



26 June 2015

Director (210)
Attn: Protest Coordinator
P.O. Box 71383
Washington, D.C. 20024-1383

RE: Protest of the Proposed Miles City Field Office Resource Management Plan and Final Environmental Impact Statement, June 2015

Dear Director Kornze:

On behalf of our members who live, work and travel within the Miles City Field Office Planning Area, the following organizations hereby protest the Miles City Field Office Resource Management Plan (RMP) and Final Environmental Impact Statement (FEIS) issued May 29, 2015:

Northern Plains Resource Council
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Western Organization of Resource Councils
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Northern Plains Resource Council (Northern Plains), a Montana based landowner conservation organization in conjunction with its affiliate, the Western Organization of Resource Councils (WORC), a multi-state conservation organization, submits herewith its protest of the Miles City Field Office Resource Management Plan and Final Environmental Impact Statement (MCFO RMP/FEIS). Northern Plains has participated in the planning, scoping, and draft of the MCFO RMP/FEIS. In addition, it was deeply engaged in the planning and development of the underlying RMPs encompassed in the MCFO RMP/FEIS -- the 1985 Powder River RMP and the 1996 Big Dry RMP. Northern Plains is a membership-based grassroots organization whose members have significant interests that will be adversely affected by the planning decisions in the MCFO RMP/EIS. WORC is a network of state-based grassroots organizations that consists of Northern Plains and six other western state-based organizations. WORC represents Northern Plains frequently in regional and Washington, DC, venues and has participated in Bureau of Land Management (BLM) land-use planning and federal coal-management policy issues since it was formed in 1979.

Interest of the Parties

Our members breathe the air, live on the land, and drink the water of the planning area. Many of our members are split-estate landowners overlying federal minerals that are slated for leasing and development under the proposed plan. Our members also recreate on BLM lands in the planning area, hold grazing leases for BLM land parcels, and otherwise use BLM lands. Our members will be adversely affected by the decisions made under the guidance of the MCFO RMP, including but not limited to, authorizing fossil-fuel leasing and extraction and the corresponding impacts to air, land, and water quality. Our organizations are therefore eligible to protest the plan under 43 C.F.R. § 1610.5-2(a).

Participation in the Planning Process

Throughout the MCFO RMP planning process and throughout the process of the historic RMPs that underlie the MCFO RMP, the Big Dry RMP and the Powder River RMP, our members and organizations actively engaged in the RMP and EIS processes.

Issues Protested

- Out-of-date planning and data and information have been used throughout the MCFO RMP and FEIS regarding coal
- Significant climate consequences of leasing or exchanging coal are missing in the MCFO RMP/FEIS
- Surface-owner consultation, a required and important step in planning, is out-of-date and invalid
- Stale data is used for unsuitability screens
- Impact analysis is flawed due to faulty assumptions on length of surface-mine disturbance and reclamation outcomes
- Failure to address issues of water quantity relating to liquid minerals development and the slow rate of recharge in fields that have been developed for coal bed methane.
- Allowing the use of impoundments as a method of water management for oil and gas development.

A major issue that NORTHERN PLAINS RESOURCE COUNCIL and WESTERN ORGANIZATION OF RESOURCE COUNCILS raise in its protest of the MCFO RMP/FEIS is that it allows BLM to bring forward for further consideration for leasing more than **68.38 billion tons of federal coal** without having updated the underlying land-use planning, surface-owner analyses, unsuitability screenings, status of reclamation, or impacts analyses. The absence of current, accurate information essential to guide sound land-use planning and National Environmental Policy Act (NEPA) compliance render the MCFO RMP/FEIS invalid under existing laws governing these activities. We protest the plan and call for BLM to re-do the sections pertaining to coal management in order to bring them up-to-date with current, valid data.

Coal

Out-of-date planning and data and information have been used throughout the MCFO RMP and FEIS regarding coal

According to the MCFO RMP,

“Any party desiring a coal lease can apply and the application would be considered based on its own merits. The coal planning process is described in the *Coal* section of the *Minerals Appendix*.”

The Minerals Appendix consists of excerpts pertaining to coal decisions from the **Big Dry RMP of 1996** and the **Powder River RMP of 1985**. In those historic RMPs, planning activities vital to the integrity of land-use planning date as far back as 1981 (See “*Call for Resource Information*” - MCFO RMP/FEIS Vol. 3, MIN-139).

Due to the use of stale data and information, land-use planning, coal management and impacts analysis in the MCFO RMP/FEIS are riddled with dubious, out-of-date, and/or invalid information. According to MCFO RMP/FEIS, in March 1983 Powder River Resource Area staff identified locations where unsuitability criteria applied within the areas that contained coal with development potential (MIN-140). This analysis is 32 years old. While some screens would remain static during that period (i.e., lands unsuitable because they are the sites of historic Plains Indian battlefields), many would not.

