Record of Decision & Written Findings for Spring Creek Coal Mine

Spring Creek Coal, LLC
Permit ID# C1979012
Big Horn County, Montana

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

Dated: March 27, 2020

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INTRODUCTION

Spring Creek Coal, LLC (SCC) submitted a major revision application(Application) on November 1, 2013, to the Montana Department of Environmental Quality (DEQ) for a major revision to their surface mine permit (C1979012), known as the TR1 Project, at the Spring Creek Mine (SCM), an existing surface coal mine near Decker, Montana (MT) (**Figure 1**). The SCM is operated by the Navajo Transitional Energy Company, LLC (NTEC).

The proposed TR1 Project would allow SCC to mine approximately 72 million additional tons of coal and disturb an additional 977 acres within the existing permit boundary. The TR1 Project would extend the life of the mine by approximately four years, from 2027 to 2031. The proposed mine disturbance would use existing infrastructure at the SCM. The approved surface mining permit boundary would remain the same at 9,220 acres (**Figure 2**). The TR1 Project would change the currently-approved postmine topography to better resemble the premine topography and provide additional flat-benched areas for sage grouse habitat.

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., MCA) and the implementing rules (ARM 17.24.301-1309) adopted under MSUMRA. The permitting decision before DEQ is to make a decision under its MSUMRA authority.

In addition, DEQ has the responsibility of fulfilling the requirements of the Montana Environmental Policy Act (MEPA) (Section 75-1-101, *et seq*., MCA) 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 the TR1 Project. This environmental review, culminating in the issuance of the Final EIS on March 12, 2020, was conducted to fulfill the requirements of MEPA.

DEQ's need for the action, under MEPA, was to analyze the potential environmental impacts from the project in order to make a more fully informed decision prior to approval or disapproval of the Application under Section 82-4-227, MCA. In accordance with 75-1-201(4)(a), MCA, DEQ cannot impose measures on any permit, in this case, the surface-mine permit, as part of the MEPA review process beyond what is required for compliance with MSUMRA and other state statutes. However, nothing prevents SCC and DEQ from mutually developing measures that may, at the request of the applicant, be incorporated into a permit or other authority to act, (75-1-201(4)(b), MCA). The conditions under which DEQ could deny the TR1 Project are described in the Final EIS (see **Section 1.4, Agency Roles and Responsibilities**).

The Montana Environmental Policy Act (MEPA), Section 75-1-201, *et seq.,* Montana Code Annotated (MCA), requires the preparation of an EIS for state actions that may significantly

affect the quality of the human environment. The EIS includes a detailed statement on the environmental impact of the proposed action and a no action alternative. DEQ issued a Draft EIS on August 27, 2019 and made the draft available for public review and comment for 30 days. The Final EIS addresses issues and concerns raised during the public comment period and at a public meeting. All new information and analysis supplied during the comment period and developed in response to comments received were used to prepare the Final EIS.

Written Findings

The purpose of this document is to set forth DEQ's decision on SCC's Application and the reason for the decision. In accordance with ARM 17.4.629 (1), at the time of the agency's decision concerning a proposed action for which an EIS was prepared, the agency shall prepare a concise public record of decision. This record of decision has been integrated into DEQ's *Written Findings* documenting the permitting decision under MSUMRA and fulfills the requirements of MEPA.

Part one of the *Written Findings* contains the MEPA record of decision and describes the alternatives considered, documents DEQ's decision, the reason for the decision, and the special conditions surrounding the decision or its implementation. Part two serves as the *Written Findings* which documents DEQ's MSUMRA permitting decision. The agency action at issue is DEQ's permitting decision. The decision is based on information provided by SCC in its Application, the Draft EIS (2019) and Final EIS (2020), the *Written Findings* (Part II), and the Cumulative Hydrologic Impact Assessment (CHIA). The CHIA includes an analysis of impacts on the hydrologic balance and an assessment of the Probable Hydrologic Consequences of the proposed project.

