

**RECORD OF DECISION &
PLAN OF OPERATIONS APPROVAL**

**BATTLE MOUNTAIN GOLD
PHOENIX PROJECT**

**Plan of Operations #: NVN-067930
EIS#: NV063-EIS00-28**

PREPARED BY:
Bureau of Land Management
Battle Mountain Field Office
Battle Mountain, Nevada

COOPERATING AGENCY:
Nevada Division of Wildlife

Introduction

Battle Mountain Gold (BMG), a wholly owned subsidiary of Newmont Mining Corporation (NMC), has submitted the Phoenix Project (Project) Plan of Operations (Plan) to the Battle Mountain Field Office of the Bureau of Land Management (BLM). The Plan would expand current mining and mineral processing operations in Copper Canyon, approximately 12 miles south of the town of Battle Mountain in Lander County, Nevada.

Actions associated with the Project consist of the following: development of the Phoenix and Reona pits, expanding the existing Midas and Iron Canyon Pits, and construction of associated processing and heap leach facilities. The purpose of the Project is to extract gold and incidental silver and copper from ore within the Phoenix Project Area. Mining the Project ore deposit will add up to 28 years of mining followed by approximately five years of reclamation. An environmental impact statement was prepared which analyzed the environmental consequences of approving the proposed Project and alternatives.

The Project will result in approximately 4,308 acres of new disturbance on public and private lands in the Copper Canyon area. The Project is located within portions of Sections 15, 16, 21, 22, 23, 26, 27, 28, 32, 33, and 34 of Township 31 North, Range 43 East; and portions of Sections 2, 3, 4, 8, 9, 10, 16, and 21 of Township 30 North, Range 43 East, Mount Diablo Base and Meridian (MDB & M).

Decision

The decision of the Field Manager, Battle Mountain BLM Field Office, is to select the Proposed Action analyzed in the Phoenix Project Final Environmental Impact Statement (FEIS) as modified with mitigation and monitoring requirements, as the BLM's Preferred Alternative. Development of the Project is authorized by this decision. The BLM decision is based on the action proposed in Plan of Operations NVN-067930 (Plan), submitted by BMG pursuant to 43 Code of Federal Regulations (CFR) § 3809. Implementation of this decision with mitigation and monitoring measures will not cause undue or unnecessary degradation of the public lands.

Before construction or operations may begin as approved in this Record of Decision, the following must occur:

- An approved long-term funding mechanism must be in place to satisfy all costs to implement the Contingent Long-Term Groundwater Management Plan;
- An approved financial guarantee for reclamation must be in place, as discussed further in this Record of Decision;
- BMG must implement the applicable monitoring and mitigation measures identified in the FEIS and this Record of Decision; and,
- BMG must secure all required federal, state, and local permits.

The FEIS analyzed the Proposed Action and the No Action Alternative. Eighteen alternatives identified during scoping were considered but not analyzed in detail. All practicable means to

avoid or minimize environmental harm resulting from the selection of the BLM Preferred Alternative have been adopted. All mitigation will be implemented and enforced.

Management Considerations

The rationale for the above decision is supported by the Surface Management Regulations (43 CFR § 3809), the Federal Land Policy and Management Act (FLPMA) of 1976, and the Mining Law of 1872. The Plan has been analyzed under the Council on Environmental Quality implementing regulations for the National Environmental Policy Act (NEPA) of 1969. Selection of the Proposed Action will allow BMG to undertake and continue a legitimate use of the public lands in an environmentally sound manner without causing undue or unnecessary degradation.

BLM has selected a Preferred Alternative, based on the analysis in this FEIS, that best fulfills the agency's statutory mission and responsibilities, giving consideration to economic, environmental, technical, and other factors. The BLM has determined that the environmentally Preferred Alternative is the Proposed Action detailed in Chapter 2, including the monitoring and mitigation measures specified in Chapter 3 and additional mitigation measures identified in this ROD.

The selection of the Preferred Alternative rather than the No Action Alternative is partially based on impacts associated with socioeconomic values, as this region is highly dependent on the mining industry for employment. The Preferred Alternative will result in a beneficial impact on socioeconomics as opposed to the No Action Alternative which would result in the elimination of up to 28 additional years of employment for up to 270 individuals.

The Project is in conformance with the Shoshone-Eureka Resource Management Plan (RMP) Record of Decision (ROD) which states: "Make available and encourage development of mineral resources to meet national, regional, and local needs consistent with national objectives for an adequate supply of minerals." The RMP ROD also states "All public lands in the planning area will be open for mining and prospecting unless withdrawn from mineral entry."

The Project is in conformance with the President's National Energy Policy as put forth in Executive Order 13212 and will not have an adverse impact on energy development, production, supply and/or distribution.

Summary of the Proposed Action

Principal components of the Proposed Action include the following:

- Mining four open pits and excavating and beneficiating existing ore stockpiles associated with previous Tomboy, Northeast Extension, and Fortitude mining operations;
- Use of new and existing facilities and open pits for waste rock;
- Reclamation of existing and proposed surface disturbance;
- Backfilling the Reona, Iron Canyon, Phoenix, and Midas pits to an elevation above the projected postmining ground water level;
- Amending the submerged waste rock to achieve neutralization of all sulfide predicted to oxidize;

- Relocating the county road to Willow Creek reservoir around the Natomas waste rock facility and optional use area;
- Approximately 4,308 acres of new surface disturbance in the Copper Canyon area;
- An operational mine life of up to 28 years, followed by approximately five years of reclamation;
- The employment of up to 270 individuals.

Summary of the No Action Alternative

Under the No Action Alternative, BMG will not develop the Phoenix ore body as presently defined. BMG will continue operations as previously approved. Upon completion of currently permitted mining operations, the existing facilities will be closed and reclaimed in accordance with current permits and applicable federal and state closure and reclamation requirements. After closure and reclamation, the total area that had been subject to mining and reclamation will be approximately 2,822 acres.

Summary of the BLM Preferred Alternative

Public comments received on the Draft EIS and Final EIS resulted in further refinement of the Project. These refinements have been incorporated into the Plan or have resulted in the BLM formulating additional mitigation and monitoring measures beyond those originally identified in the DEIS. Methods to minimize environmental harm from the Preferred Alternative have been identified in the FEIS and made part of this ROD.

The Project operations will be monitored by BLM under Inspection and Enforcement procedures in accordance with 43 CFR § 3809. Inspections will occur at a minimum of four times per year during the life of the Project. In addition to the Nevada State Engineer's and the Nevada Division of Environmental Protection's (NDEP) monitoring requirements, the water quality of the Project will be monitored per the guidelines established in the Plan.

Monitoring and mitigation measures presented in the Final EIS are summarized below (for a full discussion of these measures see Chapter 3 of the Final EIS). Additional mitigation measures WR-12 and S-5 and a modification to WR-7 are also provided. All monitoring and mitigation measures identified in the Final EIS and additional measures will be instituted and adhered to by BMG. Reports generated for the following monitoring and mitigation measures will be provided to the BLM and the appropriate permitting agency.

