

WRITTEN FINDINGS

Prepared by:

Montana Department of Environmental Quality  
Industrial and Energy Minerals Bureau  
Coal Program

For

Amendment and Mine Plan Revision

Bull Mountain Coal Mining Inc.  
C1993017

Musselshell and Yellowstone Counties

October 2013



D-000022

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## I. INTRODUCTION

Signal Peak Energy, LLC (SPE), formerly Bull Mountain Coal Mining, Inc. (BMCM) and Bull Mountain Property Investments, Inc. (BMPII), has applied to the Montana Department of Environmental Quality (DEQ) for an amendment (Amendment 3) to its current mining and reclamation plan at the Bull Mountains Mine No. 1 (Figure 1), SMP C1993017. The proposed permit amendment would add 7,161 acres to the permit area, expand the underground mine plan and add approximately 176 million tons of coal to the permitted life-of-mine reserves. Approximately 20 acres of additional surface disturbance is expected as a result of this Amendment. This amount of additional disturbance is necessary to construct temporary surface facilities that support underground mining. Temporary surface support facilities include boreholes, service pads, power lines, and roads.



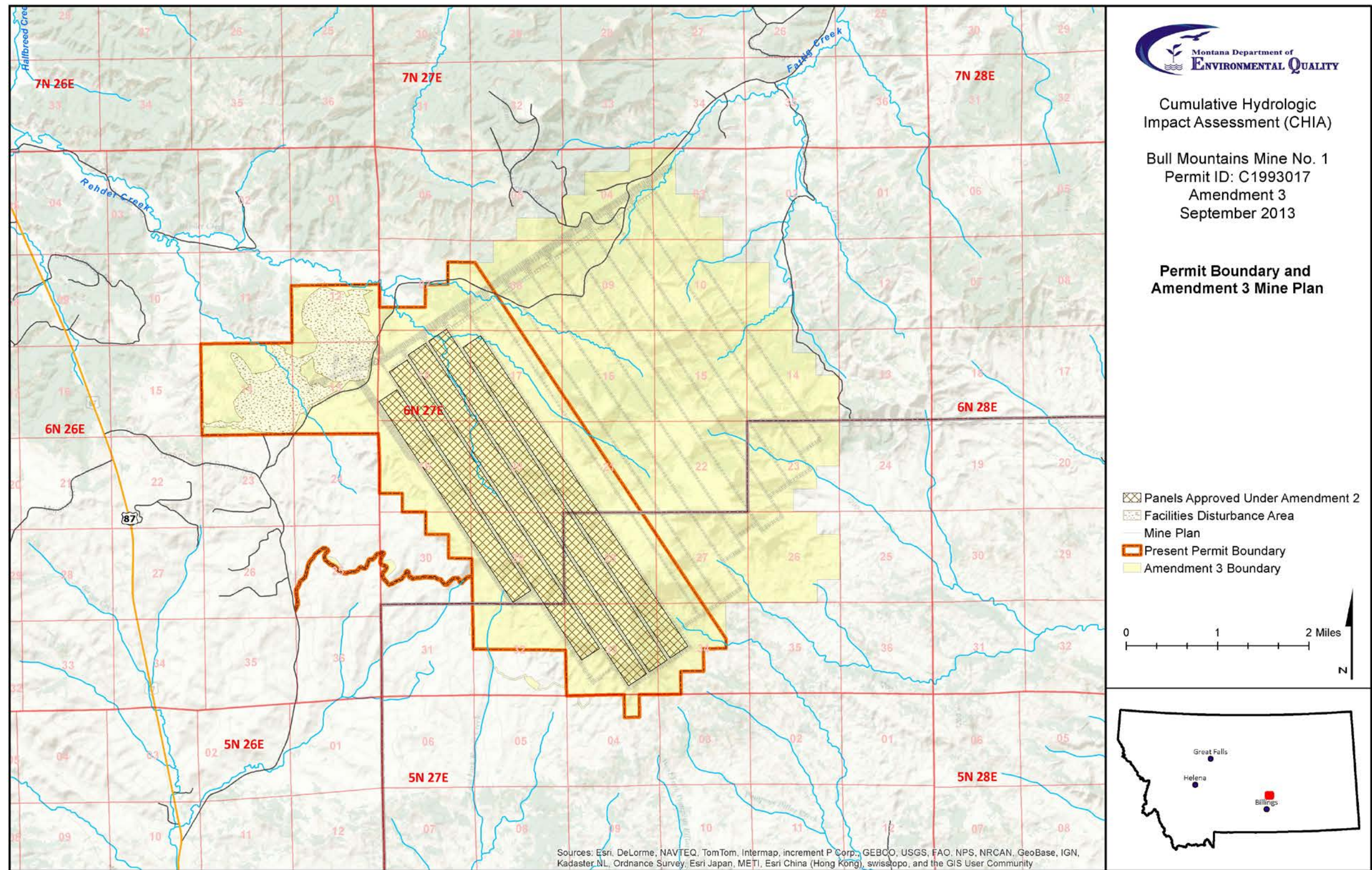


Figure 1: Permit Boundary and Amendment 3 Mine Plan



Table I -- Introductory Table

Applicant .....	Signal Peak Energy, LLC (SPE)
Name of Mine .....	Bull Mountains Mine No.1
Surface Mine Permit Number.....	C1993017
MSHA Number .....	2401950
Type of Mine.....	Underground
Type of Application .....	Amendment
Application number.....	03
Area within existing permit boundary (acres).....	7,735
Proposed Increase in Permit Area (Acres).....	7,161
Total proposed permit area (acres) .....	14,896
Anticipated Annual Production .....	Up to 11,000,000 tons
Reclamation Bond Amount.....	\$11,700,000

Table II - Chronology of Events

Permit Chronology

July 2, 2002	Permit transferred to BMP Investments Inc. pursuant to 82-4-250, MCA.
May 9, 2003	5-Year Renewal of SMP 93017: Permitted acreage remains the same.
August 24, 2006	Total change of Ownership and Control resulted in transfer of the permit to the new owners. The name of the permittee and acreage within the permit remain the same.