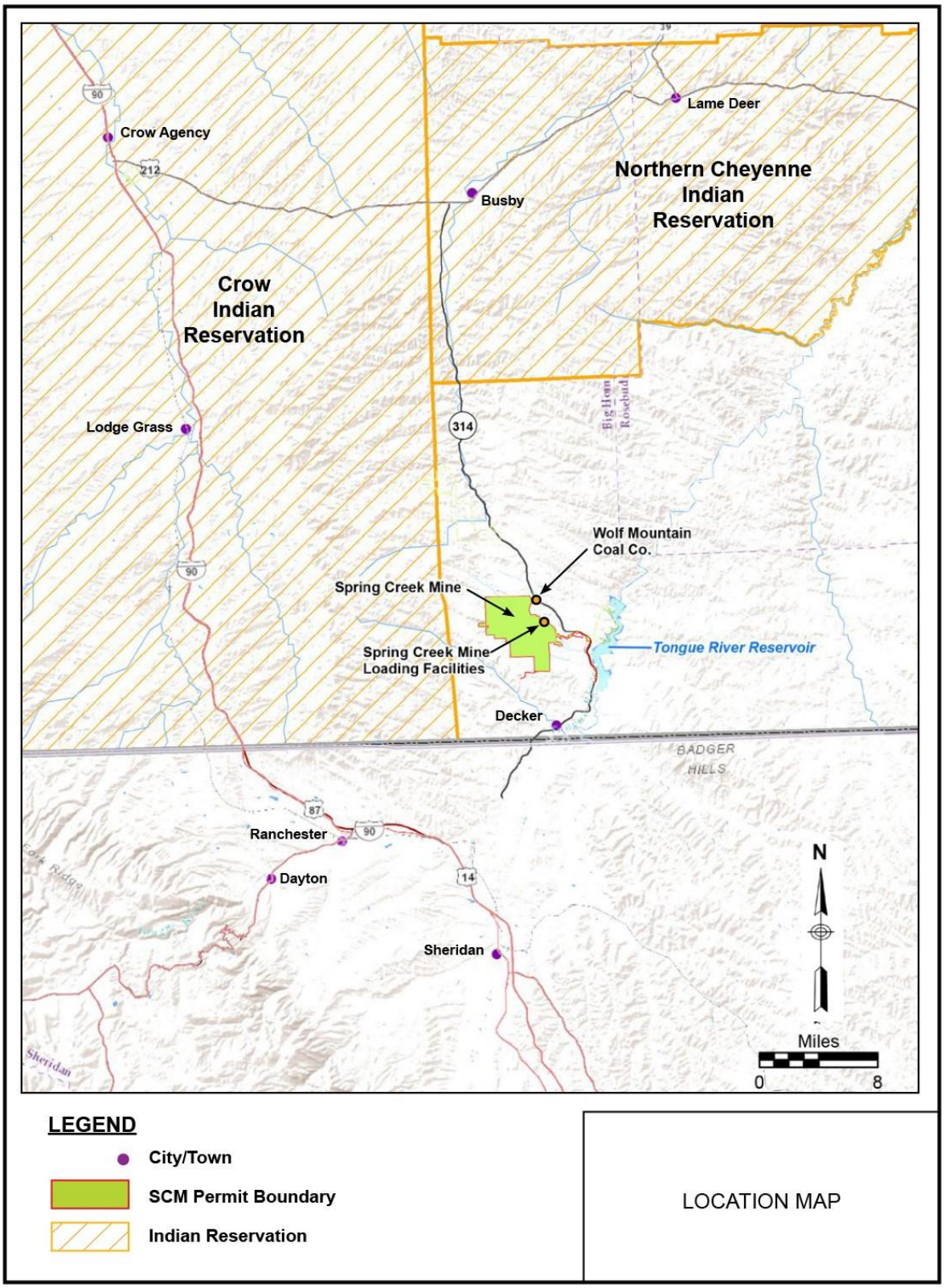

Figure 1. Project Location

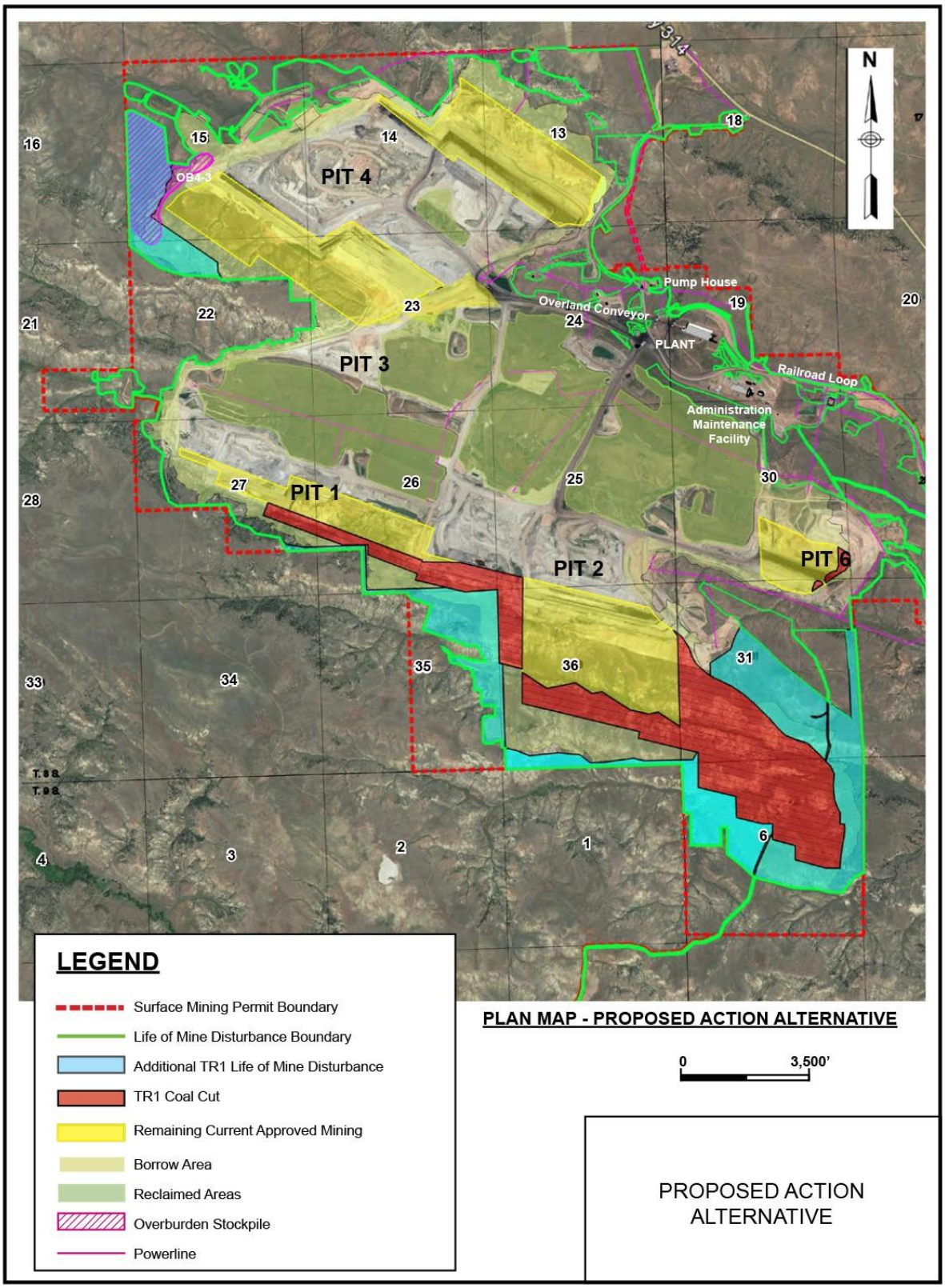

Figure 2. Proposed TR1 Project

I. RECORD OF DECISION

DEQ has prepared a concise public Record of Decision (ROD) for the Spring Creek Mine TR1 Project EIS. Pursuant to ARM 17.4.629(1), the following sections constitute DEQ's ROD.

