



DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PO# 4820000251]

BLM Director's Response to the Montana Governor's Appeal of the BLM Montana/Dakotas State Director's Governor's Consistency Review Determination for the Miles City Field Office Proposed Resource Management Plan Amendment and Final Supplemental Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of response.

SUMMARY: The Bureau of Land Management (BLM) is publishing this notice of the reasons for the BLM Director's determination to reject the Governor of Montana's recommendations regarding the Miles City Field Office Proposed Resource Management Plan Amendment (RMPA) and Final Supplemental Environmental Impact Statement (Final SEIS).

ADDRESSES: A copy of the Record of Decision and Approved RMPA for the Miles City Field Office RMPA/Final SEIS is available on the BLM website at:
<https://eplanning.blm.gov/eplanning-ui/project/2021155/570>.

FOR FURTHER INFORMATION CONTACT: Heather Bernier, Division Chief for Decision Support, Planning, and National Environmental Policy Act; telephone 303-239-3635; address P.O. Box 151029, Lakewood, CO 80215; email hbernier@blm.gov.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Bernier. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: On May 17, 2024, the BLM released the Proposed RMPA/Final SEIS for the Miles City Field Office planning effort (89 FR 43432). In accordance with the regulations at 43 CFR 1610.3-2(e), the BLM submitted the Proposed RMPA/Final SEIS for the Miles City Field Office planning effort to the Governor of Montana for a 60-day Governor’s Consistency Review in order for the Governor to review the Proposed RMPA and identify any inconsistencies with State plans, policies, or programs. On July 16, 2024, the Governor of Montana submitted a response for the Miles City Field Office RMPA/Final SEIS to the BLM Montana/Dakotas State Director. The State Director reviewed the Governor’s response and the alleged consistency issues and did not accept the Governor’s recommendations. The BLM sent a written response to the Governor on August 12, 2024.

On September 18, 2024, the Governor of Montana appealed the State Director’s decision to the BLM Director. In reviewing these appeals, the regulations at 43 CFR 1610.3-2(e) state that “[t]he Director shall accept the (consistency) recommendations of the Governor(s) if he/she determines they provide for a reasonable balance between the state’s interest and the national interest.” On November 6, 2024, the BLM Director issued a response to the Governor detailing the reasons that the recommendations did not meet this standard. Pursuant to 43 CFR 1610.3-2(e), the basis for the BLM’s determination on the Governor’s appeal is presented below. The appeal response is being published verbatim.

“I am in receipt of your letter dated September 18, 2024, which contains the State of Montana’s appeal to the Bureau of Land Management (BLM) Montana/Dakotas State Director’s response to the Governor’s consistency review of the Miles City Field Office Proposed Resource Management Plan Amendment (RMPA) and Final Supplemental Environmental Impact Statement (SEIS). The Governor’s consistency review is an

important part of the BLM land use planning process, and we appreciate the significant time and attention that you and your staff have committed to this effort.

The applicable regulations at 43 CFR 1610.3-2(e) provide you with the opportunity to appeal the State Director's decision to not accept the recommendations you made in your consistency review letter. These regulations also guide my review of the appeal, in which I must consider whether you have raised inconsistencies with State or local plans, policies, and or programs. If inconsistencies are raised, I consider whether your recommendations address the inconsistencies and provide for a reasonable balance between the national interest and the State of Montana's interest.

I have completed my review of your appeal and determined that the recommendation you have provided does not meet this standard for the reasons detailed in the following paragraphs.

In your appeal, you allege the three consistency issues below:

- “Alternative D is inconsistent with Montana’s Constitutional Mandate to utilize State Trust Lands to fund schools and other public institutions.”
- “Alternative D is inconsistent with Montana’s ‘All-Of-The-Above’ Energy Strategy, and the SEIS fails to consider critical local energy plan.”
- “Alternative D conflicts with Montana’s Coal Revenue Trust Fund Policy.”

It is your recommendation that ‘the BLM withdraw the Miles City Field Office RMPA/SEIS and work collaboratively with the State to form alternatives that honor State plans, policies, and programs.’

Upon review, I find that your recommendation does not present a reasonable balance between the national and the State's interest. The Proposed RMPA/Final SEIS is a land use level review specific to the Miles City Field Office and is in response to the Federal district court's order in *Western Organization of Resource Councils, et al. v. Bureau of Land Management*, Civil Action No. CV-00076-GF-BMM (D. Mont. 2022).

The BLM developed a range of alternatives to meet the purpose and need of the Proposed RMPA/Final SEIS and the court's order, such as to complete new coal screens in accordance with 43 CFR 3420.1-4; provide additional land use planning level analysis that considers no-leasing and limited coal leasing alternatives; and disclose the public health impacts, both climate and non-climate, of burning fossil fuels (coal, oil, and gas) from the planning area.

While there are State and Federal policies that may encourage coal mining and facilitate the orderly development of coal resources, they do not mandate that coal mining would be authorized wherever coal reserves may be present. The Proposed RMPA/Final SEIS also only applies to federally administered coal in the Miles City Field Office planning area and does not make decisions on State lands or privately owned coal resources. Similarly, the BLM's regulatory process does not apply to State lands and does not preclude the State from making management decisions for State trust lands, nor preclude the State's authority to manage[], permit, and bill other uses of State lands accordingly to meet the State's fiduciary responsibility.

Additionally, under Alternative D, the State's mineral estate was determined to not have development potential or not expected to be leased or mined within the life of the plan. This is due to: 1) no new mines projected, 2) the Rosebud Mine having sufficient coal reserves from existing leases, and 3) the Spring Creek Mine projecting needs from pending Federal leases and subsequent 1,300 acres of Federal coal leases. The BLM also carefully considered current and future coal demand with national and international trends as they relate to coal development in the Miles City planning area. The BLM recognizes a potential future decrease, but that is expected as the national coal market is in decline and trending to continue that decline throughout the life of the plan.

Finally, the BLM has prepared the Miles City Proposed RMPA/Final SEIS in accordance with all applicable Federal laws, regulations, and policies. The BLM did

carefully review and consider applicable State, local, and other Federal agency plans, policies, and programs in the development of the Miles City Proposed RMPA/Final SEIS. The BLM is consistent, to the extent practicable, with these plans as per the provisions of the Federal Land Policy and Management Act and the planning regulations at 43 CFR 1610-3-2.”

(Authority: 43 CFR 1610.3-2(e))

Nada Wolff Culver,

Principal Deputy Director.

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