RECORD OF DECISION

&

WRITTEN FINDINGS

Prepared by:
Montana Department of Environmental Quality
Mining Bureau
Coal Section

for
Westmoreland Rosebud Mining, Rosebud Mine Area B Amendment 5

Westmoreland Rosebud Mining, LLC
Permit No. C1984003B

Rosebud County, Montana

May 2022
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INTRODUCTION

Western Energy, now Westmoreland Rosebud Mining LLC (Westmoreland Rosebud), a subsidiary of Westmoreland Mining LLC (Westmoreland), submitted an application to the Montana Department of Environmental Quality (DEQ) on February 17, 2017, for a proposed fifth amendment (AM5) to the operating permit (C1984003B) for Area B at the Rosebud Mine, an existing surface coal mine near Colstrip, Montana (Figure 1). DEQ deemed the AM5 Application complete on February 24, 2021. The currently permitted area is 6,045 acres, of which 5,655 acres are approved for disturbance by mining and associated activities. If approved as proposed, AM5 (Project) would increase the Area B permit area by 9,108 acres; this 15,153-acre Area B permit area as modified by AM5 is referred to in this document as the Project area. The Project also includes an updated Area B operations plan and an updated reclamation plan that would add mine passes and areas of reclamation, respectively. Westmoreland Rosebud estimates that there are 104.3 million tons of recoverable coal in the Project area. At Westmoreland Rosebud’s proposed rate of production, the Project would extend active mining in the Area B permit area by 15 years. Without the addition of the Project, the operational life of Permit Area B would be expected to end in 2030.

Westmoreland Rosebud has also applied to DEQ for a new Montana Pollutant Discharge Elimination System (MPDES) permit (MT-0032042) for the Project. DEQ determined the MPDES application was complete on June 1, 2020. The proposed Project area is located about 5 miles southwest of Colstrip in Township 1 North, Ranges 40 and 41 East and includes two drainages, Lee Coulee and Richard Coulee, which are divided by a tall ridge (Figure 2). Lee Coulee, Richard Coulee, and their tributaries flow into Rosebud Creek, a tributary of the Yellowstone River.

The surface of the Project area is owned by private parties (92 percent) and the State of Montana (8 percent). The subsurface is owned by private parties, the State of Montana, and the federal government. Westmoreland Rosebud holds private, state, and federal leases for Project area coal; Westmoreland Rosebud is not seeking to mine any federal coal leases that have not been previously approved under the Area B federal mining plan.

Pre-mine land uses in and adjacent to the Project area include livestock grazing, pastureland, agricultural cropland, wildlife habitat, and industrial/commercial land (i.e., public airport and ranch yards). The primary pre-mine surface land use in the Project area is livestock grazing. The eastern part of the amendment area includes part of the Big Sky Mine permit area (C1988004B), which was previously mined and reclaimed and was released from jurisdiction in 2020. A significant portion of the acreage proposed to be added by the Project burned in 2012 and again in 2021.
DEQ’S RESPONSIBILITIES AND PURPOSE OF THE WRITTEN FINDINGS

Responsibilities
DEQ is responsible for administrating the Montana Strip and Underground Mine Reclamation Act (MSUMRA) (82-4-201 et seq., Montana Code Annotated [MCA]) and the implementing rules (Administrative Rules of Montana [ARM] 17.24.301-1309) adopted under MSUMRA. The mine permitting decision before DEQ is made under its MSUMRA authority.

DEQ is also responsible for administering the Montana Water Quality Act (75-5-101 et seq., MCA) and the implementing rules (ARM 17.30.101 et seq.). This act regulates discharges of pollutants into state surface waters through an MPDES Permit application process and the adoption of water quality standards.

Finally, DEQ has the responsibility of fulfilling the requirements of the Montana Environmental Policy Act (MEPA) (75-1-101 et seq., MCA) and its implementing rules (ARM 17.4.601 et seq.). MEPA requires an environmental review of actions taken by the State of Montana that may significantly affect the quality of the human environment. The intent of the environmental review is to inform the public and public officials of the anticipated impacts in Montana associated with this state action. This environmental review, culminating in the issuance of the Final Environmental Impact Statement (EIS) on May 9, 2022, was conducted to fulfill the requirements of MEPA.