DESCRIPTION OF THE ALTERNATIVES

DEQ evaluated two alternatives in the EIS: a No Action Alternative and the Proposed Action. The Proposed Action included additional mitigation measures. MEPA's implementing rules require a "reasonable alternatives analysis," including a "no action alternative," in an EIS. In accordance with 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). The alternatives are summarized below and described fully in **Chapter 2** of the Final EIS. Alternatives considered but eliminated from further analysis are also summarized below and described in detail in **Section 2.4** of the Final EIS.

No Action Alternative

Under the No Action Alternative, the SCM TR1 application would not be approved by DEQ for one or more of the conditions for denial listed in Section **Error! Reference source not found.** of the EIS. SCM would continue to operate the mine and process coal produced within their current disturbance area. At an average production rate of approximately 18 million tons per year, the mine life is expected to continue through approximately 2027.

Selection of the No Action Alternative would not have changed the status of the Spring Creek Mine that is currently permitted and being mined and/or reclaimed by SCC (see Final EIS, **Section 2.2)**.

Proposed Action Alternative (Selected Alternative)

Under the Proposed Action, SCM would add 977 acres of additional disturbance to expand mining in pits and add approximately 72 million tons of recoverable coal. The mine life would be extended approximately 4 years to 2031 at an annual production rate of 18 million tons. The additional coal reserves are of similar coal quality compared to the currently leased and permitted coal mining reserves and annual coal production would not change. The number of employees and facilities would not change, but their employment and use would be extended by approximately 4 years.

The overall permit boundary would remain unchanged at 9,220 acres. The total life-of-mine disturbance within the permit boundary would increase by 977 acres from the current 6,134 acres to the proposed 7,111 acres.

Mitigation Measures

Sage Grouse On-going Mitigations: These measures include best practices to reduce noise impacts to wildlife, particularly for the predicted topsoil salvage noise level at the Pasture

lek. The best practices are listed in the revised SCM Fish and Wildlife Plan (ARM 17.24.312) in the TR1 Project Application (SCM, 2017b) and include:

- Minimize surface disturbance activities to the extent practicable (e.g., soil salvage, road construction, grubbing, logging, exploratory drilling, etc.) during the primary breeding season for most species in the region (i.e., April 1 through July 31);
- Honor sage grouse lek buffers to the extent practicable and schedule disturbance activities near active leks to occur outside the breeding season; and
- Monitor all environmental variables, including vegetation, soils, wildlife (terrestrial and aquatic, as warranted), water and air quality/meteorology, to proactively mitigate mine related impacts.

SCM would complete the wildlife mitigation required under stipulations from Federal Coal Lease Modification MTM-069782 and Land Use Lease MTM-74913 including the development of a Habitat Recovery and Replacement Plan (HRRP) to mitigated for impacts to sage grouse and other wildlife habitats in the disturbance area. Some of the HRRP tasks are linked with reclamation of the TR1 Project Area and will only be completed if the TR1 Project is approved by the DEQ and the Federal Mine Plan revision approved by the OSM. The HRRP tasks are provided in **Table 2.2-1** of the EIS**.**

Sage Grouse Compensatory Mitigation: SCC would also deposit compensatory mitigation funding in the amount of $107,727 into the Montana Sage Grouse Oversight Team's Stewardship Fund.

Cultural Resource Mitigation: SCC would be required to completed mitigation before the disturbance of one site that is recommended as eligible for the National Register of Historic Places.

