

Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Quinault Indian Nation.

## II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72,440, 72,447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation v. Thurston County*, 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because “tax on the payment of rent is indistinguishable from an impermissible tax on the land.” See *Seminole Tribe of Florida v. Stranburg*, No. 14–14524, \*13–\*17, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of “traditional notions of Indian self-government,” requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker*

analysis from the preamble to the surface leasing regulations, 77 FR at 72,447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to “allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.” 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes “flexibility to adapt lease terms to suit [their] business and cultural needs” and to “enable [Tribes] to approve leases quickly and efficiently.” *Id.* at 5–6.

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. See *Michigan v. Bay Mills Indian Community*, 134 S. Ct. 2024, 2043 (2014) (Sotomayor, J., concurring) (determining that “[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding”). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. See *id.* at 2043–44 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. See 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also

retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Quinault Indian Nation.

Dated: October 31, 2018.

**Tara Sweeney,**

*Assistant Secretary—Indian Affairs.*

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

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### Notice of Intent for the Potential Amendment to the Approved Resource Management Plan for the Buffalo Field Office, Wyoming, and To Prepare an Associated Supplemental Environmental Impact Statement

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent.

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Wyoming Buffalo Field Office intends to prepare a Supplemental Environmental Impact Statement (EIS) and potential amendment for the 2015 Buffalo Field Office Approved Resource Management Plan (RMP). The Supplemental EIS is in response to a United States District Court, District of Montana, opinion and order (*Western Organization of Resource Councils, et al vs BLM*). This notice announces the beginning of the scoping process to solicit public comments and identify issues presented in the opinion and order.

**DATES:** To ensure that we can adequately consider all comments, the

BLM must receive written comments by December 28, 2018. The BLM will announce a public scoping meeting during this period through local news media, newsletters, our ePlanning website, and the BLM website (<http://www.blm.gov/wyoming>) at least 15 days prior to the meeting. The BLM will provide additional opportunities for public participation upon publication of the Draft Supplemental EIS.

**ADDRESSES:** You may submit comments on issues, planning criteria, and resource information by any of the following methods:

- Website: <http://go.usa.gov/x9PT8>.
- Mail: Buffalo RMP SEIS, Attn:

Thomas Bills, Project Manager, BLM Buffalo Field Office, 1425 Fort Street, Buffalo, WY 82834.

**FOR FURTHER INFORMATION CONTACT:**

Thomas (Tom) Bills, RMP Supplemental EIS Project Manager; Telephone 307-684-1133; or at the above mailing address or website. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The BLM is preparing this Supplemental EIS in response to a United States District Court of Montana opinion and order (*Western Organization of Resource Councils, et al. v. BLM*; CV 16-21-GF-BMM; 3/26/2018 and 7/31/2018).

In September 2015, the BLM approved the Record of Decision for Approved RMPs and Amendments in the Rocky Mountain Region, which included Wyoming's Buffalo Field Office. The 2015 Buffalo Approved RMP provides a single, comprehensive land use plan that guides management of BLM-administered lands and minerals in the Buffalo Field Office. The plan provides goals, objectives, land use allocations, and management direction for the BLM-administered surface and mineral estate based on the BLM's multiple use and sustained yield mission, unless otherwise specified by law (FLPMA Sec. 102(c), 43 U.S.C. 1701 *et seq.*). The Buffalo Field Office manages approximately 800,000 acres of surface land and 4.7 million acres of mineral estate in Campbell, Johnson, and Sheridan counties in north-central Wyoming.

On March 26, 2018, the U.S. District Court concluded: (1) NEPA requires the BLM to consider an alternative that

would decrease the amount of coal potentially available for leasing, which requires updated coal screening that considers climate change impacts to assess the amount of recoverable coal available in the Approved RMP; (2) the BLM must supplement the Buffalo Final EIS with an analysis of the environmental consequences of downstream combustion of federal coal, oil, and gas open to development under the RMP; and (3) The BLM must provide additional justification and analysis of global warming potential over an appropriate planning period consistent with evolving science. The purpose of this public scoping process is to solicit public input that will influence the scope of the Buffalo Supplemental EIS with respect to the U.S. District Court's determinations.

There are currently 13 operating coal mines in the planning area. All are in Campbell County (part of the Antelope Mine is in Converse County). There are presently two proposed mining operations on existing Federal coal leases or on privately owned coal in the planning area. One of these proposed mining operations is located in Sheridan County. All of the existing or proposed mining operations are surface coal mines, using truck/shovel or dragline mining methods.

The 2015 Buffalo RMP relied on coal screening completed during a 2001 RMP update. The 2001 screening reviewed 567,200 acres in two areas identified as acceptable for potential coal leasing in the Buffalo Field Office (494,000 acres in Campbell County and 73,200 acres in Sheridan County), containing an estimated 50.25 billion tons of coal. Based on the update, the BLM determined that 63,600 acres containing more than 6.2 billion tons of coal are unsuitable for surface coal mining operations, while the remainder of the coal lands in these areas remains available for further consideration for coal leasing. The BLM completed and documented surface owner consultation. The BLM estimates about 26 billion tons of coal would be developed under the Approved RMP in the areas made available for coal leasing under the 2001 coal screening. Since 1985, about 10.8 billion tons of coal within the planning area either were leased or are under consideration for leasing. The BLM has projected that the areas it screened and deemed acceptable for leasing will meet the anticipated demand for coal reserves. The BLM determined a new coal screening is not necessary in the Buffalo Field Office because no new lands have been nominated for analysis since the previous screenings, but BLM Wyoming

will analyze the downstream impacts of developing federal minerals.

**Call for Coal and Other Resource Information**

The BLM requests that industry, state and local governments, and the public provide relevant coal resource data that can help inform this planning effort. Specifically, the BLM requests information on the development potential (*e.g.*, location, quality, and quantity) of BLM-administered coal mineral estate, and on surface resource values related to multiple use conflicts.

The purpose of this request is to ensure BLM Wyoming has sufficient information and data to consider a reasonable range of resource uses, management options, and alternatives for managing BLM-administered coal mineral estate. The BLM will use this information to complete the Supplemental EIS and formulate alternatives that identify areas acceptable for further leasing consideration.

Proprietary data marked as confidential may be submitted in response to this call for coal and other resource information. Please submit all proprietary information to the Buffalo Field Manager at the address listed above. The BLM will treat submissions marked as "Confidential" in accordance with the laws and regulations governing the confidentiality of such information.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, the BLM cannot guarantee that it will be able to do so.

**Authority:** 43 CFR 1610.2(c) and 3420.1-2.

Dated: November 16, 2018.

**Mary Jo Rugwell,**

*State Director.*

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