December 13, 2006	The name change for the company was registered with the Montana Secretary of State. The new name for the company is Bull Mountain Coal Mining, Inc.
January 16, 2007	Application 00178 (Amendment 1) adding 2,172 acres for underground mining level disturbance and related subsidence, as well as ancillary disturbance within the new permit boundary was approved.
May 9, 2008	5-Year Renewal of SMP C1993017: Permitted acreage remains the same.
September 15, 2008	Permit was transferred to SPE.
August 3, 2011	Amendment 2 (Application 00187) for an additional 1,193 acres was received.
October 4, 2012	Amendment 2, Permit Issued – Reclamation bond required \$10,860,511; amount of reclamation bond held \$11,700,000.

### Application Chronology

October, 5, 2012	Amendment 3 Application for an additional 7,161.4 acres was received.
December 14, 2012	DEQ declared Amendment 3 (AM3) complete. Applicant could begin public notice.
December 19, 2012	DEQ mails Notice of Application to pertinent state, local and federal agencies.
January 2, 9, 16, 23	Notice of Application was published in the Billings Gazette and Roundup Record Tribune.
January 07 through February 27, 2013	DEQ received written comments.
March 01, 2013	DEQ sent first technical deficiency letter to SPE.
March 19, 2013	DEQ received SPE's first round technical deficiency response.
June 14, 2013	DEQ sent second technical deficiency letter to SPE.
July 01, 2013	DEQ received SPE's second round technical deficiency response.
August 02, 2013	DEQ sent third round technical deficiency letter to SPE.
August 19, 2013	DEQ received third round technical deficiency response.
September 03, 2013	DEQ declared AM3 to be technically acceptable.
September 03, 2013	Requests to the Billings Gazette and Roundup Record Tribune to publish the notice of acceptability and availability of the EA.
September 12 and 19, 2013	Notice of Acceptability and availability of the Draft EA are published in the Billings Gazette.
September 23, 2013	DEQ received receipt of affidavit for notice of application from the Billings Gazette.

