



**Record of Decision &  
Written Findings for  
Rosebud Coal Mine Area F  
Western Energy Company  
Permit ID# C2011003F  
Rosebud & Treasure County,  
Montana**

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

PLAINTIFFS'  
EXHIBIT

**P277**

Dated: April 18, 2019

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- ATTACHMENT 1: 2019 CUMULATIVE HYDROLOGIC IMPACT ASSESSMENT
- ATTACHMENT 2: PRIVATE PROPERTY TAKINGS ASSESSMENT
- ATTACHMENT 3: RESPONSE TO PUBLIC COMMENTS ON PERMIT APPLICATION PROCESS

## **INTRODUCTION**

Western Energy Company (Western Energy) submitted a mine permit application (Application) on November 2, 2011, to the Montana Department of Environmental Quality (DEQ) for a new surface mine permit (C2011003F), known as Area F (project or project area), at the Rosebud Mine, an existing surface coal mine in Colstrip, Montana (MT) (**Figure 1**). Western Energy, a subsidiary of Westmoreland Coal Company (Westmoreland), is the operator of the Rosebud Mine and the project proponent. The proposed mine permit application would add 6,746 acres and approximately 70.8 million tons of recoverable coal reserves to the Rosebud Mine, extending the operational life of the mine by 8 years (at the current rate of production). Operations in the project area would last 19 years and would disturb 4,260 acres. Of these, 2,159 acres would be disturbed by mining; the remainder would be disturbed by highwall reduction, soil storage, scoria pits, haul-road construction, and other miscellaneous activities. The surface of the permit area is entirely privately owned, but the subsurface is both privately (3,479 acres) and federally (3,267 acres) owned. Western Energy holds leases for the federal (M82186) and private coal (G-002 and G-002-A). Current surface land uses in the project area include grazing land, pastureland, cropland, wildlife habitat, and industrial (a county road, a gas-transmission pipeline, and high-voltage electric transmission lines cross the project area).

## **DEQ'S RESPONSIBILITIES AND PURPOSE OF THE WRITTEN FINDINGS**

### Responsibilities

DEQ is responsible for administering 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 this state action. This environmental review, culminating in the issuance of the Final EIS on November 30, 2018, 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 Western Energy 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 Western Energy's Application for a surface mine permit for Area F are described in the Final EIS (see **Section 1.4, Agency Authority and Actions**).

DEQ prepared a joint Environmental Impact Statement (EIS) for the Western Energy Area F Project with the United States Department of the Interior (DOI), Office of Surface Mining Reclamation and Enforcement (OSMRE) Western Region Office to analyze the environmental impacts associated with the Application in a coordinated and comprehensive manner. The DOI Bureau of Land Management (BLM) Miles City Field Office acted as a cooperating agency as it is the federal agency responsible for leasing federal coal lands under the Mineral Leasing Act (MLA) of 1920, as amended (30 USC Section 181 et seq.). The joint EIS meets the requirements of MEPA and the National Environmental Policy Act (NEPA) (42 USC Section 4321 et seq.); the Council on Environmental Quality's (CEQ) NEPA regulations (40 Code of Federal Regulations (CFR) Parts 1500 to 1508).

### Written Findings

The purpose of this document is to set forth DEQ's decision on Western Energy'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 Western Energy in its Application, the Draft EIS (2017) and Final EIS (2018), 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.

Other DEQ permitting decisions related to this project, such as those for an application for a new Montana Pollutant Discharge Elimination System (MPDES) permit MT-0031828 for project area outfalls, and an application to modify Montana Air Quality Permit (MAQP) #1570-07 to include the project area, will be presented in separate decision documents.

In compliance with NEPA (40 CFR 1505.2), OSMRE will document its selected alternative and supporting reasoning in a separate Record of Decision (ROD). OSMRE will also prepare a Mining Plan Decision Document (MPDD) for the DOI Assistant Secretary for Land and Minerals (ASLM) with its recommendation regarding the federal mining plan for the project area. A MPDD will be prepared because Western Energy's proposed project constitutes a major revision to the current Rosebud Mine operations. The ASLM will decide whether to approve, disapprove, or conditionally approve the project area mine plan.

