



U.S. Department of the Interior
Bureau of Indian Affairs
Rocky Mountain Regional Office

RECORD OF DECISION

Absaloka Mine South Extension Coal Lease

Crow Indian Reservation

Big Horn County, Montana

Typical landscape in the South Extension



Mining operations at the Absaloka Mine



Reclaimed land at the Absaloka Mine



October 2008

BUREAU OF INDIAN AFFAIRS
MISSION STATEMENT

The mission of the Bureau of Indian Affairs is to enhance the quality of life and to promote economic opportunity in balance with meeting the responsibility to protect and improve the trust resources of American Indians, Indian tribes and Alaska Natives.

**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
RECORD OF DECISION
ABSALOKA MINE CROW RESERVATION SOUTH EXTENSION
BIGHORN COUNTY, MONTANA**

INTRODUCTION

Westmoreland Resources, Inc. (WRI) has owned and operated the Absaloka Mine, a surface coal mine located in northeastern Big Horn County, Montana, approximately 30 miles east of Hardin, Montana, since 1974. The Absaloka Mine is located in the Crow Ceded Area north of and adjacent to the Crow Indian Reservation on what is known as the Tract III Coal Lease. Although the Tract III Coal Lease is outside of the Crow Reservation, the coal estate is actually part of the Reservation and held in trust by the United States for the Crow Tribe. In 2004, WRI entered into an Exploration and Option to Lease Agreement with the Crow Tribe under the Indian Mineral Development Act (IMDA) for a coal reserve area encompassing approximately 3,660 acres on the Crow Indian Reservation, south of and adjacent to the Tract III Coal Lease. WRI exercised its lease option on June 1, 2006, for this coal reserve, which WRI refers to as the proposed Absaloka Mine Crow Reservation South Extension. A prerequisite to approval of the South Extension Lease entails the consideration of environmental impacts associated with the proposal. For this reason, the subject Environmental Impact Statement (EIS) has been prepared under the authority of the National Environmental Policy Act (NEPA) of 1969, implementing regulations of the Council of Environmental Quality (CEQ) at 40 Code of Federal Regulations (CFR) Parts 1500-1508, and the Department of the Interior Implementing Procedures at 516 Departmental Manual 1, 2, 4, 5, 6, 10, and 15.

Absaloka Mine's current permit area is almost entirely within the Tract III Coal Lease, extending to the Crow Indian Reservation boundary. The permit area contains coal reserves that are not yet included within Absaloka mine's currently approved mining plan. WRI has filed an application with the Montana Department of Environmental Quality (MDEQ) and the Federal Office of Surface Mining Reclamation and Enforcement (OSM), to revise its existing permits to mine these additional reserves (referred to herein as the Tract III Revision). The Tract III Revision area lies completely within the Absaloka mine's current mine permit boundary, while the proposed South Extension tract is contiguous to and south of the mine permit boundary. WRI wishes to maximize coal recovery and ultimately facilitate an orderly advancement of mining operations into the South Extension. For purposes of this EIS, WRI's proposed Tract III Revision is considered an integral part of the proposed South Extension development plan. The proposals by WRI to extend the mineable

coal reserves at the Absaloka Mine would require various approvals and permits by federal and state agencies with Indian trust, coal mine permitting and other regulatory responsibilities.

In response to WRI's proposal, the Bureau of Indian Affairs (BIA) must decide whether to approve the IMDA lease for the South Extension. In order to approve the lease, the BIA must fulfill the requirements of NEPA by evaluating the environmental impacts of leasing and subsequently mining the coal reserves within the South Extension. BIA has determined that approval of the South Extension coal lease is a major action, which requires preparation of an EIS.

The preparation of this EIS is a prerequisite for BIA's approval of the IMDA lease and mining of coal reserves in the Tract III Revision and South Extension areas; however, it is not the enabling action that would allow mining to begin. WRI would not be authorized to conduct mining operations by the preparation of this document and BIA's approval of the lease. Prior to conducting any mining-related activities within these two proposed mine development areas, WRI must obtain an approved mine permit revision from MDEQ (with OSM concurrence) for the Tract III Revision and a separate surface mining permit from OSM for the South Extension. OSM is the regulatory authority for surface mining on the Crow Indian Reservation. If the BIA approves the IMDA lease for the South Extension tract and the surface use agreements between WRI and the allottee surface owners in the South Extension, OSM will then have the responsibility for a permit decision on WRI's South Extension mining permit application.

