

# **DECISION NOTICE and FINDING OF NO SIGNIFICANT IMPACT**

## **Federal Coal Lease COC-61357 Modification, Tract 4**

**Paonia Ranger District  
Grand Mesa, Uncompahgre and Gunnison National Forests  
Delta County, Colorado**

### ***I. INTRODUCTION***

An Environmental Assessment (EA) has been prepared that analyzes the surface impacts of modifying federal coal lease COC-61357. An application was filed with the Uncompahgre Field Office USDI BLM by Oxbow Mining, LLC (Oxbow) to modify existing federal coal lease COC-61357 by adding 148 acres. The lease modification application contains approximately 142 acres of National Forest System (NFS) surface lands managed by the Grand Mesa, Uncompahgre, and Gunnison National Forests (GMUG) and approximately 6 acres managed by the Uncompahgre Field Office of the Bureau of Land Management (BLM). The entire coal estate is administered by the BLM. The lease modification application will be processed according to procedures set forth in 43 CFR 3432.

The proposed lease modification is located Section 32, Township 12 South, Range 90 West and Section 5, Township 13 South, Range 90 West 6<sup>th</sup> P.M in Delta County, Colorado (approximately 9 miles north/northeast of Paonia, Colorado), and is shown in Appendix A of this document.

The coal in this lease modification would be accessed and recovered by underground longwall mining methods. Oxbow applied for this lease modification to allow for a more safe and logical mine design and to ensure that federal coal reserves are not bypassed.

The USDA-Forest Service (FS), as the surface management agency, considers consenting to the BLM leasing reserves underlying lands under its jurisdiction, and prescribes conditions (as stipulations) for the protection of non-mineral resources.

My decision has been further informed by review of the Unsuitability Analysis and Report (EA, Appendix A).

### ***II. SCOPE OF DECISION AND AUTHORITY***

#### **Scope of Decision**

With respect to the National Forest System (NFS) lands, I have decided to approve the Proposed Action Alternative as described in the EA (EA, Chapter 2.2), and summarized in Section V of this document. This decision gives the USDI-BLM my consent to modify existing federal coal Lease COC-61357 by adding 142 acres of NFS lands according to the Federal Coal Leasing Amendments Act of 1976 and to prescribe conditions

(stipulations) needed for the protection of non-coal resources on lands managed by the BLM for minerals and the FS for federal surface located in Section 32, Township 12 South, Range 90 West 6th PM.

## **Authorities**

The Decision to consent to BLM modifying federal coal lease COC-61357 is made under Mining and Minerals Policy Act of 1970 which states in part that it is the “continuing policy of the federal government in the national interest to foster and encourage private enterprise in... (t)he development of economically sound and stable domestic mining minerals and mineral reclamation industries...(and) the orderly and economic development of domestic mineral resources....” Further, federal mineral leasing follows the Mineral Leasing Act of 1920 as amended by the Federal Coal Leasing Amendments Act of 1976 (MLA), and specific procedures set forth in 43 CFR 3400.

This lease modification application will be processed according to procedures set forth in 43 CFR 3432. Lease modifications are considered non-competitive leasing actions, as they are applied for by lease holders to add acreage to an existing lease. In this case, Oxbow has applied for this modification. No other coal company could obtain the rights to the coal in this lease modification if it is approved.

The subsequent permitting action to allow mining and changing of the approved mine permit boundary to include the modification areas would be evaluated by the Colorado Division of Reclamation Mining Safety (DRMS) under procedures set forth in 30 CFR 700 et. seq. and the Regulations of the Colorado Mined Land Reclamation Board for Coal Mining.

These changes may also require approval from the USDI through the Office of Surface Mining Reclamation and Enforcement (OSM).

The Decision to consent to BLM modifying federal coal lease COC-61357 is also made under The Surface Mining Control and Reclamation Act of 1977, as amended, (SMCRA) gives OSM primary responsibility to administer programs that regulate surface coal mining operations and the surface effects of underground coal mining operations in the United States. Pursuant to Section 503 of SMCRA, DRMS developed, and the Secretary of the Interior approved, Colorado’s permanent regulatory program authorizing DRMS to regulate surface coal mining operations and the surface effects of underground coal mining on private and State lands within the State of Colorado.

In September 1982, under Section 523(c) of SMCRA, DRMS entered into a cooperative agreement with the Secretary of the Interior authorizing DRMS to regulate surface coal mining operations and the surface effects of underground coal mining on Federal lands within the State. Based on the cooperative agreement, Federal coal lease holders in Colorado must submit a permit application package to OSM and DRMS for proposed mining and reclamation operations on Federal lands in the State.

DRMS enforces the performance standards and permit requirements during the mine’s operation and has primary authority in environmental emergencies. OSM retains oversight responsibility for this enforcement. BLM and the surface management agencies (in the case the Forest Service and BLM) have authority in emergency situations in which DRMS or OSM inspectors cannot act before environmental harm or damage occurs.

### **III. DECISION**

The location of the NFS land for which consent is given to modify coal lease COC-61357 is shown in Appendix A of this document.

My consent decision is conditioned that application of the Coal Lease Stipulations as identified in COC-61357 parent lease be applied to the lease modification area (Appendix B of this document and EA, Chapter 2). This includes two updated stipulations from the parent lease (reflecting current direction) and two additional site-specific Coal Lease Stipulations from the EA (Chapter 2) and from restrictions developed from the Unsuitability Analysis and Report (EA, Appendix A) are listed below:

#### Updated Stipulations:

- A 1/8 mile buffer zone (660 ft.) Will be protected on either side of the riparian zones (or a buffer zone may be established in accordance with the surface management agency guidelines). No surface disturbances, except surface subsidence, will be permitted within these buffer zones.
- All or part of the land included in COC-61357 and subsequent modifications, are in the Springhouse Park Inventoried Roadless Area (IRA) and may be subject to restrictions on road-building pursuant to rules and regulations of the Secretary of Agriculture applicable at the time any road may be proposed on the lease. Locations of any proposed surface use will be verified for relationship to IRA boundaries using site-specific maps if/when surface operations are proposed.