Action 1 moves forward a massive quantity of federal coal from the decades-old RMPs for leasing. Action 2 recommends (Table 2-5. *Comparison of Alternatives*, p. 2-76) that the BLM evaluate all coal leasing and exchanges for their suitability for leasing or exchange. This will result in a site-specific and piecemeal approach, which is no substitute for land-use planning and the landscape level decision-making appropriate to the agency’s policy under the Federal Lands Policy and Management Act (FLPMA) and the Federal Coal Management Program (FCMP) established in 1980.

Ironically, the MCFO RMP appears to take federal coal management full circle. The preceding coal program was an industry-driven preference right lease-by-application approach and was discredited and discarded largely because it lacked a robust and broad context for coal management decisions. At the time, the Department of the Interior instituted a moratorium to reform the entire program and incorporate Congressional reforms contained in a package of legislation that embedded coal management decision-making in sound land-use planning, stewardship of land and water, and full examination of environmental impacts. These laws included the FLPMA of 1976, the Federal Coal Leasing Amendments Act of 1975, and the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

To illustrate the inadequacy of the proposed MCFO RMP, as noted in our comments submitted on the Draft RMP and EIS, the wide-spread extraction of coal bed methane (CBM) in the 1990-2008 period and its cumulative impacts on the quantity and quality of water should be updated. The states of Wyoming and Montana have engaged in both negotiations and litigation over the effects of produced CBM water pollution on the viability of water in the Tongue River for irrigation a vital economic activity in southeastern Montana. Existing and proposed new coal mining in the Tongue River drainage will exacerbate the electric conductivity and sodium adsorption ratios of water in the River. The fact that water quality in the Tongue River is already pushing against limits of salinity for downstream irrigators

due to upstream energy development (both coal and CBM) should have been addressed in the MCFO RMP/FEIS in order to inform the BLM on whether certain coal fields lying within that drainage and its tributaries should be acceptable for further consideration for leasing. The MCFO RMP/FEIS failed to apply this information at the land-use planning level, deferring it to later site-specific decision makers. In light of the vast coal resource in the region, federal coal that, if mined, would threaten an important and ongoing renewable industry in the region should be designated unacceptable for further consideration for leasing or exchange.

The use of decades-old land use plans for managing coal creates some glaring omissions. Another example of widespread water contamination due to industrial activity in the plan area is the widening contamination emanating from highly toxic fly ash ponds at Colstrip which are leaking into area groundwater wells and downstream creeks in the Rosebud Creek drainage. Even though it's an area near an active mine and potential new leasing, this critical issue has not been identified or factored into the coal planning in the proposed MCFO RMP/FEIS.

Significant climate consequences of leasing or exchanging coal are missing in the MCFO RMP/FEIS

The BLM ignores the climate costs of burning the coal in the MCFO RMP planning area, making it available for leasing without developing and applying limits to coal leasing and exchanges based on that analysis.

Since 1984, scientific understanding and documentation of the urgent and mounting crisis of atmospheric concentration of greenhouse gases (GHG) threatening catastrophic climate change has emerged and matured presenting critical issues for federal coal managers that were not examined or addressed in the MCFO RMP/FEIS. The MCFO RMP/FEIS recognizes and acknowledges the issues and the science of climate change and its connection to human-caused greenhouse gas concentration in the atmosphere. However, it misses the forest through the trees by ignoring BLM's direct responsibility to manage one of the largest and most dangerous sources of carbon pollution on the planet, coal. The MCFO RMP/FEIS discussion of the issue of greenhouse gas emissions is absurdly circumscribed in relation to the 68.38 billion tons of coal in the plan deemed acceptable for further consideration for lease or exchange.

According to Energy Information Agency, combustion of one short ton of coal results in 2.86 tons of CO₂ emissions, which means that 68.38 billion tons of coal in the plan area would generate 195.5 billion tons of CO₂. Yet, the analysis is limited to the emissions from the mines themselves, disregarding the larger and more urgent questions regarding BLM's role in transferring this vast source of harmful carbon pollution to energy companies whose purpose is to develop the coal in ways that would result in devastating consequences for the planet.

The BLM proposes to address the issue of GHG emissions in specific lease applications and fails in its responsibilities to analyze this resource programmatically and consider any ramifications. The MCFO RMP/FEIS fails to comply with NEPA when it deems this enormous amount of coal acceptable for further consideration for leasing without looking at the big picture holistically and addressing the global climate impacts of burning that coal if it is leased.

Surface-owner consultation, a required and important step in planning, is out-of-date and invalid.

