

**ATTACHMENT 5:**

**COMMENT LETTERS THAT SPECIFICALLY  
REFERENCE THE NARO SOUTH LBA TRACT**



**Powder River Coal Company**

12433 N. Hwy 59  
Caller Box 3034  
Gillette, Wyoming 82717-3034

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CASPER FIELD OFFICE

United States Department of the Interior  
Bureau of Land Management  
Casper Field Office  
2987 Prospector Drive  
Casper, WY 82604 – 2968

ATTN: Nancy Doelger  
**RE: South Powder River Basin Coal Final EIS**

**Tindall Operating Company – Comment Letter 7**

Powder River Coal Company wishes to clarify certain statements made in Tindall Operating Company Comment Letter noted as “7” in Volume 2 of 2, Appendix M of the South Powder River Basin Coal Final EIS. Tindall Operating Company states: “The Draft EIS also states in section 4.1.12 that “[n]egotiations are ongoing between the applicant mines and the existing oil and gas leases on how to proceed with both operations if the coal tracts are leased. To the contrary, Powder River Coal abruptly and unilaterally terminated any such negotiations with Tindall in November of 2002.”

It must be noted that at the time this comment was submitted (March 31, 2003), Tindall Operating Company had in hand a letter from Powder River Coal Company dated March 14, 2003, indicating interest in establishing an agreed upon process for dealing with certain conflicts between oil and gas and mining operations at the North Antelope Rochelle Mine.

Powder River Coal Company never received a response from Tindall Operating Company with regard to this letter. In November 2003, Powder River Coal Company again initiated contact with Tindall Operating Company and proposed a process for dealing with conflicts. Tindall Operating Company did respond in this instance and a meeting has been proposed.

**Department of the Army – Corps of Engineers – Comment Letter 2**

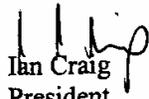
Powder River Coal Company wishes to clarify a statement made in the Corps of Engineers Comment letter noted as “2” in Volume 2 of 2, Appendix M of the South Powder River Basin Coal Final EIS. Mr. Matthew Bilodeau states: “However, portions of all proposed LBAs have not been the subject of formal wetland and waters delineations confirmed by the Corps and appear to contain jurisdictional and/or non-

jurisdictional waters. For example, the NARC South LBA includes Sections 28-30, Township 41N, Range 70W as well as Sections 24 and 25, Township 41N, Range 70W. These areas have not been reviewed no confirmed by the Corps.”

It was recently confirmed via phone call with Mr. Bilodeau that he had inadvertently made this comment based on outdated information. Powder River Coal Company does indeed have a confirmed inventory of the above-referenced area.

Powder River Coal Company appreciates the opportunity to comment on this FEIS. If you have any questions regarding this letter, please contact Wanda Burget at (307) 685-6708.

Sincerely,



Ian Craig  
President  
Powder River Coal Company



REPLY TO  
ATTENTION OF:

**DEPARTMENT OF THE ARMY**  
**CORPS OF ENGINEERS, OMAHA DISTRICT**  
**WYOMING REGULATORY OFFICE**  
**2232 DELL RANGE, BLVD., SUITE 210**  
**CHEYENNE, WYOMING 82009-4942**

January 21, 2004

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**CASPER FIELD OFFICE**

Chandler Peter

Ms. Nancy Doelger  
Bureau of Land Management  
Casper Field Office  
2987 Prospector Drive  
Casper, Wyoming 82604

Dear Ms. Doelger:

This is a follow up to a comment letter provided February 12, 2003 on the Draft South Powder River Basin Coal Environmental Impact Statement. The EIS addresses potential Lease By Applications (LBA) from the Antelope, North Antelope/Rochelle Complex (NARC), North Rochelle, and Black Thunder Mines in Converse and Campbell Counties.

The February 12 letter contained an erroneous determination as it relates to the NARC South LBA associated with Sections 28-30, Township 41N, Range 70W as well as Sections 24 and 25, Township 41N, Range 71W. The letter stated these areas had not been reviewed nor confirmed by the Corps relative to jurisdiction for Section 404 of the Clean Water Act. These areas were part of a revised wetland and waters determination that was confirmed March 2, 2001. A copy of that determination is enclosed.

I regret any inconvenience this error may have caused your agency. If you have any questions concerning this matter, please contact me at (307) 772-2300. Please refer to File No. **200340022** in any future correspondence.

