

**Decision Notice
and
Finding of No Significant Impact
for the
Pineau Mine Exploration Project**

USDA - Forest Service
Beaverhead-Deerlodge National Forest
Pintler Ranger District
Powell County, Montana

DECISION

I have decided to approve the Plan of Operations submitted by Robert Waller, with additional mitigation measures. Under the approved plan, Mr. Waller will be authorized to use an excavator to excavate a trench 40-feet wide by 200-feet long to bedrock. Approximately 1/3 acre of small diameter timber in the test trench area will be removed and an additional 1/3 acre of sapling size trees will be removed in the area where the test material will be spread out and tested. Topsoil, where present, will be removed before excavation and saved for use in reclamation. The non-gold bearing material (overburden) will be excavated down to the gold bearing material (pay gravels) and saved for use in reclamation. The pay gravels will then be spread out 4 to 6 inches thick in a clearing and a metal detector passed over the pay gravels to look for valuable minerals. After testing is completed, the trench will be backfilled with the overburden and tested pay gravels and contoured. The topsoil will then be spread over the disturbance and seeded if needed. Access to the area will be by existing road #636. Approximately 300 feet of a closed non-system road will be used to access the test trench location; rocks used to close the road will be removed to allow access. No improvement to the closed road will occur. Pickup trucks will be used to haul personnel, equipment, and fuel during operations. Operations will occur sporadically during the summer months. The project should be completed in three summers.

The following mitigation measures will be incorporated into the approved Plan of Operations:

- A gate will be installed on the closed access road to restrict public motorized use in the area during the life of the project.
- Trench: The top 8-12 inches of soil will be removed and stored. The backfilled trench will be covered with salvaged topsoil.
- Clearing: The top 8-12 inches of soil, along with existing ground vegetation (grasses, forbs), will be removed and stored. The salvaged topsoil and vegetation will be spread over clearing once pay gravels and overburden are removed.
- The disturbed trench and clearing will be seeded with native seed if needed.
- A barrier will be erected around the test trench to prevent access by boreal toads.
- No fuels or toxicants will be stored within 150 feet of the pond.
- No operations or facilities associated with the project will be allowed within 150 feet of the pond.
- Equipment will be cleaned and inspected for noxious weeds and the site will be monitored for the presence of noxious weeds after the project is completed; noxious weeds will be treated if they are found.

PURPOSE AND NEED FOR ACTION

Robert Waller of Bozeman, Montana submitted a Plan of Operations to explore for minerals on unpatented mining claims located in T. 8 N., R. 12 W., section 11, approximately 16 miles northwest of Deer Lodge, Montana in the Master Mine area (see attached project map). Mr. Waller proposed to excavate a trench 40 feet wide by 200 feet long to bedrock and test for valuable minerals.

The role of the Forest Service is to ensure that mining activities minimize adverse environmental effects on National Forest System (NFS) resources and comply with all applicable environmental laws. Congress has not given the Forest Service authority to unreasonably circumscribe or prohibit reasonably necessary activities under the 1872 General Mining Law that are otherwise lawful.

PROPOSED ACTION

Refer to the Decision section, above and EA pages 2, 4 -5 for a complete description of the proposed action.

PUBLIC INVOLVEMENT

A scoping letter dated February 18, 2009, describing the proposal was mailed to 166 interested individuals, organizations, and agencies. The letter requested comments to the proposal and requested that comments be postmarked by March 20, 2009. In addition, the proposal was listed in the BDNF Schedule of Proposed Actions (SOPA) list. We received one supportive response on the project.

The EA was sent to the individual that responded to scoping and the EA was posted on the BDNF web site. On June 17, 2009, a legal notice was published in the *Montana Standard* newspaper alerting the public of the availability of the EA. No comments were received during the comment period.

ISSUES/CONCERNS

The interdisciplinary team found no issues or unresolved conflict concerning alternative uses of available resources. No issues were identified that required an alternative to address them; refer to EA pages 3-4.

ALTERNATIVES CONSIDERED

The Pineau Mine Exploration Project EA fully developed one action alternative and the No Action alternative.

- Alternative 1 is the No Action Alternative
- Alternative 2 is the Proposed Action

Refer to EA pages 4-5 for additional details on the alternatives.

Resource concerns brought out during interdisciplinary team analysis were addressed by including mitigation measures with the selected alternative. Therefore, I find the range of alternatives adequate.

RATIONALE FOR MY DECISION

I did not select the No Action alternative because it was non-responsive to Mr. Waller's POO with its stated purpose of exploring for minerals. The Forest Service is obligated under the 1872 Mining Law to grant mining proponents certain rights to access and use National Forest System (NFS) lands for mineral entry. Other laws allow the Forest Service to regulate mining activities to minimize adverse environmental effects on National Forest resources.