DEQ’s purpose in conducting this environmental review is to act on Westmoreland Rosebud’s Application for a new MPDES Permit (MT-0032042) and its Application to amend the Area B operating permit. The proposed amendment to the existing Area B operating permit would allow additional mine passes, construction of haul roads, construction of ramp roads, and an extension of the operational life of the mine. DEQ’s actions on Westmoreland Rosebud’s surface mine operating permit amendment application must be in accordance with MSUMRA, 82-4-221 et seq., MCA (see EIS Section 1.4.1.2, DEQ Decisions). DEQ may not withhold, deny, or impose conditions on the AM5 amendment based on MEPA under 75-1-201(4), MCA. The conditions under which DEQ could deny Westmoreland Rosebud’s MPDES Permit (MT-0032042) or Application to amend the Area B permit are described in the Final EIS (see EIS Section 1.4.1.2, DEQ Decisions).

Written Findings
The purpose of this document is to set forth DEQ’s decision on Westmoreland Rosebud’s MPDES Permit (MT-0032042) application and Area B amendment (AM5) application and the reasons for these decisions. At the time of its decision concerning an action for which an EIS is prepared, DEQ is required to prepare a concise public record of decision. ARM 17.4.629(1). This Record of Decision (ROD) has been integrated into DEQ's Written Findings documenting the permitting decision under MSUMRA and fulfills the requirements of MEPA.

Part I of this document contains the MEPA ROD; it describes the mine alternatives considered and documents DEQ's decision, the reason for the decision, and the special conditions surrounding the decision or its implementation. Part II serves as the Written
Findings, which documents DEQ’s MSUMRA permitting decision. The agency action at issue is DEQ’s MSUMRA permitting decision. The decision is based on information provided by Westmoreland Rosebud in its Application, the Draft EIS (2020) and Final EIS (2022), the Written Findings (Part II), and the Cumulative Hydrologic Impact Assessment (CHIA). The CHIA (Attachment 1) includes an analysis of impacts on the hydrologic balance and an assessment of the probable hydrologic consequences of the proposed Project.

Other DEQ permitting decisions related to this Project, such as those for an application for a new MPDES Permit MT-0032042 for Project area outfalls, will be presented in separate decision documents.

I. RECORD OF DECISION

DEQ has prepared a concise public record of decision concerning the proposed action for which the EIS was prepared (AM5 to surface mine operating permit C1984003B and MPDES Permit MT-0032042). Pursuant to ARM 17.4.629(1), the following sections constitute DEQ’s record of decision.

Description of the Alternatives

DEQ evaluated three alternatives in the EIS: Alternative 1 – a.k.a. the “No Action Alternative,” Alternative 2 – a.k.a. the “Proposed Action” (as this was the action Westmoreland Rosebud proposed in its application) and Alternative 3 – a.k.a. the “Lee Coulee Only Alternative.” MEPA’s implementing rules require a “reasonable alternatives analysis,” including a “no action alternative,” in an EIS. Pursuant to MEPA, DEQ is required to consider alternatives that are realistic and technologically available and that represent a course of action that bears a logical relationship to the proposal being evaluated, ARM 17.4.603(2)(b). Alternatives 1, 2, and 3 are summarized below and described fully in the Final EIS (Chapter 2 for Alternatives 1 and 2 and Appendix E for Alternative 3). Alternatives considered but not carried forward for detailed analysis are also summarized below and described in detail in Section 2.6 of the Final EIS.
Figure 1. Project Location.
Figure 2. Location of Mine Facilities and Permit Areas.
Alternative 1 – No Action

Alternative 1 considered a scenario where state and private coal in the Project area would not be mined. Under the No Action Alternative, Westmoreland Rosebud’s AM5 amendment to the Area B operating permit and the MPDES Permit would not be approved by DEQ. Westmoreland Rosebud would complete mining and reclamation in the Area B permit area according to its currently approved operating permit. Specifically, the following aspects would remain as currently permitted:

1) The size of the Area B permit area would remain at 6,045 acres;
2) The size of the disturbance area would remain at 5,655 acres;
3) The Area B operations plan, including the location of the Area B haul roads, would not be updated; and
4) The Area B reclamation plan would not be updated.

