

APPENDIX A

STANDARD AND SPECIAL LEASE STIPULATIONS DEVELOPED FOR THE LEASE BY MODIFICATION TRACT

SPECIAL STIPULATIONS - In addition to observing the general obligations and standards of performance set out in the current regulations, the lessee shall comply with and be bound by the following stipulations. These stipulations are also imposed upon the lessee's agents and employees. The failure or refusal of any of these persons to comply with these stipulations shall be deemed a failure of the lessee to comply with the terms of the lease. The lessee shall require his agents, contractors and subcontractors involved in activities concerning this lease to include these stipulations in the contracts between and among them. These stipulations may be revised or amended, in writing, by the mutual consent of the lessor and the lessee at any time to adjust to changed conditions or to correct an oversight.

(a) CULTURAL RESOURCES -

(1) Before undertaking any activities that may disturb the surface of the leased lands, the lessee shall conduct a cultural resource intensive field inventory in a manner specified by the Authorized Officer of the Bureau of Land Management (BLM¹) (hereinafter referred to as the Authorized Officer) on portions of the mine plan area, or exploration plan area, that may be adversely affected by lease-related activities and which were not previously inventoried at such a level of intensity. Cultural resources are defined as a broad, general term meaning any cultural property or any traditional lifeway value, as defined below:

Cultural property: a definite location of past human activity, occupation, or use identifiable through field inventory (survey), historical documentation, or oral evidence. The term includes archaeological, historic, or architectural sites, structure, or places with important public and scientific uses, and may include traditional cultural or religious importance to specified social and/or cultural groups. Cultural properties are concrete, material places, and things that are classified, ranked, and managed through the system of inventory, evaluation, planning, protection, and utilization.

Traditional lifeway value: the quality of being useful in or important to the maintenance of a specified social and/or cultural group's traditional systems of (a) religious belief, (b) cultural practice, or (c) social interaction, not closely identified with definite locations. Another group's shared values are abstract, nonmaterial, ascribed ideas that one cannot know about without being told. Traditional lifeway values are taken into account through public participation during planning and environmental analysis.

The cultural resources inventory shall be conducted by a qualified professional cultural resource specialist; i.e., archaeologist, anthropologist, historian, or historical architect, as appropriate and necessary, and approved by the Authorized Officer (BLM if the surface is privately owned). A report of the inventory and recommendations for protection of any cultural resources identified shall be submitted to the Western Regional Director of the Office of Surface Mining (hereinafter referred to as the Assistant Director) by the Authorized Officer. Prior to any on-the-ground cultural resource inventory, the selected professional cultural resource specialist shall consult with the BLM, the Northern Cheyenne Cultural Protection Board, and the Crow Historic and Cultural Committee. The purpose of this consultation will be to guide the work to be performed and to identify cultural properties or traditional lifeway values within the immediate and surrounding mine plan area. The lessee shall undertake measures, in accordance with instructions from the Assistant Director to protect cultural resources on the leased lands. The lessee shall not commence the surface-disturbing activities until permission to proceed is given by the Assistant Director in consultation with the Authorized Officer.

¹ Refer to page v for a list of abbreviations and acronyms used in this document.

- (2) The lessee shall protect all cultural resource properties within the lease area from lease related activities until the cultural resource mitigation measures can be implemented as part of an approved mining and reclamation plan or exploration plan.
- (3) The cost of carrying out the approved site mitigation measures shall be borne by the lessee.
- (4) If cultural resources are discovered during operations under this lease, the lessee shall immediately bring them to the attention of the Assistant Director, or the Authorized Officer if the Assistant Director is not available. The lessee shall not disturb such resources except as may be subsequently authorized by the Assistant Director. Within two (2) working days of notification, the Assistant Director will evaluate or have evaluated any cultural resources discovered and will determine if any action may be required to protect or preserve such discoveries. The cost of data recovery for cultural resources discovered during lease operations shall be borne by the surface managing agency unless otherwise specified by the Authorized Officer.
- (5) All cultural resources shall remain under the jurisdiction of the United States until ownership is determined under applicable law.
- (6) The mitigation plan found in Appendix D of the EA DOI-BLM-MT-020-2010-29 for Spring Creek Coal Lease Modification MTM 069782 for mitigating impacts to NRHP Cultural site (24BH3392) must be initiated and completed prior to surface disturbing activities occurring on the tracts.
- (7) Prior to surface disturbance, the information for archaeological sites 24BH2530, 24BH2531, 24BH3388, 24BH3396, ad 24BH3401 in Section 35, T08S, R39E will be updated. The purpose of the updating is to better refine the spatial extent and relationships between the sites, man-made disturbances, and Archaeological Site 24BH1589 on adjacent state lands.