September 27, 2013 DEQ received requests for extension to public comment period and granted extension. Comment period extended to October 7, 2013.

October 7, 2013 Public comment period ended.

October 18, 2013 Permit Issued – Reclamation bond required \$11,194,411; amount of reclamation bond held \$11,700,000.

## II. EVALUATION OF COMPLIANCE

### A. Coal Reserves and Coal Conservation

SPE proposes to amend approximately 7,161 acres to the permit area of the Bull Mountains Mine No. 1, south of Roundup, Montana. AM3 would add about 176 million tons of in-place coal reserves to the existing permit area, for a total of approximately 287 million tons of in-place coal. All extracted coal would be from the Mammoth Coal Seam.

Coal at Bull Mountains Mine No. 1 would be recovered using mechanical underground mining methods, including continuous mining (“room and pillar”) and longwall mining. Subsidence is planned to occur over the mined-out area.

Longwall mining is a method by which all of the coal is completely removed from each longwall panel, effectively achieving 100% coal extraction. The complete extraction of the coal in each longwall panel results in subsidence. The surface above the mine maintains the premine configuration at a somewhat lower elevation throughout the mined area. Subsidence is often expressed by new features in the surface (e.g. cracks, rock falls/slides, and uneven areas). At full production, SPE is planning on mining longwall panels at a rate of 11,000,000 tons/year. This number equates to the longwall face advancing roughly 55 ft/day.

### B. Overburden, Soils and Engineering

#### Overburden and Soils

The proposed amendment to Bull Mountains Mine No. 1 is for the expansion of underground mining; therefore, the soil resource would remain relatively undisturbed. Soils included in the area covered by the proposed amendment are going to remain in place; however, the mine would pass under the surface with a longwall operation which is expected to create subsidence on the surface. The result would be undulations in the topography and the surface may sustain some cracking. Mechanical treatment of subsidence may be more degrading to the soils than leaving them to repair in situ. Since soil profiles would remain mostly intact, the chemical and physical characteristics should remain the same. Repair and/or mitigation of surface subsidence would be evaluated on a site-specific basis. Soil salvage, regrading, soil replacement and seeding may be needed to restore the surface configuration necessary to maintain stream profiles, minimize erosion, and ensure the premine land use is maintained.



## Engineering

Longwall panels at the Bull Mountains Mine consist of a block of coal, approximately 1,250 feet wide by 15,000 to 23,300 feet long. Panels would be completely extracted, resulting in caving in these areas. As subsequent rock strata above the mine cave in, the disturbance eventually would propagate to the surface in the form of subsidence, or surface depression. The mined-out areas cave in behind the longwall system as it advances along the length of the panel. Collapse of the roof over the longwall panel would cause the surface overlying the panel to subside by an amount somewhat less than the thickness of the coal seam. Subsidence in the Bull Mountains has been predicted to be and field verified to be about 70% of the extraction thickness. The Mammoth Coal ranges in thickness from 8 to 11 feet in the permit area. Subsidence is expected to range up to approximately 5-8 feet.

Surface cracking is expected in some areas. Minor damage to roads and fences is possible. Steep slopes in the area may be prone to rockslides during and for a time following subsidence. Landowners must be provided with a schedule at least 6 months prior to their property being undermined. The schedule must contain enough information to enable landowners to move cattle to safe areas and to avoid hazardous areas while mining is taking place.

### C. Vegetation

As mining activities within the proposed amendment area would be underground, there would be little direct impact to the vegetative communities. There is expected to be drill pads, roads, and subsidence disturbance. Areas needing repair would have the soil salvaged from the site, as necessary, the site repaired/regraded, soil replaced, and the affected area seeded with an approved seed mix. As the proposed mining method would result in large panels subsiding as a unit, it is anticipated that this type of subsidence would have minimal effect on deep rooted plant species, such as ponderosa pine. However, some trees may be damaged, especially if they are located on a slough or subsidence crack.

