



DECISION MEMO

SMART CREEK MINERAL EXPLORATION PROJECT

USDA Forest Service
Beaverhead-Deerlodge National Forest
Pintler Ranger District

Granite County, Montana
T8N, R13W, sections 5, 6 and 7

Background

The Kennecott Exploration Company submitted a Plan of Operations (POO) to explore for minerals on unpatented mining claims located in T8N, R13W, sections 5, 6 and 7, approximately 1.5 miles northwest of Maxville, Montana. The project lies in the Flint Foothills Management Area in the Clark Fork Flint Landscape.

Purpose & Need

Under the 1872 General Mining Law, miners have a legal right to conduct exploration activities on unpatented claims on lands open to mineral entry under the Law. The role of the Forest Service is to ensure that mining activities minimize adverse environmental effects on National Forest System (NFS) lands 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 Law that are otherwise lawful.

Decision

I have decided to approve the Plan of Operations for the Smart Creek Mineral exploration project submitted by the Kennecott Exploration Company with the design features and mitigation measures listed below. My decision is responsive to the Kennecott Exploration Company's right under the 1872 mining law to search and develop minerals, subject to the Organic and Multiple Use Mining acts. Both acts require the Forest Service to reasonably regulate the mining activity to minimize adverse environmental effects on NFS resources and ensure compliance with other applicable environmental laws. My decision is in compliance with applicable environmental laws, thereby minimizing adverse environmental effects.

My decision authorizes five exploration test trenches approximately 4 feet deep to test for minerals over the course of 30 days. The test trenches will be approximately 15 feet wide and vary in length from 316 feet to 1,202 feet, totaling 4,429 feet long. Total disturbance will be approximately 3 acres. All excavations will be done with an excavator. Test trench sites will be cleared of debris, sapling size trees and brush. Approximately 80 sapling size trees and 20 larger (8 to 16 inch diameter at breast height) trees will be removed. All trees removed will be stored on site and used in reclamation.

Topsoil will be removed and stockpiled to one side of the trench for later reclamation work. Waste rock will then be removed down to the mineralized layer and be stockpiled separately from the topsoil for reclamation.

Samples from the mineralized layer will then be removed from the area in soil bags for testing. After removing the samples for testing the first test trench will be backfilled with the waste rock and topsoil replaced, contoured, and seeded if needed and the second test trench opened. Only one test trench will be open at a time. A total of approximately 2 to 4 cubic yards of material may be removed for testing.

Forest Service roads #1501, UR8-408, and UR8-409 will provide vehicle access and equipment will travel cross country between trench B and trench C for approximately 200 feet. This proposal requires no road construction. Trenching activities using heavy equipment will occur when soils are dry to avoid compaction and rutting. The project will be completed in one field season and all disturbed areas will be reclaimed.

Design Features and Mitigation Measures Required by This Decision

- The site will be reclaimed to the natural grade to the extent feasible.
- If cultural resource sites or artifacts are discovered during project implementation, the Forest Archeologist and appropriate tribes will be notified immediately.
- Food and attractant storage, possession and handling will comply with Food Storage Order 2014-BD/BITT-009 during all operations
- Noxious weeds will be controlled following procedures in the Noxious Weed Control Program ROD (2002) for the Beaverhead-Deerlodge National Forest.
- Operator is responsible for immediate repairs of any and all damages to roads, structures, and improvements, which result from his operations, at his own expense.

Reasons for Categorically Excluding the Proposed Action

An action may be categorically excluded from further analysis and documentation in an environmental impact statement (EIS) or environmental assessment (EA) if it is within one of the categories identified by the USDA in 7 CFR part 1b.3 or 7 CFR part 1b.3 or 36 CFR 220.6(d) or (e), and there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative effect on the quality of the human environment.

This project has been reviewed in accordance with FSH 1909.15 Chapter 30. I have determined the project fits the following category: *36 CFR 220.6(e)(8)*:

Short term mineral, energy, or geophysical investigations and their incidental support activities that may require cross country travel by vehicles and equipment, construction of less than one mile of low standard road, or use and minor repair of existing roads.

My decision is based on a review of the project record that shows a thorough review of relevant scientific information, a consideration of responsible opposing views, and the acknowledgement of incomplete or unavailable information. The record includes the following resource specialist reports or documentation of review:

*Biological Assessments for Aquatic, Botany, and Wildlife TES species
Specialist reviews for Heritage Resources, Soils, Hydrology, and Recreation*

By definition, categorical exclusions do not individually or cumulatively have significant effects on the human environment (40 CFR 1508.4). Resource specialists considered direct and indirect effects from the proposed action coupled with past, present, and reasonably foreseeable actions. I have examined the proposed action and the effects analyses disclosed in the resource specialist reports listed above and conclude that without notable individual effects from the proposed action, there would be no discernable cumulative effects.