(b) PALEONTOLOGICAL RESOURCES -

If a paleontological resource, either large and conspicuous, and/or of significant scientific value is discovered during construction, the find will be reported to the authorized officer immediately. Construction will be suspended within 250 feet of said find. An evaluation of the paleontological discovery will be made by a BLM approved professional paleontologist within five (5) working days, weather permitting, to determine the appropriate action(s) to prevent the potential loss of any significant paleontological value. Operations within 250 feet of such discovery will not be resumed until written authorization to proceed is issued by the Authorized Officer. The lessee will bear the cost of any required paleontological appraisals, surface collection of fossils, or salvage of any large conspicuous fossils of significant interest discovered during the operation.

(c) PUBLIC LAND SURVEY PROTECTION -

The lessee will protect all survey monuments, witness corners, reference monuments, and bearing trees against destruction, obliteration, or damage during operations on the lease areas. If any monuments, corners or accessories are destroyed, obliterated or damaged by this operation, the lessee will hire an appropriate county surveyor or registered land surveyor to reestablish or restore the monuments, corners, or accessories at the same locations, using surveying procedures in accordance with the "Manual of Surveying Instructions for the Survey of Public Lands of the United States." The survey will be recorded in the appropriate county records, with a copy sent to the authorized officer.

(d) RESOURCE RECOVERY AND PROTECTION PLAN (R2P2) -

Notwithstanding the approval of a resource recovery and protection plan (R2P2) by the BLM, lessor reserves the right to seek damages against the operator/lessee in the event (i) the operator/lessee fails to achieve maximum economic recovery (MER) [as defined at 43 CFR 3480.0-5.2(21)] of the recoverable coal reserves or (ii) the operator/lessee is determined to have

caused a wasting of recoverable coal reserves. Damages shall be measured on the basis of the royalty that would have been payable on the wasted or unrecovered coal.

The parties recognize that under an approved R2P2, conditions may require a modification by the operator/lessee of that plan. In the event a coal bed or portion thereof is not to be mined or is rendered unmineable by the operation, the operator shall submit appropriate justification to obtain approval by the authorized officer to leave such reserves unmined. Upon approval by the authorized officer, such coal beds or portions thereof shall not be subject to damages as described above. Further, nothing in this section shall prevent the operator/lessee from exercising its right to relinquish all or a portion of the lease as authorized by statute and regulation.

In the event the authorized officer determines that the R2P2 as approved will not attain MER as the result of changed conditions, the authorized officer will give proper notice to the operator/lessee as required under applicable regulations. The authorized officer will order a modification if necessary, identifying additional reserves to be mined in order to attain MER. Upon a final administrative or judicial ruling upholding such an ordered modification, any reserves left unmined (wasted) under that plan will be subject to damages as described in the first paragraph under this section.

Subject to the right to appeal hereinafter set forth, payment of the value of the royalty on such unmined recoverable coal reserves shall become due and payable upon determination by the authorized officer that the coal reserves have been rendered unmineable or at such time that the lessee has demonstrated an unwillingness to extract the coal.

The BLM may enforce this provision either by issuing a written decision requiring payment of the Minerals Management Service (MMS) demand for such royalties, or by issuing a notice of non-compliance. A decision or notice of non-compliance issued by the lessor that payment is due under this stipulation is appealable as allowed by law.

(e) MULTIPLE MINERAL DEVELOPMENT

Operations will not be approved which, in the opinion of the authorized officer, would unreasonably interfere with the orderly development and/or production from a valid existing mineral lease issued prior to this one for the same lands.