Geology and Minerals

G-1: Facility Stability. Designs for Tailings Area #3 and for facilities that could be constructed in the South Optional Use Area (including a tailings impoundment and/or heap leach facility) were not available for review as part of the EIS. All of these facilities will be designed, constructed, and maintained in a stable manner during both the operations and postmining periods. Geotechnical investigations and stability analyses will be performed to demonstrate that all of these proposed facilities will be properly designed and remain functional after an Operational Basis Earthquake and will not fail catastrophically or release fluids or materials during a Maximum Credible Earthquake. The minimum factors of safety and seismic

displacements for all facility slope designs will be determined as part of the permits and approvals granted by the Nevada Division of Environmental Protection and the Nevada Division of Water Resources.

G-2: Pit Slope Setback. The potential for damage to existing and proposed waste rock facilities from pit slope failures will be minimized by conducting geotechnical investigations and slope stability analyses to determine an appropriate setback distance for each existing and proposed facility located within 1,000 feet of a final pit rim. In determining the design setback distance for these facilities, potential failures that could occur during both the operational and postclosure periods will be considered. Options to preclude impacts to existing or proposed facilities from future pit slope failures include modifying the final pit rim location or adjusting the facility location to provide an adequate setback distance. If potentially unforeseen adverse geologic conditions are exposed in the pit wall as mining progresses, the final setback distance of any potentially affected facility will be modified as necessary to reduce the potential for damage during the operation and postclosure periods.

Water Resources and Geochemistry

A comprehensive Water Resources Monitoring Plan (Brown and Caldwell 2000e) has been developed to establish a network of surface water and ground water monitoring stations for both water quantity and water quality at the Phoenix Project area. The plan addresses the monitoring of new project facilities that may have the potential to affect waters of the State, or pose a risk to the environment and human health. Water quantity measurements will include diversion rates from ground water pumping and surface beneficial use, water levels in monitoring wells and piezometers, and flow rates of springs, streams and other surface water monitoring locations associated with storm water controls. Water quality monitoring of surface water resources will be conducted twice a year and consist of field parameter measurement (pH, conductivity, and temperature). Water quality monitoring of ground water resources will consist of quarterly measurements of these same field parameters and collection and analysis for the NDEP Profile I list of constituents.

Under this monitoring plan, BMG will monitor surface water quality and flow at 13 existing surface water monitoring locations, 10 existing spring locations, and 14 new surface water monitoring locations. BMG also will monitor ground water quality in 19 existing monitoring and pumping wells and 27 new monitoring wells. Monitoring associated with new facilities will be phased in over the life of the project. In addition, water levels in 49 existing monitoring wells will be monitored. Monitoring for new facilities will be initiated early enough to define downgradient baseline water quality prior to construction and operation of the proposed facilities. Monitoring results will be provided to NDEP and BLM on a quarterly basis and summarized in an annual report. Monitoring of surface and ground water diversion rates will be submitted to the Nevada Division of Water Resources on a monthly basis and summarized in an annual report. The timeframe for continued monitoring during closure and into the postreclamation period will be determined based on site conditions at the time of reclamation and closure.

In order to decrease the uncertainty of the predicted transient response of the ground water model, it is necessary to incorporate monitoring data representing the basins response to dewatering. The Water Resources Monitoring Plan will be amended to include a periodic recalibration of the hydrologic model.

As part of the Waste Rock Management Plan (Brown and Caldwell 2000d), BMG will install unsaturated zone monitoring devices at the downgradient edge of each waste rock facility to monitor performance of the waste rock facilities. These devices will be installed to collect quarterly pore water samples for analyses of NDEP Profile II constituents in the cap, the underlying waste rock material, and the substrate materials immediately beneath the facilities. Analytical results, interpretations, and recommendations associated with this unsaturated flow performance program will be submitted in an annual Waste Rock Management Report.

Installation and monitoring will be initiated immediately after final facility construction and reclamation. The time frame for continued monitoring of the waste rock facilities in the postreclamation period is not specified in the Waste Rock Management Plan or Contingent Long-Term Groundwater Management Plan (Brown and Caldwell 2000c).

As addressed in mitigation measures S-1 and S-2, the perimeter fence will be maintained, and a grazing management plan will be implemented during reclamation and in the postreclamation period. These measures are intended in part to minimize potential damage to the reclaimed caps covering the waste rock disposal facilities.

A Contingent Long-Term Ground Water Management Plan has also been developed by BMG for implementation to mitigate potential impacts to ground water quality beneath the waste rock facilities. This plan specifies installation of a series of ground water recovery wells downgradient of the project facilities within the project boundary. In the event that unsaturated zone monitoring indicates that seepage from the base of a waste rock facility is occurring, ground water will be pumped from the recovery wells and the recovered water treated and reinjected.

Long-term monitoring and contingent long-term ground water management are integral parts of the Proposed Action. The following additional monitoring and mitigation measures will be implemented to further reduce or eliminate potential impacts to water resources from the Proposed Action.

WR-1: Long-term Monitoring. Numerical simulations indicate that a perennial segment of Willow Creek, several spring sites, and existing surface and ground water rights could be affected by mine-induced drawdown of regional ground water levels. BMG will be responsible for continued monitoring and reporting of changes in ground water levels and surface water flows, as specified in the Water Resources Monitoring Plan in the postreclamation period. BMG will provide the monitoring results, describe any deviations from the original predictions, and propose modifications to the monitoring plan, if appropriate, in an annual report to both the NDWR and the BLM. The combined surface and ground water monitoring results will be used to trigger the implementation of measures WR-3 and WR-4 to mitigate impacts to surface water resources. Monitoring and reporting will continue until all impacts to water resources have been mitigated. Monitoring will cease with approval of both the NDWR and the BLM.

WR-2: Little Cottonwood Canyon Inventory and Monitoring. Prior to the initiation of mine dewatering, a baseline inventory will be performed to locate and characterize any perennial waters, including spring source areas and perennial stream reaches located in the south tributary of Little Cottonwood Canyon. The inventory will be performed during the low-flow period (late September through mid-October) to establish baseline flow and water quality conditions (major ion, trace elements, and isotope geochemistry). The inventory also will include site observations of hydrogeologic conditions, photographs, and description and mapping of wetland vegetation. Based on the results of the inventory, BLM or BMG will add additional representative spring(s) to BMG's surface water monitoring program, if appropriate. BMG's spring inventory and recommendations regarding additional spring monitoring will be submitted to the BLM for approval.