### D. Wildlife/Livestock

Numerous springs are located within the proposed amendment area. These springs are important to grazing livestock and to the local wildlife community. Water provided by these springs helps ensure livestock distribution throughout the grazing pastures and allows for overall grazing of the area, increasing the economic return to the land owner. A variety of wildlife species, including small mammals, bats, song birds, shorebirds, upland game birds, raptors, big game, and warm-water aquatic species utilize the springs and associated areas of ponded water.

Aquatic plants (periphyton), macroinvertebrates (e.g. earthworms, insects etc.) and vertebrates (e.g. tiger salamanders, painted turtles) are associated with springs and ponds (304(1) j-27). Fish have not been found in any of the ponds or stream reaches. Currently, there is no evidence that mining has impacted aquatic or other wildlife (e.g. birds, deer, coyotes etc.) that depend on these water supplies.

No threatened or endangered aquatic species or habitat has been identified in the area.

Subsidence related fractures associated with the Fractured Zone may intercept and direct shallow groundwater into the Caved Zone which may alter spring discharge and ultimately land use.

#### E. Hydrology

The main hydrologic issues surrounding the Bull Mountains Mine No. 1 are the potential for loss or diminution of the quantity and quality of groundwater and surface water, and the resulting impacts to wells, springs, ponds, and stream reaches within and in the vicinity of the mined area. These potential impacts are described below and would be expected to be the same impacts that may occur if mining is expanded under AM3.

##### Surface Water

Stream reaches in the amendment area are typically dry. Notwithstanding storm events or unusually high precipitation, stream flow only occurs where shallow groundwater flow intersects stream channels, resulting in springs. Springs may form stream flow for a short reach downstream of the spring issue point, and wet or ponded surface conditions may be observed, particularly where springs have been developed for stock water use (via constructed in-channel ponds or impoundments). The extent of flowing, wet, or ponded in-channel conditions from year to year can be attributed to the amount of recent precipitation and the recharge or diminution of shallow perched aquifers that contribute to spring flow. Thus, spring flows and issue points within the permit area are highly variable and dependent upon local precipitation and geologic controls.

Springs and stream channels in the amendment area that have the potential to be impacted by mining operations include 1) those that occur within the disturbed surface areas of the Bull Mountain Mine and 2) those that occur in the undisturbed surface areas within the permit boundary. Disturbed surface areas of the Bull Mountains Mine include the facilities area and the waste disposal area in the northwest portion of the permitted area. Undisturbed surface areas are those areas above planned longwall panels where subsidence features (fractures, depressions, and subsurface deformation) in overburden may alter the flow of surface water or shallow groundwater. Undisturbed surface areas include all mine lands within the permit that do not include the mine facilities area or waste disposal area.

##### Undisturbed Areas

In the Bull Mountains, subsidence fracture hydraulic conductivities are expected to be buffered by thick shales; however, some increases in both vertical and horizontal hydrologic conductivities may occur as a result of subsidence. Subsidence fractures in areas of shallow overburden cover may cause diversion of the shallow groundwater, and some increased lateral drainage from higher overburden units to lower springs also may occur temporarily as a result of flow along subsidence fractures. Settling and compression after mining are expected to close

most subsidence fractures, thereby returning the shallow groundwater flow directions, including flow to springs, to approximately the premining orientation. If, however, flow to the springs is impacted, the permittee is committed to replacing the flow using one of the methods discussed in Surface Mine Permit Volume 3, Section 314 - 6.0 MITIGATION PLANS.

Springs and seeps are monitored regularly in order to assess impacts from mining. Where flows from springs and seeps are impacted, water quantity and water rights have the potential to be impacted. Impacts to water rights are assessed and evaluated with respect to regional and local impacts to spring systems that feed surface water resources. To date, several springs under panels 2 and 3 have been undermined. While some springs (17145, 17185) have shown a temporary alteration or interruption of flows or adjacent well-water levels as anticipated, weekly monitoring of spring flows prior to and after undermining have shown no adverse long-term effects.