With regard to the proposed Tract III Revision, this EIS analyzes the environmental impacts of mining currently leased coal reserves within the Tract III Coal Lease that is held in trust by the United States for the Crow Tribe, as required by NEPA and the Montana Environmental Policy Act (MEPA) and associated rules and guidelines. With regard to the proposed South Extension, this EIS analyzes the environmental impacts of leasing and mining the coal reserves within the Crow Reservation South Extension lease tract, which are held in trust by the United States for the Crow Tribe, as required by NEPA and associated rules and guidelines. This analysis emphasizes the cumulative impacts that would result from proposed mining in the Tract III Revision and South Extension together.

The currently permitted mining area on the existing Tract III Coal Lease will sustain the current production rate of 6.5 to 7.0 million tons of coal per year only through 2009 since the remaining mineable and marketable coal reserves on that portion of Tract III are limited. Within the Tract III Revision area, approximately 13 million additional tons are potentially mineable and recoverable. Permitting this coal would extend the mine life by two additional years, or potentially through 2011. Approval of the Tract III Revision by MDEQ

and OSM, IMDA lease approval by BIA, and OSM approval of the South Extension permit application would add approximately 94 million tons of in-place coal reserves. WRI estimates that 77 million of these tons are recoverable and marketable. This would enable the mine to extend its productive life to 2020 or 2021 at the current production rate of 6.5 to 7.0 million tons per year.

The Absaloka Mine provides substantial benefits to the Crow Tribe in several ways. The Tribe receives income from royalties on the coal production from the Absaloka Mine. These royalties have been primarily distributed to Tribal members as per capita payments. The Tribe also receives production taxes on the coal produced at the mine, at the same rates as the Montana severance and gross proceeds taxes. These tax payments currently comprise the majority of the Tribe's general fund budget. Finally, the majority of the employees of the mine are members of the Crow Tribe, and this mine employment provides some of the best paying jobs in the area. The purpose and benefit of the Proposed Action is to maximize the economic benefit from the coal trust resource by continuing to provide those benefits to the Crow Tribe; as well as allow WRI to continue to access coal reserves, owned by the Crow Tribe, for the sale of coal to customers using it for electric power generation.

The BIA and MDEQ are joint lead agencies, responsible for the preparation of this EIS pursuant to their respective authorities under NEPA and MEPA. OSM, Environmental Protection Agency (EPA), Bureau of Land Management (BLM), and the Crow Tribe are cooperating agencies, as entities with a permit decision function and/or with special expertise or interest in the proposed project.

DECISION

The decision is to approve the Proposed Action as described in the EIS. This alternative is the approval of WRI's IMDA lease agreement with the Crow Tribe for the South Extension tract and approval of all surface use agreements between WRI and the allottee surface owners in the South Extension. This alternative assumes that the leased coal reserves in the southern portion of the Tract III Coal lease would be added to the existing Absaloka mine plan and that surface coal mining operations would be allowed to advance on to the South Extension tract, which is located entirely within the Crow Indian Reservation. This decision is not the final approval for actions associated with the Proposed Action. Other Federal and State actions will have to occur before actions that affect the environment can ensue. OSM will have to comply with the Surface Mine Control and Reclamation Act (SMCRA), concur with the approval of a mine permit revision from MDEQ for the Tract III Revision, as well as issue a separate surface mining permit for the South Extension. EPA will have to issue a National Pollutant Discharge Elimination System (NPDES) Permit for water discharges from the South Extension.

BASIS FOR THE DECISION

Bases for selecting the Proposed Action are as follows:

We are satisfied that the decision to approve the lease agreement is in the best interests of the Crow Tribe, which is the Indian mineral beneficial owner. The approval considers the statutory mission of the BIA and takes into account the trust responsibility of the United States Government. Trust Principles include the protection and preservation of Indian trust assets (land and minerals in this instance); promotion of the beneficial owners (Crow Tribe) intended use of the assets; and promotion of self determination over land and resource utilization.

The environmentally preferable alternative is the No Action Alternative. This alternative is not viable considering the fact that the government's trust obligations and BIA's mission would not be met by doing so. Considering the foreseen impacts, both environmental preservation and the government's responsibilities will be met by the approval of the Proposed Action.

