.

National Historic Preservation Act: This decision complies with the provisions of this Act and the American Indian Religious Freedom Act. Native American interests were consulted during this project. (FEIS, Chapter 1, pages 1-24 through 1-25.)

Endangered Species Act: Compliance with this Act is addressed on page 4 of this document. A Biological Assessment for the NARO North LBA Tract was included in Appendix G in the Final South Powder River Basin EIS. BLM's determinations are shown in Table 2, Page 4. BLM formally requested consultation with the U.S. Fish and Wildlife Service on these determinations in a letter dated December 31, 2003. U.S. Fish and Wildlife Service concurred with these findings in a letter dated February 14, 2004.

National Environmental Policy Act: The EIS documentation for this project supports compliance with this Act.

H. Implementation Date

After signing this ROD, the Forest Service has a 45-day appeal period (see below). The BLM lease sale cannot occur until the Forest Service appeals procedures have been observed. If no appeal is received on this decision, implementation may begin on, but not before, the fifth business day following the close of the appeal filing period (36 CFR, Part 215.10(a)). If an appeal is received, implementation may occur on, but not before, the fifteenth business day following the date of the appeal disposition (Part 215.10(b)).

This project will be implemented after the BLM has signed the ROD, and after a 30-day appeal period for the BLM decision has elapsed. At least forty-five (45) days after the BLM appeal period is completed, the BLM will hold a sealed-bid sale. The bids will be reviewed after the sale and accepted or rejected. If a bid is accepted, then the Department of Justice (DOJ) has 30 days to review the sale results for consistency with antitrust laws. Following the DOJ review, the lease is issued after BLM completes the required documentation and the lease document is signed.

I. Administrative Appeal Opportunities

This decision is subject to appeal pursuant to Federal regulations at 36 CFR, Part 215, "Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities (Nov. 4, 1993)."

Where to File an Appeal

By Mail:
USDA Forest Service
Region 2, Rocky Mountain Region
Attn: Appeal Deciding Officer
POB 25127
Lakewood, CO 80225-25127

Delivery:
USDA Forest Service
Region 2, Rocky Mountain Region
Attn: Appeal Deciding Officer
740 Simms Street
Golden, CO 80401-4720

Fax: 303-275-5134 Hours: Mon-Fri 7:30 am-4:30 pm
E-mail: appeals-rocky-mountain-regional-office@fs.fed.us

(Acceptable formats for electronic appeals are: rtf, pdf, or word.)

For electronically mailed comments or appeals, the sender should normally receive an automated electronic acknowledgment from the agency as confirmation of receipt. If the sender does not receive an automated acknowledgment of the receipt of the comments, it is the sender's responsibility to ensure timely receipt by other means.

Notices of Appeal that do not meet the requirements of 36 CFR 215.14 will be dismissed.

J. Contact Person

For additional information concerning this decision or the Forest Service appeal process, contact Thomas A. Florich, Lands/Minerals Program Manager, Medicine Bow-Routt N.F. & Thunder Basin N.G., 2468 Jackson Street, Laramie, WY 82070, 307-745-2435 , e-mail tflorich@fs.fed.us.

Mary H. Peterson
Forest Supervisor
Medicine Bow-Routt National Forests &
Thunder Basin National Grassland

Date

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

APPENDIX A

NOTICE FOR LANDS OF THE NATIONAL FOREST SYSTEM UNDER JURISDICTION OF DEPARTMENT OF AGRICULTURE

NOTE: Pursuant to Forest Service Manual 2820 – Minerals and Geology, R2 Supplement No. 2800-94-1, Chapter 2820 – Mineral Leases, Permits, and Licenses, Effective July 29, 1994, the following notice is required on all leases involving NFS lands. The notice as presented in this appendix includes corrections to language inadvertently included in the notice as presented in the FEIS Appendix D, pages D-6 through D-7. The standard Forest Service lease notice as required under FSM 2820, R2 Supplement, does not include language addressing sensitive species, as incorrectly included in the FEIS Appendix D.

**NOTICE FOR LANDS OF THE NATIONAL FOREST SYSTEM
UNDER JURISDICTION OF DEPARTMENT OF AGRICULTURE**

R2-FS-2820-13 (92)

Serial No. WYW150210

The permittee/lessee must comply with all the rules and regulations of the Secretary of Agriculture set forth at Title 36, Chapter II, of the Code of Federal Regulations governing the use and management of the National Forest System (NFS) when not inconsistent with the rights granted by the Secretary of Interior in the permit. The Secretary of Agriculture's rules and regulations must be complied with for (1) all use and occupancy of the NFS prior to approval of an exploration plan by the Secretary of the Interior, (2) uses of all existing improvements, such as forest development roads, within and outside the area permitted by the Secretary of the Interior, and (3) use and occupancy of the NFS not authorized by an exploration plan approved by the Secretary of the Interior.

All matters related to this stipulation are to be addressed to:

Forest Supervisor
Medicine Bow-Routt National Forests & Thunder Basin National Grassland
2468 Jackson Street
Laramie, WY 82070
307-745-2300

who is the authorized representative of the Secretary of Agriculture.

NOTICE

CULTURAL AND PALEONTOLOGICAL RESOURCES - The FS is responsible for assuring that the leased lands are examined to determine if cultural resources are present and to specify mitigation measures. Prior to undertaking any surface-disturbing activities on the lands covered by this lease, the lessee or operator, unless notified to the contrary by the FS, shall:

1. Contact the FS to determine if a site specific cultural resource inventory is required. If a survey is required, then:
2. Engage the services of a cultural resource specialist acceptable to the FS to conduct a cultural resource inventory of the area of proposed surface disturbance. The operator may elect to inventory an area larger than the area of proposed disturbance to cover possible site relocation which may result from environmental or other considerations. An acceptable inventory report is to be submitted to the FS for review and approval at the time a surface disturbing plan of operation is submitted.

3. Implement mitigation measures required by the FS and BLM to preserve or avoid destruction of cultural resource values. Mitigation may include relocation of proposed facilities, testing, salvage, and recordation or other protective measures. All costs of the inventory and mitigation will be borne by the lessee or operator, and all data and materials salvaged will remain under the jurisdiction of the U.S. Government as appropriate.

The lessee or operator shall immediately bring to the attention of the FS and BLM any cultural or paleontological resources or any other objects of scientific interest discovered as a result of surface operations under this lease, and shall leave such discoveries intact until directed to proceed by FS and BLM.

ENDANGERED OR THREATENED SPECIES - The FS is responsible for assuring that the leased land is examined prior to undertaking any surface-disturbing activities to determine effects upon any plant or animal species listed or proposed for listing as endangered or threatened, or their habitats. The findings of this examination may result in some restrictions to the operator's plans or even disallow use and occupancy that would be in violation of the Endangered Species Act of 1973 by detrimentally affecting endangered or threatened species or their habitats.

The lessee/operator may, unless notified by the FS that the examination is not necessary, conduct the examination on the leased lands at his discretion and cost. This examination must be done by or under the supervision of a qualified resource specialist approved by the FS. An acceptable report must be provided to the FS identifying the anticipated effects of a proposed action on endangered or threatened species or their habitats.

Signature of Licensee/Permittee/Lessee