Under Public Law 95-87, the 1977 SMCRA, all comprehensive land-use plans involving potential coal leasing shall consult with qualified private surface owners over federal coal with development potential and ask the surface owner to state his/her preference for or against the offering of the deposit under his/her land for lease. The screening of qualified split-estate surface owners is woefully out-of-date, having been completed in 1983, more than 30 years ago. A child born in 1983 would now be 32 years old. Land ownership has changed hands. Generations have come and gone without having been consulted during this land-use planning process. Yet, there was no effort made under the proposed MCFO RMP/FEIS to address this essential and important step. This gaping flaw in the plan is another reason we are protesting the MCFO RMP/FEIS. We call on the BLM to conduct this step as required under SMCRA.

The absence of timely surface owner consultation as part of the planning process is all the more egregious with the recent precedent of BLM Miles City Field Office *exchanging* (emphasis added) federal coal under qualified private surface owners without permitting them the opportunity to refuse consent for having their surface strip mined (See *MTM 99236 Nance-Brown AVF Coal Exchange, Rosebud County, Montana*). The possibility of additional use of land exchanges to transfer federal coal in a vacuum of timely and valid information and planning is deeply troubling.

In effect, the MCFO RMP offers at least 67 billion tons of federal coal for exchanges (estimate of coal acceptable for leasing or exchange that is not part of an existing mine expansion plan.) Based on recent history, coal exchanges are subject to an even more random and haphazard review process than scrutiny given lease applications. The NEPA and agency review executed in 2012 for the Nance-Brown AFV Coal Exchange was weak and narrowly scoped.

Stale data is used for unsuitability screens

Application of unsuitability screens for important wildlife habitat (e.g. eagle nests) is based on data available as of Feb. 18, 1983. The proposed MCFO RMP/FEIS clearly contains more current data on important wildlife species and their critical habitat and range, however (except, perhaps in the case of sage grouse habitat) it was not utilized in planning the ongoing management of coal. According to the MCFO RMP, "areas proposed for coal development would be evaluated for unsuitability when a lease application is received" (See *"Environmental consequences: fish, aquatic and wildlife habitat, including special status species," p. 4-108*). Hence, the BLM abdicates its responsibility under the federal coal-management program of using unsuitability screens at the land-use planning stage for identifying areas where coal development is suitable for consideration. This lapse undermines the proactive management principals embodied under the federal coal-management program. Relegating wildlife unsuitability screens to project level review will result in fragmentation and forgoes the important timely opportunity to take a wider look that would enable the agency to anticipate and understand the potential cumulative effects of multiple projects. It also fails to account for the wide-ranging habitat of some species and the opportunity and necessity to manage resources in order to enhance the integrity and continuity of that habitat range.

Impact analysis is flawed due to faulty assumptions on length of surface-mine disturbance and reclamation outcomes

The MCFO RMP/FEIS predicates the anticipated impacts of coal mining on the now disproven assumption (made in the 1996 Big Dry RMP) that surface mining of federal coal would take 10-13 years for completion of the full cycle from initial disturbance through mining, reclamation, and bond release for each acre. (See “A description of a generic mine operation was developed for the Big Dry RMP [BLM 1995]” - p. MIN-128. See also “It would take approximately 10 to 13 years for completion of the full cycle from initial disturbance through mining reclamation and bond release for each acre.” p. MIN-138.) These rosy assumptions of two decades ago failed to materialize for coal-mined lands in Montana.

In 2014, of the 39,953 acres disturbed by coal surface mining in Montana since passage of the federal law only 3,870 acres had achieved Phase III bond release indicating successful establishment of vegetative communities appropriate for post-mine land use. Far less, 67 acres, had achieved final (Phase IV) bond release in Montana. (See *Office of Surface Mining Reclamation and Enforcement, Annual Evaluation Report for the Regulatory Program of Montana for Evaluation Year 2014, October 2014.*) We recognize that not all lands that have been re-seeded are eligible for Phase III bond release because they must withstand a ten-year cycle before becoming eligible to apply. However, the fact is that for Montana coal surface mines that have been operating since the 1970s or early 1980s less than 10% of acres mined have passed the one measurable bench mark signifying successful reclamation as recognized by the Office of Surface Mining (OSM). This is cause for significant alarm (See *Undermined Promise II, www.underminedpromise.org*). For BLM to base its analysis of the impacts of mining on wildly inaccurate assessments regarding reclamation invalidates that examination and merits our protest of the proposed MCFO RMP/FEIS.

Also egregious is the attempt to whitewash the scandal of acres mined and not yet reclaimed by listing acres disturbed and acres “reseeded” and claiming that equates to “fully reclaimed” (See “According to the Office of Surface Mining and Enforcement (OSM), since 1999, approximately 39,831 cumulative acres in Montana have been disturbed as a result of surface coal mining, and of this area approximately 20,003 acres have been **fully reclaimed.**” (emphasis added) [p. MIN-128]).