The EIS was prepared in response to the prospective leaseholder's desire to exercise the terms and conditions of their IMDA agreement with the Crow Tribe. The environmental impacts of this decision were fully disclosed in the Draft and Final EISs. Opportunities for public and regulatory entity involvement were availed. BIA responses to public and regulatory entity comments are also disclosed.

All practicable means to avoid or minimize environmental harm from the selected alternative have been adopted. SMCRA, which will dictate subsequent mining, does not permit any unnecessary environmental disruption. Monitoring, inspections, and enforcement are all inherent components of SMCRA, as well as BIA and BLM responsibilities regarding production verification and the prevention of waste.

This decision only relates to the approval of WRI's IMDA lease agreement with the Crow Tribe for the South Extension tract and approval of all surface use agreements between WRI and the allottee surface owners in the South Extension. This decision is not the final approval for actions associated with the Proposed Action. Other Federal and State actions will have to occur before actions that affect the environment can ensue. OSM will have to comply with SMCRA, concur with the approval of a mine permit revision from MDEQ for the Tract III Revision, as well as issue a separate surface mining permit for the South Extension. EPA will have to issue, under the Clean Water Act, an NPDES Permit for water discharges from the South Extension.

Issue and Resource considerations are as follows:

- Environmental Justice - As stated in Section 3.17.6 of the Draft EIS, no disproportionately high or adverse human health or environmental effects (specifically to tribal lands, treaty rights, and trust responsibilities) are currently falling on minority or low-income populations as a result of current mining activities at the Absaloka Mine. Consequently, implementation of the proposed South Extension development plan would extend the current health and environmental justice effects created by the Absaloka Mine, but not adversely affect the environmental considerations in the area. Elected officials of the Crow Tribe have approved of the agreement with WRI to mine Indian owned coal on the Crow Indian Reservation. These elected officials who are responsible for the well-being of all Tribal members recognize that implementation of the proposed South Extension development plan would extend the current health and environmental effects created by the Absaloka Mine, but not adversely affect the environmental justice considerations in the area. The Crow Tribe was consulted regarding Environmental Justice as it relates to the Proposed Action, and the July 8, 2008 response from the Crow Tribal Chairman, Carl Venne, is included as part of the Final EIS.

- Air Quality - Based on the analyses contained in Sections 3.4 and 4.2.3, impacts to air quality from mining in the South Extension would be consistent with historic monitoring results of the Absaloka Mine and will likely be negligible. Particulate emissions data indicate that there have been no exceedances of current air quality standards. There would not be additional sources of fugitive dust, and the relative locations of emission sources would change but the numbers and types of sources would not. Air quality modeling results indicate that the projected mine activities would be in compliance with annual and short-term National Ambient Air Quality Standards (NAAQS) and Montana Ambient Air Quality Standards (MAAQS) for the life of the mine at the permitted mining rate of 11 million tons per year. WRI proposes to continue mining at a rate of approximately 7 million tons per year. Public exposure to particulate emissions from surface mining operations is most likely to occur along the publicly accessible roads and highway that pass near the area of mining operations. Occupants of dwellings in the area could also be affected; however, there are just two occupied dwellings on or within one mile of the South Extension development area and one non-mine related business (Spring Creek Café) within 4.6 miles of the proposed development area (Figure 3-8 within the Draft EIS). The occupants (who are non-Indian) of the two dwellings would relocate prior to mining.

- Ground Water - With respect to the anticipated impacts to groundwater resources, the coal and overburden aquifers in the pit areas would be removed during mining and replaced with backfill. Groundwater levels in the coal and overburden aquifers adjacent to the mine pits would decline. The anticipated extent of the lowered overburden and coal potentiometric surfaces are

discussed in Section 3.5.1 and depicted on Figures 3-10 and 3-11, respectively, in the Draft EIS. Groundwater level drawdowns in the coal and overburden are expected to last for many years after mining while the backfilled pit areas are resaturating, but as shown by these figures, drawdowns are not expected to extend much beyond the boundary of the proposed South Extension development area, thereby not impacting adjacent landowners. The Absaloka Mine's groundwater monitoring data indicate that after reclamation the backfill readily resaturates and yields groundwater of sufficient quality for livestock watering and wildlife use.