The interdisciplinary team reviewed the resource conditions listed in FSH 1909.15 Chapter 30 (31.2) and other concerns applicable to this project to determine whether any extraordinary circumstances exist. The mere presence of one or more of the resource conditions listed below does not preclude the use of a categorical exclusion. It is the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions, if such a relationship exists, and the degree of potential effect of a proposed action on these resource conditions that determine whether extraordinary circumstances exist.

The following table provides a summary of the final determinations regarding the cause-effect relationship between the proposed action and degree of potential effect on the resource conditions in the left hand column in the table below. All specialist reports (available in the project record) have been finalized and I have reviewed them in detail prior to reaching this decision.

Table 1. Potential Effects to Resource Conditions Considered for Extraordinary Circumstances

RESOURCE CONDITION	POTENTIAL EFFECT
Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species.	<i>Threatened or Endangered Species:</i> Implementation of the proposed action is not likely to adversely affect the threatened grizzly bear and Canada lynx or their habitat. The threatened bull trout or their habitat would not be affected by the proposed action. <i>Sensitive Species:</i> May impact individuals or habitat, but would not contribute to a trend towards federal listing or loss of viability to the population or species of wolverine. No Impact – all other Sensitive terrestrial, aquatic, and plant species.
Floodplains, wetlands, or municipal watersheds	The project does not occur within a municipal watershed, floodplain or wetland. Therefore, negative impacts to floodplains, wetlands, or municipal watersheds are not projected.
Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas.	No congressionally designated areas occur in or near the project; therefore negative impacts to any congressionally designated areas are not projected.
Inventoried Roadless Areas (IRAs)	There are no IRAs within the project area. Therefore, negative impacts to inventoried roadless areas are not projected.
Research Natural Areas (RNAs)	There are no RNAs within the project area. Therefore, negative impacts to any research natural areas are not projected.
American Indians and Alaska Native religious or cultural sites.	The area has been surveyed and historical features will be avoided. Section 106 consultation is taking place under the

RESOURCE CONDITION	POTENTIAL EFFECT
Archaeological sites, or historic properties or areas.	auspice of R1 Programmatic Agreement with Montana SHPO.

I find the determinations reached in the extraordinary circumstances consideration table above maintain a high degree of certainty. Therefore, I am confident that this project would have no significant effect on the human environment, individually or cumulatively, and no uncertainty exists regarding this degree of potential effect. I have reviewed the individual specialist reports submitted for detailed descriptions of the methods and data used to come to these determinations if a written analysis was required.

Scoping and Public Involvement

A scoping letter dated October 28, 2016, describing the project was mailed to 78 interested individuals, organizations, agencies, and tribes for review and comment by November 21, 2016. The project was posted on the BDNF website, the schedule of proposed actions (SOPA) in October 2016. Ten letters commenting on the proposal were received.

Concern Summary and How Concerns are addressed

The Forest Service should prohibit this mining activity outright. Please see the Purpose and Need section for an explanation of the Forest Service Role in mining on NFS. Reasonable mitigation measures are applied to address potentially adverse impacts.

The project will become a fully operating mine. This proposal is for a short term, one year or less, mineral investigation. Should the operator decide there is enough valuable minerals to develop a mine, a new or revised Plan of Operations and analysis would be required.

An Environmental Impact Statement should be required. Please see the Reasons for Categorically Excluding the Proposed Action section above.

Prevent impacts to elk and deer during hunting season and winter. This exploration project is authorized for a year or less and operations are not proposed during hunting season or winter months.

Noxious weed introduction. The Design Features specify implementation of Best Management Practices for Weed Prevention in the 2002 BDNF Noxious Weed Control ROD. In addition the operator will be required, under terms and conditions attached to his plan of operations, to monitor for the introduction of noxious weeds for three years following exploration.

Traffic impacts to the road, school bus stop and bridge. The temporary increase in traffic is anticipated to be one trip in and one trip out with a lowboy hauling an excavator. Support vehicles will make two to three trips a day. All vehicles are required to obey posted speed and weight limit signs, and traffic laws associated with school bus stops. Damage to the road caused by the operation is addressed in the Design Features and Mitigation Measures.

Depreciation of property value. As described in the Purpose and Need section the FS does not have the authority to unreasonably circumscribe or prohibit reasonably necessary activities under the Mining Laws that are otherwise lawful.

Impacts to surface and ground water. Table 1 identifies no negative impacts to floodplains, wetlands, or municipal water supplies.