<u>COMPARISON OF ALTERNATIVES</u>

Table 1.1 Comparison of Effects by Alternative and		
Resource	**No Action Resource**	**Proposed Action (with Mitigations)**
Air Quality	Excellent air quality with limited local sources of pollutants and consistent wind dispersion. SCM to continue to control fugitive dust per SCM's Montana Air Quality Permit (MAQP) #1120-12.	Air quality would continue to be excellent. An estimated annual emission of PM_{10} of 668.53 tons per year over the additional 4 years if mine life. Fugitive dust would continue to be controlled per SCM's MAQP #1120-12
Land Use	SCM would not expand mining to the TR1 area and approved land use would remain unchanged. The 977 acres of	Surface disturbance for the additional 977 acres would be reclaimed to 748 acres of wildlife habitat and 229 acres of Grazing

	grazing land would not be disturbed.	Land.
Noise	SCM would not expand mining to the TR1 area and existing noise levels are estimated to be approximately L_{90} 15 dBA and L_{50} 20 dBA, which are typical for sparsely populated, rural locations, with man-made noise sources intermittently higher. The predicted L_{50} noise levels would exceed ambient noise by more than +10 L_{50} dBA during pre-strip operations at 3 of the 4 nearest leks.	Expanded mining in Pits 1, 2, and 6 would result in short-term noise impacts at 3 sage grouse leks. The L_{50} noise levels are predicted to exceed the ambient noise by more than +10 L_{50} dBA at the Pasture lek during topsoil salvage in 2029, when the equipment is closest to the lek.
Socioeconomics	SCM would maintain current level of 281 employees for about 5 years (at 13 to 14 million tons per year); would increase to 340 employees with increase to 18 million tons per year. Total annual taxes and royalties paid to Montana to remain at approximately $42 million.	Maintain approximately 281 to 340 employees and income for an additional 4 to 7 years. Total taxes and royalties of $42 to $59.5 million would continue to be paid to Montana over 4 to 7 more years.
Soils	SCM would not expand mining to the TR1 area and there would be no impacts to soils on the 977 acres.	An additional 977 acres would be disturbed with long-term and moderate impacts to soil physical properties, loss of soil structure, soil compaction, and potential soil erosion. Soil productivity would return to previous levels within 10 years after reclamation.
Transportation	SCM would continue to ship coal by rail, with an incidental amount by truck hauling, until all recoverable coal is mined in approximately 2027. An annual average daily traffic (AADT) count on Highway 314 would continue at about 176.	Continue to ship coal for about 4 additional years using the same methods and daily traffic counts.
Vegetation and Reclamation	SCM would not expand mining to the TR1 area and there would be no impacts to vegetation on the 977 acres.	The TR1 area supports sagebrush, grassland (including cheatgrass), greasewood, and limited stands of juniper in the draws and steeper slopes. Mining disturbances could

		result in additional weed infestations that would require monitoring and treatment. Much of TR1 reclamation is at the end of mining because of lengthening existing haul roads to recover the additional coal reserves. As a result, the haul road areas would be left unreclaimed for longer periods. (SCM would pay sage grouse compensatory mitigation amount of $107,727 for loss of 615 functional acres of sage grouse habitat.)
Water	Mining would continue in the current permit area but not expand into the TR1 area. Existing impacts include reductions in the surface flow in Pearson Creek and reductions in the flow of the Anderson-Dietz (A-D) aquifer to the Tongue River Reservoir. Impacts to ground water would taper off over the remaining life of mine.	Most of the TR1 expands mining within the South Fork Spring Creek and Pearson Creek Drainage areas as shown in Figure 3.11-1. The TR1 revision would also reduce surface flow within the South Fork Pearson Creek ephemeral stream channel. The Proposed Action is modeled to discharge at approximately 157 gallons per minute to the Tongue River Reservoir from mining the A-D aquifer. As a result, the Proposed Action Alternative is projected to reduce ground water flow by an additional 28 gallons per minute or 45 acre-feet per year. Impacts would continue until TR1 Project Area is reconnected with Pearson Creek and the Tongue River Reservoir.
Wildlife	Wildlife habitat consists of sagebrush-steppe, upland grassland, bottomland, reclaimed grasslands, and agriculture fields. Impacts general to all wildlife species include mortality, disturbance, and habitat loss and would primarily be from road kill,	SCM has completed or nearly completed 12 of 14 HRRP requirements in advance of the TR1 Project. SCM also voluntarily participates in the CCAA related to TR1 to help minimize impacts to sage grouse and other anthropogenic activities in the area. SCM also submitted the SOSI