The anticipated impacts to the Middle Fork Sarpy Creek alluvial groundwater system within and near the South Extension development area are discussed in Section 3.5.1 in the Draft EIS. Middle Fork Sarpy Creek is an ephemeral stream. Flow events occur rarely and are only in response to snowmelt and/or rainfall runoff. The hydrologic function of Middle Fork Sarpy Creek is to convey streamflow and provide a component of recharge to its alluvial aquifer. WRI's mine plan for the South Extension development area leaves an undisturbed corridor in place along the drainage bottom of Middle Fork Sarpy Creek, which would limit impacts to the alluvial aquifer and allow surface water in the stream channel to flow through this area during mining. Recharge patterns to the alluvium from runoff events are therefore not expected to change because the alluvial aquifer is recharged primarily from upstream runoff sources, of which only a small portion would be interrupted and captured during mining by the mine's drainage control measures.

Groundwater flow directions in the overburden and Rosebud-McKay coal seams within the general analysis area are toward the aquifers' subcrops beneath Middle Fork Sarpy Creek alluvial valley fill deposits and discharge to the alluvium. Mining would interrupt recharge from these bedrock units to the alluvium; therefore, assuming all groundwater flow from the bedrock units is interrupted by the mine pits, a maximum reduction in groundwater flow through the Middle Fork alluvial aquifer system of up to 30 percent could occur. Localized, short-term dewatering of the alluvium may occur if an excavation unintentionally intersected the edge of saturated alluvial deposits. WRI would employ best management practices, such as leaving competent coal between the alluvial deposits and the pits and alter mining in that area as necessary to avoid excessive, long-term alluvial dewatering.

Groundwater flowing downgradient/downstream through the Middle Fork alluvium provides recharge to the sub-Robinson aquifer units immediately downstream of the South Extension development area. As a result, the alluvium is dry or nearly dry in the lower portion of the Middle Fork Sarpy Creek drainage basin. Therefore, no discernable impacts to the overall Sarpy Creek hydrologic system due to the loss of alluvial groundwater flow during mining are expected.

Once mining is completed, water levels would be reestablished in the adjacent backfill, and lateral recharge to the alluvium would resume. Furthermore, all surface runoff from the reclaimed lands would be reestablished, thus reestablishing that component of recharge to the alluvial aquifer. The result of these measures would help reduce impacts to the hydrologic system and aid in reestablishment of the alluvial groundwater system.

- Surface Water - Impacts to surface water resources by the proposed development plan are discussed in Section 3.5.2 in the Draft EIS. In summary, changes to the overall flow and water quality characteristics of Middle Fork Sarpy Creek and Sarpy Creek during and after mining are expected to be negligible and essentially undetectable. A slight reduction in downstream flow rates may occur during mining and no negative impacts to surface water quality would be expected. To date, affects to surface water quality from mining are considered imperceptible and affects from future mining activities are expected to be similar. The proposed mine plan for the South Extension development area avoids disturbance of the Middle Fork Sarpy Creek stream channel; therefore, restoration of surface drainage flow patterns as part of the reclamation plan would be expedited. Reclamation at the Absaloka Mine has been successful at reestablishing drainage flow patterns and is an on-going process.

- Noise - As addressed in Section 3.14 in the Draft EIS, there would be no disruptive noise impacts as a result of the proposed South Extension development plan. Mining activities (particularly blasting) would occur nearly 5 miles from the nearest public facilities and over a mile from the closest occupied dwelling, which is owned by a non-Indian rancher (Figure 3-8 in the Draft EIS).

- Traffic - The transportation facilities near the Absaloka Mine that are currently used by travelers would not change due to the proposed South Extension development plan. The amount of coal transported daily to the Hardin Generating Station via Highway 384 would not change, although mining the proposed development area would extend the impacts of that coal hauling to the power plant by 3 to 12 years, depending on which alternative is selected. Vehicular traffic to and from the mine via Highway 384 would also continue into the future for the same extended period of time, depending on which alternative is selected. The proposed development plan would impact no pipelines or power/utility transmission lines.

- Waste Products - Wastes produced by current mining activities and how they are handled in accordance with procedures described in the approved mine permit are addressed in Sections 2.6 and 3.16 of the Draft EIS. Since the existing mine office, shop, warehouse, and coal processing facilities would not be relocated, most of the wastes requiring disposal would continue to be generated on the Tract III Coal Lease. All wastes that would be generated in

the course of mining the proposed development area would be handled in accordance with existing regulations using the procedures currently in use and in accordance with the approved waste disposal plans described in the Absaloka Mine's approved mine permits.

