AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Potential Comments on Federal Coal Lease Modificat

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Potential Comments on Federal Coal Lease Modifications CCO-1362 and COC-67232 Supplemental Draft EIS.

Fiscal Impact:

Submitted by: Laura Seymour for David Baumgarten **Submitter's Email Address:** lseymour@gunnisoncounty.org

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ◉ Required ○ Not Required

Comments:
ok db 6/29/17

Reveiwed by: Discharge Date: 7/5/2017 Certificate of Insurance Required

Yes ○ No ◉

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 7/7/2017

○ Consent Agenda ◉ Regular Agenda ○ Worksession Time Allotted: 10

Agenda Date: 7/11/2017

Revised April 2015

USDA United States Department of Agriculture | Forest Service | Grand Mesa, Uncompahgre and Gunnison National Forests

2250 South Main Street
Delta, CO 81416
970-874-6600
TDD: 970-874-6660
Fax: 970-874-6698

File Code: 1950; 2820
Date: June 5, 2017

Dear Interested Party:

On approximately June 9, 2017, the Grand Mesa, Uncompahgre, and Gunnison National Forests (GMUG) with cooperating agencies, Bureau of Land Management (BLM), Office of Surface Mining Reclamation and Enforcement (OSMRE) and Colorado Division of Reclamation Mining and Safety (DRMS), will publish the Notice of Availability in the Federal Register for Federal Coal Lease Modifications COC-1362 and COC-67232 Supplemental Draft Environmental Impact Statement (SDEIS). The publication in the Federal Register identifies the official comment period for this SDEIS. Comments must be received by July 24, 2017. The lease modifications are located on the Paonia Ranger District, near Somerset, Colorado.

Background

In late 2011, an environmental assessment (EA) was prepared for this leasing action, decision appealed and reversed. In 2012, an Environmental Impact Statement (EIS) was prepared. Forest Service's and BLM's respective decisions were issued under the framework of the newly-released Colorado Roadless Rule (CRR) which included an exception called the North Fork Coal Mining Area (NFCMA) allowing temporary road construction or reconstruction for coal mines which would further make underground mining technically feasible by providing access to surface safety features. The leases were modified later that year. In 2013, BLM issued an EA and decision for on-lease coal exploration activities. The Forest Service's CRR decision and consent to lease decision and BLM's leasing and exploration decisions were litigated. In 2014, the NFCMA exception of the CRR and three lease modification-related decisions were vacated by the Court. As a remedy to litigation the CRR, the NFCMA was analyzed in a Supplemental EIS, and reinstated in December 2016 with an effective date of April 18, 2017. This SDEIS has been prepared to correct court-identified deficiencies in the leasing analysis and exploration analysis and address new information since 2012 in the lease modification area.

Project Information

This SDEIS analyzes the effects of the Forest Service consenting to the BLM to modify the two coal leases and for BLM to then decide whether or not to modify the leases. If the BLM decides to issue the lease modifications they may consider authorizing on-lease exploration.

At the leasing stage, the federal agencies evaluate the effects of subsidence (lowering of the land surface incident to coal removal) and identify which surface resources may require specific protection from subsidence or foreseeable surface uses. The quantity of mineable coal in the lease modifications would extend the existing operations approximately a year and a half beyond those leases that are currently approved. No increase in coal production is anticipated nor would any additional jobs be created at the West Elk Mine if BLM decides to issue the lease modifications.

The BLM manages the federal mineral estate for coal leases. Where the land surface is managed by the Forest Service, BLM must have consent from the Forest Service before leasing can occur. Subsequent permitting through DRMS and possibly OSMRE would also be required before mining could occur. Therefore, the cooperating agencies will be using this same analysis to inform their decision making processes and regulatory requirements.

In 2009, the BLM notified the GMUG that ArkLand Company, LLC and Mountain Coal Company (MCC) applied to modify existing federal coal leases, COC-1362 and COC-67232 by adding about 800 and 920 acres respectively to them. Coal in the existing leases is mined by MCC from their West Elk Mine near Somerset in Gunnison County, Colorado. The applications were made to prevent bypass of federal coal reserves.

The coal lease modification areas lie in portions of sections 10-11, 14-15, and 22- 23 of T14S, R90W, 6th P.M. The modification areas include National Forest System (NFS) surface lands managed by the GMUG. The coal estate in this area is administered by the BLM Uncompahgre Field Office.

The BLM is required by law to consider leasing Federally-owned minerals for economic recovery. With respect to NFS lands, the agency considers consenting to the BLM leasing coal reserves underlying lands within its jurisdiction, and prescribes conditions (as stipulations) for the protection of non-mineral resources. In this instance, the Forest Service is considering consenting to BLM modifying ArkLand's and MCC's existing federal coal leases COC-1362 and COC-67232 by adding 1,720 cumulative acres to them. The Forest Service identifies any needed stipulations to protect non-coal (surface) resources. If Forest Service consent is given, the BLM would offer the modifications by noncompetitive bid.

If the lease modifications occur, the coal in this area would be accessed and recovered by underground longwall mining methods. The coal would be transported using MCC's existing coal transportation system and surface facilities. At the leasing stage, the federal agencies evaluate the effects of subsidence (i.e. the land surface lowered as a result of mining) on surface resources, and identify which surface resources may require specific protection from subsidence or foreseeable surface uses. Under a reasonably foreseeable mine plan scenario which is a projection of surface impacts and not site-specific approval, surfaces uses on these modifications may include methane drainage wells (MDWs), and depending associated access roads required to safely mine the coal resources. Specific locations of the MDWs and roads are not known at the leasing stage and will not be known until the specific mine plans are approved during the subsequent permitting process. However, the surface uses are reasonably projected for cumulative effects analysis purposes in NEPA at the leasing stage. Additionally, the site-specific effects of on-lease exploration have been analyzed on the lease modifications for BLM's purposes and for agency convenience.