### Disturbed Areas

No permanent effects to the quantity and quality of stream flow would be anticipated from disturbed surface areas within the existing and proposed mine permit area. All flow from disturbed areas would be captured by sedimentation ponds, and is regulated under DEQ's MPDES permitting section.

The effects of sediment pond discharges on stream water would be negligible. All sediment ponds are designed to contain the 10-year / 24-hour runoff plus sediment. Due to the low precipitation in the area, pond discharges are very infrequent (wet-weather discharges in 2011 and 2013 were the first discharges recorded since 1991). In the event that a sediment pond discharge should occur, sampling, effluent limits, and reporting will comply with DEQ requirements. Routine maintenance of the ponds will maintain the storage capacity. Where practical, runoff from undisturbed areas will be diverted around the sedimentation ponds in order to decrease the quantity of water to be treated within the ponds. Some undisturbed area waters would enter the ponds, however, and would be treated and discharged under permit requirements.

During the life of the mining operation, ditches and culverts would be employed to handle surface runoff within and around the mine facilities area. All ditches and culverts would be routinely inspected to ensure that accelerated erosion is not occurring at the outfalls. No long term or permanent water quality impacts are anticipated due to the emplacement of these structures.

### Ground Water

Four groundwater aquifer systems occur in the mined area and vicinity: alluvial aquifer, overburden aquifer, Mammoth coal aquifer, and the underburden aquifer. Mining is expected to affect the water levels of all these aquifers except the alluvial aquifer. Groundwater direction in all but the alluvial aquifer is generally toward the northwest; alluvium within the permit boundary is generally dry except during and after significant storm events. Generally, groundwater associated with the underburden and Mammoth coal aquifers occurs under confined conditions and is unconfined in the overburden and alluvial aquifer systems.



The most significant drawdown and the greatest radius of influence have been recorded in the Mammoth Coal (drawdown of approximately 30 feet in BMP-37) consistent with the predictions made in the PHC. Significant drawdown (approximately 20 feet in BMP-44) has also been recorded in the upper underburden that generally mimics the drawdown pattern or radius of influence of the overlying coal indicating that the upper underburden and coal aquifers are hydraulically connected.

The flow model prediction in the PHC indicates groundwater associated with the Mammoth Coal and upper underburden aquifers will recover to near premining levels approximately 50 years after the cessation of mining. After the conclusion of mining, the gate roads may remain intact or may collapse, thus each of these scenarios was tested using the groundwater model. If the gate roads collapse, groundwater levels in the northern part of the mine area and north of the permit area will return to near premine levels. If the gate roads remain intact, a mine pool will form in the northern part of the mine workings resulting in postmine water levels higher than premine near the north permit boundary. In either scenario, some residual drawdown will persist in the southern part of the mine area indefinitely due to the change in aquifer properties from coal to gob.

By contrast, very little drawdown has been recorded in the overburden aquifer except directly over panel 2 (BMP-60 and BMP-90) during active mining. Extensive overburden drawdown is expected over the mined area as mining advances consistent with predictions in the PHC as overburden subsidence fractures provide a series of transmissive conduits into the mineralized gob of the Caved Zone. Drawdown in the overburden is not expected outside of the subsidence area due to the generally perched and discontinuous nature of the overburden aquifers. Drawdown of the alluvial aquifer system is not expected as these sediments are often dry and become partially saturated due to significant precipitation events.

A decline of groundwater quality is expected as longwall mining and subsidence continue to produce additional panels of collapsed and mineralized rubble in the Caved Zone (gob). Vertically transmissive and mineralized fractures may intercept and direct shallow groundwater into the Caved Zone affecting local overburden groundwater levels, spring discharge, and surface drainage that may ultimately increase mine discharge. This prediction is consistent with the PHC: “A general increase in total dissolved solids, sodium, and sulfate concentration is anticipated in the groundwater that flows through the gob and potentially in the highly fractured zones immediately above the mined out area” (Page 314-5-47). The eventual groundwater quality within the mined-out area or Caved Zone may become similar to the groundwater quality within abandoned coal mines near Roundup, MT where the average TDS, sulfate, and specific conductance concentrations are 2,042 mg/L, 1,106 mg/L and 3,038  $\mu\text{S}/\text{cm}$ , respectively. However, the groundwater quality within the Caved Zone may exceed these concentrations since the groundwater in the abandoned mines near Roundup does not come into contact with mineralized gob.