- Cultural Resources - The Absaloka Mine is located on the traditional cultural territory of the Crow Tribe, and the South Extension development plan would extend the mining operation onto the present day Crow Reservation. Consultation with indigenous tribes and the participation of Crow tribal representatives on the cultural resource inventories and site evaluations are covered in the Cultural Resources section (Section 3.12) of the Draft EIS. Based on recent cultural resource inventories and site evaluations, no Native American heritage, traditional cultural, special interest, or sacred sites have been formally recorded to date within the proposed development area. Cultural properties that are determined to be eligible for the National Register of Historic Places will be avoided or a data recovery plan will be implemented prior to disturbance. The plan has been developed in consultation with the Crow Tribal Historic Preservation Office.

- Social and Economic Issues - The social and economic impacts of the proposed project on the Crow Tribe are very pertinent to the analysis and have been disclosed in detail within the socioeconomics section (Section 3.17) of the Draft EIS. The social and economic effects of the proposed project on the community are considerable and widespread. The Absaloka Mine is the greatest source of income to the Crow Tribe. Aggregate coal royalty and taxes paid to the tribe was \$16.6 million in 2006. Under the Proposed Action, potential additional tribal revenues approximate \$200 million through 2021. The May 5, 2008, employment record for the mine indicates that 116 (111 Crow or Crow-related) of the 156 mine employees have minority status, which speaks directly to the issue of social and economic development. The average annual wage (over \$80,000 in 2006) per employee paid by the Absaloka Mine is considerably higher than the average annual wage earned per job on the Crow Indian Reservation (approximately \$28,000 in 2005). The human environment for many minority people of the Crow Nation would not be best served if the mine is not allowed to continue to operate. People who are prosperous have the means required to protect and enhance their environment.

PUBLIC INVOLVEMENT

The BIA published a Notice of Intent to prepare an EIS and Notice of Scoping in the *Federal Register* for the proposed expansion of the Absaloka Mine onto the Crow Indian Reservation on November 28, 2006. The publication announced the time and location of a public scoping meeting and requested public comment on BIA's proposed approval of the IMDA lease agreement for a coal reserve area on the Crow Indian Reservation and the associated mine

permitting process. The BIA also published notices of public scoping meetings in the local newspapers (the Big Horn County News and the Billings Gazette) on November 9 and 16, 2008 and on December 7 and 14, 2008.

Public scoping meetings were held on November 16 and December 14, 2006, at the Big Horn County Courthouse in Hardin, Montana. The scoping meeting that was held in November was attended by eight private citizens, five representatives from OSM, one representative from MDEQ, and three employees from the Absaloka Mine. WRI orally presented information about its mine and its need for additional coal. The presentation was followed by a question and answer period, during which four oral comments were made. BIA, MDEQ, and WRI were present to field comments from the public. There was no attendance by private citizens or representatives from the federal and state agencies other than the BIA and MDEQ at the scoping meeting that was held in December. The scoping period extended from November 28, through December 26, 2006, during which time BIA and MDEQ received written comments from three entities: the Northern Cheyenne Tribe's Air Quality Division and two individual citizens.

The Absaloka Mine South Extension Draft EIS was distributed on March 21, 2008. Fifty four copies were printed and mailed to parties on the BIA distribution list (Table 5-4 in the Draft EIS), including the public libraries in Hardin and Crow Agency, Montana and the BIA offices in Crow Agency and Billings, Montana. An electronic copy of the document in PDF format was posted on the MDEQ website to provide a broader distribution. This mailing and website posting opened the comment period for the Draft EIS. A notice announcing the availability of the Draft EIS was published by the BIA in the *Federal Register* on March 21, 2008. A 46-day comment period on the Draft EIS commenced with publication of BIA's March 21 notice of availability and ended on May 5, 2008. The BIA published a notice of public hearing on the Draft EIS in the *Federal Register* on April 2, 2008. The BIA also published a notice of public hearing in the local newspapers (the Big Horn County News and the Billings Gazette) on April 16 and 23, 2008. BIA's *Federal Register* notice and local press notices announced the date and time of the public hearing, which was held on April 23, 2008, at 7:00 p.m. at the Big Horn County Courthouse in Hardin, Montana. The purpose of the public hearing was to solicit public comments on the Draft EIS. The public hearing was attended by representatives from WRI, BIA, MDEQ, OSM, and the Crow Tribe. Three private citizens attended the hearing. No comments, written or oral, were received at the April 23 public hearing. A court reporter typed a transcript of the public hearing and it is available for public review.