The BLM realizes that coal mining operations conducted on Federal coal leases issued within producing oil and gas fields may interfere with the economic recovery of oil and gas; just as Federal oil and gas leases issued in a Federal coal lease area may inhibit coal recovery. BLM retains the authority to alter and/or modify the R2P2 for coal operations on those lands covered by Federal mineral leases so as to obtain maximum resource recovery.

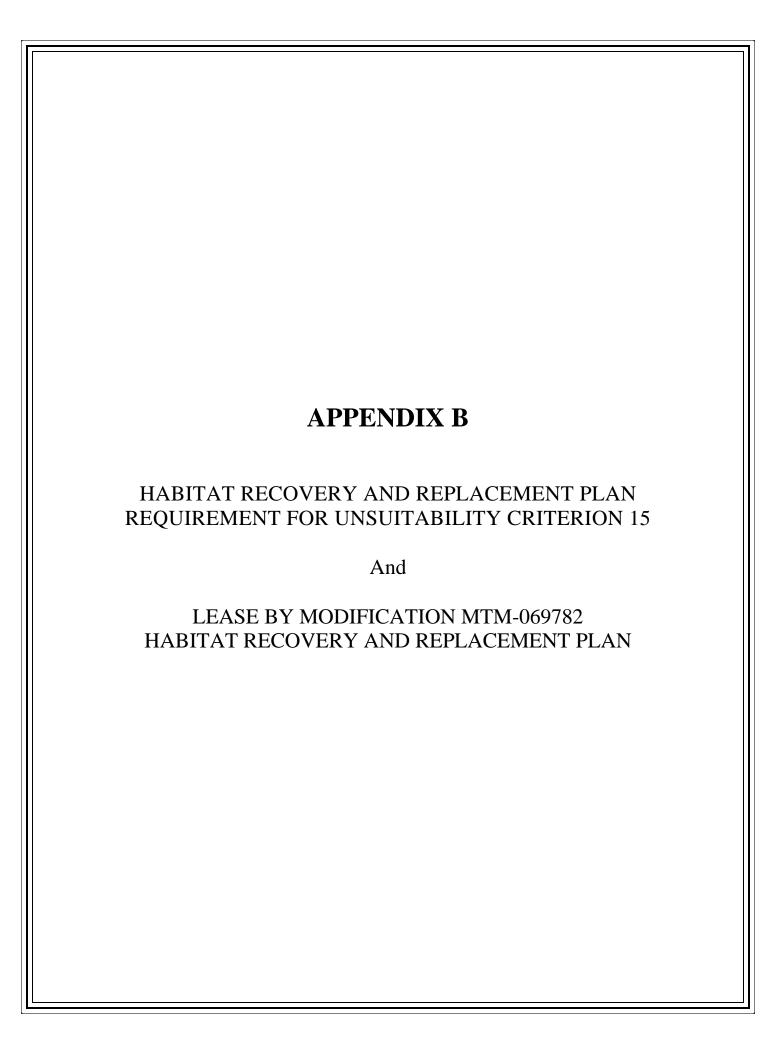
(f) RECLAMATION/WILDLIFE -

SCCC will be required to reclaim disturbed habitats within the areas designated as *Unsuitable for Leasing with Exceptions Applied* back to wildlife habitat as outlined in the Habitat Recovery and Replacement Plan (HRRP), which is included in part in Appendix B. This reclamation stipulation suffices for the needs of other wildlife species within the tract disturbance area.

To mitigate the loss of and replace habitats within the tract disturbance area delineated as value sage-grouse habitat (BLM 2006) SCCC will be required to adhere to terms of the HRRP, which is included in part in Appendix B.