Under the No Action Alternative, mining in Area B would likely cease by 2030, and coal would not be recovered from the Project area. The environmental, social, and economic conditions described in Chapter 3 of the Final EIS would continue, unaffected by the construction and operation of the Project.

Selection of the No Action Alternative would not change the existing status of the other permit areas of the Rosebud Mine (see EIS Section 2.2, Rosebud Mine – Description of Past and Existing Mine Operations and Reclamation and Table 6). Nor would selection of this alternative change the status of the federal coal lease MTM 80697 (tracts in Areas B and C) modification application.

Alternative 2 – Proposed Action

Alternative 2 is the proposed Project (a.k.a. “Proposed Action”) as put forward by Westmoreland Rosebud in its AM5 Application to DEQ (prior to the 2021 eighth-round deficiency response). The Proposed Action (Figure 3), also referred to as Alternative 2 in the EIS, would modify four primary aspects of the operating permit:

1) The size of the Area B permit area would increase to 15,153 acres (a 9,108-acre or 151 percent increase);
2) The size of the permitted disturbance area would increase to 11,202 acres (a 5,547-acre or 98 percent increase), and this area would be located in both Richard and Lee Coulees;
3) The Area B operations plan would be updated to include additional mine passes, an extension of the Richard and Lee haul roads, construction of ramp roads, and an extension in operational life (mining until 2045 instead of 2030); and
4) The Area B reclamation plan would be updated to include reclamation of the additional disturbance area and an extended reclamation timeline.

Over the 30-year life of the Project, which would add 15 years to the permitted mine life of Area B, Westmoreland Rosebud would extract 104.3 million tons of coal from the Project area (see EIS Table 8).

Mining operations in the Project area would continue to run 24 hours a day, 7 days a week, and the same surface-mining and reclamation methods currently used in Area B (described
in **EIS Section 2.2.2.2, General Mining Method** and **EIS Section 2.4.5, Reclamation Plan** would continue to be employed throughout the Project area. Westmoreland Rosebud would continue to use fugitive dust control measures in the Project area and other supporting permit areas consistent with Montana Air Quality Permit (MAQP) #1483-09 throughout operations and reclamation. Blasting would continue to be completed according to Westmoreland Rosebud’s approved blasting plan, which would be modified to include the entire Project area. Existing discharges for Area B (as currently permitted) would continue in accordance with existing MPDES Permit MT-0023965. New discharges from the Project area into 27 new outfalls would occur in accordance with Westmoreland Rosebud’s new MPDES Permit MT-0032042, if approved by DEQ.

Westmoreland Rosebud’s plan for protection of the hydrologic balance is presented in [Appendix J](#) in Westmoreland Rosebud’s Application (see EIS Appendix A). Westmoreland Rosebud’s proposed protection measures include ground water management, surface water management, operation of sediment-control measures (sediment ponds, diversions, ditches and culverts, and pit dewatering), pond maintenance and inspection, reclamation sediment-control measures, and protection of existing water rights.

In Alternative 2, Westmoreland Rosebud would monitor resources in the Project area to ensure that any Project impacts are consistent with those considered in DEQ’s permitting decision, including those disclosed in this EIS. Westmoreland Rosebud’s monitoring program includes the following (see also EIS Table 9): soil and spoil sampling and analysis per DEQ’s Soil and Spoil Guidelines; revegetation monitoring during the bond liability period; boron in bottom ash, which has been used in the past in Area B on roads and as culvert bedding (see EIS Section 2.4.4.5, Bottom Ash); surface and ground water monitoring; alluvial valley floor (AVF) monitoring; wildlife surveys; and aquatic macroinvertebrate surveys. Results of Westmoreland Rosebud’s monitoring programs would be reported at least annually to DEQ.

Alternative 2 includes several mitigations for potential impacts, including air quality, historic properties, greater sage-grouse, wildlife, and wetlands. The mitigations are summarized below.