The comment period on the Draft EIS was extended to June 4, 2008 in response to the Environmental Protection Agency's (EPA's) request to extend the comment period 30 days so that revised information regarding EPA's proposed National Pollutant Discharge Elimination System (NPDES) permit for

the proposed Absaloka Mine South Extension development plan would be available during the Draft EIS comment period. The Absaloka Mine South Extension Draft EIS included information for NPDES water discharge alternatives of storm water runoff and mine drainage associated with the expansion of the Absaloka Mine within the exterior boundaries of the Crow Indian Reservation. On April 2, 2008, EPA received a revised NPDES permit application from WRI, and EPA subsequently announced that WRI's draft NPDES permit was available for public comment from May 2 through June 2, 2008.

A total of four entities and individuals submitted five comment letters to BIA and MDEQ during the public comment period on the Draft EIS. The majority of comments came from agencies (OSM and EPA) and two comment letters were sent from individual citizens. Comments contained within the letters that were submitted by OSM (one letter) and EPA (two letters) addressed more than one topic or resource area. Those comments that did not request specific analysis or response were duly noted, but no other response was required. Copies of all comment letters received on the Absaloka Mine South Extension Draft EIS are included in Appendix A of the Final EIS.

In accordance with the CEQ Regulations codified at 40 CFR 1506.10 (b), availability of the Final EIS and Record of Decision (ROD) regarding the approval of the IMDA lease for the in-trust coal and the surface use agreements will be published in the *Federal Register* by the BIA and EPA. BIA will also post the availability of the Final EIS and ROD in the local newspapers: the Big Horn County News and the Billings Gazette. Copies of BIA's ROD and Final EIS will be mailed to parties on the distribution list and others who commented on this EIS during the NEPA process. The BIA's decisions must be appealed within 30 days from the date the Notice of Availability for the ROD is published in the *Federal Register*. The decisions can be implemented at that time if no appeal is received. The Notice of Availability for the ROD is being published concurrently with the Notice of Availability for the Final EIS [40 CFR part 1506.10 (b)], and BIA's decisions will become effective after 30 days if no appeal has been filed (25 CFR part 2).

ALTERNATIVES ANALYZED IN DETAIL

The alternatives that were analyzed in detail in this EIS were the Proposed Action and two alternatives to that action, including the No Action Alternative.

- **Proposed Action** – The Proposed Action is the approval of Absaloka Mine's Tract III Revision and the approval of the South Extension coal lease. Contingent on the lease approval, the Proposed Action also includes approval of the surface mining permit for the South Extension.

In each case, action may consist of approval, approval with stipulations, or disapproval. The Proposed Action, approval of WRI's IMDA lease agreement with the Crow Tribe for the South Extension tract and approval of all surface use agreements between WRI and the allottee surface owners in the South Extension, is the BIA's Preferred Alternative. The Preferred Alternative assumes that the leased coal reserves in the southern portion of the Tract III Coal Lease would be added to the existing Absaloka mine plan and that surface coal mining operations would be allowed to advance on to the South Extension tract located entirely within the Crow Indian Reservation.

The area of interest lies to the south of the existing Absaloka Mine operations and is divided into two distinct proposed disturbance areas, the Tract III Revision and the South Extension. For the purpose of this analysis, the combined areas that would be disturbed by removal of the economically mineable coal reserves within the Tract III Revision area and South Extension area are referred to as either the South Extension development area or the proposed development area. This alternative assumes that the leased reserves in the southern portion of the Tract III Coal Lease would be added to the existing mine plan and that surface coal mining operations would eventually be allowed to advance onto a new tract of land located entirely within the adjacent Crow Indian Reservation.

The South Extension lease tract includes 3,660.23 acres. WRI estimates that the Proposed Action, involving both the Tract III Revision area and the South Extension tract, would add approximately 93.9 million tons of in-place coal reserves, and that approximately 76.6 million of those reserves would be recoverable. The Tract III Revision area would provide approximately 17.4 million of those additional tons, while the South Extension tract would provide approximately 59.2 million additional tons.