#### New Stipulations:

- In the future, if water used for mine related activities exceeds a depletion amount previously consulted upon by the GMUG, the permitting agency must enter into consultation with the U.S. Fish and Wildlife Service to determine appropriate conservation measures to offset effects to listed fish and critical habitat in the upper Colorado River Basin.
- No surface occupancy is allowed for exploration, methane drainage, or ventilation and/or escape shafts in the modification area.

In addition, the following stipulations will be updated on the parent lease to reflect current direction and mis-wording in the original lease:

- Except at specifically approved locations, mining that would cause subsidence will not be permitted within a zone under Hubbard Creek. (See Figure 2 of the FS and BLM Records of Decision). The zone is determined by projecting a 25 degree angle of draw (from vertical) from the surface expression of the creeks down to the top of the coal seam to be mined.
- All or part of the land included in COC-61357 and subsequent modifications, are in the Springhouse Park Inventoried Roadless Area (IRA) and may be subject to restrictions on road-building pursuant to rules and regulations of the Secretary of Agriculture applicable at the time any road may be proposed on the lease.

Locations of any proposed surface use will be verified for relationship to IRA boundaries using site-specific maps if/when surface operations are proposed.

Where potential additional stipulations were identified, they were compared to the parent lease language. The parent lease was more restrictive and, therefore, not updated to include these lesser restrictions.

This decision will be implemented through issuance of this Decision Notice (DN), BLM issuance of a decision to modify the lease and the Forest Service providing concurrence to a mining and reclamation plan approved through the DRMS and OSM process (EA, Sections 1.4 and 1.5). The lessee will be required to secure any additional Local, State or Federal permits as applicable and required by law.

In the event of any contradiction or conflict between descriptions or depictions of authorized actions, my decision is to be taken from the project documents in the following order of precedence: first the description in this DN, second the representations on the Appendix A- Decision Map, and finally descriptions in the EA.

It must also be noted that this consent decision by the USDA-FS to the USDI-BLM to lease these lands, is not the final decision. The BLM, Colorado State Director will make a separate and final decision for leasing the BLM public lands and the coal reserves in the modification area.

#### ***IV. REASONS FOR THE DECISION***

##### **Applicable Laws, Regulations, and Policy**

This decision is consistent with applicable laws, regulations, and policies (refer to Section VIII of this document and EA, Chapter 1) and are consistent with Forest Land and Resource Management Plan (LRMP) direction (EA, Chapters 1 & 3).

##### **How Issues Were Considered**

The general issue of concern is the potential for subsidence to impact surface resources. This overarching concern was described in the Issues (EA, Chapter 1) that were analyzed in the EA. Potential impacts will be mitigated or reduced to a very low level by the application of the Coal Lease Stipulations from the parent lease (EA, Chapters 2 & 3 and Appendix B of this document).

Benefits will also occur from implementation of my decision. Additional tons of coal will be made available to supply energy needs of the country, and will provide some economic benefit to the surrounding communities.

##### **Factors Other Than Environmental Effects Considered In Making the Decision**

The purpose and need of this project is to consider issuing a coal lease modification for federal coal lands immediately adjacent to exiting federal coal lease COC-61357. The purpose of the lease modification is to allow for a more safe and logical mine design and to ensure that compliant and super-complaint coal reserves are recovered. My decision supports the Purpose and Need for this project.

My decision fulfills the Federal Government's policy to foster and encourage mineral development (Mining and Mineral Policy Act of 1970), the Federal Land and Management Policy Act (FLPMA), and complies with the GMUG Forest Plan direction.

The No Action Alternative (EA, Chapter 2.2) was not selected because it would not meet the Forest Plan direction to "encourage environmentally sound energy and minerals development" (Forest Plan, page II-61) nor would it allow development under 43 CFR 3432 (as amended by the Energy Policy Act of 2005) which allows coal lessees to apply noncompetitively for additional acreage.

### **Identification of the Environmental Documents Considered in Making the Decision**

This decision was made after carefully considering the contents of the EA, public comments, agency response to comments, and the supporting project file. The GMUG Forest Plan was reviewed and this decision determined to be consistent with it. The numerous other environmental documents (EA, Chapter 1) prepared for activities in the area were also consulted.

### **How Considerations Were Weighed and Balanced In Arriving At the Decision**

The resource impact analyses presented in the EA (Chapter 3, and summarized in Table 2-1) show that potential impacts to surface resources are very low. Granting consent to lease these lands adds about 142 acres of NFS lands to the coal lease base in the North Fork Valley to allow for a more safe and logical mine design. Oxbow currently has over 6,000 acres of federal lands under lease. This additional acreage represents about 2% of the currently leased acreage.

I have also considered Executive Order 13212, which directs federal agencies to take steps to increase the energy supply to our nation.

Coal in the North Fork Valley is desirable because it is considered "compliance coal" (both compliant and super-compliant) under the Clean Air Act emissions standards. The coal from the area is low sulfur, low ash, and has high burning capabilities.

### **Relationship to Public Involvement**

Public and agency comments were sought throughout this project (refer to Section VI of this document and EA, Chapters 1 & 4). The Forest Service addressed comments received during scoping on the project, which are included as part of the body of the EA (EA, Chapters 1).