Sincerely,

Chandler J. Peter  
Project Manager  
Wyoming Regulatory Office

Copy furnished:

Brad Dingee  
Peabody Group  
Caller Box 3034  
Gillette, Wyoming 82717-3034



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, OMAHA DISTRICT  
215 NORTH 17TH STREET  
OMAHA, NEBRASKA 68102-4978

March 2, 2001

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CASPER FIELD OFFICE

Wyoming Regulatory Office  
2232 Dell Range Blvd., Suite 210  
Cheyenne, Wyoming 82009

Mr. Brad Dingee  
Peabody Group  
Caller Box 3034  
Gillette, Wyoming 82717-3034

Dear Mr. Dingee:

This is in reference to your request received March 1, 2001 for verification of a wetland and waters of the U.S. delineation conducted on property surrounding the North Antelope/Rochelle Coal Mine Complex (located to the north, west and south). It is recognized that these areas may not be part of the mine's current permit area but may be added to the mine at a later time. The newly delineated area contains the following jurisdictional areas:

75.28 acres riverine wetlands  
26.99 acres stockpond wetlands  
11.42 acres riverine open water  
44.62 acres stockpond open water  
158.31 acres of jurisdictional waters and wetlands\*

\* Does not include 57.50 acres of ephemeral channel other waters of the U.S. as well as 1.44 acres of wetlands and other waters contained at Site 12E on Antelope Coal Mine which were constructed as mitigation under Corps authorization.

The delineation also includes 20.92 wetland acres and 1.33 open water acres of playa/depressional features (see Table 2 in report. Please also note that Table 5 inaccurately states that these features comprise 22.92 acres). In the case of Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, No. 99-1178 (January 9, 2001) (SWANCC), the U.S. Supreme Court held that the Corps exceeded its statutory authority by asserting jurisdiction over an abandoned sand and gravel pit in northern Illinois which provides habitat for migratory birds. Although the Court held that the Corps application of 328.3(a)(3) was invalid in SWANCC, the Court did not strike down 328.3(a)(3) or any other component of the regulations defining waters of the United States. In light of the Courts ruling, the Corps will no longer rely on the use of waters or wetlands as habitat by migratory birds as the sole basis for the assertion of regulatory jurisdiction

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over isolated, non-navigable, intrastate waters. Based on the information contained in the delineation report and the court ruling, it has been determined that the playa/depressional wetlands and waters addressed by the report are isolated and do not support interstate commerce. Therefore, they are not considered to be jurisdictional waters of the United States under Section 404 of the Clean Water Act. Although the Corps does not consider these features to be jurisdictional, the Wyoming Department of Environmental Quality and/or Office of Surface Mining may still require these features be identified for their regulatory purposes.

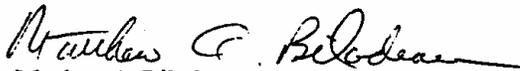
Based upon the information submitted, it is determined that the wetland and waters of the U.S. delineation lines shown on the plan map entitled Map D10-3-1 Wetlands and Other Waters of the U.S., dated 1/01 with no revisions, are accurate depictions of wetlands and waters of the United States for the delineated area. It is expected that the mine will submit a revised delineation map for the overall mine complex at a later date.

**This determination is valid for a period of 5 years, until March 2, 2006, unless new information warrants a modification.**

The Corps of Engineers regulates the placement of dredged and fill material into wetlands and other waters of the U.S. as authorized by Section 404 of the Clean Water Act (33 U.S.C. 1344). The Corps regulations were published in the November 13, 1986 edition of the Federal Register (Vol. 51, No. 219) at 33 CFR Parts 320 through 330. Our office has determined that West School and Trussler Creeks, their tributaries, as well as the adjacent and isolated wetlands on the mine meet the definition of waters of the U.S. as defined at 33 CFR Part 328.3(a)(1), (2), (3)iii, (4), and (7). As such they are subject to regulation by the Corps in accordance with Section 404. However, in the March 28, 2000 edition of the Federal Register, the Corps implemented an administrative appeals process for jurisdictional determinations. If you want to challenge the Corps assertion of jurisdiction over these areas, you must submit the enclosed form to this office within 60 days or you will forfeit your right to an administrative appeal.

If you have any questions concerning this matter, please contact Chandler Peter at (307) 772-2300. Please refer to File No. 199840014 in any future correspondence concerning this action.

Sincerely,



Matthew A. Bilodeau  
Program Manager  
Wyoming Regulatory Office

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Enclosure

Copy furnished: (w/o enclosure)

John Wagner  
Wyoming Department of Environmental Quality  
Land Quality Division  
122 West 25<sup>th</sup>  
Herschler Building  
Cheyenne, Wyoming 82002