Under the Proposed Action, WRI currently estimates that average annual production would be 6.5 to 7.0 million tons. The life of the existing mine would be extended to 2020 or 2021 and employment would be about 171 persons.

The Proposed Action will require various approvals and permits by federal and state agencies with Indian trust and coal mine permitting responsibilities. The following federal and state agency actions would be taken:

- BIA would approve WRI's IMDA lease agreement with the Crow Tribe for the South Extension tract.

- BIA would approve all surface use agreements between the allottee surface owners in the South Extension tract and WRI.
 - MDEQ would use this EIS and information included in WRI's permit revision package to approve the advancement of surface mining operations at Absaloka Mine into the Tract III Revision area.
 - OSM would use this EIS and information included in WRI's permit revision package to concur with MDEQ approval of WRI's permit revision package for the Tract III Revision.
 - OSM would use this EIS and information included in WRI's permit application package to approve the advancement of surface mining operations at the Absaloka Mine from the Tract III Coal Lease into the South Extension tract.
 - BLM and other federal and state agencies could use this EIS, the Tract III South permit revision package, and the South Extension permit application package to ensure compliance with the terms of the coal lease agreements, Mineral Leasing Act of 1920 (MLA), NEPA, the Clean Water Act, and other federal laws and their attendant regulations.
- **Alternative 1** - Under Alternative 1, the coal contained within the South Extension tract on the Crow Indian Reservation would not be mined if the BIA does not approve the IMDA lease for the South Extension tract. Furthermore, because the South Extension includes allotted trust lands, the coal contained within the South Extension tract on the Crow Indian Reservation would not be mined if the BIA does not approve all surface use agreements between the allottee surface owners and WRI. WRI would, however, receive approval from MDEQ and OSM to revise Absaloka Mine's existing mine and reclamation plan to include the Tract III Revision area, and that portion of the coal reserves contained within the Tract III Revision area east of Middle Fork Sarpy Creek would be mined.

The Tract III Revision area lies completely within Absaloka Mine's currently approved mine permit area and the existing Tract III Coal Lease area. The coal reserve within the Tract III Coal Lease is held in trust by the United States for the Crow Tribe and is part of the Crow Indian Reservation. The economically mineable coal reserves within the Tract III Coal Lease that are on the west side of Middle Fork Sarpy Creek and north of the Crow Indian Reservation boundary are within Absaloka Mine's currently approved mine permit area. However, this block of coal (approximately 4.5 million tons of recoverable coal) is considered mineable only in conjunction with mining the South Extension tract and would not be included in this alternative.

WRI estimates that Alternative 1, involving just the Tract III Revision area east of Middle Fork Sarpy Creek, would add approximately 15 million tons of in-place coal and that approximately 13 million tons of those in-place coal reserves would be recoverable. Annual coal production would be approximately 6.5 to 7.0 million tons per year, and at that mining rate, the life of the mine would be extended to 2011. Employment would be about 171 persons.

Under Alternative 1, Absaloka Mine's permit area would not change, but the area of permitted disturbance would be increased. The following federal and state agency actions would be taken:

- MDEQ would use this EIS and information included in WRI's permit revision package to approve the advancement of surface mining operations at Absaloka Mine into the Tract III Revision area.
 - OSM would use this EIS and information included in WRI's permit revision package to concur with MDEQ approval of WRI's permit revision package for the Tract III Revision.
 - BLM and other federal and state agencies could use this EIS and the Tract III South permit revision package to ensure compliance with the terms of the coal lease agreements, MLA, NEPA, and other federal laws and their attendant regulations.
 - BIA would not approve WRI's IMDA lease agreement with the Crow Tribe for the South Extension tract.
 - OSM would not approve the advancement of surface mining operations at Absaloka Mine from the Tract III Coal Lease into the South Extension tract on the Crow Indian Reservation.
- **Alternative 2** – Alternative 2, the No Action Alternative, assumes completion of currently permitted mining at the Absaloka Mine. All actions associated with this alternative have been analyzed in existing NEPA/MEPA compliance documents and the MDEQ/OSM approved mine plan. Any modifications to the existing mine plan are evaluated through mine plan amendments. No extension of mining would occur.
 - **Alternative 3** - Another alternative that was considered but not analyzed in detail is the approval of the South Extension coal lease, approval of all surface use agreements between the South Extension tract's allottee surface owners and WRI, and approval of the necessary permits that would allow surface mining to occur on the South Extension tract. WRI would not, however, receive approval from MDEQ and OSM to revise Absaloka Mine's existing mining and reclamation plan to include the Tract III Revision area, and the coal contained within the Tract III Revision area would not be mined. Geologic factors and Absaloka Mine's