I recognize that some members of the public generally do not support energy activities on NFS lands. As a mineral-related activity, coal mining is a recognized use of National Forest System lands and approving and administering these activities is part of the Forest Service mission and the legal framework under which the agency operates.

I also recognize the concern that potential surface use may occur on the lease modification because of Roadless Area Conservation Rule of 2001 inventoried areas<sup>1</sup>; however, I have approved the inclusion of lease stipulations to prevent any surface occupancy in this lease modification area. This is a decision to consent to the lease modification. If the lease modification were issued, it would grant the lessee the right to develop the minerals on the tract, but not authorize any surface occupancy. Also at this leasing stage, no surface uses have been proposed or are anticipated under a reasonably foreseeable mine plan (EA, Chapter 2 and Section 3.1). Any proposal for surface use would need to be framed in the context of the lease stipulations identified in this Decision (Appendix B of this document, and EA, Section 2.1.3) which preclude surface occupancy.

## ***V. SUMMARY OF ALTERNATIVES CONSIDERED***

Five alternatives were considered in the EA (Chapter 2) with two carried forward for detailed analysis. The selected action is the Proposed Action, conditioned with Coal Lease Stipulations. A summary of the action alternatives considered in the EA follows:

### **No Action**

Under the no action alternative, the lease modification would not be approved, and no mining would occur in this specific area. Impacts from mining coal under this area would not occur on these lands, and the effects from on-going land uses would continue. The land would continue to be managed according to Forest Plan standards, goals and guidelines.

### **The Proposed Action**

The proposed action is to modify Oxbow's existing federal coal lease COC-61357 by adding 148 acres to it to allow for a more safe and logical mine design and to ensure that federal coal reserves are not bypassed.

The proposed lease modification consists of approximately 148 acres located on lands managed by the BLM for minerals and the FS & BLM for federal surface Section 32, Township 12 South, Range 90 West and Section 5, Township 13 South, Range 90 West 6<sup>th</sup> P.M.

The proposed action deals primarily with underground mining. It is assumed that longwall mining practices would be used. Only minor surface disturbance would occur on Forest Service lands as a result of subsidence.

## ***VI. PUBLIC INVOLVEMENT***

Project scoping comments were solicited from appropriate agencies, specific interested parties, and the general public. The Notice of Opportunity to Comment was published in the Grand Junction Daily Sentinel on April 26, 2008. The notice asked for public comment on the proposal for 30 days following publication. In addition, as part of the public involvement process, Forest Service and BLM met with Colorado Division of Wildlife, US Environmental Protection Agency, Office of Surface Mining and Reclamation and Colorado Division of Reclamation Mining and safety and sent scoping letters to

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<sup>1</sup> It is recognized that the RACR was permanently enjoined by Judge Clarence A. Brimmer again on August 12, 2008. At this time, the Forest Service has not established regulatory direction in dealing with this court ruling.

approximately 85 groups, individuals and agencies. Four comment letters were received.

Using the comments from the public, other agencies, and the interdisciplinary team, all the issues brought up are addressed in the following sections: Key Issues, Non-key Issues, or Alternatives Considered but Eliminated from Detailed Study (EA, Sections 1.8.1, 1.8.2, and 2.2, and Chapter 3).

## **VII. FINDING OF NO SIGNIFICANT IMPACT**

Based on my review of the EA, public comments on the EA, the agency responses to comments (EA, Chapters 1), the supporting project record, and upon my analysis immediately below, I find that actions resulting from my decision do not constitute major Federal actions significantly affecting the quality of the human environment, as defined in the Code of Federal Regulations Title 40 Part 1508, section 27 (40 CFR 1508.27) in terms of either context or intensity, and that an environmental impact statement need not be prepared.

### **Context**

Locality- This decision would directly affect about 142 acres of NFS lands on the Paonia Ranger District. This number represents the acreage in the lease modification and in relation to the reasonably foreseeable mine plan (EA, Section 3.1), about 184 acres would be subsided. In context of the surrounding area, over 6,000 acres of land are currently under lease for the Elk Creek Mine. The acreage involved in this lease tract represents a small percentage of all the lands (federal and private) currently committed to coal resource recovery.

Potential impacts due to subsidence of the land surface are monitored or mitigated by application of the Coal Lease Stipulations in Appendix B of this document. The effects on public land and users over both the short-term and long-term would remain consistent with that which is presently occurring and has occurred in the past decade. No short or long term significant impacts are expected as a result of this decision in the local context (EA, Chapter 3).

Affected Interests and Affected Region- Affected interests for this project are permittees in the project area, people who use the project areas for recreation, people using public and Forest roads, residents in Delta and Gunnison Counties, the project proponent and other coal companies. This decision allows continued use of the area by livestock permit holders and recreational users of the areas. Monitoring and mitigation measures in the form of lease stipulations are prescribed as carried forward from the parent lease and those identified specific to the modification area in this decision to protect and preserve other forest uses. Other required permits would specify terms of use to further reduce effects on other forest uses. No short or long term significant impacts on affected interests are expected as a result of this decision in the regional context (EA, Chapter 3).

Society as a Whole- This decision provides the opportunity for federal coal reserves to be mined and contribute to filling the nation's need for coal. This decision also ensures that mineable federal coal reserves are not bypassed. Given the short duration of mining the coal and small amount of coal reserve that will be added based on replacing acreages of unmineable coal, there would be no impacts to society as a whole.