Air quality mitigations are described in Westmoreland Rosebud’s Fugitive Dust Control Plan (applicable to the entire mine) and as required by MAQP #1483-09. The Fugitive Dust Control Plan may need to be updated to address the addition of the Project area.

Any adverse impacts on the potential historic properties in the Project area would be resolved through a mitigation plan, to be developed by Westmoreland Rosebud, submitted to DEQ, and approved by DEQ in coordination with the State Historic Preservation Officer prior to disturbance. In addition, if any cultural resources were inadvertently unearthed or otherwise encountered during mining activities, work would cease in the area of the discovery until the resources could be identified and appropriate resource protection measures could be implemented.

Westmoreland Rosebud consulted with the Montana Sage Grouse Habitat Conservation Program to develop a sage-grouse mitigation plan (EIS Appendix C) The mitigation plan
includes actions to avoid, minimize, and reclaim impacts on greater sage-grouse. Westmoreland Rosebud is also obligated to provide compensation for unavoidable adverse residual impacts on greater sage-grouse or their habitat. Westmoreland Rosebud opted to make a contribution in the full amount of $36,522.91 to the Stewardship Fund.

Westmoreland Rosebud proposes a number of measures to protect and enhance fish and wildlife habitat (see Application Appendix N-1), including avoidance, minimizing impacts, reclaiming and replacing wildlife habitat, implementing a wildlife conservation plan to address threatened and endangered species and Montana Species of Concern, and monitoring wildlife use of reclaimed areas.

Westmoreland Rosebud proposes a wetland mitigation plan for mining-impacted non-jurisdictional wetlands (Application Appendix N-1). The plan includes avoidance measures and mitigations for the loss of wetland function and values. Mitigations include creation through reclamation, enhancement of wetland habitat, state initiative support, and restoration. Westmoreland Rosebud would monitor all wetland mitigation sites for establishment of invasive species, survival rates of planted vegetation, and efficacy of livestock exclusion measures. If needed, Westmoreland Rosebud would implement corrective actions.
Figure 3. Project Area, Alternative 2 – Proposed Action.
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Alternative 3 – Restrict Mining to Lee Coulee Only Alternative (Lee Coulee Only) (Selected Alternative)

Alternative 3 (Lee Coulee Only) is DEQ’s mitigated alternative and was designed to avoid potential water quantity and quality impacts (Figure 4). The primary difference between Alternative 2 (Proposed Action) and Alternative 3 (Lee Coulee Only) is that under Alternative 3, no mining would be permitted in Richard Coulee. Under Alternative 2, mining and associated disturbance would occur in both the Lee Coulee and Richard Coulee drainages, but in Alternative 3, all mining and most disturbance would be limited to the Lee Coulee drainage. Under Alternative 3, some limited, minor disturbance to approximately 26 acres also would occur on the ridge between Richard and Lee Coulees for construction of eight MPDES outfalls (AM5-11 through AM5-18) and sediment traps (TA-Rich-1 through TA-Rich-8). These eight MPDES outfalls would discharge to Richard Coulee. Table 1 in EIS Appendix E outlines the key differences between Alternatives 2 and 3. Under Alternative 3:

1) The size of the Area B permit area would increase to 15,153 acres (a 9,108-acre or 151 percent increase);
2) The size of the permitted disturbance area would increase to 8,194 acres (a 2,539-acre or 45 percent increase) and would be located primarily in Lee Coulee;
3) The Area B operations plan would be updated to include additional mine passes, an extension of the Lee haul road, construction of ramp roads, and an extension in operational life (mining until 2036 instead of 2030); and
4) The Area B reclamation plan would be updated to include reclamation of the additional disturbance area and an extended reclamation timeline.

Over the 21-year life of the Project, which would add 6 years to the mine life of Area B, Westmoreland Rosebud would extract 62.3 million tons of coal from the Project area (see Table 2 in EIS Appendix E).