Return of the area to the original condition. As stated above in the Design Features and Mitigation Measures section, the site will be reclaimed to the natural grade to the extent feasible. See the Decision for a description of operator requirements.

Forest Plan Direction

The National Forest Management Act (NFMA) requires the development of long-range land and resource management plans. The Beaverhead-Deerlodge National Forest Plan was approved in 2009 and provides guidance for all natural resource management activities on the Beaverhead-Deerlodge National Forest. NFMA also requires that all projects and activities be consistent with the plans. The decision is consistent with Forest Plan direction including all applicable standards.

Forestwide Locatable Minerals Goal

Locatable Minerals are developed on all parts of the Forest not withdrawn from locatable mineral entry in accordance with the 1872 Mining Law, regulations, and national direction. (FP pg. 27)

Findings Required by Law

National Forest Management Act - The Beaverhead-Deerlodge National Forest Land and Resource Management Plan (Forest Plan) was approved in 2009, as required by this Act. The Forest Plan has been reviewed in consideration of this project and the project meets all applicable management direction, including consistency with all applicable standards.

On April 9, 2012 the Department of Agriculture issued a final planning rule for National Forest System land management planning (2012 Rule) 77 FR 68 [21162-21276]). None of the requirements of the 2012 Rule apply to projects and activities on the Beaverhead-Deerlodge National Forest, as the 2009 Beaverhead-Deerlodge Forest Plan was developed under a prior planning rule (36 CFR §219.17(c)). Furthermore, the 2012 Rule explains, “[The 2012 Rule] supersedes any prior planning regulation. No obligations remain from any prior planning regulation, except those that are specifically included in a unit’s existing plan. Existing plans will remain in effect until revised” (36 CFR §219.17).

Endangered Species Act - See the “Reasons for Categorically Excluding the Proposed Action” Section of this document, and Table 1, for a summary of the effects of this project to Endangered, Threatened, or Candidate Species for the Beaverhead-Deerlodge NF (list dated January 8, 2015). The summary is based on a more thorough analysis available in the project record. This project is consistent with the requirements of the Endangered Species Act.

Sensitive Species (Forest Service Manual 2670) - This direction requires analysis of potential impacts to sensitive species and the Regional Forester approved the sensitive species list on February 25, 2011 (updated August 26, 2011 to include white bark pine). Our review of the potential effects of this decision upon the sensitive species has been completed and the analysis documented in the project file and Resource Condition Table above.

Environmental Justice (Executive Order 12898) - This Order requires consideration of whether projects would disproportionately affect minority or low-income populations in or around the project area. Based on internal review and public scoping, the proposed action did not identify any adversely impacted local minority or low-income populations.

Clean Water Act – The intent of the Act is to restore and maintain the integrity of waters. The Forest Service complies with this Act through the use of Best Management Practices (BMPs). This decision

incorporates Best Management Practices to ensure protection of soil and water resources and complies with the Clean Water Act and State water quality standards.

Clean Air Act – Under this Act, areas of the country were designated as Class I, II or III airsheds for “Prevention of Significant Deterioration” purposes. There will be no air quality impacts as a result of this decision.

The National Historic Preservation Act – As discussed earlier in this document and in detail in the project file, impacts to cultural resources are not expected.

Migratory Bird Treaty Act – There will be no known substantial losses of migratory bird habitat expected from the implementation of this proposal.

National Environmental Policy Act (NEPA) – This Act requires public involvement and consideration of potential environmental effects. This decision memo and the project record provide documentation of NEPA compliance.

Other Laws or Requirements – The proposed action is consistent with all other Federal, State, and/or local laws or requirements.

Administrative Review Opportunities

Decisions made under Categorical Exclusions are not subject to objection pursuant to 36 CFR 218. The permittee however, may appeal this decision pursuant to Department of Agriculture regulations 36 CFR 214.

Implementation Date

This decision is not subject to objection pursuant to 36 CFR 218 and may begin as soon as the Plan of Operations is modified to include the design features and mitigation specified above. The plan must be signed by Kennecott and approved by me. The appropriate calculated reclamation bond must also be posted prior to implementation. This will likely occur in May 2017, and operations may begin immediately afterward.

Contact Person

Supporting documentation for this decision is available for public review at the Pintler Ranger District, 88 Business Loop, Philipsburg, MT 59858.

Further information about the decision can be obtained from Steve Kelley, Minerals Administrator, at (406) 494-0222, or by written request to Mr. Kelley, Butte Ranger District 1820 Meadowlark, Butte, MT 59701, or via email to skelley@fs.fed.us.

Responsible Official

/s/ Craig Kendal

CRAIG KENDALL
Acting District Ranger
Pintler Ranger District

February 26, 2017

Date

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