STIPULATIONS DEVELOPED FOR MTM-74913 SCCC LAND USE LEASE ASSIGNMENT/RENEWAL/AMENDMENT

- a. Land Use Lease MTM-74913 is being renewed for an additional 20 years, along with the amendment, and will expire April 22, 2032.
- b. This amendment is subject to the terms and conditions in 43 CFR 2920, the mitigations set forth in the application/plan of development, the stipulations and special conditions of the original lease, except Item (i) of "Section 3 Restrictions on Use" of the original lease regarding reclamation is no longer in effect. Reclamation of the federal land affected by the LUL will be in accordance with the Habitat Recovery and Replacement Plan (HRRP) and the reclamation plan, contained in the approved State and Federal Mine Permits.
- c. The Flood Control Structures will be constructed in accordance with the Mine Safety and Health Administration (MSHA) design and operation requirements.
- d. The holder shall comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated. In any event, the holder(s) shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, et seq.) with regard to any toxic substances that are used, generated by or stored on the right-of-way or on facilities authorized under this right-of-way grant. (See 40 CFR, Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 761.1-761.193.) Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR, Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 102b. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any toxic substances shall be furnished to the authorized officer concurrent with the filing of the reports to the involved Federal agency or State government.
- e. The holder shall conduct all activities associated with the construction, operation, and termination of the land use lease within the authorized limits of the lease.
- f. The holder shall be responsible for weed control on disturbed areas within the limits of the lease. The holder is responsible for consultation with the authorized officer and/or local authorities for acceptable weed control methods.
- g. The holder shall coordinate with the parties holding authorized rights on the adjacent and affected lands [such as working out other grazing options with the grazing permittees/lessees].
- h. This land use authorization renewal and amendment are issued subject to a subsequent appraisal by a qualified appraiser of the Bureau of Land Management. The authorized user agrees to pay the Bureau of Land Management, upon demand, those fees determined in the appraisal to represent the fair market rental for the use of the public lands involved in this land use authorization amendment.



HABITAT RECOVERY AND REPLACEMENT PLAN REQUIREMENT FOR UNSUITABILITY CRITERION 15

(From Management Situation Analysis (MSA) available at the BLM Miles City Field Office)

A. The lessee shall be required to mitigate for grouse habitat loss where applicable and the resultant loss or displacement of these species due to surface coal mining operation.

The habitat recovery and replacement plan shall indicate the methods to be employed by the lessee which will ensure that the recovered or replaced land has the capacity to support these species, as determined by Bureau of Land Management (BLM¹) in consultation with the State of Montana.

Mitigation methods may require the lessee to employ techniques for wildlife range manipulation or intensive wildlife habitat range management. Habitat recovery or replacement may not be completely feasible in the permit area; therefore, recovery or replacement may be accomplished on lands made available through the surface management agency, the state or the lessee outside the permit area in combination with recovery and replacement methods on suitable lands within the permit area. In addition, habitat enhancement may be undertaken, outside the permit area, to accommodate or compensate for these displaced species that will move from the mining area during disturbance.

The habitat recovery and replacement plan shall consist of, at least, the following five parts:

- 1. A habitat analysis of the permit areas which:
 - a. Identifies the state wildlife species of high interest listed in paragraph A which occupy the permit area.
 - b. Includes an analysis of the quality of the habitat for those species.
 - c. Map and identify all riparian areas or mesic woody draws critical to the survival of these species.
- 2. A detailed description of the methods selected by the lessee to recover, replace or mitigate habitat loss, together with a comparative analysis of alternate methods which were considered and rejected by the lessee and the rationale for the decision to select the proposed methods.

The methods utilized by the lessee for recovery and replacement may include, but are not limited to, any of the following techniques:

- a. Increasing the quantity and quality of forage available to these wildlife species.
- b. The acquisition of critical wildlife habitat for the identified species.
- c. Mechanical manipulation of low quality wildlife habitat.
- d. Recovery, replacement or protection of critical wildlife habitat by selected fencing.
- e. Development of grazing management system that will enhance the wildlife habitat potential.

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¹ Refer to page v for a list of abbreviations and acronyms used in this document.