Mining operations in the Project area would continue to run 24 hours a day, 7 days a week, and the same surface-mining and reclamation methods currently used in Area B (described in EIS Section 2.2.2.2, General Mining Method and EIS Section 2.4.5, Reclamation Plan) would continue to be employed throughout the Project area. Westmoreland Rosebud would continue to use fugitive dust control measures in the Project area and other supporting permit areas consistent with MAQP #1483-09 throughout operations and reclamation. Blasting would continue to be completed according to Westmoreland Rosebud’s approved blasting plan, which would be modified to include the entire Project area. Existing discharges for Area B (as currently permitted) would continue in accordance with existing MPDES Permit MT-0023965. New discharges from the Project area into 18 new outfalls would occur in accordance with Westmoreland Rosebud’s new MPDES Permit MT-0032042, if approved by DEQ.

Other elements described for Alternative 2 in the EIS would be the same for Alternative 3, including methods for protecting the hydrologic balance (EIS Section 2.4.6). Most monitoring under Alternative 3 would be as described for Alternative 2 or would be very similar (see Table 3 in EIS Appendix E); the one exception is AVF monitoring. DEQ would not require AVF monitoring under Alternative 3 because there would be no potential AVF...
impacts as a result of Alternative 3 activities. The timeline for all Alternative 3 monitoring is expected to be 9 years shorter than that for Alternative 2.

Under Alternative 3, Westmoreland would implement mitigations for impacts to the wet reach of Lee Coulee. The two mitigation plans include: (1) installation of a well(s) constructed to discharge directly into Lee Coulee Pond (PO-311); and/or (2) installation of exempt well(s) that would discharge directly to the wet reach of Lee Coulee. All other mitigations are the same as those described above for Alternative 2.
Figure 4. Project Area, Alternative 3 – Lee Coulee Only (Selected Alternative).
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Decision

DEQ selects Alternative 3 – the Lee Coulee Only Alternative, consistent with Westmoreland Rosebud's acceptable Application for AM5 to C1984003B (certified as acceptable on April 12, 2022) and as described in Appendix E of the Final EIS, as the selected alternative. The reasons for this decision and the conditions surrounding the decision are addressed in detail below and in Part II, MSUMRA Written Findings, Conditions.

Reason for DEQ's Decision

The reason DEQ selected Alternative 3 is that it complies with the regulatory requirements of MSUMRA (see Part II: MSUMRA Written Findings), is sufficiently protective of resources in the Project area and vicinity, and is implementable by DEQ. As documented in the Final EIS, Alternative 3 meets the Project's stated purpose and need (EIS Section 1.3) and is consistent with all applicable regulatory requirements (EIS Section 1.4.1.1), while minimizing potential impacts (EIS Appendix E). In addition, Alternative 3 addresses the issues of concern identified during the scoping process (EIS Section 1.5.2) and in public comments on the Draft EIS (Appendix D). Additional information for DEQ's decision is addressed in detail in Part II, MSUMRA Written Findings, Conditions. MSUMRA's regulatory requirements and environmental performance standards are protective of resources. Pursuant to ARM 17.24.405 and 82-4-227, MCA, MSUMRA provides all practical means to avoid or minimize environmental harm, including, without limitation, measures addressing water quality and quantity impacts, wildlife impacts, reclamation, and other measures. DEQ determined that Westmoreland Rosebud's amended application was complete on February 21, 2021,¹ and acceptable under MSUMRA on April 12, 2022.

Special Conditions Surrounding the Decision

ARM 17.24.302(1): By November 27, 2022, Westmoreland must update the Area B permit application to be current and accurate including removing all references to proposed or anticipated mining in Richard Coulee.

ARM 17.24.318, 1131: Treatment of cultural resources within SMP C1984003B is covered by a Memorandum of Agreement (MOA) developed under the provisions of Section 106 of the National Historic Preservation Act and pursuant regulations (36 Code of Federal Regulations (CFR) 800). Westmoreland shall treat all cultural resources, including incidental discoveries during mining, according to the provisions of the MOA.