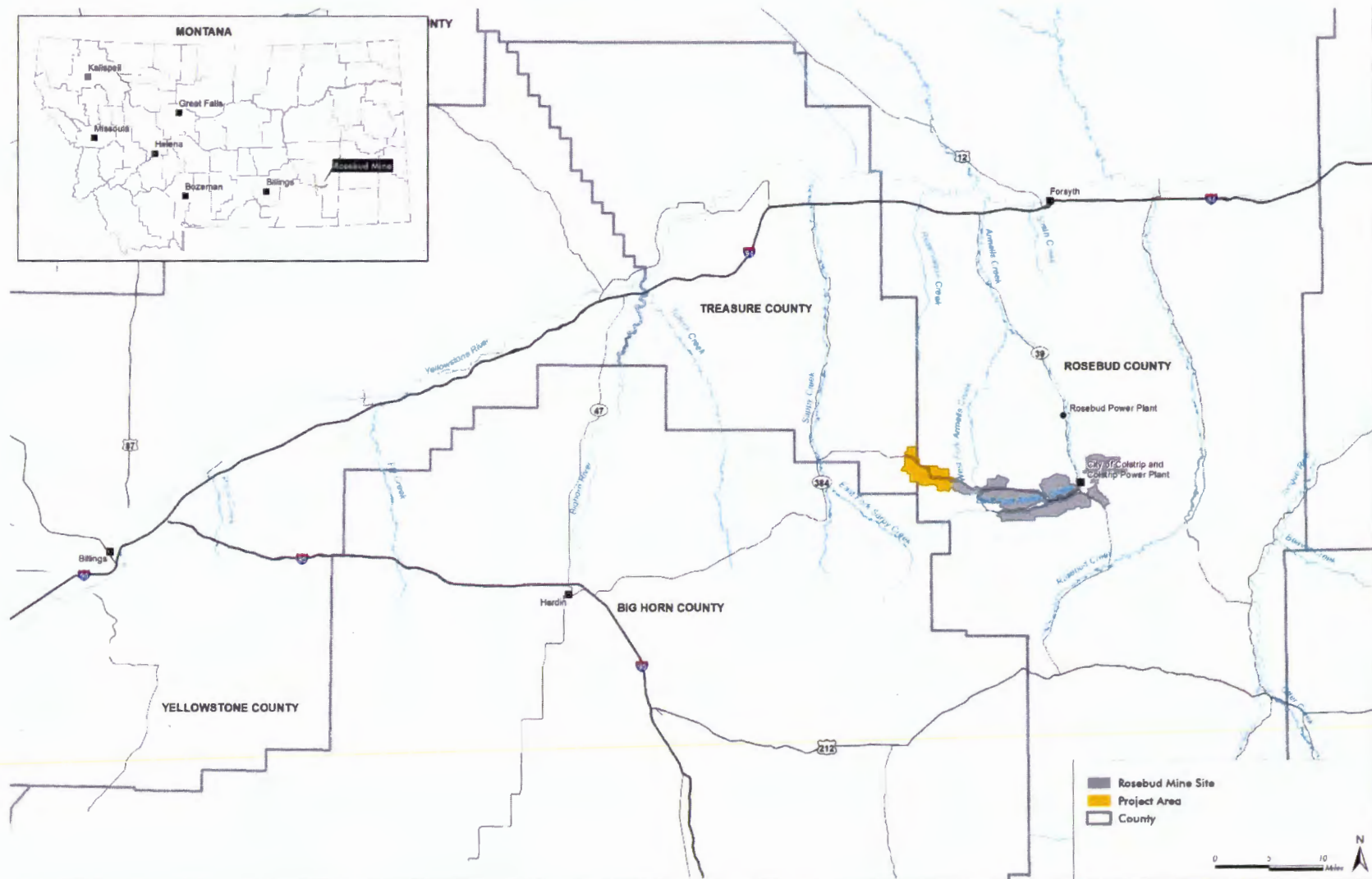


Figure 1. Project Location

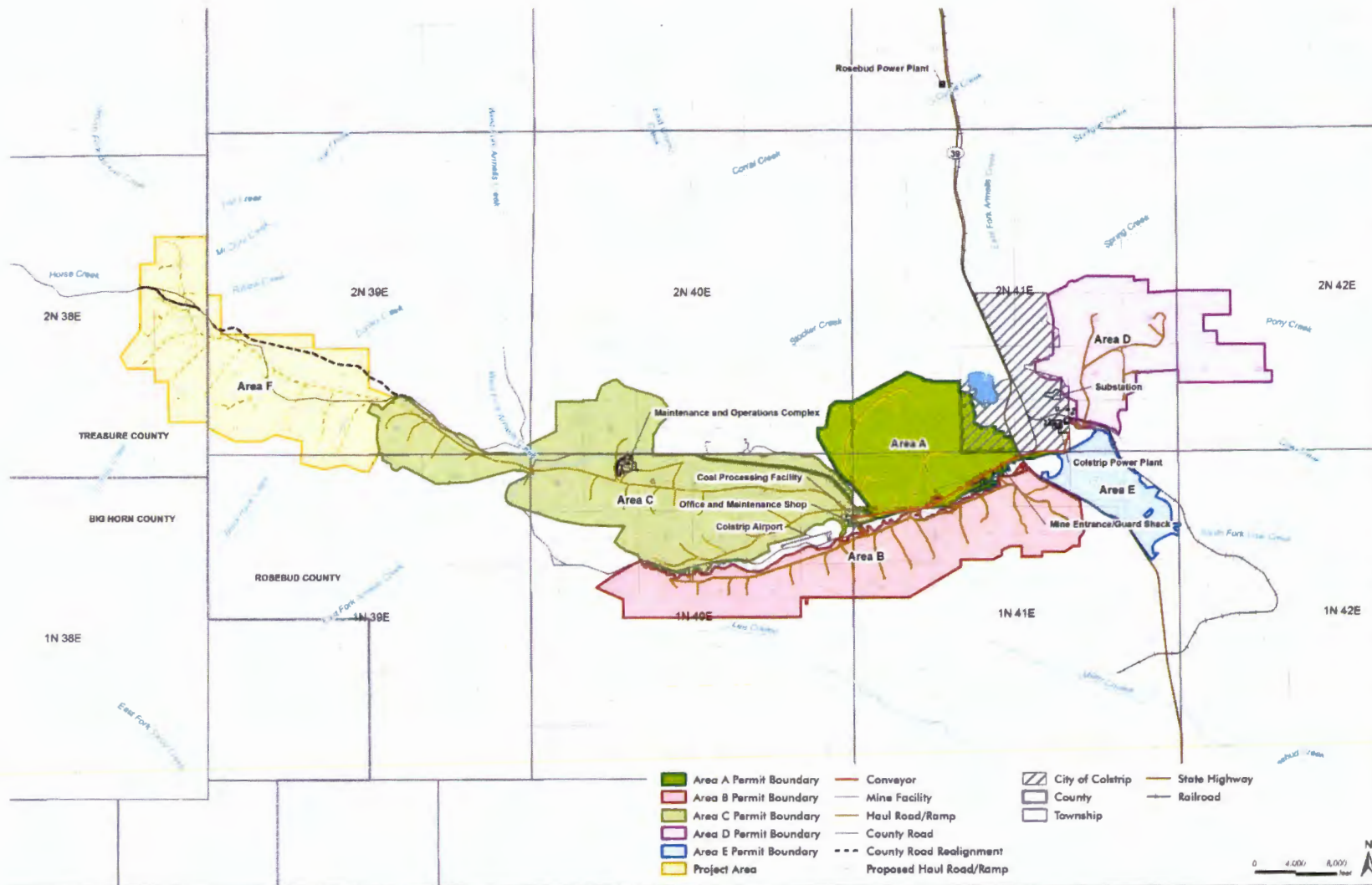


Figure 2. Location of Mine Facilities and Permit Areas

## I. RECORD OF DECISION

DEQ has prepared a concise public record of decision for which the EIS was prepared (new surface-mine permit at the Rosebud Mine). Pursuant to ARM 17.4.629(1), the following sections constitute DEQ's record of decision.

### DESCRIPTION OF THE ALTERNATIVES

DEQ and OSMRE evaluated three alternatives in the EIS: Alternative 1 – the No Action Alternative, Alternative 2 – the Proposed Action, and, Alternative 3 – the Proposed Action plus Environmental Protection 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). Alternatives 1, 2, and 3 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 2.6** of the Final EIS.