- 3. A timetable specifying that which will be required to accomplish the habitat recovery or replacement plan and showing how this timetable relates to the overall mining plan.
- 4. An evaluation of the final plan by the BLM in consultation with the State of Montana. The State and BLM may comment on the methods selected and the techniques to be employed by the lessee and may recommend alternate recovery or replacement methods. If there are recommended alternative methods, the lessee shall consider those recommendations and, if the lessee rejects them, the lessee shall indicate its reasons as required by provision 2 above. If no State or BLM comment is included in the plan, the lessee will provide verification of its consultation with these agencies and the plan may be considered without comment.
- 5. In the development of this plan, direct liaison with the State of Montana is essential.
- B. The stipulations set forth herein are not, in any way, intended to conflict with nor preempt the responsibilities of the Department of State Lands, nor any other state or federal agency, regulating surface coal mining and reclamation. Lessee shall comply with all valid and applicable laws and regulations of federal, state and local governmental authority.
- C. The authorized BLM officer shall provide written approval of the plan to the lessee. Resolution of conflicts, during development of this plan, will be brought to the attention of the authorized officer. Failure to resolve the conflicts or comply with agreements worked out under this plan will constitute noncompliance as described in Section 21 of the coal lease.

LEASE BY MODIFICATION MTM-069782 HABITAT RECOVERY AND REPLACEMENT PLAN

Note: The entire Habitat Recovery and Replacement Plan document, including attachments, maps, and supporting baseline habitat data, can be viewed at the BLM Miles City Field Office Montana Department of Environmental Quality/Coal and Uranium Bureau or is available in electronic format from the Miles City Field Office.

Introduction

On May 15, 2007, Spring Creek Coal Company (SCCC) submitted an application for a coal lease modification MTM-069782 in T. 8 S., R. 40 E., Section 31; and T. 9 S., R. 40 E., Section 6, Big Horn County, Montana. The lease by modification (LBM) encompasses approximately 498 acres adjacent to the current lease areas that would be mined in accordance with the requirements of Surface Coal Mine Permit #79012. The disturbance within and associated with this LBM is approximately 820 acres.

On March 4, 2009, SCCC submitted a proposal assigning Spring Creek Coal Company's Land Use Lease (LUL) MTM-74913 from Spring Creek Coal Company to Spring Creek Coal Limited Liability Company and renewing the land use lease for an additional 20 years and amending the lease to authorize the use of 197.12 additional acres of public land for coal mine layback, construction of a flood control structure, placement of topsoil and overburden stockpiles, and establishment of transportation and utility line corridors in order to fully recover coal reserves from existing Federal Coal Lease MTM-94378 and Montana State Coal Lease C-1088-05, and from the above referenced pending LBM. The disturbance within this LUL amendment area total approximately 197 acres.

The following document is a Habitat Recovery and Replacement Plan (Plan) that was developed through consultation with the Bureau of Land Management (BLM), Montana Fish Wildlife and Parks (MFWP), and the Montana Department of Environmental Quality (MDEQ). This consultation was necessary due to the requirements of the Unsuitability Criteria found in 43 CFR 3461.5(o) (1) which states in part "On some Criterion 15 acreage a lease may be issued if, after consultation with the MDEQ, the surface management agency determines that all or certain methods of coal mining will not have a significant long term impact on the species [sage-grouse] being protected." The framework of this Plan follows the BLM's Appendix II, Habitat Recovery and Replacement Plan Requirement for Unsuitability Criterion 15.

The Habitat Recovery and Replacement Plan for SCCC is based on a holistic approach that considers proper conservation practices for all species of concern, including the sage-grouse. SCCC will also continue to follow proactive practices, such as monitoring and treating for mosquito larvae in ponds and stored tires around the mine site to prevent potential West Nile Virus with potential impacts to sage-grouse. SCCC is including several conservation practices as determined through collaboration with MFWP, BLM, and MDEQ. Specifically, the Plan includes habitat analyses, enhancements to the current approved reclamation plan, and off-site mitigation options.

- 1. A detailed habitat analysis of the permit area will accomplish the following:
 - a. Identify the state wildlife species of high interest listed in paragraph A which occupy the permit area.

The wildlife chapter in the Final Supplement to the Montana Statewide Oil and Gas Environmental Impact Statement (SEIS) and Amendment of the Powder River and Billings Resource Management Plans (December 2008a) addresses the sage-grouse as a State species of special concern (pages 3-118 through 3-125). Due to its location within baseline and annual survey perimeters, SCCC has monitored wildlife activity, including spring sage-grouse use, on the LBM every year from 1976 through 2008. Sage-grouse use of the LBM during other seasons was monitored with less regularity during that period. No sage-grouse leks have been recorded on the LBM surface during the last 33 years. SCCC will continue to monitor for sage-grouse and other wildlife species as per the Administrative Rules of Montana (ARM) 17.24.1129 and 17.24.751 through the life of the mine.

b. Include an analysis of the quality of the habitat for those species.