ARM 17.24.314(4): Westmoreland is required to drill a mitigation well(s) and provide the information associated with the mitigation plan for preventing potential adverse impacts associated with Lee Coulee. The well information Westmoreland provides must include the quality and quantity of water extracted, the exact location of the well, and the method utilized. Westmoreland must submit this information to DEQ by November 27, 2022. If the water quality, quantity, or location of the well(s) is other than identified in the mitigation plan, mining must cease within the AM5 proposed mining area until a mitigation well that

¹ Prior to a change in ownership and control of the mine (a significant change), DEQ had deemed the application complete on May 24, 2017.
meets the water quality and quantity requirements is approved by DEQ.

**ARM 17.24.723(1) and (2):** Westmoreland shall perform macroinvertebrate monitoring on all intermittent reaches of all streams affected by mining on a schedule approved by DEQ (every five years to be submitted with renewal). The proposed monitoring plan must be submitted to DEQ via a minor revision for incorporation into the wildlife monitoring plan.

**Public Involvement**
DEQ considered public and multi-agency input during the preparation of the EIS and in the selection of an alternative. Public scoping identified the following key issues of concern: (1) impacts on air quality, (2) impacts on surface water quality and quantity, (3) impacts on ground water quality and quantity, (4) impacts on wetlands, (5) impacts on vegetation and reclamation success, and (6) impacts on socioeconomic conditions (see EIS Section 1.5.2, Scoping Issue Identification). All six issues were analyzed in the EIS.

DEQ issued the Draft EIS on September 23, 2020, for a 30-day public comment period and provided notice in the Billings Gazette, in the Forsythe Independent Press, on DEQ’s website, on Eventbrite, and on postcards and emails sent to persons on the Project mailing list. DEQ extended the comment period by 30 days to November 23, 2020, at the request of some public commenters.

A remote public meeting was held via Zoom on November 10, 2020. DEQ personnel and representatives from DEQ’s third-party EIS contractor, ERO Resources Corporation, provided an overview of the proposed Project and anticipated impacts. Members of the public were given the opportunity to provide oral comments at the end of the meeting.

During the 60-day public comment period, 37 comment documents were submitted on behalf of 41 commenters. Substantive public comments and DEQ responses to those comments are in EIS Appendix D.

**Appeal of DEQ's MEPA Decision 75-1-201(5)(a)(ii), MCA**
Any action of proceeding challenging a final agency decision alleging failure by DEQ to comply with or inadequate compliance with a MEPA requirement must be brought within 60 days after issuance of the record of decision pursuant to Section 75-1-201(5)(a)(ii), MCA.

**Additional Information**
The Final EIS and electronic copies of this Record of Decision & Written Findings can be downloaded as PDFs from DEQ’s webpage: https://deq.mt.gov/mining/Programs/coal. For additional information regarding the Project, please contact the DEQ Project Coordinator, Craig Jones, DEQ Director’s Office, PO Box 200901, Helena, MT 59620-0901, 406-444-0514, crajones@mt.gov.

**Approval**

This record of decision is effective on signature.
Record of Decision & Written Findings, Rosebud Mine Area B Amendment 5

Christopher Dorrington, Director
Montana Department of Environmental Quality

5/27/2022

Date
II. **MSUMRA WRITTEN FINDINGS**

Table 1. Introductory Table.

<table>
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<td>Area within existing permit boundary (acres)</td>
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<td>Total proposed permit area (acres)</td>
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<td>Anticipated annual production</td>
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**Findings**

Table 2. Permit and Review Chronology.

- **February 17, 2017**  
  Application for Area B Amendment 5 (AM5) (C1984003B) is received.

- **March 28, 2017**  
  DEQ determines the application to be deficient (1st round).

- **April 20, 2017**  
  Western Energy submits the revised application (1st completeness deficiency response) for Area B AM5.

- **May 23, 2017**  
  DEQ determines the application to be deficient (2nd round).

- **May 23, 2017**  
  Western Energy submits the revised application (2nd completeness deficiency response) for Area B AM5.

- **May 24, 2017**  
  DEQ determines that Application C1984003B (Permit Area B AM5) is complete and that an EIS is needed.

- **May 26, 2017**  
  DEQ sends out the notice of application.