Currently, there is no evidence that local and off permit groundwater quality of any of the hydrologic units has been degraded or impacted by mining. Groundwater quality of shallow and

deep aquifers (alluvium, overburden, coal, and underburden) is monitored regularly by a network of 105 monitoring wells to alert DEQ about the potential for material damage during or post mining.

#### F. Cultural and Historic Resources

Proposed AM3 is for extension of underground activities of an existing mine, and the only significant surface disturbance anticipated is the possibility of some surface failure in areas of steep slopes where few archeological/historical resources are expected. Roads and pads will be located above the panels; however, archaeological surveys are required to be completed two years prior to mining and will allow for the identified sites to be avoided or mitigated with approval from the Montana State Historical Preservation Office (SHPO). Protection of any incidentally discovered sites is stipulated in the approved mining permit or extension of underground activities of an existing mine.

#### G. Bonding

The estimate of reclamation costs and associated bonding requirements were updated for this amendment. For organizational purposes, the bond estimate is divided into Phases 1, 2 and 3. In general, Phase 1 relates to the cost for reclaiming the historic mine facilities which were in place prior to SPE ownership. Phase 2 reclamation costs are related to facility improvements which have taken place under SPE ownership. The Phase 3 costs relate to the removal of underground mining equipment and the reclamation of lands and facilities above the underground mining.

Where appropriate, all previous bond items were adjusted for inflation by using current cost data. The primary changes to the bond estimate are due to the additional costs of reclamation for new roads, bore-hole pads, and facilities as well as reductions for the completed reclamation of obsolete stockpiles and facilities. The major changes to the bond amount are summarized as follows:

The primary change to the Phase 1 estimate is a reduction of \$500,400 as a result of completing the removal of a coal waste Stockpile 1A.

The Phase 2 estimate reflects the costs of reclaiming the main facilities area. Since no significant changes will be made to the facilities area, this phase of the bond estimate is not changed.

The Phase 3 estimate is increased by \$762,357 to account for the reclamation of additional roads, borehole pads and service pads.

#### Phase 1, 2 and 3 Bond Summary

	Previous Amount	Adjusted Amount	Net Change
Phase 1	\$4,139,174	\$ 3,589,936	-\$ 549,238
Phase 2	\$4,950,636	\$ 4,950,636	\$ 0
Phase 3	\$1,770,701	\$ 2,653,839	+\$ 762,357
Total	\$10,860,511	\$ 11,194,411	+\$ 333,900

### III. FINDINGS

- A. DEQ has determined that the Bull Mountains Mine amendment/revision AM3, received October 5, 2012, and revised through August 19, 2013, is complete and accurate, subject to stipulation and the applicant has complied with Montana's permanent regulatory program (82-4-222, MCA).
- B. The applicant has demonstrated that reclamation, as required by the Montana Strip and Underground Mine Reclamation Act and regulations, can be accomplished under the proposed reclamation plan [82-4-227(1), MCA] subject to stipulation.
- C. DEQ has determined the proposed amendment to the Bull Mountains Mine Plan area is:
1. Not within an area under study or administrative proceedings under a petition to have an area designated as unsuitable for strip or underground coal mining operations [82-4-227(9), MCA].
  2. Not included in an area designated unsuitable for strip or underground coal mining operations pursuant to 82-4-227(9), MCA.
  3. Not on any lands subject to the prohibitions or limitations of 82-4-227, MCA, to include national parks, refuges, forests, etc.; nor where adverse impacts to publicly owned parks or places included in the National Register of Historic Places, and buildings, occupied dwellings, and cemeteries would occur.
  4. Not proposing disturbance within 100 feet, horizontally, of the outside right-of-way line of a public road, the Fattig Creek county road in AM3 and therefore ARM 17.24.1134 does not apply to this permitting action. However, a signed agreement with Musselshell County to allow mining activities to go under the road is located within the permit as Exhibit 901-2 within Volume 5.
  5. Not mining within 300 feet, horizontally, of any public building, church, school, community or institutional building, or public park.
  6. Not mining within 100 feet, horizontally, of a cemetery where human bodies are interred.
- D. SPE has obtained all surface and mineral rights to conduct mining and reclamation operations in the proposed amendment area.
- E. DEQ has made an assessment of the probable cumulative impacts of all anticipated coal mining on the hydrologic balance of the cumulative impact area. See Appendix I for detailed assessments.