#### Alternative 1 – No Action

Alternative 1 considered a scenario where federal and private coal in the project area would not be mined. Under this No Action Alternative, Western Energy's Application for the project would not be approved by DEQ (see Final EIS, **Section 1.4.1.2, Montana Department of Environmental Quality, Conditions for Denial**). Without an approved state surface mine permit, OSMRE would not make a recommendation to the ASLM regarding a federal mining plan for the project. Without an approved permit and federal mining plan, Western Energy would not develop the project, resulting in 4,260 acres of previously undisturbed ground not being disturbed. It would also result in 33,885,390 tons of federal coal not being recovered from lease M-82816 and 37,036,115 tons of private coal not being recovered from private leases G-002 and G-002a. The existing environmental, social, and economic conditions described in Chapter 3 of the Final EIS would continue, unaffected by the construction and operation of the project.

Under the No Action Alternative, the proposed Area F permit would be denied. Selection of the No Action Alternative would not have changed the status of the other five areas of the Rosebud Mine that are currently permitted and being mined and/or reclaimed by Western Energy (see Final EIS, **Section 2.2, Description of Existing Mine and Reclamation Operations**), nor would it have changed the status of other areas of the Rosebud Mine that are in the permitting process.

#### Alternative 2 – Proposed Action (Selected Alternative)

Alternative 2, is the Proposed Action as put forward by Western Energy in its Application to DEQ for a new surface-mine operating permit for the project area. A detailed summary, including the proposed sequence of operations, reclamation plan, measures to protect the hydrologic balance, and proposed monitoring and mitigation measures, is provided in the

### Final EIS in **Section 2.4, Alternative 2 – Proposed Action.**

After operational start-up, Western Energy will mine 2,159 acres within the proposed 6,746-acre permit area (**Figure 3**). During the first 12 years of production, 4 million tons of coal will be mined annually, with the rate dropping to 3.25 million tons annually during the last 7 years of production. Mine features for the project area include mine pits, scoria pits, soil stockpiles, overburden stockpiles, haul roads, haul-road ramps, and the area of disturbance.

Mining in the first 6 years will occur between Donley Creek and Black Hank Creek and in a small section east of Black Hank Creek. In years 7 through 13, mining will occur between Robbie and Donley Creeks, except for several passes on the west side of Robbie Creek. In years 14 through 16, mining will occur between McClure Creek and Robbie Creek. In year 17, mining will be north of McClure Creek before moving to the area west of Black Hank Creek that will be mined in the final 2 years of mine life in the project area.

The coal-mining method will be the same area surface-mining method that Western Energy currently uses in other permitted areas. In advance of each mining pass, soil will be removed from the area and stockpiled according to type for later use during reclamation. Next, the overburden (material covering the coal seams) will be drilled and blasted. Overburden from the initial cut will be stockpiled as spoil. A dragline (or mobile equipment in some limited instances) will then be used to strip the overburden from succeeding mine passes. Spoil will be cast into the mined-out pit created by the preceding pass.

After the dragline exposes the coal seam in each pass, the coal will be drilled and blasted. A loading shovel, front-end loader, or backhoe will load blasted coal into coal haulers. The coal will be transported on an established haul road to Area C or Area A for crushing (**Figure 2**). After crushing, most of the coal will be sent via an existing 4.2-mile conveyor to the Colstrip Power Plant. Coal with higher sulfur content (an estimated 105,000 tons/year from the project area) will be trucked to the Rosebud Power Plant, which is also in Colstrip.

Western Energy will mine around an electric-transmission line and a gas-transmission pipeline that cross the project area and will relocate portions of the electric distribution lines that run throughout the project area. Western Energy also will relocate two segments of the Horse Creek Road, a county road that transverses the project area. Specifically, a 4.2-mile segment of Horse Creek Road in the northeast/north-central portion of the permit area (owned and maintained by Rosebud County) and a 1.3-mile segment in the northwestern portion of the permit area (owned and maintained by Treasure County) will be rerouted (**Figure 3**). The road relocation will be done in two phases. The longer segment, which is in Rosebud County, will be relocated during initial development of the project. The west end of the realignment, which is in Treasure County, will be relocated when mining moves into the northwestern corner of the project area (about 12 years later).