- **July 5, 2017**  
  DEQ receives the affidavit of publication from Western Energy. The Public Notice is published June 1, 8, 15, and 22, 2017, in the *Forsyth Independent Press*.

- **July 19, 2017**  
  DEQ receives comments from Montana Environmental Information Center.

- **September 20, 2017**  
  DEQ sends the 1st-round acceptability deficiency letter to Western Energy.
Record of Decision & Written Findings, Rosebud Mine Area B Amendment 5

December 6, 2017  DEQ receives Western Energy’s response to the 1st-round acceptability deficiency for Application C1984003B (Permit Area B AM5).

April 5, 2018  DEQ sends the 2nd-round acceptability deficiency letter to Western Energy.

July 30, 2018  DEQ receives Western Energy’s response to the 2nd-round acceptability deficiency for Application C1984003B (Permit Area B AM5).

November 26, 2018  DEQ sends the 3rd-round acceptability deficiency letter to Western Energy.

March 22, 2019  DEQ receives Western Energy’s response to the 3rd-round acceptability deficiency for Application C1984003B (Permit Area B AM5).

July 12, 2019  DEQ sends the 4th-round acceptability deficiency letter to Western Energy.

November 5, 2019  DEQ receives Western Energy’s response to the 4th-round acceptability deficiency for Application C1984003B (Permit Area B AM5).

February 25, 2020  DEQ sends the 5th-round acceptability deficiency letter to Western Energy.

April 28, 2020  DEQ receives Western Energy’s response to the 5th-round acceptability deficiency for Application C1984003B (Permit Area B AM5).

July 24, 2020  DEQ sends the 6th-round acceptability deficiency letter to Western Energy.

January 7, 2021  DEQ receives Western Energy’s response to the 6th-round acceptability deficiency for Application C1984003B (Permit Area B AM5).

February 24, 2021  DEQ determines that there has been a significant change (ARM 17.24.404(1)) in the permit application due to change in the ownership and control of the applicant to Westmoreland Rosebud Mining LLC.

February 24, 2021  DEQ determines that the amended application for SMP C1984003B is administratively complete.

April 27, 2021  DEQ sends the 7th-round acceptability deficiency letter to Westmoreland Rosebud.

May 21, 2021  DEQ receives Westmoreland Rosebud’s response to the 7th-round acceptability deficiency for Application C1984003B (Permit Area B AM5).

August 13, 2021  DEQ sends the 8th-round acceptability deficiency letter to Westmoreland Rosebud.

October 6, 2021  DEQ receives Westmoreland Rosebud’s response to the 8th-round acceptability deficiency for Application C1984003B (Permit Area B AM5).

December 6, 2021  DEQ sends the 9th-round acceptability deficiency letter to Westmoreland Rosebud.

March 16, 2022  DEQ receives Westmoreland Rosebud’s response to the 9th-round acceptability deficiency for Application C1984003B (Permit Area B AM5).

April 12, 2022  DEQ finds that the Amendment Application C1984003B (Permit Area B AM5), submitted on February 24, 2017, and revised through March 16, 2022, is acceptable, and the applicant has complied with Montana’s permanent regulatory program. See ARM 17.24.406(a).

April 13, 2022  DEQ publishes the Notice of Acceptability in the *Billings Gazette* on April 13, 2022, and April 20, 2022.

May 2, 2022  DEQ receives public comments from EarthJustice and various citizens.

May 9, 2022  DEQ completes the final EIS and makes it available to the public.

1. DEQ found that the Amendment Application C1984003B (Permit Area B AM5), submitted on February 24, 2017, and revised through March 16, 2022, is complete and accurate, and the applicant has complied with Montana’s permanent regulatory program. See ARM 17.24.406(a).

2. The applicant has demonstrated that reclamation, as required by the MSUMRA and implementing rules, can be accomplished under the proposed reclamation plan (see ARM 17.24.406(a)).