WR-3: Perennial Springs and Streams Flow. The comprehensive Water Resources Monitoring Plan will be expanded to include all 10 spring sites and at least three flow monitoring locations along the lower perennial reach of Willow Creek. An annual report and assessment of the surface water conditions will be provided to the BLM. Monitoring of these surface water resources will include annual flow measurements during the low-flow season (late September through mid-October). In addition, a stream gage coupled with a shallow ground water monitoring well, will be established to continuously monitor flows and shallow ground water elevations on Willow Creek. This monitoring station will be installed in the gaining perennial reach below the Willow Creek reservoirs, or another approved location within this stream reach. If monitoring indicates that flow reductions have occurred and that these reductions are likely the result of mine-induced drawdown, the following measures will be implemented:

1. NDWR and the BLM will evaluate the available information and determine if mitigation is required.
2. If mitigation is required, BMG will be responsible for preparing a detailed, site-specific plan to enhance or replace the impacted perennial water resources. The mitigation plan will be submitted to the BLM and NDWR for review within 30 days of identifying drawdown impacts to surface water resources. Mitigation will depend on the actual impacts and site-specific conditions and could include a variety of measures such as flow augmentation on-site or off-site surface water improvements, or other approved measures. Flow augmentation could be implemented to maintain flows and functional riparian and aquatic habitats at pre-project levels. The source of water for flow augmentation could include water piped from another nearby source or water supplied by a well drilled into an underlying aquifer near the affected spring or stream. Discharge from the well to the surface could be maintained by natural artesian flow, wind generation, or by an electric pump powered by commercial electricity or solar power generation. Other possible mitigation measures include a) improving existing stream or spring sites to enhance water yield collection and/or b) developing or improving other nearby streams or springs to offset the loss in flow.
3. An approved site-specific mitigation plan will be implemented followed by monitoring and reporting to measure the effectiveness of the implemented measures.

4. If initial implementation were unsuccessful, NDWR or BLM will require implementation of additional measures, if appropriate.

WR-4: Water Rights. BMG will be responsible for monitoring ground water levels between the mine and water supply wells, ground water rights, and surface water rights as part of the comprehensive monitoring program. Adverse impacts to water wells and water rights will be mitigated, as required by NDWR. For impacts to wells, mitigation could include lowering the pump, deepening an existing well, drilling a new well for water supply wells, or providing a replacement water supply of equivalent yield and general water quality. For surface water rights, mitigation could require providing a replacement water supply of equivalent yield and general water quality.

WR-5: Additional Long-term Water Quality Monitoring. The Water Resources Monitoring Plan includes surface water and ground water quality monitoring. Under this monitoring plan, the duration of monitoring in the postmining period will depend on the requirements set forth in the NDEP Water Pollution Control Permit for the Phoenix Project. Under current Nevada regulations (NAC 445A.446), NDEP could require monitoring for up to, but not exceeding, 30 years after permanent closure of a facility. As stated in the impact assessment, there is a potential for infiltration through the waste rock facilities to impact ground water quality in the long-term (>30 years after permanent closure). The Contingent Long-term Groundwater Management Plan is designed to prevent degradation of ground water quality in the postclosure period. In addition to the monitoring measures set forth in the Contingent Long-term Groundwater Management Plan, the BLM, in coordination with applicable state agencies, will require BMG to provide funding for additional monitoring of ground water quality in the postmining period. Long-term monitoring of ground water quality will be required to 1) assist in evaluating the need to implement the Contingent Long-term Groundwater Management Plan, 2) verify that ground water quality has not been impacted, and/or 3) demonstrate that impacted ground water has been fully captured by the ground water management system. Specific details regarding supplemental ground water quality monitoring associated with the Contingent Long-term Groundwater Management Plan are provided in mitigation measure WR-6.

WR-6: Supplemental Measures to the Contingent Long-term Groundwater Management Plan. The Contingent Long-term Groundwater Management Plan specifies measures to monitor the unsaturated zone at the downgradient edge of each waste rock facility and to implement a response plan to capture and treat affected ground water, if necessary. The following additional monitoring and mitigation measures will supplement the Contingent Long-term Groundwater Management Plan.

1. If long-term unsaturated zone monitoring of water quality at the toe of a waste rock facility indicates that leachate from the facility is migrating downward beyond the depth of the unsaturated zone monitoring points, a site-specific ground water monitoring plan (including ground water monitoring locations, monitoring well design, sampling frequency, sample protocols, and reporting) will be developed, and submitted for approval by the BLM in coordination with applicable state agencies, within 60 days of detection.

2. After approval, the site-specific ground water monitoring system will be installed and maintained to monitor ground water quality immediately downgradient of the waste rock facility on at least an annual basis. The combined information from the unsaturated zone and ground water monitoring system will be used by the BLM, in coordination with applicable state agencies, to implement the ground water extraction and treatment system in specific areas, as necessary, to prevent impacts to ground water quality downgradient of the defined extraction points identified in the Contingent Long-term Groundwater Management Plan.

3. If extraction and treatment become necessary, additional monitoring will be implemented downgradient of the extraction wells to verify that the degraded water has been fully captured by the ground water extraction system.

4. Any unsaturated zone monitoring or ground water monitoring required will continue until the potential risk of ground water contamination has been shown to be minimal as determined by the BLM in coordination with other applicable agencies.

In addition, BMG and BLM will continue to evaluate other appropriate technologies for prevention of water quality impacts. Ground water quality impacts will be mitigated by either implementation of the measures defined in the Contingent Long-term Groundwater Management Plan or by other appropriate measures approved by the BLM in coordination with other applicable agencies.

WR-7: Minnie Pit. The Water Resources Monitoring Plan will be expanded to include monitoring for water ponded in the existing Minnie Pit, if it occurs. If standing water is observed in the Minnie Pit prior to backfill, or the projected postmining water table is projected to saturate backfill material, the backfill material placed in the potential ground water saturation zone will be amended to preclude ground water quality impacts.

- Soils and reclamation measures S-1 and S-2 will protect waste rock facility caps during reclamation.

WR-8: Tailings (Supernatant) Pond Fluids. The following monitoring and mitigation measures will be used to mitigate potential impacts to waterfowl and other wildlife associated with the supernatant pond fluids. The pH of any ponded fluids contained within the tailings facilities will be monitored on a daily basis, and the water quality of the pond will be analyzed on a quarterly basis for NDEP's Profile II list of constituents. If deleterious supernatant pond water quality is detected, the pH of the fluids will be adjusted using chemical alkalinity additions (such as hydrated lime, milk of lime, or sodium hydroxide) to increase the pH and correspondingly reduce trace metal concentrations to non-toxic levels.

WR-9: Final Reclamation of Sediment Basins. Prior to capping and successful revegetation of the waste rock facilities, sediment basins located downstream of the waste rock facilities could collect runoff that is acidic and/or contains elevated metals concentrations. As part of the final reclamation and closure activities, the chemical composition of sediment contained in the basins

will be analyzed. If the sediment contains contaminants likely to degrade surface or ground water quality, the sediment will be excavated and disposed of either on-site or off-site in accordance with applicable state and federal regulations, in coordination with the NDEP and the BLM.