Reclamation will begin within two years of mining the initial pass and will continue as subsequent mine passes are completed until Phase IV bond release. Reclamation will facilitate the following postmine land uses: grazing land, cropland, and wildlife habitat. The



major reclamation steps planned to occur before and after mining include, but are not limited to, soil-material salvage and redistribution, pit backfilling, grading and contouring to the postmining topography, drainage construction, revegetation, and postmine monitoring. In addition to the reclamation of the landscape disturbed by mining operations, other disturbed areas that will require reclamation include the road system, mine plant facilities, sedimentation ponds, and temporary diversion structures.

### Alternative 3 – Proposed Action Plus Environmental Protection Measures

Under Alternative 3, OSMRE would require Western Energy to implement additional environmental protection measures that are above and beyond that required of MSUMRA. These measures (listed below and described in the Final EIS, **Section 2.5.2, Environmental Protection Measures**) were conceptual in nature and were designed to minimize environmental effects and to address key issues identified during the scoping process (see Final EIS, **Section 1.5.2.1, Key Issues Identified During Scoping for Detailed Analysis**). Alternative 3 Environmental Protection Measures include:

- Additional requirements for a Water Management Plan:
  - Enhancements of wetland habitats
  - Pit water management
  - Ground water monitoring and mitigation
  - Additional requirements for the Wetland Mitigation Plan: Natural water source for off-site mitigation areas
  - Mitigation sites to be within the same watershed
  - Deed restrictions or easements on mitigation sites
  - Soil Salvage from affected wetlands
  - Managed water releases
- Modifications to reclamation practices
  - Soil Salvage from affected wetlands (and stockpiling, if necessary) and redistributed
  - Organic amendments on small-acreage problem areas
  - 5-foot contours for postmine topography design
  - DEQ review of drainage basin design for select drainages
- Other mitigations
  - Geological resources survey
  - Paleontology resources survey

Under Alternative 3, Western Energy would develop, mine, and reclaim the project area as proposed in the Application. Under Alternative 3, additional measures would be included in the water-management plan, additional requirements for the wetland mitigation plan, and development of practices designed to improve reclamation (soil stockpiling, soil redistribution, and drainage-basin design) and revegetation success for wildlife habitat. Alternative 3 also included requirements for a geological survey and paleontology mitigations.