	collisions with powerlines and fences, and trapping in pits. These impacts would continue through the life of the mine but would be minimized through reclamation and continued adherence to existing plans that are part of the SCM permit. Additional voluntary conservation measures (CCAA, SOSI) would also help minimize impacts to wildlife, including sage grouse.	Plan to provide broad, long-term direction for management of wildlife species of special interest that occur in the SCM wildlife monitoring area. (SCM would pay sage grouse compensatory mitigation amount of $107,727 for loss of 615 functional acres of sage grouse habitat.)
Cultural Resources	There would be no additional ground disturbance with the potential to disturb cultural sites. Sites in the TR1 Project Area will continue to degrade naturally, which may result in data loss over time.	TR1 would adversely affect one site that has been determined to be eligible for the NRHP. The approved mitigation plan for the one site would be completed prior to disturbance.

PUBLIC INVOLVEMENT

MEPA provides for public review and comment at the initiation of a project during scoping and once the environmental analysis is made available in the draft EIS document. Issues were identified from public scoping comments, from other agencies' comments, and from internal discussions. Relevant issues were identified as ones with potential associated impacts that would adversely affect a resource area; these were retained for detailed analysis in this EIS. Nonrelevant issues were either beyond the scope of the Proposed Action, not supported by scientific evidence, or have no unresolved conflicts to resources (EQC, 2013); these nonrelevant issues were not carried forward for detailed analysis. Resource areas anticipated to be affected by the Proposed Action are provided in Section 1.6.1. of the Final EIS. Resources with no anticipated impacts or which are outside the scope of the analysis are presented in Section 3.2 of the Final EIS.

The SCM TR1 Project EIS scoping period began on April 6, 2018 and ended on May 7, 2018. DEQ held a scoping meeting and open house on April 18, 2018 at the Hardin High School in Hardin, Montana. The full transcript for the scoping meeting is included in the Administrative Record. DEQ also accepted written comments at the meeting, on DEQ's website, and by regular mail. DEQ published a legal notice of the scoping period and public meeting in the Big Horn County News, Billings Gazette, and Sheridan Press during the weeks of April 8 and April 15, 2018.

The draft EIS was made available for public review and comment on August 27, 2019 with a 30-day comment period ending September 26, 2019. DEQ issued a press release

announcing the comment period and a public meeting. The public meeting was held September 11, 2019 from 6:00 to 8:00 pm at the Big Horn County Extension Office in Hardin, Montana. Oral and written comments were accepted at the meeting.

Written and oral comments on the draft EIS appear in their entirety along with DEQ's responses to the comments in **Appendix B**.

DECISION

DEQ, selects the Proposed Action with stipulations, consistent with SCC's TR1 Application for C1979012 and as described in 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/Modification*.

REASON FOR DEQ'S DECISION

The reason DEQ selected the Proposed Action with conditions 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, the Proposed Action meets the project's stated purpose and need (**Section 1.3**) and is consistent with all applicable regulatory requirements (**Section 1.4**), while minimizing potential impacts (**Section 2.6.1**). In addition, Proposed Action addresses the issues of concern identified during the scoping process. Additional information for DEQ's decision is addressed in detail in **Part II, MSUMRA Written Findings***, Conditions/Modification*.

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 SCC's TR1 Application was complete on December 6, 2013 and acceptable under MSUMRA on February 10, 2020.