## **Intensity**

Consideration of Beneficial and Adverse Impacts- Beneficial and adverse impacts were described in the EA (Chapter 3) and considered in Section III of this Decision Notice. Impacts of this decision will be similar to those of previous decisions regarding coal leasing and mining in this project area and in adjacent areas on the GMUG and BLM lands. A benefit of this project will be the contribution of coal to the nation's energy needs. Although both beneficial and adverse effects are disclosed, none are severe enough to be considered significant. None of the expected beneficial or adverse impacts have a significant amount of intensity that would require documentation in an EIS.

Consideration of Public Health and Safety- I considered public health and safety issues in this decision. Since there are no changes to the existing coal transportation system (EA, Section 3.29), that the coal would be mined from an underground mine, the scale of this project, and the short-term duration of project activities, coupled with lease stipulations, reduces the risk to public health and safety to negligible levels.

Consideration of Unique Characteristics such as Proximity to Historic or Cultural Resources, Park Lands, Prime Farmlands, Wetlands, Wild and Scenic Rivers, or Ecologically Critical Areas- Consideration of Unique Characteristics Such As Proximity To Historic Or Cultural Resources, Park Lands, Prime Farmlands, Wetlands, Wild and Scenic Rivers, Or Ecologically Critical Areas. Historic and cultural resources are addressed in the following sections. There are no prime farmlands, rangeland, or forest land as defined in the Secretary of Agriculture's Memorandum Number 1827, Supplement 1, identified on the Grand Mesa or Gunnison National Forests. Wetlands would not be affected, as no delineated wetlands are known to exist in the lease modification impact area. There are no identified parklands or Wild and Scenic rivers in proximity to the project. The area of my decision has not been identified by any source as an ecologically critical area.

Consideration of the Degree to Which the Effects on the Quality of the Human Environment Are Likely to be Highly Controversial- This decision and its effects are not unique. Mineral-related (oil and gas, and coal) leasing decisions have been made on this National Forest for the past 30 years. Surface related impacts incident to subsidence are expected to be consistent with past impacts from similar projects in this project area and elsewhere in the project vicinity. The quality and use of the human environment in the project area is understood, has been analyzed, and is not highly controversial from a scientific standpoint. Given that activities will occur for short periods of time at specific locations, there is very low risk of effects spreading to local communities. Monitoring of subsidence in the area has shown that small-scale impacts have occurred, but none that contribute substantially to the landscape (EA, Section 3.5). Information or data that would demonstrate that the effects described in the EA are highly controversial have not been brought forward. Given the small scale, localized impacts associated with this project, the intensity of this factor does not require documentation in an EIS.

Consideration of the Degree to Which the Possible Effects on the Human Environment are Highly Uncertain or Involve Unique or Unknown Risks- This decision is not unique for this area, as mineral leasing projects have been previously approved in close proximity to the project area. The Forest Service has experience in implementing and monitoring similar projects, the effects of which have been found to be reasonably

predictable. The risks associated with subsidence are understood, and can be evaluated and reasonably predicted. No effects from this decision would be classified as highly uncertain or involving unique or unknown risks. The intensity of this factor does not require documentation in an EIS.

Consideration of the Degree to Which the Action May Establish a Precedent for Future Actions with Significant Effects or Represents a Decision in Principle about a Future Consideration- Consenting to coal activities on this lease modification will not create a precedent for future leasing or lease modifications. The BLM currently administers coal leasing activities in close proximity to the lease modification area. Further, the GMUG has previously analyzed coal exploration and development in the vicinity of the lease modification and in other areas on the forest. My decision follows the legal direction for coal (EA, Chapter 1) and is an identified and anticipated activity in the GMUG Forest Plan. Any future proposals would have to be evaluated on their own merits based on the issues and effects related to the location, timing and intensity of each action. My decision does not set a precedent or represent a decision in principle about a future consideration therefore documentation in an EIS is not required.

Consideration of the Action in Relation to Other Actions with Individually Insignificant but Cumulatively Significant Impacts- Coal exploration has occurred adjacent to the lease modification area since approximately 1999 (EA, Chapter 3.1). Underground coal mining has also occurred adjacent to the lease modification. No reasonably foreseeable future projects have been identified that would, in connection with this decision, produce cumulative effects beyond those currently occurring. The limited scale of activity creates minimal individual effects, as well as minimal cumulative effects when added to the existing situation and other potential activities. The proposed action will result in generally unnoticeable subsidence of the surface and will not affect other uses. While this lease modification will also contribute unnoticeably to air quality/climate change over current conditions, there is a growing national concern with regard to these topics, which cannot be fully addressed at the project level.

Consideration of the Degree to Which the Action May Adversely Affect Areas or Objects Listed in or Eligible for Listing in the National Register Of Historic Places or May Cause Loss or Destruction of Significant Scientific, Cultural, or Historical Resources. The project record and field reviews support that no cultural or historic sites would be affected by this decision (EA, section 3.25 and project file). The SHPO was consulted, and concurred with these findings. When implementing the decision, any previously unidentified sites inadvertently discovered would be avoided or mitigated so there would be no effect upon them (see Appendix B of this document).

Consideration of the Degree to Which the Action May Adversely Affect an Endangered or Threatened Species or Its Habitat Has Been Determined Not to be Critical Under The Endangered Species Act. A Biological Assessment has been prepared for this decision (EA, Section 3.9 and Project File). All known endangered or threatened species in the area were considered. Due to "no effect" determinations for Canada, Lynx and the Greenback cutthroat trout, the US Fish and Wildlife Service (FWS) is not required to be consulted. This decision is likely to adversely affect the four Colorado River endangered fish species through water depletions as a result of mining. The scope of this project is consistent with the FWS Programmatic Biological Opinion for Water Depletions (May 27, 2007) as related to minerals activity on the GMUG. If additional findings regarding threatened or endangered, proposed or sensitive species are

discovered, a new biological assessment or evaluation will be written, and any mitigation incorporated into lease stipulations.