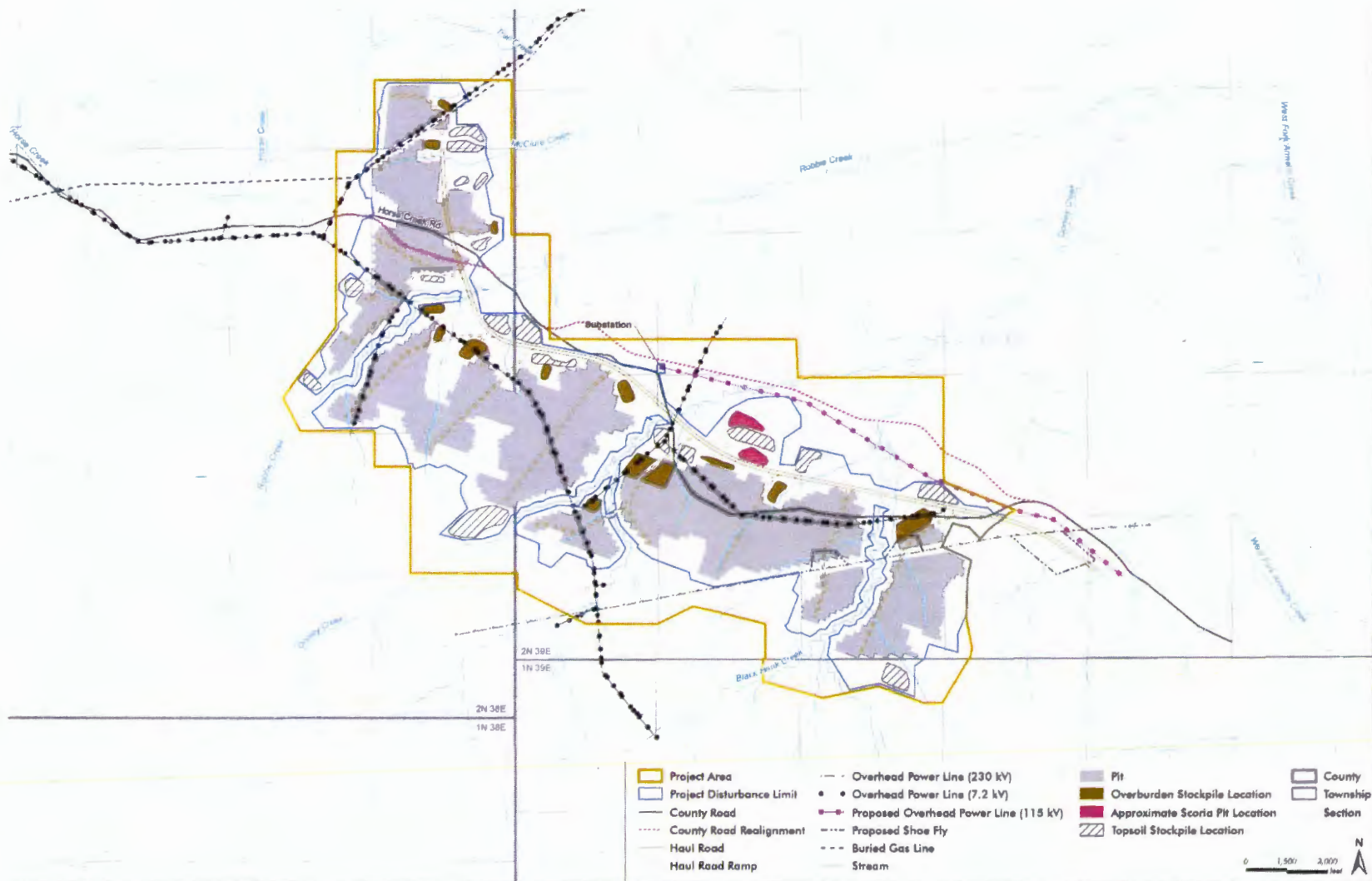


Figure 3. Project Area, Selected Alternative

## **DECISION**

DEQ, selects in part Alternative 2 – Proposed Action, consistent with Western Energy’s Application for C2011003F 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 Alternative 2 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 2 meets the project’s stated purpose and need (**Section 1.2**) and is consistent with all applicable regulatory requirements (**Section 2.5.1**), while minimizing potential impacts (**Section 2.5.2**). In addition, Alternative 2 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 Western Energy’s Application was complete on August 8, 2012 and acceptable under MSUMRA on October 5, 2018.

## **SPECIAL CONDITIONS SURROUNDING THE DECISION**

The *Written Findings* also revealed that a portion (approximately 74 acres) in the northwestern part of the proposed mine plan cannot be mined as proposed without causing material damage to the ground water outside of the permit area. DEQ’s *written findings* are in **Part II, MSUMRA Written Findings**, of this document.

## **PUBLIC INVOLVEMENT**

DEQ considered public and multi-agency input during the preparation of the EIS and in selection of an alternative. Public scoping identified the following eight key issues of concern (see Final EIS, **Section 1.5.1, Scoping**): 1) effects on surface water quality and quantity; 2) effects on ground water quality and quantity; 3) effects on wetlands and non-wetland waters of the U.S.; 4) effects on wildlife and their habitats; 5) effects of the project on climate change; 6) effects of the power plants on climate change and environmental resources; 7) effects on human health and environment; and 8) reclamation. All eight issues were analyzed in the EIS, however, pursuant to 75-1-201(2)(a), MCA, scoping issues 5 and 6 were not within DEQ’s jurisdiction to analyze because they were regional, national, or global in nature. Effects of climate change were analyzed to comply with NEPA.

After issuance of the Draft EIS, DEQ and OSMRE conducted a 60-day public comment period. The initial 45-day public comment period on the Draft EIS began on January 4,

2018, and was noticed in the *Federal Register*, on agency websites, in legal notices, and in local newspapers. At the request of the Northern Plains Resource Council and Montana Environmental Information Center, the comment period was extended by the agencies to March 5, 2018 (a 15-day extension). DEQ and OSMRE jointly hosted a public open house and town hall meeting in Colstrip, Montana, on February 13, 2018. DEQ and OSMRE considered public comments received on the Draft EIS and responded to substantive public comments (see **Appendix F, Comments on the DEIS and Responses**, in the Final EIS).

#### **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>. The Final EIS is also available to view at the DEQ Headquarters, the OSMRE Western Region, the BLM Miles City Field Office, the BLM State Office, and the Rosebud County Library (addresses and hours of availability are below). 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](mailto:JLane2@mt.gov).