It is shown in the Final SEIS on Map 3-13 (page 3-124) that the LBM is located within a "crucial sage-grouse habitat area" (CX Ranch B). SCCC conducted baseline permitting requirements (per ARM 17.24.304) in 2006/2007. These baseline studies were inclusive on numerous aspects including wildlife (Attachment 1 and Maps 1 and 2), vegetation and range analysis (Attachment 3 and Map 5), soils (Attachment 4 and Map 6), and water (Attachment 5). This data has been compiled and submitted to the MDEQ – Industrial and Energy Minerals Bureau; the wildlife component was included with the 2007 Annual Wildlife Monitoring Report (enclosed), submitted to MDEQ. The summary reports show sage-grouse have not used the LBM area for lekking activities, though less is known about other potential seasonal use. The LBM has been described as having very little, if any, surface water in the immediate area. Much of the vegetation within the LBM is comprised of sagebrush, cheatgrass, and other native and introduced plant species, and the draws and steeper aspect areas include sporadic stands of trees (mostly juniper). These data have been submitted with the baseline studies. However, the influence of these physical characteristics on the presence/absence of sage-grouse in the LBM, beyond the spring display season, has not yet been determined.

c. Map and identify all riparian areas critical to the survival of the species.

Per the baseline permitting requirements as stated above, riparian areas were dry and no apparent subirrigation was available to produce or support stands of succulent forbs. Twenty-three riparian areas were documented during the studies. There are various mesic woody draws along the drainages of the ephemeral Pearson Creek and its south tributary. Baseline studies (Attachment 2, Maps 3, 4, and 4a) have also documented 26 cliff features and 91 rock outcrop features in Sections 6, 31, 35, and 36 of the LBM area. Slope assessment also showed approximately 32% of the topography to be greater than 15% slope. Baseline drawings also show a predominance of juniper and pine trees along drainages that support raptor perching and/or nesting activity. These features are unattractive habitat for sagegrouse. These data have been submitted with the baseline studies to the MDEQ as part of revising the MDEQ mining permit. Permitting the LBM through MDEQ will include additional details on the plans.

- 2. A detailed description of the methods selected by the lessee to recover, replace or mitigate habitat loss; a comparative analysis of alternate methods that were considered and rejected by the lessee, and the rationale for the decision to select the proposed methods. The methods utilized by the lessee for recovery and replacement may include, but are not limited to, any of the following techniques:
 - a. Increasing the quantity and quality of forage available to these wildlife species.

Sage-grouse utilize diverse forages and habitats during different seasons – for example: green forbs and grasses found in mesic habitats in spring and summer, forbs for brood rearing, and sagebrush leaves throughout the year, with almost total use during winter. Additionally, sagebrush provides an important yearlong habitat component for nesting cover, security cover, and thermal cover. The importance of sagebrush grasslands to sage-grouse is well documented; however, re-establishment of this habitat type has been met with varying degrees of success in coal mine reclamation. At SCCC, several reclamation techniques have also yielded varying degrees of success; however, the experimentation has lead to the development of more than one successful technique (e.g., direct haul of platy soils, use of scoria and suitable spoil as a growth media, and use of seed mixes containing more shrubs with a reduced herbaceous component). One such reclamation example is Par 2C in Pit #1, for which SCCC received an Office of Surface Mining Reclamation award in 2005.

In recognition of the difficulties in establishing sagebrush, SCCC will continue to investigate several methods of sagebrush establishment. Improved methods may include considerations of focused timing windows for sagebrush seeding and modifications to seedbed preparation methods, among other potential options to enhance sagebrush establishment. Additionally, SCCC will evaluate enhancing specific areas of existing reclamation with sagebrush interseeding and or other normal husbandry practices. One experimental method will be conducted by chemically fallowing pilot areas of reclaimed vegetation, followed by interseeding with sagebrush. Example pilot areas would consist of multiple plots covering less than one-half-acre each in Par 1E or Par 4B.