However, the Forest Service cannot prohibit nor unreasonably restrict operations. The Pineau Mine Exploration Project EA addresses National Forest resources and the analysis finds that the surface resources can be adequately protected. Based on the analysis summarized in the EA, there would be no reason to prohibit (no action alternative) Mr. Waller from operating.

The selected alternative is Mr. Waller's POO, with added mitigation measures identified during the environmental analysis; this alternative meets his purpose and need for mineral exploration on NFS lands. The National Forest surface resources will be adequately protected. The short time frame and small size of the project (less than 1 acre) will place minimal disruption to the natural environment. I find no irreversible or irretrievable commitments of these resources.

Consistency with the Forest Plan

In reaching my decision, I have thoroughly read and understand the EA and all the associated materials contained in the project file for the proposed action. In addition, I reviewed the appropriate sections of the 2009 BDNF Revised Land and Resource Management Plan (Revised Forest Plan), the Revised Forest Plan FEIS, and the Revised Forest Plan Record of Decision.

I find that my decision is consistent with the goals, objectives, and standards of the Revised Forest Plan as described for the management area specific to this proposal. Refer to the EA pages 3, 6-11 and the project file for more information regarding this project's consistency with the Revised Forest Plan.

FINDINGS REQUIRED BY LAWS, REGULATIONS, AND POLICIES

Numerous laws, regulations, and agency directives require my decision be consistent with their provisions. I have determined my decision is consistent with all laws, regulations, and agency policy. The following summarizes findings required by major environmental laws. My decision to implement the Pineau Mine Exploration project, including all mitigation, is consistent with land management direction described in the Revised Forest Plan.

1872 Mining Law, 1897 Organic Act, and 1955 Multiple Use Mining Act

My decision is responsive to Mr. Waller's right to access and use NFS lands open to mineral entry under the 1872 Mining Law. This mining activity conducted under the 1872 Mining Law is subject to the Organic Act and Multiple Use Mining Act, which allow the Forest Service to reasonably regulate the mining activity to minimize adverse environmental effects on National Forest resources and ensure compliance with other applicable environmental laws. My decision is in compliance with these applicable environmental laws, thereby minimizing adverse environmental effects.

National Environmental Policy Act (NEPA)

NEPA provisions and all regulations for implementation of NEPA (as required under 40 CFR 1500) have been followed in the development of the environmental assessment and decision notice. The detailed specialist reports (summarized in the EA) contained in the project file disclose the expected impacts of this project. This Decision Notice describes the decision I have made and my rationale for making it.

National Forest Management Act (NFMA)

The National Forest Management Act and accompanying regulations require that several specific findings be documented at the project level.

Consistency With Forest Plan. See discussion under "Consistency with the Forest Plan" section above.

Sensitive Species. Federal law and direction applicable to sensitive species include the National Forest Management Act and the Forest Service Manual (2670). The Regional Forester has approved the sensitive species list – those plants and animals for which population viability is a concern. In making my decision, I have reviewed the analysis and projected effects on all sensitive species listed as occurring or possibly occurring within the analysis area (EA pages 7 – 11). These findings support the conclusion the project will have no adverse impacts on sensitive species.

National Historic Preservation Act, Archaeological Resources Protection Act, and Native American Graves Protections and Repatriation Act

A field inventory was completed and there were no heritage resource sites located in the proposed project area; no known cultural resources will be affected by the project (EA page 6). My decision meets the intent of these acts.

Clean Water Act and State Water Quality Standards

The design of project activities is in accordance with Revised Forest Plan standards and guidelines, Best Management Practices, and applicable Forest Service manual and handbook direction. Project activities will be consistent with the Clean Water Act, State Water Quality Standards, and consistency requirements for TMDL watersheds (EA page 6).

The Endangered Species Act

This decision is in full compliance with the Endangered Species Act. In accordance with Section 7 (c) of the Endangered Species Act, as amended, and as described in the Wildlife Species Considered and Regulatory Authority section in the wildlife specialist report in the project file and summarized on EA pages 10-11, there will be no effect to any federally listed species.

Environmental Justice and Civil Rights

Executive Order 12898, issued in 1994 ordered Federal Agencies to identify and address any adverse human health and environmental effects of agency programs that disproportionately impact minority and low-income populations. The Order also directs agencies to consider patterns of subsistence hunting and fishing when an agency action may affect fish or wildlife. The project will not alter opportunities for subsistence hunting and fishing by Native American tribes. Tribes holding treaty rights for hunting and fishing on the BDNF are included on the project mailing list, and have the opportunity to provide comments on this project. Public involvement occurred for this project, the results of which I have considered in this decision. Public involvement did not identify any adversely impacted local minority or low-income populations. This decision is not expected to adversely impact minority or low-income populations.

The Civil Rights Act of 1964 provides for nondiscrimination in voting, public accommodations, public facilities, public education, federally assisted programs, and equal employment opportunity. Title VI of the Act, Nondiscrimination in Federally Assisted Programs, as amended (42 U.S. C. 2000d through 2000d-6) prohibits discrimination based on race, color, or national origin. This decision complies with this act.