SPECIAL CONDITIONS SURROUNDING THE DECISION

As a condition of this approval in order to mitigate for Greater Sage-grouse (GRSG) habitat impacts and pursuant to Section 82-4- 227(2)(a) and 82-4-231(10)(j), MCA), SCC shall, prior to undertaking any ground-disturbing activities in connection with TR-1, offer for deposit via wire transfer or cashier's check consisting or cleared and available funds, a financial contribution of $107,727 to the Montana Sage Grouse Oversight Team (MSGOT) Stewardship Account for Compensatory Mitigation for impacts to GRSG habitat, or to such other or additional account or recipient as DEQ may thereafter designate (Mitigation Funding). Such Mitigation Funding shall be used to implement grazing systems, conservation easements, or to buy or retire private mineral leases either within the lands identified as crucial sage grouse habitat in the SEIS area or having similar habitat characteristics.

APPEAL OF DEQ's MEPA DECISION 75-1-201(5)(a)(ii), MCA

Any action or proceeding challenging a final agency decision alleging failure by DEQ to comply with or inadequate compliance with a MEPA requirement must be brought in state district court or in federal court, as appropriate, 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: http://deq.mt.gov/Public/ea/coal. For additional information regarding the Final EIS or to request a CD version of the Final EIS, please contact the DEQ Project Coordinator, Jen Lane, DEQ Director's Office, DEQ, PO Box 200901, Helena, MT 59620-0901, 406-444-4956, JLane2@mt.gov.

APPROVAL

This record of decision is effective on signature.

3/27/2020

Shaun McGrath, Director
Montana Department of Environmental Quality

Date

II. MSUMRA WRITTEN FINDINGS

Table I - Introductory Table

Applicant ……	Spring Creek Coal, LLC (SCC)
Name of Mine ……....	Spring Creek Coal Mine (SCM)
MSHA Number ……	24-01457
Type of Mine ……	Strip
Type of Application ……..	Major Revision
Area within existing permit boundary (acres) …...	9,220
Proposed Increase in Permit Area (Acres) ……	0
Total proposed permit area (acres) ……..	9,220

FINDINGS

Table II – Permit and Review Chronology

March 2, 2012	DEQ receives Minor Revision MR168 to add LBM and Land Agreements, which was re-submitted as Major Revision TR1.
November 1, 2013	Application for Major Revision TR1 is received.
December 5, 2013	DEQ sends out First Round Completeness Deficiency
December 5, 2013	DEQ receives response to First Round Completeness Deficiency.
December 6, 2013	DEQ determines that Major Revision TR1 is complete.
December 11, 2013	DEQ sends out the notice of application.
February 12, 2014	DEQ receives the affidavit of publication from SCC. The Public Notice was published December 19 and 26 and January 2 and 9, 2014 in the Big Horn County News.
February 10, 2014	DEQ receives comments from Western Environmental Law Center and Northern Plains Resource Council.
March 31, 2014	DEQ sends out First Round Acceptability Deficiency.

August 18, 2014	DEQ receives SCC's response to the first-round acceptability deficiency for Major Revision TR1.
December 9, 2014	DEQ sends the second-round deficiency letter to SCC.
March 11, 2015	DEQ receives SCC's response to the second-round acceptability deficiency for TR1.
June 17, 2015	DEQ sends the third-round deficiency letter to SCC.
July 9, 2015	DEQ receives SCC's response to the third-round acceptability deficiency for TR1.
September 11, 2015	DEQ sends the fourth-round deficiency letter to SCC.
November 3, 2015	DEQ receives SCC's response to the fourth-round acceptability deficiency for TR1.
December 21, 2015	DEQ sends the fifth-round deficiency letter to SCC.
May 4, 2016	DEQ receives SCC's response to the fifth-round acceptability deficiency for TR1.
June 20, 2016	DEQ sends the sixth-round deficiency letter to SCC.
July 20, 2016	DEQ receives SCC's response to the sixth-round acceptability deficiency for TR1.
June 20/27, 2016	DEQ received a copy of the SCC Resource Recovery and Protection Plan (R2P2).
June 28, 2016	DEQ sends the seventh-round deficiency letter to SCC.
June 28, 2017	DEQ receives SCC's response to the seventh-round acceptability deficiency for TR1.
October 2017	DEQ begins the EIS process for TR1.
February 10, 2020	DEQ found that the TR1 original application, submitted on November 1, 2013, and revised through June 28, 2017, is acceptable, and the applicant has complied with Montana's permanent regulatory program. See Administrative Rule of Montana (ARM) 17.24.406(a).