Consideration of Whether the Action Threatens a Violation of Law or Requirement Imposed for the Protection of the Environment. To the best of my knowledge, this decision does not threaten violation of any laws and regulations imposed for the protection of the environment (refer to Section VIII of this document).

### ***VIII. FINDINGS REQUIRED BY OTHER LAWS AND REGULATIONS***

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.

**Federal Land Policy and Management Act of 1976:** This Act allows the granting of land use permits on National Forest System lands. The regulations at Code of Federal Regulations Title 36 Part 251 (36 CFR 251) guide the issuance of permits under this Act. Land use permits are granted on National Forest System lands when the need for such is consistent with planned uses.

**National Forest Management Act of 1976:** The Forest Plan was approved in 1983 and amended in 1991, as required by this Act. This long-range land and resource management plan provides guidance for all resource management activities in the Forest. The National Forest Management Act requires all projects and activities to be consistent with the Forest Plan. The Forest Plan has been reviewed in consideration of this project (EA, Chapters 1 & 3). This decision is consistent with the Forest 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 (EA, Chapter 1.). This decision is consistent with this Act.

**Mineral Leasing Act of 1920, as Amended by the Federal Coal Leasing Amendments Act of 1975:** These Acts authorize the federal agencies to lease coal reserves (EA, Chapter 1), and prescribe conditions for protection of non-coal resources. It requires the BLM to secure consent from other surface management agencies prior to leasing federal coal lands. This decision is consistent with these Acts.

**Clean Air Act of 1955, as amended 1977:** This Act required States to develop plans to implement, maintain, and enforce primary and secondary ambient air quality standards for any criteria air pollutants, and called federal agencies to prevent deterioration of air quality. Effects on air quality as a result of this project were analyzed and showed that this project will have negligible effects on air quality. This decision is consistent with this Act.

**Clean Water Amendments of 1972:** This Act requires State and Federal agencies to control and abate water pollution. This project was designed to comply with this Act (EA, Chapter 2 and Appendix B of this document). This decision is consistent with this Act.

**Executive Order 11990 and 11988:** The management of wetlands and floodplains are subject to Executive Orders 11990 and 11988, respectively. The purpose of the EOs are to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and floodplains and to avoid direct or indirect support of new construction in wetlands wherever there is a practical alternative. This order requires the Forest Service to take action to minimize destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands. In compliance with this order, Forest Service direction requires that an analysis be completed to determine whether adverse impacts would result (EA, Chapter 2 and Section 3.10-3.13). The project was designed to avoid impacts to wetlands and floodplains. This decision is consistent with this Order.

**National Historic Preservation Act:** All areas of potential disturbance have been surveyed for cultural resources. Hence there is no impact to significant cultural or historic properties (Section VII). Ongoing consultation has identified no places of American Indian cultural or religious significance (EA, Sections 3.24-3.25 and Project File).

**Endangered Species Act:** Compliance with this Act is addressed in Section VII, of this document.

**National Environmental Policy Act:** The documentation for this project supports compliance with this Act. The process of environmental analysis and decision making for this proposed action, and the associated documentation, have been conducted to fully comply with the requirements of NEPA. These include requirements of the Act itself, CEQ regulations at 40 CFR 1500, Forest Service policies at Forest Service Handbook 1909.15, the requirements that evolved through the practice of NEPA, and from case law.

**Energy Policy Act of 2005:** With respect to coal under 43 CFR 3432 (as amended by the Energy Policy Act of 2005), the holder of a federal coal lease may apply to modify a lease by up to 960 acres. The federal agencies are responding to an application to modify an existing lease. This Decision is consistent with this Act.

## ***IX. IMPLEMENTATION DATE AND ADMINISTRATIVE REVIEW AND APPEAL OPPORTUNITY***

### **Implementation Date**

If no appeals are filed within the 45-day time period, implementation of the decision may occur on, but not before, 5 business days from the close of the appeal filing period. When appeals are filed, implementation may occur on, but not before, the 15th business day following the date of the last appeal disposition.

In relation to the Forest Service role in this project as the federal surface land management agency in the State coal program, the agency will be able to provide the

required formal concurrence on related permitting actions to the DRMS or OSM as applicable, no sooner than 5 days after the appeal filing period closes. If an appeal is filed, formal concurrence would not occur until after the appeal resolution period described above.

### **Administrative Review or Appeal Opportunities**

This decision is subject to administrative review pursuant to Federal Regulations at 36 CFR 215. Appeals (including attachments) must be in writing and filed (regular mail, fax, e-mail, hand-delivery, express delivery, or messenger service) with the Appeal Deciding Officer (§ 215.8) within 45 days following the date of publication of a legal notice of this decision in the *Grand Junction Daily Sentinel*. Attachments received after the 45-day appeal period will not be considered. The publication date of the legal notice in the newspaper of record is the exclusive means for calculating the time to file an appeal (§ 215.15 (a)). Those wishing to appeal should not rely upon dates or timeframe information provided by any other source.