3. The Permit Area B AM5 application area is not located:
   a) within an area under study or administrative proceedings under a petition to be designated as unsuitable for strip or underground coal mining operations. See 82-4-227(9), MCA;
b) within an area designated unsuitable for strip or underground coal mining operations pursuant to 82-4-227(9), MCA;

c) on any lands within the boundaries of units of the national park system, the national wildlife refuge system, the national wilderness preservation system, the national system of trails, the wild and scenic rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act or study rivers or study river corridors established in any guidelines issued under that act, or national recreation areas designated by an act of congress, or on any federal lands within national forests, subject to the exceptions and limitations of 30 CFR 761.11(b) and the procedures of 30 CFR 761.13 (see 82-4-227(13), MCA);

d) on any lands upon which mining would adversely impact any publicly owned park or place included in the National Register of Historic Places (see ARM 17.24.1131);

e) where the operation will constitute a hazard to a dwelling, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property (see 82-4-227(7), MCA) except as conditioned below;

f) within 300 feet of any occupied dwelling (see 82-4-227(7)(a), MCA);

g) within 300 feet of any public building, church, school, community or institutional building, or public park (see 82-4-227(7)(b), MCA);

h) within 100 feet of a cemetery (see 82-4-227(7)(c), MCA); or

i) within 100 feet of the outside right-of-way line of a public road (see 82-4-227(7)(d), MCA).

4. The Applicant has provided documentation for all surface and mineral rights to conduct mining and reclamation operations authorized under the Rosebud Mine Permit Area B AM5 application area.

5. DEQ has made an assessment of the cumulative hydrologic impacts of all anticipated coal mining on the hydrologic balance within the cumulative impact area. See Attachment 1, which is incorporated into these findings by reference. In that assessment, DEQ has determined that this application with modifications will not result in material damage to the hydrologic balance outside the permit area.

6. The Applicant has paid all reclamation fees from previous and existing operations as required by 30 CFR Chapter VII, Subchapter R, as verified through the Applicant Violator System (AVS check of May 20, 2022).

7. The proposed application is not likely to jeopardize the continued existence of threatened or endangered species or result in the destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) (see ARM 17.24.751) (see Appendix E of the Final EIS)

8. The Applicant has obtained or applied for required air quality and water quality permits (see 82-4-231(2), MCA).

9. There are no pending MSUMRA violations for the Applicant at the Rosebud Mine. No other strip- or underground-coal-mining operation that is owned or controlled by the applicant or by any person who owns or controls the applicant is currently in violation
of Public Law 95-87, as amended, any state law required by Public Law 95-87, as amended, or any law, rule, or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection, the department may not issue a strip- or underground-coal-mining permit or amendment, other than an incidental boundary revision, until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the administering agency (82-4-227(11), MCA) (AVS check of May 20, 2022).

10. Records of DEQ and OSMRE show that the applicant does not own or control any strip- or underground-coal-mining operation that has demonstrated a pattern of willful violations of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, when the nature and duration of the violations and resulting irreparable damage to the environment indicate an intent not to comply with the provisions of the MSUMRA (82-4-227(12), MCA) (AVS check of May 20, 2022).

11. The Applicant is in compliance with all applicable federal and state cultural resource requirements, including ARM 17.24.318, 1131, and 1137, and as explained in the conditions listed below.

12. The required bond for the Rosebud Mine Area B AM5 permit is $86,550,000.00. Bond will be updated as part of Westmoreland Rosebud’s annual permit commitments by June 30, 2022.

**Private Property Takings**

The 1995 Montana state legislature passed House Bill 311, which requires a state agency to prepare an assessment of whether a proposed agency action will result in a taking of private property. DEQ prepared the assessment, which concludes that the action approval of the Rosebud Coal Mine Area B application does not result in the taking of private property. The Private Property Takings Assessment is attached to these Written Findings as Attachment 2.

**Decision**

Based on the information found in Westmoreland Rosebud’s Application and these findings, DEQ approves AM5.

**Conditions**

Conditions are as listed above in the Record of Decision.

**REFERENCES CITED**

https://deq.mt.gov/mining/Programs/coal.

https://deq.mt.gov/mining/Programs/coal.
Montana Department of Environmental Quality (DEQ). 2022. Westmoreland Rosebud Mining Rosebud Coal Mine Area B Surface Mining Permit (C1984003B).