In fact, the official test of reclamation success is and always has been bond release according to OSM Directive REG-8 “Oversight of State Regulatory Programs”:

*OSM will evaluate and report on the effectiveness of state programs in ensuring successful reclamation on lands affected by surface coal mining operations. **Success will be determined based on the numbers of acres that meet the bond release standards and have been released by the state.***

*Once the data collection system and verification procedures have been established, **the acres released from bond will represent specific on-the-ground reclamation.** [emphasis added]*

Oil and Gas

Failure to address issues of water quantity relating to liquid minerals development and the slow rate of recharge in fields that have been developed for coal bed methane

The preferred alternative (Alternative E) in the proposed final RMP fails to address issues of water quantity concerns relating to liquid minerals development, including both oil and gas and coal bed natural gas. Oil and gas development uses large amounts of fresh water. The EPA has estimated that between 70 and 140 billion gallons of water are required annually for fracking. (See *Draft Plan to Study the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources*, EPA, 2011 This water is completely lost to the system since it is contaminated with chemicals and much of it is disposed of into deep-injection wells. (See *Gone for Good*, Western Organization of Resource Councils, 2013) This is in contrast to agricultural water use. Agriculture is the largest water user in Montana, but the water used is sent back into the overall water cycle. Similarly the BLM knows from past study that each coal bed methane well involves removing 16,000 gallons of water per day from the coal bed aquifer. Studies of the CBM fields have shown the groundwater table is not being recharged as quickly, if at all, as anticipated by the state (Attachment). Impacts water quantity from consumptive use in oil and gas and coal bed methane development could be a problem for southeastern Montana well into the future and need to be addressed in the final RMP.

In addition to documenting the amount of water currently available in the system, the BLM should document and mitigate the amount of water used for federal oil and gas drilling. Additionally, each well should have monitoring systems to ensure that the actual amount of water being used is accurate. Finally, the BLM must take action to alleviate some of the water loss from oil and gas operations. The RMP should require recycling of drilling and frack water. Oil and gas companies have the technology to do this and should be required to implement this water conserving technology.

Allowing the use of impoundments as a method of water management for oil and gas development

We believe the BLM mistaken in allowing the continued use of impoundments as a method of water management for oil and gas development in the RMP and believe all use of impoundments as a method of water disposal should be removed from the RMP. Impoundments, or pits, for produced water from oil and gas/CBNG production create unnecessary risks. A 2003 EPA study, *Oil and Gas Environmental Assessment Effort*, assessed site operator management of oil and exploration and development waste. The study focused on the use of production pits used at drilling sites. In Montana 137 sites were inspected and 61 were found to be problematic. (See *Oil and Gas Environmental Assessment Effort 1996-2002*, EPA, 2003) Issues of concern included discharges to surface and groundwater, leaks and spills, and improperly designed, located and operated pits. These kinds of failures endanger the health of surrounding humans, wildlife, and soil and therefore should be mitigated by the elimination of impoundments for oil and gas water management in the RMP. In addition, states like North Dakota banned pits or impoundments as recently as 2011.

Conclusion and Requested Remedies

In order to correct the legal and technical errors of the MCFO RMP/EIS, BLM must:

1. Prepare and release for public comment a revised RMP and supplemental Draft EIS.
2. Conduct the planning steps of unsuitability screens, multiple-use conflicts, and surface-owner consultation for federal coal in the planning area using valid, current data.
3. Conduct a new cumulative impacts analysis properly disclosing impacts from previous CBM and existing coal mines on water quality in the Tongue River Basin.
4. Conduct a new impacts analysis properly accounting for the lengthy removal of surface-mined lands from productive use and the growing gap between mined lands and lands put back into post-mining use in accordance with Public Law 95-87 by means of final (or Phase III) bond release.
5. Conduct a new impacts analysis properly disclosing the GHG ramifications of leasing significant quantities federal coal deemed acceptable in the planning area.
6. Properly consider and disclose other impacts as discussed above.
7. Address the loss of large quantities of fresh water due to oil and gas operations by documenting and mitigating the amount of water used for federal oil and gas drilling, requiring monitoring systems on wells and requiring recycling of drilling and frack water.
8. Revisit the impact analysis to incorporate the findings in the 2003 EPA study *Oil and Gas Environmental Assessment Effort*, and ban pits and impoundments as a method of water management for oil and gas development because they are not working and they endanger the health of surrounding humans, wildlife, and soil.

Until the deficiencies of the RMP/EIS are corrected, none of the coal should be considered acceptable for further consideration for leasing or exchange. Similarly, oil and gas on federal lands should not be leased until these issues have been addressed.

Sincerely,



Steve Charter, Chair
Northern Plains Resource Council



Bob LeResche, Chair
Western Organization of Resource Councils