The appeal must be filed (regular mail, fax, email, hand-delivery, or express delivery) with the Appeal Deciding Officer at:

Appeals Deciding Officer  
U.S.D.A. Forest Service  
Rocky Mountain Region  
740 Simms Street  
Golden, CO 80401

Fax: 303-275-5134 to the attention of Appeals

Email: [appeals-rocky-mountain-regional-office@fs.fed.us](mailto:appeals-rocky-mountain-regional-office@fs.fed.us)

The office business hours for those submitting hand-delivered appeals are 8:00 AM to 4:30 PM Monday through Friday, excluding federal holidays. Electronic appeals must be submitted in a format such as an e-mail message, plain text (.txt), rich text format (.rtf), or MSWord (.doc) to [appeals-rocky-mountain-regional-office@fs.fed.us](mailto:appeals-rocky-mountain-regional-office@fs.fed.us). In cases where no identifiable name is attached to an electronic message, a verification of identity will be required. A scanned signature is one way to provide verification.

Appeals, including attachments, must be filed within 45 days from the publication date of this notice in the *Grand Junction Daily Sentinel*. Attachments received after the 45 day appeal period will not be considered. The publication date in the *Grand Junction Daily Sentinel* is the exclusive means for calculating the time to file an appeal. Those wishing to appeal this decision should not rely upon dates or timeframe information provided by any other source.

Individuals or organizations who expressed interest during the comment period specified at 36 CFR 215.6 may appeal this decision. The notice of appeal must meet the appeal content requirements at 36 CFR 215.14.

Contact Person

For more information about this project, contact Ryan Taylor, 403 N. Rio Grand Ave., Paonia, CO 81428, phone 970-527-4151, or at [rztaylor@fs.fed.us](mailto:rztaylor@fs.fed.us) .

**XI. SIGNATURE AND DATE**

*/Charles S. Richmond/*

*8/21/2008*

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CHARLES S. RICHMOND  
Forest Supervisor  
Grand Mesa-Uncompahgre-Gunnison National Forests

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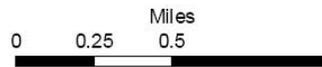
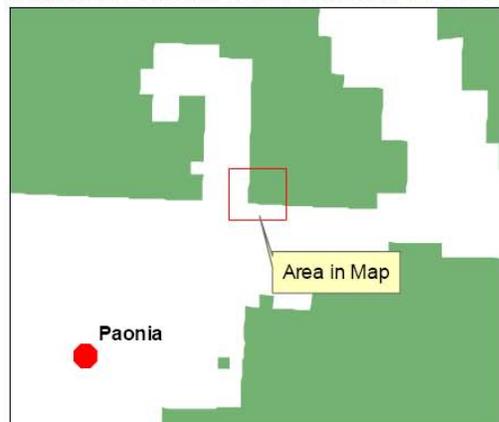
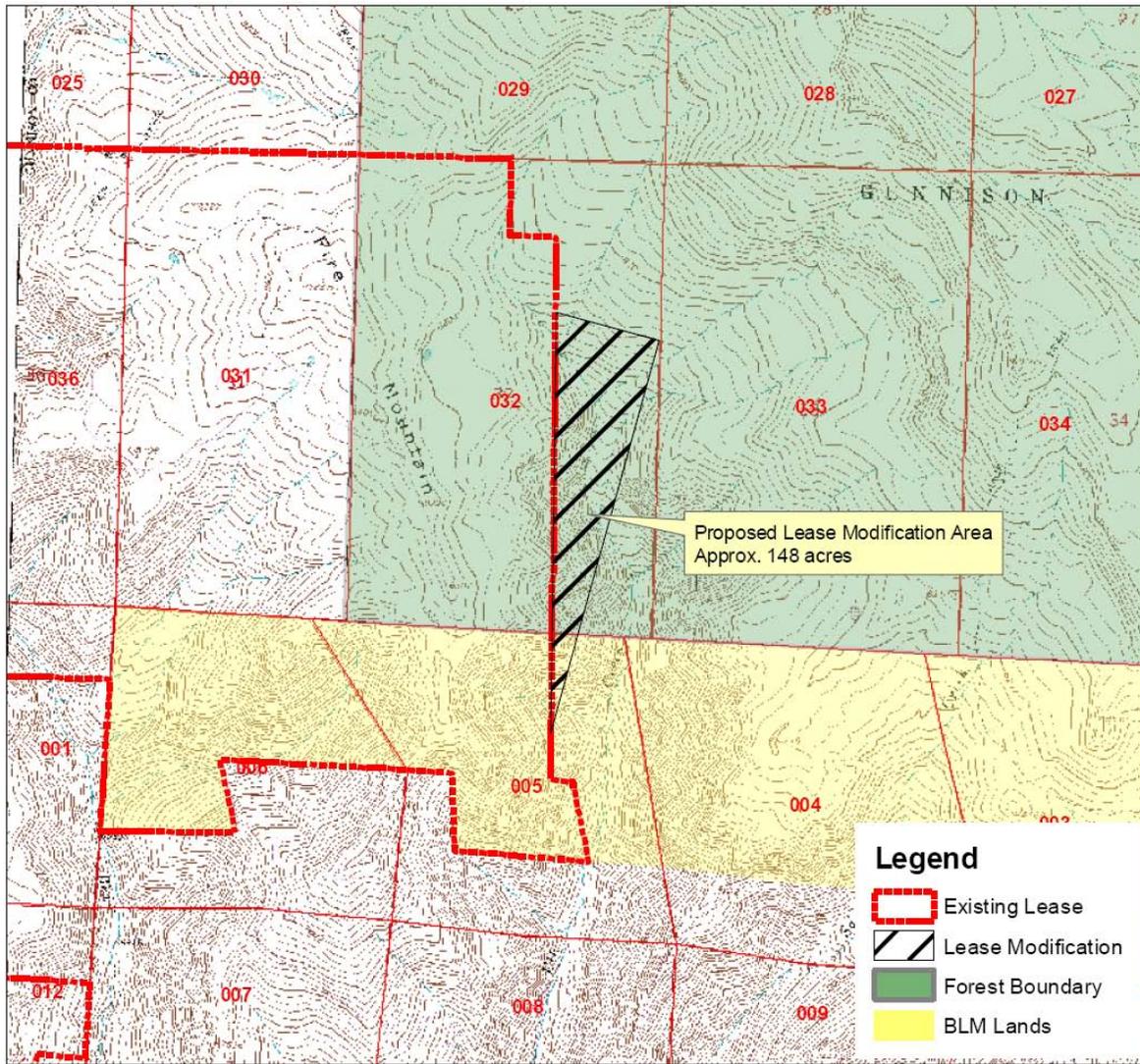
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# Appendix A- Decision Map