Montana DEQ (Lee Metcalf Building)  
1520 East 6th Avenue  
Helena, MT 59620-0901  
Between the hours of 8:00 AM and 5:00 PM  
Monday through Friday (Closed Saturday  
and Sunday)

BLM Miles City Field Office  
111 Garryowen Road  
Miles City, MT 59301  
Between the hours of 7:45 AM and 4:30 PM  
Monday through Friday (Closed Saturday  
and Sunday)

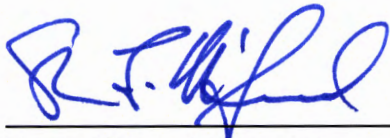
OSMRE, Western Region  
1999 Broadway, Suite 3320  
Denver, CO 80202  
Between the hours of 8:00 AM and 4:00  
PM Monday through Friday (Closed  
Saturday and Sunday)

BLM State Office, Billings, MT  
5001 Southgate Drive  
Billings, MT 59101  
Between the hours of 8:00 AM and 4:00  
PM Monday through Friday (Closed  
Saturday and Sunday)

Rosebud County Library  
201 North 9th Avenue  
Forsyth, MT 59327-0007  
Between the hours of 11:00 AM and 7:00 PM  
Monday through Thursday; 11:00 AM to  
5:00 PM Friday; 10:00 AM to 1:00 PM  
Saturday (Closed Sunday)

**APPROVAL**

This record of decision is effective on signature.



\_\_\_\_\_  
Shaun McGrath, Director  
Montana Department of Environmental Quality

4/18/19

\_\_\_\_\_  
Date

FOR ADDITIONAL INFORMATION REGARDING THE PROJECT, THIS RECORD OF DECISION OR THE FINAL EIS, PLEASE CONTACT DEQ PROJECT COORDINATOR, JEN LANE, DEQ DIRECTOR'S OFFICE, DEQ, PO BOX 200901, HELENA, MT 59620-0901, 406-444-4956, JLANE2@MT.GOV.

## II. MSUMRA WRITTEN FINDINGS

**Table I - Introductory Table**

Applicant .....	Western Energy Company
Name of Mine .....	Rosebud Coal Mine Area F
MSHA Number .....	24-01747
Type of Mine .....	Strip
Type of Application .....	New Permit
Area within existing permit boundary (acres) .....	0
Proposed Increase in Permit Area (Acres) .....	6,746
Total proposed permit area (acres) .....	6,746
Anticipated Annual Production .....	4 million tons

### **FINDINGS**

**Table II - Permit and Review Chronology**

November 2, 2011	Application for Rosebud Coal Mine Area F is received.
January 10, 2012	DEQ sends out First Round Completeness Deficiency
May 7, 2012	DEQ receives response to First Round Completeness Deficiency.
August 8, 2012	DEQ determines that Application # C2011003F (Area F) is complete and that an environmental impact statement is needed.
August 2, 2012	DEQ sends out the notice of application.
September 7, 2012	DEQ receives the affidavit of publication from Western Energy Company. The Public Notice was published August 9, 16, 23, and 30, 2012 in the Forsyth Independent Press.
October 1, 2012	DEQ receives comments from Western Environmental Law Center.
November 29, 2012	DEQ sends out First Round Acceptability Deficiency.
February 11, 2014	DEQ receives Western Energy's response to the first-round acceptability deficiency for Application # C2011003F (Area F).

June 9, 2014	DEQ sends the second-round deficiency letter to Western Energy.
July 10, 2015	DEQ receives Western Energy's response to the second-round acceptability deficiency for Area F.
November 6, 2015	DEQ sends the third-round deficiency letter to Western Energy.
February 29, 2016	DEQ receives Western Energy's response to the third-round acceptability deficiency for Area F.
June 27, 2016	DEQ sends the fourth-round deficiency letter to Western Energy.
August 29, 2016	DEQ receives Western Energy's response to the fourth-round technical comments for Area F.
December 23, 2016	DEQ sends the fifth-round deficiency letter to Western Energy.
May 5, 2017	DEQ receives Western Energy's response to the fifth-round acceptability deficiency for Area F.
June 7, 2017	DEQ sends the sixth-round deficiency letter to Western Energy.
June 26, 2017	DEQ receives Western Energy's response to the sixth-round acceptability deficiency for Area F.
September 1, 2017	DEQ received a copy of the Area F Resource Recovery and Protection Plan (R2P2) for Logical Mining Unit MTM 83589 containing Federal Coal Lease M82186.
October 19, 2017	DEQ sends the seventh-round deficiency letter to Western Energy.
December 21, 2017	DEQ receives Western Energy's response to the seventh-round acceptability deficiency for Area F.
April 20, 2018	DEQ sends the eighth-round deficiency letter to Western Energy.
June 8, 2018	DEQ receives Western Energy's response to the eighth-round acceptability deficiency for Area F.
October 5, 2018	DEQ found that the Area F original application, submitted on November 2, 2011, and revised through June 8, 2018, is complete and accurate, and the applicant has complied with Montana's permanent regulatory program. See Administrative Rule of Montana (ARM) 17.24.406(a).