February 10, 2020	DEQ publishes Notice of Acceptability in the Billings Gazette on February 13 and 20, 2020. No comments were received.
February 12, 2020	DEQ receives a public records request from Montana Environmental Information Center.
March 12, 2020	DEQ issues the Final Environmental Impact Statement for TR1.

1. DEQ found that the Major Revision TR1 application, submitted on November 1, 2013, and revised through June 28, 2017, is complete and accurate, and the applicant has complied with Montana's permanent regulatory program. *See* Administrative Rule of Montana (ARM) 17.24.405(6)(a).

2. The applicant has demonstrated that reclamation, as required by the Montana Strip and Underground Mine Reclamation Act and implementing rules, can be accomplished under the proposed reclamation plan (*see* ARM) 17.24.405(6)(a).

3. The Major Revision TR1 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));
   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 obtained all surface and mineral rights to conduct mining and reclamation operations authorized under the Major Revision TR1 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 minimize disturbance of the hydrologic balance on and off the mine plan area and 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 3/24/20).

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* memorandum of 8/3/2017 from USFWS).

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 SCM. 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 3/24/20).

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 Montana Strip and Underground Mine Reclamation Act (82-4-227(12), MCA) (AVS check of 3/24/20).

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 SCM permit is $110,000,000. The bond was calculated as part of the Minor Revision MR248 submitted on April 30, 2019. Bond will be updated as part of SCC's annual permit commitments by April 15, 2020.

13. On the basis of the information set forth in the application, in an onsite inspection, and in an evaluation of the operation by the Department, the applicant has affirmatively demonstrated that the requirements of MSUMRA will be observed and that the proposed method of operation, backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, or reclamation of the affected area can be carried out consistently with the purpose of MSUMRA.

Private Property Takings

14. The 1995 Montana state legislature passed House Bill (HB) 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 Major Revision TR1 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

15. Based on the information found in SCC's Application and these findings, DEQ hereby approves in part Major Revision TR1 application as revised through June 28, 2017, and DEQ grants the permit subject to the following conditions/modifications:

CONDITIONS/MODIFICATIONS (IF ANY)

16. ARM 17.24. 318, 1131: Treatment of cultural resources within SMP C1979012 is covered by a MOA developed under the provisions of Section 106 of the National Historic Preservation Act and pursuant regulations (36 CFR 800). Treatment of all cultural resources, including incidental discoveries during the course of mining, must be handled according to the provisions of this MOA.

17. As a condition of this approval in order to mitigate for Greater Sage-grouse (GRSG) habitat impacts and pursuant to Section 82-4- 227(2)(a) and 82-4-231(10)(j), MCA), SCC shall, prior to undertaking any ground-disturbing activities in connection with TR-1, offer for deposit via wire transfer or cashier's check consisting or cleared and available funds, a financial contribution of $107,727 to the Montana Sage Grouse Oversight Team (MSGOT) Stewardship Account for Compensatory Mitigation for impacts to GRSG habitat, or to such other or additional account or recipient as DEQ may thereafter designate (Mitigation Funding). Such Mitigation Funding shall be used to implement grazing systems, conservation easements, or to buy or retire private mineral leases either within the lands identified as crucial sage grouse habitat in the SEIS area or having similar habitat characteristics.

RESPONSES TO PUBLIC COMMENTS

No comments were received during the acceptability determination comment period.

REFERENCES CITED

Spring Creek Coal, LLC Final Environmental Impact Statement (DEQ, March 12, 2020)

Spring Creek Coal, LLC Spring Creek Coal Mine Surface Mining Permit (SMP C1979012)