Prior to mining the baseline studies identified 626 acres of pastureland at SCCC. SCCC's Mining Permit #79012 includes a revegetation plan which establishes only 440 acres of pastureland in the postmine. As a result SCCC voluntarily replaced 186 acres of pastureland with other land use types which contain all native species seed mixes (South Fork Amendment, Application 174 approved 01/08).

Additionally, SCCC commits to revising their revegetation plan by removing the pastureland seed mix. This revision eliminates seeding future reclamation as pastureland on lands owned by SCCC. As a result, this revision will seed roughly 440 acres currently identified as pastureland with all native seed mixes such as sagebrush grassland, for example. SCCC will continue to confer with the MDEQ to obtain their approval to further revise the reclamation plan as part of permitting Application 183, the Pearson Creek Permit Amendment. This collaborative approach will assure the design addresses the diverse needs of all wildlife.

SCCC and MDEQ anticipate approval of Application 183 in 2009. Upon MDEQ approval, the revised reclamation plan will be incorporated into the mining permit. However, SCCC will work with MDEQ to approve sagebrush grassland or other native seed mixes which could potentially be applied in fall 2008.

b. Acquiring critical wildlife habitat for the identified species.

SCCC anticipates disturbing approximately 848 acres inside the crucial sage-grouse area associated with the mining activities within the LBM and LUL amendment areas. In 2007, SCCC donated \$135,000 towards the Montana Land Owner Incentive Program (LIP) as part of permitting Pit #4. SCCC will provide additional funding in the amount of \$12 per acre, or the established LIP payment rate, at the time these funds are needed, for each acre to be disturbed by the LBM mining activities. SCCC understands that offering a standard LIP program agreement to landowners in the area may be difficult. SCCC will work with MFWP to assist them with finding eligible lands for applying the pool of funds towards the LIP program or similar conservation efforts that will provide protection of sage-grouse habitat. Funds could be used to implement grazing systems, conservation easements, or to buy or retire private mineral leases, for example. SCCC offers to assist the BLM and MFWP in identifying landowners eligible for conservation programs, with an emphasis on lands inside the crucial sage-grouse areas and/or with active sage-grouse leks or identified winter ranges.

SCCC will work with the BLM and MFWP to find areas at least equal to the acreage disturbed by the LBM mining activity. At least one year prior to disturbing the crucial sage-grouse habitat within the LBM, SCCC will provide the MFWP with a list of landowners either within the lands identified as crucial sage-grouse habitat in the SEIS area or having similar habitat characteristics. This list of landowners will have been initially contacted by SCCC to introduce the conservation programs, and will include those individuals who have expressed an interest in participating.

c. Performing manipulation to improve habitat.

SCCC will provide MFWP and BLM with a manipulation study plan defining the treatment areas, methods of manipulation, and monitoring methods. The study plan will focus on areas of mature and/or low quality sagebrush stands in the LBM area. Additional lands beyond the LBM area will also be included in areas identified for habitat improvement; with agency approval, as opportunities and resources become available. The study plan will be approved by MFWP and BLM prior to implementation.

With agreement of the agencies, SCCC will study and assess manipulation beginning in 2009, after issuance of the LBM. A phased approach over several years will be used to assess various methods (including, but not limited to, size of area being manipulated, aspect of the terrain being manipulated, and manipulation techniques). Examples of m manipulation include, but are not limited to, cutting, mowing, combining, fire, grazing, raking, harrowing, pitting, and aerating. The results will be used as a guide for the successful use of manipulation methods for future reclamation planning. Dependent upon the location of the vegetation being manipulated, the area could be assessed for response(s) over several years.

d. Using selected fencing for recovery, replacement, or protection of critical wildlife habitat.

Fencing has been known to cause sage-grouse fatalities. SCCC will consult with the agencies to determine if removal of some fencing between Sections 36 and 31 would benefit the sage-grouse habitat. Fencing may be used to control grazing on grouse habitat. Any new fencing will be constructed to include wildlife friendly design.

e. Developing grazing management systems that will enhance the wildlife habitat potential.