WR-10: Use of Waste Rock as Road Fill and Exposure of Waste Rock Material. All waste rock to be used as construction material (e.g., haul roads, pads) and older waste rock exposed in excavations for roads or facility areas will be sampled and analyzed in accordance with the Waste Rock Management Plan to determine if they contain contaminants that are likely to become mobile and degrade surface or ground water. Only benign waste rock will be used as uncapped or uncovered construction fill, and older waste rock exposed during construction will be covered with a sufficient thickness of benign material to prevent impacts to storm water runoff quality.

WR-11: Surface Water Quality for Waste Rock Facilities. The Water Resources Monitoring Plan will be revised to include specific procedures to monitor surface water flow and field water quality parameters (including pH and conductivity) at monitoring locations Phx 1 through Phx-14 quarterly (if there is sufficient flow) and during runoff events. Modifications to the plan will include: (1) procedures to determine when runoff-event-driven sampling will be performed (based on precipitation and snow melt); (2) field water quality parameter thresholds to determine when water quality samples will be collected for laboratory analysis, and (3) laboratory analyses to be conducted (including a list of constituents to be analyzed), if necessary. The revised plan will be submitted to the NDEP and BLM for approval prior to project initiation.

WR-12: Modifications to the Waste Rock Management Plan. The following monitoring and mitigation measures will supplement, or modify provisions for testing and selective handling of waste rock used for capping material:

1. In an effort to exclude potentially acid generating rock from being placed as capping material, prior to placement of waste rock as capping material, Net Acid Generation (NAG) testing will be performed to verify that all capping materials meet the Net Neutralization Potential (NNP) >0 criteria. For each block of capping material mined, NAG tests will be performed on representative samples from at least 10% of the blastholes, including blastholes located near the center and each corner of the block of material to be extracted for capping.
2. To further minimize the potential for placement of potentially acid generating materials, to reduce the availability of some constituents of concern, and to reduce the potential for sulfate release, only materials determined to have essentially no sulfide minerals, or trace amounts of sulfide minerals (estimated to be approximately 0.1% or less sulfide-sulfur content), will be used as capping material. The mine geologist will estimate the percent sulfide minerals present in identified blocks of capping material by visual examination of the bench surface, bench face, and logging of cutting from each blasthole in capping material. Field records used for determination of sulfide mineral content will be maintained on the mine site for inspection by the BLM. Specific field procedures used by the mine to restrict sulfide mineral content in capping materials will be provided by BMG for approval by the BLM prior to mining. The identification of low sulfide

materials at 0.1% or less sulfide sulfur must be conducted on materials already blasted and before flagging for removal and placement as cap suitable materials. Records for measurement and/or identification of 0.1% or less sulfide/sulfur cap materials must be recorded and maintained on site for inspection purposes for BLM and State of Nevada.

As additional data become available, BMG may propose modifications to the criteria and procedures used for selecting capping materials. BMG may also propose using amended waste rock as capping material based on the results of studies of revegetation pilot test plots. Proposed modifications to the capping material selection criteria, or field and laboratory procedures used to select these materials, will require approval of both the BLM and NDEP.

Soils and Reclamation

S-1: Fencing. BMG will leave the project perimeter fencing intact to facilitate proper pasture management within the allotment and thereby protect the integrity of the waste rock caps. This fencing is recommended to control the potential loss of perennial vegetation on reclaimed areas, particularly on waste rock facilities and pit backfills, where the amount and type of vegetation is integral to managing the potential for acid rock drainage. Such mitigation will consist of long-term fencing and maintenance in coordination with the BLM, such that grazing and pasture rotation scheduling could be managed to avoid adverse grazing impacts on the reclaimed areas. Additional internal fencing may be used to subdivide the reclaimed areas to provide productive postmining land uses while maintaining the quality and water balance function of reclaimed surfaces. If found to be appropriate, fencing maintenance will gradually be decreased as desirable plant community succession occurs on the revegetated areas, and they can be incorporated into the overall BLM range management program for the grazing allotment. Long-term perimeter fence physical maintenance will be the responsibility of the permittee and/or private landowner. Fiscal responsibility for fence maintenance will be addressed by project bonding. Long-term management oversight of the pasture defined by the perimeter fence as well as fence maintenance oversight will be the responsibility of the BLM on public lands and the landowner on private lands.

S-2: Grazing Management Plan. In association with S-1, BMG will coordinate with the grazing permittee(s), BLM, and NDOW to develop a grazing/land management plan over the short-term (prior to final revegetation bond release). This plan will address development of any desired subpastures, private land versus public land issues, waste rock cap integrity, and fire breaks among other issues for the area internal to the perimeter fence. The potential need for fire breaks relates to the need to attempt protection, over the long-term, of revegetated areas from conversion to annual grasslands as a result of wildfire. The grazing management plan will account for both livestock and wildlife grazing at proper intensities, livestock watering sources and salting program, responsibility for physical fence maintenance, fiscal responsibility for fence maintenance, and responsibility for overall management and/or incorporation into the BLM's future allotment management plans.

S-3: Steep Slopes. The number and extent of waste rock and backfill slopes steeper than 2.5 horizontal:1 vertical will be limited in the postmining topography wherever possible given land ownership and other constraints. In the northern part of the proposed project area, waste rock and

backfill slopes steeper than 2.5 horizontal:1 vertical will be allowed but their extent will be minimized. The occurrence of these slopes steeper than 2.5 horizontal:1 vertical in the postmining topography will be limited to those areas where:

- A small transition area is needed to maintain visual appearance consistent with adjacent topography of similar steepness.
- The presence of small, isolated steeper slopes allows the creation of larger flat surrounding areas so that overall revegetation and land use objectives are more likely to be successful.

S-4: Waste Rock Capping Material. The Waste Rock Management Plan specifies that potentially acid generating material in waste rock facilities will be capped with 5 feet of waste rock material having a net neutralization potential of greater than zero. Available data suggest that some of the material that could be used as capping material contains metals concentrations that could adversely affect plant growth or could pose a risk to some terrestrial organisms. To mitigate these potential impacts, the following measures will be implemented:

1. BMG will conduct a geochemical characterization of waste rock to characterize trace metals, sulfide sulfur concentrations, and net neutralization potential of the capping material.
2. BMG will evaluate the potential short-term, and long-term effects to plant species to be used for reclamation in the pilot test plot studies conducted during concurrent reclamation (see FEIS Section 2.1.21.4). This will include an evaluation of metals concentrations in cap materials and vegetation; effects to plant species at analogous reclaimed sites (e.g., Copper Basin, Copper Canyon, or other Nevada mining sites with similar metals concentrations); evaluation of the sensitivity of the reclamation species to the anticipated metals concentrations; and monitoring of plant growth, as stated in mitigation measure V-1.
3. BMG will conduct a site-specific ecological risk assessment during the revegetation test plot studies to determine the potential risk to species that occupy the project area (i.e., wildlife and livestock).

A site-specific risk assessment will determine whether: 1) a stressor has the ability to cause adverse effects and 2) ecological units (e.g., communities, populations, organisms) are in contact with the stressor for sufficient time and at a sufficient level to cause harm. If either of these two factors does not occur, then there is no risk.