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## **Appendix B- Stipulations for COC-61357 Lease Modification Tract 4**

### *Cultural and Paleontological Resources.*

- (1) Prior to any surface disturbing activities, including subsidence, the lessee shall conduct a cultural resources survey and paleontological assessment of all previously unsurveyed areas that will be directly impacted by operations under this lease. The survey shall be an intensive field inventory of cultural, historical, and archaeological values, including, but not limited to, any and all objects of antiquity, historic or prehistoric ruins and artifacts, or other specimens of scientific interest. If the paleontological assessment demonstrates a need for a site specific inventory, this survey will also be performed.
  - Surveys shall be conducted by a qualified professional cultural or paleontological resources specialist approved in advance by the Uncompahgre Field Office Manager or the Paonia District Ranger. A report on the survey and recommendations for protecting any identified cultural or paleontological resources shall be submitted to the Uncompahgre Field Office Manager or the Paonia District Ranger. After review and approval of the report, surface disturbing operations may be further conditioned with the imposition of additional stipulations for protection of the identified cultural or paleontological resources.
  - The cost of the cultural or paleontological resources survey, the report, and any measures to protect cultural or paleontological resources identified thereby shall be borne by the lessee. All identified items shall remain the property of the appropriate surface owner, but the United States reserves its right and obligation under applicable law to take action necessary to protect, preserve, or acquire such items.
  - If any items or features of historical, cultural or archaeological value are discovered during lease operations, the lessee shall immediately notify the Uncompahgre Field Office Manager or the Paonia District Ranger and shall not disturb such items or features until the Uncompahgre Field Office Manager issues instructions. If the lessee is ordered to take measures to protect any items or features of historical, cultural or archaeological value discovered during lease operations, the cost of the measures shall be borne by the lessor and such items and features shall remain under the jurisdiction of the United States.
  - The cost of conducting the inventory, preparing the reports and carrying out mitigating measures shall be borne by the lessee. Of particular concern in this lease area are un-inventoried cultural resource sites associated with rock overhangs and escarpments.

### *Threatened and Endangered Species*

- (2) If there is reason to believe that new individuals or populations of Threatened or Endangered, or Sensitive (TES) species of plants or animals, or migratory bird species of high Federal interest occur in the area, the lessee shall be required to conduct an intensive field inventory of the area to be disturbed and/or impacted. Inventory shall be conducted by a qualified specialist and a report of findings will be prepared. A plan will be prepared making recommendations for the protection of these species or action necessary to mitigate the disturbance. The cost of conducting the inventory, preparing reports and carrying out mitigating measures shall be borne by the lessee.

### *Birds*

- (3) To protect and preserve breeding and nesting habitat for the Loggerhead shrike, and other Neo-tropical birds, disturbances in sagebrush, Gambel oak stands, and riparian areas will be avoided to the extent practicable.
- (4) No surface disturbance or facilities will be located in occupied Southwest willow flycatcher habitat. Prior to any planned disturbance within riparian habitats on the lease, the lessee must: (i) Survey the area of the proposed disturbance for suitable Southwest willow flycatcher habitat, and survey all suitable habitat for the presence of the species. All habitat and species surveys must be in accordance with the accepted U.S. Fish and Wildlife Service (USFWS) protocol; (ii) Provide the results of all surveys to the USFWS, the Uncompahgre Field Office of BLM and the Paonia Ranger District of the USFS; (iii) If suitable habitat or individuals are located in the area, consultation with the USFWS will be required to determine suitable conservation measures to prevent a "taken under section 9 of the Endangered Species Act. Conservation measures may include avoidance of the occupied habitat, establishment of a buffer zone and seasonal restriction around occupied habitat, or others developed for the specific site. In accordance with current protocol, surveys for the presence of the species are valid for only one year.

### *Wildlife*

- (5) With respect to bald or golden eagle nests which may be established on the lease during the life of the project, the following shall apply: (i) No new permanent surface facilities or disturbances shall be located within a 1-mile-radius buffer zone around each bald or golden eagle nest site. (ii) No above ground activities will be allowed within a 1 mile radius buffer zone around each active eagle nest site from November 15 to July 30 for bald eagles, and around each active golden eagle nest site from February 1 to July 15. (iii) Any proposed surface facilities, disturbances or activities (noted above) in, or adjacent to, these buffer zones will require approval from the BLM or USFS on a site-specific basis, after consultation with the USFWS.

- (6) With respect to bald eagle winter roost sites or concentration areas which may become established on the lease during the life of the project, the following special stipulation shall apply: (i) No above ground activities will be allowed within a 1/4 mile radius of winter roosts between November 15 and March 15; development may be permitted at other periods. If periodic visits are required within the buffer zone after development, activity should be restricted to the hours of 10 am and 2 pm from November 15 through March 15.
- (7) With respect to other raptors (except American Kestrel) which may occur or become established on the lease during the life of the project, the following special stipulation shall apply: (i) Conduct surveys for nesting raptors on the lease tract prior to development of any surface facilities. No surface activities will be allowed within 1 mile radius of active nest sites between the dates of February 1 and August 15, unless authorized by BLM or USFS on a site specific basis.