DEQ has determined that this proposed mine plan revision would not result in material damage to the hydrologic balance outside the permit area.



- F. One occupied structure and three associated structures are contained in the revision area that will be affected by subsidence. The Sheila and Paul Soderberg residence (Tract 44 of Township 6 North, Range 27 East, Section 4) is located within the amendment boundary and will be mined under by room and pillar method. There is no subsidence planned within 700 feet of these structures. There is on additional metal pole frame structure owned by Dale B. Wallace that will be affected by subsidence within the amendment area. This structure is inside the longwall extraction perimeter at the north end of Panel 12. No material damage is expected to this structure.
- G. SPE has paid all reclamation fees from previous and existing operations as required by 30 CFR Chapter VII, Subchapter R, as per information received on Applicant Violator System (AVS), September 30, 2013.
- H. No special categories of mining are applicable to the proposed amendment.
- I. There is no proposal for an intensive agricultural post-mining land use within the amendment/revision area.
- J. The proposed amendment/revision would not affect 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.).
- K. There are no known private family burial grounds that the operation will constitute a hazard to within the amendment/revision area [82-4-227(7), MCA].
- L. SPE has obtained all required air quality and water quality permits.
- M. SPE has three recent violations that have been closed at the Bull Mountain Mine No.1.

On March 8, 2012, DEQ issued a Notice of Non-Compliance and Order of Abatement to SPE for violations of rules of the Montana Strip and Underground Reclamation Act which require that the permittee conduct operations as described in its mining permit, unless and until a mine plan revision is approved by DEQ. On February 9 and 20, 2011, boreholes 37 through 43 had been drilled without approval by DEQ. Additionally, roads and drill pads had been developed to access and operate each borehole as well as roads being developed in the bottom of dry coulees which altered the natural drainage ways. On May 29, 2012, DEQ issued a Termination of Abatement Order upon receipt and approval of MR 137 which addressed the disturbance associated with boreholes 37-49 and was approved by DEQ on May 25, 2012. On June 21, 2012, DEQ issued a Notice of Violation and Administrative Penalty Order to SPE which included a penalty of \$47,925. On July 19, 2012, SPE requested a hearing before the Board of Environmental Review to contest the violation and penalty; this request was later withdrawn. On January 15, 2013, DEQ issued a Release from Civil Liability to SPE, acknowledging receipt of \$26,537.50 civil penalty settlement and closing the case file.

On May 14, 2012, DEQ issued a Notice of Non-Compliance and Order of Abatement to SPE for violation of rules of the Montana Strip and Underground Mine Reclamation Act which require that the permittee conduct operations as described in its mining permit, unless and until a mine plan revision is approved by DEQ. On April 9, 2012, the following practice or condition was observed: After review of the 2011 Annual Hydrology Report DEQ identified that the Permittee's ground water and surface water monitoring practices materially deviated from the approved water monitoring plan. To abate the violation, SPE was ordered to submit a revised ground water and surface water monitoring plan, for inclusion in the permit that addressed the regulatory requirement. On August 24, 2012, DEQ issued a Termination of Abatement Order upon receipt and acceptance of a revised plan. On September 13, 2012, DEQ issued a Notice of Violation and Administrative Penalty Order to SPE which included a penalty of \$5,900. On November 1, 2012, DEQ issued a Release from Civil Liability to SPE, acknowledging receipt of the \$5,900 civil penalty and closing the case file.