The site-specific ecological risk assessment will be conducted in three broad phases: 1) problem formulation, 2) analysis, and 3) risk characterization.

- **Problem Formulation:** Preliminary characterization of exposure and effects; evaluation of the available scientific data; definition of objectives; and identification of data needs.
- **Analysis:** Characterization of exposure and ecological effects. Includes determination of spatial and temporal distribution of stressors and co-occurrence with the ecological unit, and identification and quantification of adverse effects. Effects are typically defined as toxicity.

- Risk Characterization: Uses the results of the exposure and effects characterization to determine the likelihood of adverse effects.

For the Phoenix Project, site-specific data will be collected during the revegetation test plot studies, including rock/soil and tissue metals concentrations, for use in the site-specific risk assessment. In addition to the collection of data on chemical concentrations, the site-specific risk assessment will consider appropriate organisms to be selected as target receptors (during the Problem Formulation phase) that will most likely be exposed to chemicals of concern. The selection of target receptor organisms may consider not only which organisms are abundant in the study area, but also endangered/threatened species and species of economic importance, i.e., livestock. Given this potential pathway, risk to humans may also require assessment.

If ecological risk is indicated during the evaluation of the test plot data, then the data will be evaluated to determine the source of risk and what mitigation measures are necessary to eliminate it or reduce it to acceptable levels.

4. If the above evaluations determine that there is a risk to either plant or wildlife species, BMG will modify the Waste Rock Management Plan to include specific measures (such as selective handling of waste rock to exclude cap materials with elevated metal concentrations, modification of the reclamation seed mix to exclude sensitive plant species, and/or recapping areas with elevated metals concentrations) to minimize these risks.

All evaluations performed as part of items 1, 2, or 3 listed above, and the associated mitigation identified in item 4 above, will be submitted to the BLM for approval.

S-5: Growth Media Suitability Verification. The success of capping materials to support vegetation depends on their physical and chemical characteristics. The mine operator will conduct additional testing (including sodium absorption ratio and electrical conductivity) on a representative suite of samples to verify that the capping materials will meet the general growth media suitability criteria presented in Table 3.3-5 of the FEIS. The sampling and analysis plan to be used for this suitability characterization testing, and the results of the testing will be provided to the BLM for approval prior to initiation of mining. Materials that do not meet the suitability criteria presented in Table 3.3-5 will not be used as capping material unless BMG can demonstrate, to the BLM's satisfaction, that these materials (or amended materials), or modifications of the reclamation seed mixture, will provide for successful revegetation.

Vegetation

BMG is required to provide for revegetation of the project area (see Section 2.4.21). An annual monitoring program will be required to ensure successful revegetation efforts at the Phoenix Project (Section 2.4.21.4).

Measures to mitigate the potential impacts to spring-related vegetation associated with seeps and springs along lower Willow Creek, which could be affected by ground water drawdown, are provided in the Water Resources and Geochemistry monitoring and mitigation measures.

Mitigation measures designed to facilitate successful reclamation and revegetation are addressed in the Soils and Reclamation monitoring and mitigation measures. As discussed in mitigation measure S-4, use of an additional criterion in the selection of capping material (sulfides less than 1 percent) should result in lower metals concentrations. It is likely that plants and soil microorganisms/ invertebrates found in the area will be tolerant of elevated metals levels and will not exhibit significant adverse effects.

V-1: Revegetation Monitoring. Because the growth media materials for both the Proposed Action and the No Action alternative may contain chemical constituents that could affect forage quality, revegetation on existing reclaimed sites will be monitored for chemical uptake and accumulation of selected elements. Such monitoring on disturbed areas will be accompanied by similar activities on nearby undisturbed lands to create a basis for comparison with native vegetation resources. Further investigations, particularly involving a review of research and existing data, will be conducted to gain further insight to the potential for plant uptake and accumulation of chemical constituents and their effect on plant success and on wildlife and livestock in comparison to undisturbed areas in the immediate region.

Postmining annual monitoring efforts will include an evaluation of the plant tissue of revegetation species to determine if metals are bioaccumulating in revegetated plants. If monitoring of plant tissue during initial concurrent reclamation and for a period of 5 to 10 years indicates that plant uptake could result in adverse impacts to wildlife or livestock, a plan will be developed by BMG and submitted to BLM and NDOW for approval to avoid potential impacts associated with accumulated metals. Possible mitigation measures to be considered, if necessary, include selective handling of growth media to further exclude certain material that contains elevated metals concentrations, or modification of the reclamation seed mixture to exclude species that are particularly susceptible to metals uptake and accumulation.

Wildlife and Fisheries Resources

Mitigation measures will be implemented to address the potential reduction in spring and stream flows as identified in the Water Resources and Geochemistry section. A measure to address potential bioaccumulation of chemical constituents in the capping material is identified S-4. Based on the potential impacts to wildlife, the following monitoring and mitigation measures to reduce impacts to wildlife, beyond those required by an NDOW Industrial Artificial Pond Permit, will be implemented.

W-1: Burrowing Owl Survey. Prior to development of the clay and gravel borrow sites or expansion of the tailings facility and tailings pipeline, these disturbance areas will be resurveyed to ensure the non-occurrence of any burrowing owl nest sites. If surveys identify active burrowing owl nest sites, ground disturbance will be conducted outside of the nesting season, if possible. If construction occurs within the nesting season, appropriate mitigation will be developed and implemented in coordination with the BLM, such as establishing buffer zones around active nest sites.

W-2: Big Game Collisions. Employees will be required to report any big game-vehicle collisions on the mine site and access road to BMG. If problems along the access road are identified, BMG will consult with the NDOW to identify and develop appropriate risk-reduction measures.

W-3: Firearms Control. BMG will prohibit employees from hunting or carrying firearms within the project area fenceline.

W-4: Wildlife Harassment. BMG will post informational bulletins to discourage employees from inadvertent or purposeful harassment of wildlife. BMG also will post state and federal regulations regarding legally protected species that could occur within the project area.

W-5: Off-Road Traffic. BMG will prohibit unauthorized off-road vehicle traffic within the project area controlled by BMG.

W-6: Bat Mitigation. Prior to any new ground disturbance activities, adits and shafts that could provide suitable bat roost sites within 0.25 mile of proposed activities will be resurveyed (preferably a warm season survey) for evidence of bat occupation. Shafts that cannot be safely accessed will be surveyed by conducting exit counts. Shafts or adits containing evidence of significant use by bat colonies will be marked in the field and on topographic maps and designated for mitigation prior to disturbance by mine development. Prior to disturbance of any identified important bat occupation sites, adits or shafts will be blocked to prevent bat entry during a period of nonoccupation.

Excluding bats from parts of the Reona adit complex may not be possible because of adit size and number as well as dangerous access. Therefore, a stepwise collapse of the complex will be evaluated in coordination with BLM and NDOW that will permit bats an opportunity to abandon this complex without being trapped. Ideally, collapse and closure of adits will be completed from late August through early October so that bats are not impacted during hibernation or maternity periods.