October 9, 2018	DEQ publishes Notice of Acceptability in the Forsyth Independent Press on October 11 and 18, 2018. No comments were received.
November 2, 2018	DEQ receives a request from MEIC to extend comment period. DEQ agrees to accept comments until November 13, 2018.
November 2, 2018	DEQ receives a public records request from MEIC.
November 9-13, 2018	DEQ receives public comments from WELC, NPRC and various citizens.
November 29, 2018	DEQ completes and makes available to the public the Final EIS.
December 5, 2018	DEQ receives supplemental comments from MEIC.
December 20, 2018	DEQ receives supplemental comments from MEIC.
January 18, 2019	DEQ receives surety bond in the amount of \$13,750,000 from Western Energy.

1. DEQ found that the Rosebud Area F application, submitted on November 2, 2011, and revised through June 8, 2018, is complete and accurate, and the applicant has complied with Montana's permanent regulatory program. *See* Administrative Rule of Montana (ARM) 17.24.406(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) 17.24.406(a).
3. The Rosebud Area F 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 Rosebud Area F 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 4/15/19).
  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* section 6.1.2 of the Final EIS)(*see* memorandum of 5/9/2017 from OSM).
  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 Coal 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 4/15/19).

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 4/15/19).
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 Area F permit is \$13,750,000. The bond was calculated as part of the permit application submitted on November 2, 2011. DEQ determined that a bond in the amount of \$13,750,000 would be required for the application. DEQ received adequate bond on January 18, 2019.

#### **Private Property Takings**

13. 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 Rosebud Coal Mine Area F 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**

14. Based on the information found in Western Energy's Application and these findings, DEQ hereby approves in part Rosebud Area F application as revised through June 8, 2018, and DEQ grants the permit subject to the following conditions/modifications:

#### **CONDITIONS/MODIFICATIONS (IF ANY)**

15. ARM 17.24.318, 1131: Treatment of cultural resources within SMP C2011003F 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.
16. ARM 17.24.405(6)(c): As described in Section 9.6.5 of the Cumulative Hydrologic Impact Analysis, based on information contained in the permit application, DEQ has determined that the proposed mine plan in T2N, R38E, Section 12 is likely to result in a change in water quality in the Rosebud Coal outside the permit boundary which could result in material damage. As such, the application does not affirmatively demonstrate that the hydrologic consequences and cumulative hydrologic impacts

of mining in Section 12 will not result in material damage to the hydrologic balance outside the permit area. Therefore, in accordance with ARM 17.24.405(4), DEQ does not approve mine passes proposed in T2N, R38E, Section 12. The area excluded from the mine plan is shown in Figure 4.



Figure 4. Area excluded from mine plan.

17. ARM 17.24.510(1): The proposed use of bottom and fly ash within the proposed project area is prohibited. These waste materials are derived from activities conducted outside the permit area and have not been demonstrated, within the Area F application, to not adversely affect water quality, public health or safety, or other environmental resources. Any reference to bottom ash and fly ash must be removed from the Area F permit application (specifically references on pages 313-1, 313-2, 321-1, 321-2, 501-1 and 510-1) within 45 days of issuance of Permit C2011003F.

#### **RESPONSES TO PUBLIC COMMENTS**

See Attachment 3

#### **REFERENCES CITED**

Western Energy Area F Final Environmental Impact Statement (OSMRE and DEQ,  
November 29, 2018)

Western Energy Company Rosebud Coal Mine Area F Surface Mining Permit (SMP  
C2011003F)