FINDING OF NO SIGNIFICANT IMPACT

I have reviewed the direct, indirect, and cumulative effects of the proposed activities documented in the Pineau Mine Exploration EA, specialist reports, and supporting documentation in the project file for this analysis. Implementing regulations for NEPA provide criteria for determining the significance of effects. Significant, as used in NEPA, requires consideration of both context and intensity as set forth in 40 CFR 1508.27:

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short and long-term effects are relevant:

The disclosure of effects summarized in the EA (and detailed resource reports in the project file) found the project limited in context. The setting of this project is localized with implications only for the immediate area. The impacts associated with this project are short-term and local and are not likely to significantly affect regional or national resources. The actions involved in this decision are consistent with management direction contained in the Revised Forest Plan.

(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following are considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effects will be beneficial.

My decision meets the intent of goals and objectives outlined in the Revised Forest Plan. Potential impacts of this decision are summarized in the EA. No significant impacts were identified.

(2) The degree to which the proposed action affects public health or safety.

This decision will have no significant or unacceptable effect on public health or safety. The project is designed to minimize environmental impacts.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

This project has been reviewed in compliance with the regulations for implementing Section 106 of the National Historic Preservation Act; there are no cultural resource concerns.

There are no park lands, no prime farmlands, no ecologically critical areas, and the area is not being considered for Wild and Scenic River designation. The analysis indicates there will be no affects to aquatic resources.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

Based on public comment, internal discussion, and the analysis of the actions in this decision, the effects on the human environment (summarized in the EA) are not likely to be considered highly controversial by professionals, specialists, and scientists.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

Scoping did not identify highly uncertain, unique, or unknown risks. The possible effects on the human environment are not highly uncertain nor do they involve unique or uncertain risks. The technical analyses conducted for determinations of the resources are supportable with use of accepted techniques, reliable data, and professional judgment. Impacts are within the limits that are considered thresholds of concern. Therefore, I conclude there are no highly uncertain, unique, or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

The implementation of this decision is not precedent setting and does not represent any future decisions. Any other proposals for this area will be subject to full NEPA disclosure.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

A cumulative effects analysis was conducted for this proposal. There are no known significant cumulative effects between this project and other projects implemented or planned on areas separated from the affected area of this project. Other known and reasonably foreseeable activities were considered, documented in the project file, and summarized in the EA.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources.

No cultural resources are expected to be affected by this action. This project has been reviewed in compliance with the regulations for implementing Section 106 of the National Historic Preservation Act; there are no cultural resource concerns.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

The project will not adversely affect any threatened or endangered wildlife, fish, or plant species (EA pages 7-11 and BA/BEs in the project file).

(10) Whether the action threatens a violation of Federal, State or local law or requirements imposed for the protection of the environment.

This action will not threaten a violation of Federal, State, or local laws or requirements imposed for the protection of the environment. Applicable laws and regulations were considered in the analysis.

Conclusion

Based upon the review of the test for significance and the environmental analysis conducted, I have determined that the actions analyzed for the Pineau Mine Exploration project do not constitute a major federal action and their implementation will not significantly affect the quality of the human environment. Accordingly, I have determined that an environmental impact statement need not be prepared for this project.

ADMINISTRATIVE REVIEW OR APPEAL OPPORTUNITIES

Pursuant to 36 CFR 215.12 Decisions and actions not subject to appeal, "The following decisions and actions are not subject to appeal under this part... (e) Projects or activities for which notice of the proposed action and opportunity to comment is published (215.5) and (1) No substantive comments expressing concerns or only supportive comments are received during the comment period for a proposed action analyzed and documented in an EA (215.6)". Because I received no comments on the Pineau Mine Exploration EA, this decision is not appealable.

As the project proponent, Mr. Waller may appeal this decision pursuant to 36 CFR 251, Subpart C. In order to be considered under that subpart, the appeal must be filed within 45 days of written notice of this decision: conform with the filing procedures stated at 36 CFR 251.87 and 251.88; and contain the information listed at 36 CFR 251.90.

Project activities may begin as soon as the minerals Plan of Operation is modified to include the additional mitigation measures and is signed by Mr. Waller and approved by me. This will likely occur in early August 2009, and operations may begin immediately after.

CONTACT PERSON

For further information on this project, please contact Steve Kelley, Project Lead, 1820 Meadowlark Lane, Butte, MT 59701, phone (406) 494-0222.

RESPONSIBLE OFFICIAL*/s/CFBuchaGentry**07/27/2009*

CHARLENE BUCHA GENTRY

DATE

District Ranger

Pintler Ranger District

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDAs TARGET Center at (202) 720-2600 (voice and TDD).

To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call (800) 795-3272 (voice) or (202)720-6382 (TDD). USDA is an equal opportunity provider and employer.