Suitable alternate adit or shaft roost sites located outside of potential disturbance areas will be protected from human intrusion by the construction of bat gates across the openings or other suitable measures. Bat gates are designed to prevent human access but allow bat passage. Selection of alternate roost sites and design of the gated closure will be coordinated with appropriate NDOW and BLM biologists, and gated closures will be inspected at regular intervals during the life of mining to ensure their effectiveness and continued bat use.

W-7: Power Line Raptor Safety. BMG will ensure all project power poles and power lines are constructed in configurations that preclude collisions and inadvertent electrocution of raptors using the power poles for perch sites. In addition, power poles will be fitted with anti-perching devices to minimize potential raptor and raven predation/harassment of sage grouse. The design and placement of anti-perching devices on power poles will be coordinated with the BLM and NDOW.

W-8: Wildlife Water Sources. As described in mitigation measures WR-1, WR-2, and WR-3, BMG will monitor seep, spring, and stream water quality and flow rates within the mine's potential drawdown area. If reductions in water quality or loss of flow are documented, mitigation measures will be applied as described in mitigation measure WR-3. Additional mitigation measures such as the establishment of wildlife guzzlers will be implemented if determined to be appropriate by the NDOW and BLM biologists. Appropriate mitigation measures to address any reduction in trout habitat also will be developed in consultation with the NDOW. Design and placement of mitigation guzzlers will be coordinated with NDOW and BLM.

Mitigation measures to minimize impacts to trout populations in lower Willow Creek will involve monitoring and reporting of flow changes, as described in mitigation measures WR-1 and WR-3.

Springsnail specimens will be collected at identified population locations in Duck Creek and Cow Canyon and identified to species by a springsnail expert to determine if these populations represent unique species prior to dewatering. If these springsnail populations are determined to be unique species, then additional mitigation measures may be needed including seep and spring mitigation measures, in addition to those described in WR-1 and WR-2, to preserve these springsnail populations.

W-9: Ground-clearing. Ground-clearing activity will not occur during the migratory bird nesting season between April 15 and August 1 unless under the direction of a qualified biologist to locate migratory songbird nest sites. If ground clearing occurred during the nesting season, mitigation for identified occupied nest sites will be determined on a case-by-case basis in consultation with the BLM. Mitigation measures could include avoidance, buffer zones, or construction constraints.

W-10: Contaminated Water Sources. Monitoring and mitigation described under WR-8 will ensure that migratory bird species and other wildlife are not exposed to potentially toxic water sources in the tailings impoundment. For process ponds and other water sources that may contain potentially toxic water sources for wildlife, wildlife exclusionary measures including, but not limited to, fencing, netting, and plastic balls will be installed as necessary.

Range Resources

Monitoring and mitigation measures applicable to range resources are associated with water resources and geochemistry, soils and reclamation, and vegetation.

R-1: Water Development. BMG will work with the BLM and permittee to develop short-term (life of mine) stock water at three locations on the periphery of the project perimeter fence to improve livestock distribution and forage utilization. No salting will be allowed within 0.25-mile of new water developments. Consideration will be given for wildlife access to these facilities.

Cultural Resources

Pursuant to 43 CFR §10.4(g), the holder of this authorization must notify the authorized officer, by telephone, with written confirmation, immediately upon the discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony (as defined at 43 CFR § 10.2). Further, pursuant to 43 CFR § 10.4(c) and (d), the operator must stop activities in the immediate vicinity of the discovery and protect it from project activities for 30 days or until notified to proceed by the authorized officer.

CR-1: Indirect Impact Mitigation. Employee and equipment access will be limited to minimize the potential for direct impacts to resources. Mine exploration and operations equipment will be prohibited outside of the proposed permit boundary, which will be clearly marked. Employee access to known archaeological and paleontological sites on private land in the vicinity of the mine will be limited.

CR-2: Additional Survey Requirements. Previously unsurveyed portions of the proposed fenceline will be surveyed for cultural resources prior to construction. If significant sites are found in these locations, attempts will be made, as identified in the Programmatic Agreement (PA), to avoid the sites. If avoidance is not possible, mitigation will be implemented as stipulated in the PA.

Air Quality

The Project includes the use of control devices and dust suppression methods to mitigate PM10 emissions. BMG has committed to the implementation of these air emissions controls in the Nevada Bureau of Air Quality Permit to Operate and in the Fugitive Dust Control Plan (BMG 2000b) for the Phoenix Project. Due in part to these emission controls, air quality analyses have demonstrated that significant impacts are not predicted. As the permitting process continues, the State of Nevada may require monitoring or mitigation measures as required by applicable regulations, if such regulations are triggered. To ensure that BLM is informed of air quality impacts and the steps taken to mitigate impacts and comply with Nevada's regulatory requirements, BLM is requiring that BMG submit copies of all air quality reports delivered to the State of Nevada and BLM, and also report annually to BLM on measures taken to control emissions of fugitive dust.

AQ-1: Air Quality Reporting. BMG will ensure that BLM receives copies of all air quality data and reports submitted to the State of Nevada under the requirements of the Phoenix air quality permit or other Nevada air quality regulations. In addition, BMG will report annually to BLM on source-specific measures taken to control fugitive dust emissions and the effectiveness of those measures in controlling sources of fugitive dust.

Social and Economic Values

The BLM can and does encourage local, county, and state governments or agencies to initiate discussions with the project proponent on the basis of the analysis presented in the EIS. The establishment of a dialogue based on mutual advantage and understanding, and a commitment to a shared responsibility for resolution of the potential impacts associated with project development, could lead to the preparation and implementation of mitigation measures that are advantageous to all parties. In particular, the volatility of the mining economy in the Lander

County area suggests that predicted social and economic effects could change if employment opportunities in the industry change. It is recommended that BMG work with local governments to monitor the effects of the proposed project to ensure that they are consistent with the projections discussed in this EIS. Consistent monitoring will facilitate adjustments in local planning efforts if major deviations from the projections should occur.

Visual Resources

Assuming successful revegetation of all disturbed landforms (except for the exposed pit walls), color and texture contrasts will be reduced to below a level of significance.

New disturbance will be limited to that needed for the safe operation of the facility to reduce the acreage that will need to be reclaimed. The long-term reclamation objective should be to achieve a self-sustaining, native vegetative community so that the colors and textures of the landscape (except for the pit highwalls), in time, will appear no different than that of the surrounding undisturbed landscape. The following measures will be required to address the creation of large landforms and night lighting.

VR-1: Landforms. Wherever possible the following measures will be incorporated into the operation and reclamation of the mine: 1) visually reduce the creation of linear and angular landforms; 2) vary final lifts of waste rock disposal areas and leach pads to create intermediate hummocks and hills; 3) vary interbench heights to reduce linear, equally spaced, terrace-like impacts; and 4) flatten final slopes to 3 horizontal:1 vertical, where possible.

VR-2: Night Lighting. Night lighting will be shielded and down directed to avoid light spill and glare as seen from the identified key observation points.