current mine plan dictate that the Tract III Revision area be mined as part of the South Extension development plan in order to achieve the most efficient recovery of the coal resource and avoid bypassing approximately 17.5 million tons of recoverable coal. If the Tract III Revision area could not be mined as proposed, the existing mining operation could not advance into the South Extension via the Tract III Revision area, resulting in a probable interruption of mining that would jeopardize WRI's coal supply agreements with its customers. Development of an efficient and economically viable mine plan is considered unlikely without including the Tract III Revision area; therefore, this alternative is not analyzed in detail in this EIS.

Table 1 summarizes the projected mine permit and surface disturbance areas, coal production, mine life, and employment for the Absaloka Mine. The environmental impacts of mining would be similar under the Proposed Action and Alternative 1, although differ in areal extent and duration.

Table 1. Summary Comparison of Permit Area, Surface Disturbance, Coal Production, and Mine Life for the Absaloka Mine and the South Extension Development Plan.

Item	No Action Alternative (Existing Absaloka Mine)	Added by Proposed Action	Added by Alternative 1
Permit Area	7,110 ac	3,316.9 ac	0 ac
Lease Area	≈ 14,000 ac	3,660.2 ac	0 ac
Surface Disturbance Area	4,835 ac	2,637 ac	385 ac
Coal Removal Area (Post-2007)	360 ac	1,771 ac	268 ac
Recoverable Coal (Post-2007)	14 mmt	76.6 mmt	13 mmt
Coal Mined Through 2007	154 mmt	—	—
Average Annual Post-2007 Coal Production	6 – 7 mmt	6 – 7 mmt	6 – 7 mmt
Remaining Life of Mine (Post-2007)	2 yrs	11 – 12 yrs	2 – 3 yrs
Average Number of Employees	171	0	0

APPROVAL

I approve WRI's IMDA lease agreement with the Crow Tribe for the South Extension tract and all surface use agreements between WRI and the allottee surface owners in the South Extension as described by the Proposed Action. Consistent with the BIA appeal regulations a 25 CFR Part 2, this decision will be in full force and effect commencing with the ending date of the appeal period.

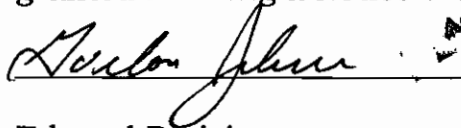
BUREAU OF INDIAN AFFAIRS APPEALS AND REVIEW PROCESS

This decision may be appealed to the Interior Board of Indian Appeals, 801 North Quincy Street, Suite 300, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR §4.310-4.340. Your Notice of Appeal to the Board must be signed by you and your attorney and must be mailed within 30 days of the date you receive this decision.

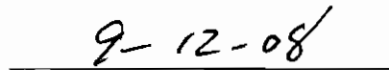
It should clearly identify the decision being appealed. If possible, attach a copy of the decision. You must send copies of your Notice of Appeal to (1) The Assistant Secretary – Indian Affairs, 4140 MIB, Department of the Interior, 18th and C Street N.W., Washington, D.C. 20240, (2) each interested party known to you and (3) this office. Your Notice of Appeal sent to the Board of Indian Appeals must certify that you have sent copies to these parties.

If you are not represented by an attorney, you may request assistance from this office in the preparation of your appeal. You must file a Statement of Reasons. This statement may be included, or filed with the Notice of Appeal. If it is not filed at the time the Notice of Appeal is filed, it must be filed within 30 days of the Notice of Appeal file date. If you file a Notice of Appeal, the Board of Indian Appeals will notify you of further appeal procedures.

If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a Notice of Appeal.

 *Edward Parisian*

Edward Parisian
Regional Director
Rocky Mountain Regional Office
Bureau of Indian Affairs
Department of the Interior

 9-12-08

Date