#### *Big Game Winter Range*

- (8) With respect to mule deer and elk crucial winter range that may be established by Colorado Division of Wildlife (CDOW) on BLM managed lands on the lease during the life of the project, the following shall apply: (i) Coal related facilities and surface disturbances except subsidence will be authorized in the review area only if no practical alternatives exist. The BLM will co-ordinate with the CDOW to determine the type and extent of allowable variances. Coal exploration, facility construction, and major scheduled maintenance will not be authorized within these crucial winter ranges from December 1 through April 30. All unavoidable surface disturbances within these crucial winter ranges during these times will require approval of the authorized officer.

#### *Water*

- (9) Water Replacement Plan. (A) Lessee shall replace, in a manner consistent with state law, the water supply of any owner of a vested water right which is proximately injured as a result of the mining activities.
- (10) Lessee, will conduct an inventory of all existing water sources (including gain/loss analyses on Elk, Bear and Hubbard Creeks) adjacent to, originating on or flowing over the lease tract (including state adjudicated water rights, stock ponds, springs, etc.) which may be impacted by subsequent mining activities. At a minimum, this inventory will include: the water right holder, location, source, amount of decree, beneficial use, current and historical flow, (including seasonal/annual variation), and the appropriation and adjudication dates, In addition to the water inventory, the lessee shall be required to establish a water resource monitoring program to locate, measure and quantify the progressive and final effects of underground mining activities on the water resources potentially affected by mining. Monitoring of water resources would continue

until a determination is made by the CDMG that there would be no injury to water resources.

- (11) Lessee shall formulate a water replacement plan to replace the possible loss of water resulting from mining activity of the lease. The water replacement plan will include all existing water sources, including those presently adjudicated and historically put to beneficial use in the Elk Creek, Bear Creek, and Hubbard Creek drainages. The water replacement plan for each respective drainage shall be developed after consultation with affected water right users and federal and state authorities, and shall be approved by state authorities before mining in the particular drainage. At a minimum, the water replacement plan will require, upon injury, replacement of water of suitable quality and water right seniority to provide for all existing uses (including sources supporting livestock and ecosystem, and other land uses as authorized by 36 CFR 251) and be delivered to existing points of diversion in a timely manner. As part of each water replacement plan, the lessee shall demonstrate its legal and physical ability to implement said plan. A source of replacement water may include, but is not limited to, the transfer of water rights, an augmentation plan, a long term water use lease, or compensatory storage.
- (12) Fueling and lubricating vehicles are prohibited within 100 feet of streams and wetlands. No fuel storage is allowed within 500 feet of any water bodies.

*Subsidence*

- (13) A pillar stability analysis shall be used to design chain and barrier pillars for long term structural integrity where needed to protect surface resources.

***Additional Stipulations for Forest Service Lands.***

- (1) All or part of the land included in COC-61357 and subsequent modifications, are in the Springhouse Park Inventoried Roadless Area (IRA) and may be subject to restrictions on road-building pursuant to rules and regulations of the Secretary of Agriculture applicable at the time any road may be proposed on the lease. Locations of any proposed surface use will be verified for relationship to IRA boundaries using site-specific maps if/when surface operations are proposed.
- (2) No surface occupancy is allowed for exploration, methane drainage, or ventilation and/or escape shafts in the modification area.
- (3) No surface occupancy or use is allowed on the lands defined as a wetland, floodplain or riparian area.
- (4) A 1/8 mile buffer zone (660 ft.) Will be protected on either side of the riparian zones (or a buffer zone may be established in accordance with the surface

management agency guidelines). No surface disturbances, except surface subsidence, will be permitted within these buffer zones.

- (5) Existing Forest Service owned or permitted surface improvements will need to be protected, restored or replaced to provide for continuance of current land uses.
- (6) Lessee shall provide for the suppression and control of fugitive dust on roads used by the lessee.
- (7) Lessee shall be required to perform a study to secure adequate baseline data to quantify existing surface resources on and adjacent to the lease area. Existing data may be used if such data are adequate for the intended purposes. The study shall be adequate to locate, quantify and demonstrate the interrelationship of the geology, topography, surface hydrology, soils, vegetation and wildlife. Baseline data will be established so that future programs of observation can be incorporated at regular intervals for comparison. .
- (8) Lessee shall be required to establish a monitoring system to locate, measure, and quantify the progressive and final effects of underground mining activities on the topographic surface, subsurface and surface hydrology, soils and vegetation. The monitoring system shall utilize techniques which will provide a continuing record of change over time and an analytical method for location and measurement of a number of points over the lease area.
- (9) In the future, if water used for mine related activities exceeds a depletion amount previously consulted upon by the GMUG, the permitting agency must enter into consultation with the U.S. Fish and Wildlife Service to determine appropriate conservation measures to offset effects to listed fish and critical habitat in the upper Colorado River Basin.
- (10) The licensee/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 and regulations must be complied with for (a) all use and occupancy of the NFS prior to approval of a permit/operation plan by the Secretary of the Interior, (b)uses of all existing improvements, such as Forest Development Roads, within and outside the area licensed, permitted or leased by the Secretary of the Interior, and (c) use and occupancy of the NFS not authorized by a permit/operating plan approved by the Secretary of the Interior.