Public Involvement

The BLM first initiated the scoping process by publishing a Notice of Intent to prepare an EIS in the Federal Register on February 9, 1995. Public scoping meetings were held for the EIS on February 27 and 28, 1995, in Battle Mountain and Reno, Nevada, respectively.

BMG subsequently conducted additional exploration and development activities that identified gold and silver ore beyond the extent of the mine plan on which the original Plan of Operations was based. The changes prompted BMG to prepare a revised Plan of Operations. Because of the revised Plan and the time elapsed since the first scoping activities in 1995, the BLM re-initiated public scoping for the project by holding a scoping meeting in Battle Mountain on March 24, 1999.

The scope of the EIS reflects input received from the public and from the appropriate government agencies. Key issues identified during the scoping process (1995 and 1999) included: potential impacts from drawdown resulting from proposed mine dewatering operations, potential impacts to ground and surface water quality, quality of post-closure pit lake water, potential impacts to ground water quality from the heap leach pad, direct and indirect results of soil erosion and sedimentation, potential impacts to soil quality for restoring habitat, wildlife and

fisheries habitat loss from increased disturbance and water quality effects, potential impacts from noxious weeds and exotic plant species as a result of reclamation activities, potential impacts to Native American religious concerns and Traditional Cultural Properties, and potential economic impacts to the community.

The 60-day public comment period on the Phoenix Project DEIS began on March 2, 2001, when the Environmental Protection Agency published the Notice of Availability of the DEIS in the Federal Register. Approximately 355 copies of the DEIS were distributed by mail to various federal, state, and local agencies; elected representatives; environmental and citizen groups; industries and businesses; and individuals. On April 4, the BLM held a public meeting in Battle Mountain, attended by 43 individuals. No statements were presented to the court reporter at the public meeting and no written comments were submitted at the public meeting.

A total of 16 comment letters were received on the DEIS. In preparing the FEIS, the BLM communicated with and received input from many federal, state, and local agencies, as well as private organizations and individuals.

Approximately 335 copies of the FEIS were distributed. A total of 16 comment letters were received on the FEIS. These letters were assessed by the BLM prior to the BLM making a determination on the Preferred Alternative.

Plan Approval

BMG's Plan of Operations (Plan), filed pursuant to 43 CFR § 3809, for the Phoenix Project was received in this office on August 17, 1994 and assigned BLM case file number N64-94-008P. The Plan was revised numerous times and resubmitted in January 1999, and assigned a new BLM case file number N63-99-001P that was later changed to NVN-067930 due to administrative reasons.

The Plan consists of expanding current operations for the beneficiation of gold, silver, and copper. This will consist of developing the Reona Pit, expanding the existing Fortitude and Northeast Extension Pits to form the Phoenix Pit, expanding North Midas and South Midas Pits to form the Midas Pit, and expanding the Iron Canyon Pit. The excavation of existing ore stockpiles associated with previous Tomboy, Northeast Extension, and Fortitude mining will be coupled with pit development. Heap-leach-grade and crushed ore will be beneficiated at the existing and proposed expansion of the Reona heap leach facility. Mill-grade ore will be beneficiated at the proposed crushing, grinding, and milling facilities. Tailings material would be deposited at the proposed lined tailings facility. The project will occur on private lands owned or controlled by NMC and public lands administered by the BLM, Battle Mountain Field Office located in MDB&M:

T. 31 N., R. 43 E., sec. 15, 16, 21, 22, 23, 26, 27, 28, 32, 33, and 34; and,
T. 30 N., R. 43 E., sec. 2, 3, 4, 8, 9, 10, 16, and 21.

Complete development of the Phoenix Project could affect up to 7,189 acres of private and public lands, including 2,881 acres of existing disturbance and 4,308 acres of proposed

disturbance. The proposal is to bond and develop the Phoenix Project in phases utilizing concurrent reclamation to ensure the reclamation surety correlates with the reclamation liability during each phase. A financial guarantee cost estimate update will occur prior to each phase or every three years, whichever comes first. This update will account for the actual disturbance, the disturbance expected to occur during the next phase, and the changing equipment and labor costs. The BLM will review the amount and terms of the reclamation financial guarantee at least annually. Based on the review BLM can request the operator to adjust the financial guarantee cost estimate accordingly.

A financial guarantee sufficient to cover reclamation activities for all surface disturbance described in the Plan of Operations, projected to occur over the 28 year development period, has been estimated to be \$237,497,300 (rounded-up to the nearest hundred). This assumes no concurrent reclamation; concurrent reclamation is part of the proposed action and plan of operations. The reclamation cost estimate has been coordinated with NDEP, Bureau of Mining Regulation and Reclamation, and NDEP concurs with the amount. As noted, unless otherwise required by the BLM or elected by the operator, BLM will not require a financial guarantee for maximum surface disturbance described in the Plan of Operations; rather, BLM will require a financial guarantee for each phase of the operation. The reclamation cost estimate for each phase will require BLM and NDEP approval (or the approval of the appropriate regulatory agency(ies) consistent with any interagency understandings). The financial guarantee for phase 1, and each subsequent phase, must be approved by BLM and NDEP and be adjudicated and secured by BLM (or the appropriate regulatory agency) prior to project start-up or the initiation of each phase.

Due to the potential for groundwater quality impacts from waste rock facilities, a Contingent Long-Term Groundwater Management Plan (Brown and Caldwell, August 2000) (CLTGWMP) has been developed for monitoring and mitigation. The cost estimate to implement the CLTGWMP is described in the Preliminary Cost Estimate for the Phoenix Project Contingent Long-Term Groundwater Plan (Brown and Caldwell, July 2001) (Preliminary Cost Estimate). To fund these costs, NMC, in a letter to the BLM dated December 14, 2001, has proposed establishing a Long-Term Contingency Fund (LTCF). The LTCF is a funding mechanism that includes a trust fund, with the initial funding amount of \$408,300, to generate the monies necessary to satisfy the cost estimate and an interim surety in the amount of \$1,000,000 to ensure that the trust fund adequately performs, among other requirements.

The BLM has determined that the Preliminary Cost Estimate and NMC's proposal are acceptable, with certain modification described below. However, the details of the trust fund arrangement, including the interim surety, will be subject to further BLM review and approval before surface disturbance may occur. The BLM will require the following modifications to the NMC proposal:

- The trust fund will be established through an agreement jointly developed with BLM which must satisfy the requirements of 43 CFR § 3809 and be sufficient at a minimum to satisfy fully the cost estimate for the CLTGWMP as reflected in the Preliminary Cost Estimate, and may be modified from time to time by the BLM;

- The trust fund agreement will detail, among other things, the management of the fund, how the monies in the fund are to be invested, how the costs of fund management will be paid, and how monies are to be disbursed, and ensure that the trust fund will remain intact and available to satisfy the cost estimate for the CLTGWMP in the event of insolvency or other unforeseen events;
- The cost estimate for the CLTGWMP, including present value analysis, will be reviewed at least every three years;
- The performance of the trust fund will be reviewed consistent with 43 CFR § 3809.556, at which time NMC will make whatever arrangements are necessary to ensure that the performance of the trust is sufficient to satisfy the cost estimate for the CLTGWMP;
- The interim surety will be maintained for a period of up to 30 years, as determined by the BLM, and may be used to either deposit in the trust fund or to provide monies to satisfy the cost estimate for the CLTGWMP; and
- The trust fund will incorporate an annual management fee mechanism, and the projected growth of the trust fund must be adjusted accordingly, unless NMC proposes another acceptable method to cover these costs for the life of the trust fund.