Properly controlled livestock grazing can be a useful land management tool for enhancing wildlife habitat. Grazing can stimulate the growth of grasses and forbs, which are important habitat components for a wide variety of wildlife species, including sage-grouse. Managed grazing can also contribute to the dispersal and fertilization of native seeds as livestock herds move through the area.

The LBM area has not been grazed by domestic livestock for the past two seasons, and grazing options are limited in that area due to the lack of natural streams and standing water. Current grazing agreements between SCCC and local ranchers are renewed annually. SCCC will work with the local livestock operator in the development of future grazing agreements in Sections 31 and 6 to ensure that they provide livestock forage while also enhancing the composition and structure of sagebrush grassland and other vegetation communities in the LBM. SCCC will seek flexibility in modifications to the timing and extent of the grazing program to adjust to natural conditions such as drought or excessive precipitation. That flexibility will ensure that grazing operations do not negatively impact wildlife habitat in the LBM area. Any changes in grazing use on BLM administered lands will be approved by the BLM's Miles City FO prior to implementation.

3. A timetable specifying what will be required to accomplish the habitat recovery or replacement plan and will show how this timetable relates to the overall mining plan.

Timetables specific to each item listed in provision 2 have been provided. The current mine plan proposes mining activity in the LBM area starting in 2012 and continuing through end of mine life in late 2028. This does not take into account potential future coal leasing activity. That potential is unknown at this time due to several factors of uncertainty. As previously described, the reclamation plan has been revised as part of this mitigation plan to include additional native seed mixes to create a mosaic of wildlife habitat; for example sagebrush grassland. These revised reclamation practices, as well as experimental manipulation practices, which prove to be successful, will be applied to areas currently being mined. As mining advances into the LBM area, reclamation will follow the approved plan. Phase III bond release signifies that MDEQ has approved the satisfactory establishment of post-mining vegetative composition and cover. The bonding period is a minimum of 10 years after the reclaimed area has been re-topsoiled and seeded. Final habitat recovery will be achieved during Phase IV bond release of the current mining areas and the LBM area. Relative to reclamation of wildlife habitat, the Administrative Rules of Montana, at 17.24.1116 (6)(d)(ii) outline that the applicable reclamation bond will not be released until fish and wildlife habitats and related environmental values have been restored, reclaimed, or protected in accordance with the Act, the rules, and the approved permit.

SCCC will continue to minimize surface disturbance by limiting the disturbance areas necessary for mining and mine related activities.

SCCC will continue to treat for mosquito larvae in ponds and tires stored around the mine site to prevent potential West Nile Virus impacts to sage-grouse.

In addition to standard monitoring efforts, SCCC will implement an expanded winter/spring wildlife monitoring plan for sage-grouse during 2008. This plan (Attachment 6 of the complete plan available at the Miles City Field Office) has been approved by BLM, MFWP, and MDEQ and initiated. The need for additional sage-grouse monitoring in future years will be reviewed with the agencies following the results of the enhanced 2008 monitoring efforts.

4. An evaluation of the final plan by the BLM in consultation with the State of Montana.

The MDEQ and BLM may comment on the methods selected and the techniques to be employed by the lessee and may recommend alternate recovery or replacement methods. If there are recommended alternative methods, the lessee shall consider those recommendations and, if the lessee rejects them, the lessee shall indicate its reasons as required by provision 2 above. If no MDEQ or BLM comment is included in the plan, the lessee will provide verification of its consultation with these agencies and the plan may be considered without comment.

The final Habitat Recovery and Replacement Plan will include recommendations received from the different agencies.

5. In the development of this plan, direct liaison with the MDEQ is essential.

SCCC will continue to work with the MDEQ, MFWP, and BLM in the development of the plan.

Status of HRRP Updated June 2009

Subsequent to development of the HRRP, SCCC has completed several of the commitments made in the HRRP.

- Item 2a. MDEQ approved minor permit revision on September 29, 2009 granting approval to remove the pastureland seed mix. The minor revision also included the addition of a sagebrush-forb mosaic native seed mix. Three acres of this seed mix was applied to permanent reclamation in the fall of 2008.
- Item 2c. SCCC prepared a Manipulation Study Plan on April 26, 2009, which is being reviewed by BLM and MFWP.