Approximately 1,709 acres of the modification areas are within the Sunset Colorado Roadless Area. If the lease modifications are approved, temporary roads and incidental timber cutting may be needed to construct, operate and maintain MDWs. This leasing action itself does not authorize any surface disturbing activities in roadless; however, it does evaluate the need for conditions on subsequent use of the land surface in Colorado Roadless Areas. In this case, lease stipulations would be updated to reflect the requirements of the CRR.

The GMUG Forest Supervisor is the Responsible Official for this discretionary consent decision on these coal lease modifications. The Colorado BLM Deputy State Director for Energy, Lands and Minerals, is the BLM's Responsible Official. Subsequent permitting activities are anticipated within the Department of Interior and by the DRMS. Given the purpose and need, the GMGU Responsible Official will review the proposed action, the other alternatives, and the environmental consequences in order to decide the following:

- Whether or not to consent to the BLM modifying existing Federal Coal Lease COC-1362 by adding 800 acres, and whether or not to consent to the BLM modifying existing Federal Coal Lease COC-67232 by adding 920 acres according to the Mineral Leasing Act of 1920 (MLA); as amended by the Federal Coal Leasing Amendments Act of 1976 and Energy Policy Act of 2005;

- If consent to modify the leases is given, prescribe stipulations needed for the protection of non-mineral surface resources by determining if the existing stipulations on the parent lease are sufficient. If the parent lease stipulations are not sufficient, the Forest Service will prescribe additional stipulations that will provide for the protection of non-mineral interests in the lands.

The GMUG is a cooperating agency to the BLM for exploration plan analysis. Although the Forest Service is the surface management agency, it does not have a decision to make for the exploration plan.

The BLM's Responsible Official will decide whether to:

- Adopt the No Action Alternative (no leasing);

- Adopt the lease modification(s) as described in either Alternative 3 or 4 with the stipulations proposed by the Forest Service and BLM; or

- Adopt the coal lease modification(s) as applied for by the applicants (these would not have updated stipulations as described in Table 2-1 or Table 2-2);

And with regard to on-lease exploration must decide whether or not to:

- Approve the exploration plan and allow the activities to occur on the coal leases, consistent with lease rights (if granted); or

- Approve the exploration plan with additional conditions (43 CFR 3482.2(a)(1)), if needed, to minimize impacts.

If the leases are modified, OSMRE will determine if there is a need for a federal mining plan modification at the time the actual permitting process is underway. DRMS would review applications submitted to the State of Colorado to revise the state mining and reclamation permit, including applications to allow mining and its related surface disturbances, reclamation, and the changing of the approved mine permit boundary to include the modification area. Reclamation bonding is required in Colorado.

A No Action alternative and action two alternatives (including the Proposed Action) are considered in detail in the SDEIS. Twelve other alternatives (some with multiple variations) were considered but eliminated from detailed study it the SDEIS.

Submitting Comments

In order to obtain standing for administrative processes or object to future Forest Service decisions (per 36 CFR 218 Subparts A and B) or appeal decisions pertinent to BLM's future decision(s), comments must have been received during a previous formal comment period or during this one. Only those individuals or organizations who submit comments during an official comment period will be eligible to file an objection. Reviewers should provide the Forest Service with their comments by **July 24, 2017**. This will enable the agencies to analyze and respond to the comments at one time and to use information acquired in the preparation of the SFEIS, thus avoiding undue delay in the decision making process. Reviewers have an obligation to structure their participation in the NEPA process so that it is meaningful and alerts the agency to the reviewers' position and contentions. Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement unless based on new information.

Comments on the Draft EIS should be specific to these lease modifications and should address the adequacy of the statement and the merits of the alternatives discussed (40 CFR 1503.3).

Send Comments to:

Grand Mesa, Uncompahgre and Gunnison National Forest
Attn: Federal Coal Lease Modifications COC-1362 and COC-67232
2250 South Main Street
Delta, CO 81416
Email: comments-rocky-mountain-gmug@fs.fed.us
Fax: 970-870-6698

Electronic comments will be accepted, and must be submitted as in common formats (*.doc,*.txt, *.rtf or .pdf). Please note in the subject line that the comments are for **Federal Coal Lease Modifications COC-1362 and COC-67232**. If the sender does not receive an automated acknowledgement of the receipt of comments, it is the sender's responsibility to ensure timely receipt by other means. Hand delivered written comments will be accepted at the GMUG National Forests, 2250 South Main Street, Delta, Colorado, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except for federal holidays.

Reviewers are advised that comments they submit will become part of the SFEIS and will be released in their entirety including personal information. Comments submitted to the Forest Service will be shared with cooperating agencies. It is suggested that document links be included in lieu of attached appendices to facilitate incorporation into the final document. Form letters submitted will count as only one comment no matter how many copies are received and if received through an organization's clearinghouse or member campaign will be assumed to represent the views of that organization.

Obtaining Copies

Copies of the SDEIS may be downloaded from the internet at the following link: https://www.fs.usda.gov/project/?project=32459

Agencies requiring certain formats of documents for review have been included with this letter.

For further information or to obtain copies of the SDEIS if unable to download directly, please contact Niccole Mortenson at 406-329-3163 or nmortenson@fs.fed.us.

Sincerely,

SCOTT G. ARMENTROUT
Forest Supervisor