If, at any time the BLM determines that the trust agreement, the interim surety, and the CLTGWMP are unsatisfactory to meet the BLM's existing and future legal obligations, the BLM will retain full authority to take whatever actions are necessary, including but not limited to requiring modification of the CLTGWMP.

Approval of the Phoenix Project Plan of Operations is granted based on the adoption of current standard operating procedures and compliance with mitigation detailed in the FEIS and Record of Decision. BMG may only perform those actions that have been described in the Plan. BMG must also comply with all Federal, State, and local regulations including obtaining all necessary permits from NDEP and other federal, state, and local agencies, and fulfilling any other Federal Land Policy and Management Act (FLPMA) requirements applicable to the project before proceeding with this project.

The surface occupancy proposed in association with this project meets the conditions specified in the applicable regulations (43 CFR § 3715). BLM is in concurrence with the proposed occupancy of the subject lands. BMG must continue to comply with sections 3715.2, 3715.2-1, and 3715.5 of the regulations.

Plan activities must be conducted in a manner that will prevent unnecessary or undue degradation. Plan activities must be in accordance with applicable air and water quality standards, including but not limited to, the Clean Air and Water Acts, as amended.

The operator must notify the BLM of periods of nonoperation of thirty days or more. The operator must take measures during such periods of nonoperation to maintain the Plan area in a safe and clean manner and to reclaim the land to avoid erosion and other adverse impacts.

Wildlife mortalities, a record of spills and releases, and remedial action taken in accordance with the emergency response plan, would be submitted on a quarterly basis to the BLM.

All operators must comply with applicable Federal and State laws dealing with the storage and disposal of chemicals, petroleum, petroleum products, Resource Conservation Recovery Act (RCRA) Subtitle C hazardous wastes, and RCRA Subtitle D solid wastes. Under no circumstances can chemicals, petroleum, petroleum products, or RCRA Subtitle C hazardous wastes be disposed in solid waste disposal areas on the mine or mill site without the written approval of the NDEP. The operator must identify what waste products will be produced, whether the waste streams are hazardous or solid, and the disposal method and location. If hazardous wastes are generated, the operator must obtain an Environmental Protection Agency generator identification number from NDEP and must manifest all shipments off-site. Copies of the manifests must be available for the Authorized Officer's inspection.

Any modification to the approved Plan must be coordinated with, and approved by, this office.

Approval of the Plan in no way implies the validity of the mining claims or the economic viability of the operation.

BLM will issue a Notice to Proceed once all contingencies have been met.

43 CFR § 3809 APPEAL STATEMENT

If you do not agree and are adversely affected by this decision, in accordance with 43 CFR § 3809.804, you may have the BLM State Director in Nevada review this decision. If you request a State Director review, the request must be received in the BLM Nevada State Office, 1340 Financial Blvd. 89502, P.O. Box 12000, Reno, Nevada 89520-0006, no later than 30 calendar days after you receive this decision. A copy of the request must also be sent to this office. The request must be in accordance with the provisions provided in 43 CFR § 3809.805. If a State Director review is requested, this decision will remain in effect while the State Director review is pending, unless a stay is granted by the State Director.

If the Nevada State Director does not make a decision on whether to accept your request for review of this decision within 21 days of receipt of the request, you should consider the request declined and you may appeal this decision to the Interior Board of Land Appeals (IBLA). You then have 30 days in which to file your notice of appeal with the IBLA (see procedures below).

If you wish to bypass the State Director review, this decision may be appealed directly to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR § Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, Nevada 89820) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulations 43 CFR § 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of this notice of appeal and petition for a stay must also be submitted to each party named in the decision and to the Interior Board of

Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR § 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

Record of Decision and Plan of Operations Approval:

/s/ Gerald M. Smith

Gerald M. Smith
Battle Mountain Field Manager

11-28-03

Date

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL Within 30 days file a *Notice of Appeal* in the office which issued this decision (see 43 CFR Secs. 4.411 and 4.413). You may state your reasons for appealing, if you desire.

2. WHERE TO FILE U.S. Department of the Interior
NOTICE OF APPEAL Bureau of Land Management
Battle Mountain Field Office
50 Bastian Road
Battle Mountain, NV 89820

SOLICITOR U.S. Department of the Interior
ALSO COPY TO Office of the Field Solicitor
6201 Federal Building
125 S. State Street
Salt Lake City, UT 84138-1180

3. STATEMENT OF REASON Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203 (see 43 CFR 4.412 and 4.413). If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary.

SOLICITOR U.S. Department of the Interior
ALSO COPY TO Office of the Field Solicitor
6201 Federal Building
125 S. State Street
Salt Lake City, UT 84138-1180

4. ADVERSE PARTIES Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents files (see 43 CFR Sec. 4.413). Service will be made upon the Associate Solicitor, Division of Energy and Resources, Washington, D.C. 20240, instead of the Field or Regional Solicitor when appeals are taken from decisions of the Director (WO-100).

5. PROOF OF SERVICE

Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy St., Suite 300, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (see 43 CFR Sec. 4.401 (c) (2)).

Unless these procedures are followed your appeal will be subject to dismissal (see 43 CFR Sec. 4.402). Be certain that all communications are identified by serial number of the case being appealed.

NOTE. *A document is not filed until it is actually received in the proper office (see 43 CFR Sec. 4.401 (a)).*

SUBPART 1821.2--OFFICE HOURS; TIME AND PLACE FOR FILING

Sec. 1821.2-1 *Office hours of State Offices.* (a) State Offices and the Washington Office of the Bureau of Land Management are open to the public for the filing of documents and inspection of records during the hours specified in this paragraph on Monday through Friday of each week, with the exception of those days where the office may be closed because of a national holiday or Presidential or other administrative order. The hours during which the State Office and the Washington Office are open to the public for the filing of documents and inspection of records are from 10 a.m. to 4 p.m., standard time or daylight savings time, whichever is in effect at the city in which each office is located.

Sec. 1821.2(d) Any documents required or permitted to be filed under the regulations of this chapter, which is received in the State Office or the Washington Office, either in the mail or by personal delivery when the office is not open to the public shall be deemed to be filed as of the day and hour the office next opens to the public.

(e) Any document required by law, regulations, or decision to be filed within a stated period, the last day of which falls on a day the State Office or the Washington Office is officially closed, shall be deemed to be timely filed if it is received in the appropriate office on the next day the office is open to the public.

* * * * *