On July 9, 2013, DEQ issues a Notice of Non-Compliance and Order of Abatement to SPE for violation of rules of the Montana Strip and Underground Mine Reclamation Act which require that a permittee obtain department approval prior to implementing a permit revision. On June 13, 2013, the permittee was observed constructing the Recovery Room Pad associated with MR 169 prior to obtaining DEQ approval. Prior to this observation, the permittee was notified that MR 169 would be approved pending the receipt of updated permit materials. At the time of the observation, DEQ had neither received the updated permit materials nor approved MR 169. To abate the violation, SPE was ordered to submit the updated permit materials required for approval of MR 169, as well as revise the internal "Management Pre-Disturbance Sign Off Form." On July 24, 2013, DEQ issued a Termination of Abatement Order upon receipt of the updated permit materials and Management Sign Off form. On August 29, 2013, DEQ issued an Administrative Order on Consent with a proposed penalty of \$3,500. SPE negotiated a lower penalty settlement of \$3,000 with DEQ. SPE submitted a penalty payment of \$3,000 on October 4, 2013, satisfying the order.

- N. No strip or underground coal mining and reclamation operations owned or controlled by SPE or related entities currently has a 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 in the United States pertaining to air or water environmental protection that has not been or is not in the process of being resolved [82-4-227(11), MCA], (AVS check of September 30, 2013).
- O. Records of DEQ show that the applicant does not control and has not controlled strip or underground coal mining and reclamation operations with a demonstrated pattern of willful violations of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, of such nature, duration, and with such resulting irreparable damage to the environment that would indicate an intent not to comply with these laws [82-4-227(12), MCA] (AVS check of September 30, 2013).

- P. SPE is in compliance with all applicable federal and state cultural resource requirements, including ARM 17.24.318, 1131, and 1137.
- Q. No re-mining is included in Amendment 3.

IV. STIPULATIONS

**ARM 17.24.304(1)(b)** Amendment 3 is for extension of underground activities of an existing mine, and the only significant surface disturbance anticipated is the possibility of some surface failure in areas of steep slopes where few archeological/historical resources are expected as well as drill pad locations and some additional roads. No additional archeological or historical sites have been discovered, and no impacts to known archeological or historical sites should occur. However, SPE is committed to completing Class III level studies above the mineplan; approximately two panels in advance of longwall extraction. Protection of any incidentally discovered sites is stipulated in the approved surface mining permit.

V. PRIVATE PROPERTY TAKINGS

The 1995 Montana state legislature passed House Bill (HB) 311, which requires a state agency to prepare an impact assessment of a proposed agency action that has private property taking or damaging implications. Part (2) of Section 5 of the Private Property Assessment Act (2-10-101, et seq. MCA) states that the assessment must include the following:

"(a) the likelihood that a state or federal court would hold that the action is a taking or damaging;

"(b) alternatives to the action that would fulfill the agency's statutory obligations and at the same time reduce the risk for a taking or damaging; and

"(c) the estimated cost of any financial compensation by the state agency to one or more persons that might be caused by the action and the source for payment of the compensation."

Part (3) of Section 5 states:

"A copy of the impact assessment for a proposed action with taking or damaging implications must be given to the governor before the action is taken, except that an action to avoid an immediate threat to public health and safety may be taken before the impact assessment is completed and the assessment may be reported to the governor after the action is taken."

Pursuant to Section 4 of the Private Property Assessment Act, the state Attorney General has developed guidelines for agency use in evaluating agency actions with respect to the above requirements. Accordingly, DEQ prepared the responses evident in the attached



checklist (See Appendix II), as they relate to the proposed mine permit amendment. A review of the attached checklist indicates that DEQ is not required to prepare a private property takings impact assessment.

VI. DECISION

Based on the information found in Signal Peak Energy's Amendment 3 and these findings, DEQ hereby approves Amendment 3 as revised through August 19, 2013.