

DECISION RECORD
for the Wyo-Ben Inc. Bentonite Mining Plan of Operation
WYW-148811
Hot Springs County, Wyoming

Introduction- The Environmental Assessment (EA) published and posted on the website inadvertently had “DRAFT” on it, this should have been removed before posting. Also, the date on the front page was incorrect, it should have been July 2009, not 2008. A 30 day public comment period was held and the EA posted on the website is the Final EA, and this document is the final Decision Record. We are sorry for any confusion this may have caused.

I have reviewed the EA WY-010-EA09-55 dated July, 2009. After consideration of the environmental affects as described in the EA, and incorporated herein, I have determined that the proposed action with the project design specifications identified in the EA will not significantly affect the quality of the human environment and that an Environmental Impact Statement (EIS) is not required to be prepared.

I have determined that the proposed action is in conformance with the approved Grass Creek and Washakie Resource Management Plans, 1996 and 1987 respectively, and is in conformance with the plans and policies of neighboring local, county, state, tribal and federal agencies and governments. This finding and conclusion is based on my consideration of the Council on Environmental Quality (CEQ) criteria for significance, (40 CFR 1508.27), both with regard to the context and intensity of impacts described in the EA.

I. DECISION

It is my decision to implement Alternative 2, “the Proposed Action with conditions of approval.”

II. ALTERNATIVES CONSIDERED

The EA for the Project considered three alternatives. Alternative 1, the “Proposed Action” considers the mine and reclamation plan as submitted. This alternative includes certain operator committed measures.

Alternative 2 considers the “Proposed Action with conditions of approval.” The conditions are the mitigating measures that arose as part of the analysis of Alternative 1.

The “No Action” (3) alternative assesses the effects of not approving the mine plan of operations as submitted or implementing any portion of the proposal. Under the No Action Alternative, the Worland Field Office (WFO) analyzed the effects of a denial of any further development associated with this project. This alternative provides a benchmark, enabling the decision maker to compare the magnitude of the environmental effects of the alternatives.

An alternative considering different locations for the conduct of mining and reclamation was dismissed from further consideration as this may remove the operation from lands where the

quality or quantity of bentonite is known through exploration and would not meet the operator needs, may be outside of placer claims located by Wyo-Ben Inc., or may be in areas where the bentonite does not outcrop.

III. RATIONALE FOR DECISION

The decision to approve the proposed action is based upon the following: 1) consistency with resource management plan and land use plan; 2) national policy; 3) agency statutory requirements; 4) relevant resource and economic issues; 5) application of measures to avoid or minimize environmental impacts; 6) finding of no significant impact; and 7) public comments. Alternative 2 was chosen as being the most environmentally sound alternative.

- 1) **National Policy:** TITLE 43--PUBLIC LANDS: INTERIOR CHAPTER II--BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR PART 3800-MINING CLAIMS UNDER THE GENERAL MINING LAWS--Table of Contents
Subpart 3802-Exploration and Mining, Wilderness Review Program
Sec. 3802.0-3 Authority.
These regulations are issued under the authority of sections 302 and 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, and 1782).
- 2) **Resource Management Plan Conformance:** This decision is in conformance with the Grass Creek and Washakie Resource Management Plans, 1996 and 1987 respectively.
- 3) **Agency Statutory Requirements:** The decision is consistent with all federal, state, and county authorizing actions required for implementation of the Proposed Action.
- 4) **Relevant Resource and Economic Issues:** Potential environmental impacts to surface and subsurface resources from the Wyo-Ben mining proposal were identified in the EA and are considered acceptable. Economic benefits to area communities derived from implementation of the Proposed Action in the form of continuing employment opportunities, equipment, services, and potential revenue are considered important.
- 5) **Opportunity for Public Involvement:** The BLM WFO released the EA on July 27, 2009 and gave the public a 30-day opportunity to review the EA. These public comments have been considered and are summarized below. The proposed mine plan was logged in to the BLM Wyoming NEPA register and posted in the WFO public room.
- 6) **Conditions of Approval:** Conditions of Approval deemed appropriate and necessary for this action are attached and are considered a part of the approval of this alternative.

IV. PUBLIC COMMENTS AND RESPONSES ON THE ENVIRONMENTAL ASSESSMENT

The Environmental Assessment for the Wyo-Ben Inc. Bentonite Mining Plan of Operation

WYW148811 Hot Springs County, Wyoming was available for a formal 30-day review and comment period from July 27-August 27, 2009. Comments were received from Wyo-Ben, the Hot Springs Conservation District, and one member of the public.

One comment was received expressing support of the Wyo-Ben Bentonite Mine Plan of Operations with the Conditions of Approval (COA). Three comments were in support of the mine plan with changes to the Conditions of Approval. All comments were carefully considered and evaluated in developing this decision record.

For purposes of this decision record, the comments have been summarized.

Comment: The Purpose and Need cites authority under 43 CFR 2200, which appears to have been developed for land transfer and land exchanges. We would appreciate clarification of BLM authority over locatable minerals under that Code.

Response: The BLM acknowledges that this reference to the regulations in 43CFR 2200 was included in error and does not apply to locatable minerals. The appropriate reference is 43CFR 3809 dealing with Surface Management.

Comment: Two comments supported the proposed speed limit of 30 mph over roads on federally managed lands. Two comments opposed the proposed speed limit.

Response: The BLM has concluded that the COA pertaining to a 30 mph speed limit on dirt roads was in error and the following was agreed to in its place: The BLM is the management agency for transportation routes crossing federal lands in each BLM office management area. BLM transportation routes consist of single-line stock pack trails up to and including upgraded, maintained gravel roads on federal lands. BLM roads located within the proposed mine plan area have been designed and constructed to meet a safe standard of 35 mph (30 mph incorrectly stated in EA). If there is a need for higher speeds on these roads, the company (Wyo-Ben) may apply for a Right of Way (ROW) grant to upgrade the road to safely accommodate higher speeds. The company maintains that they will post "caution heavy truck traffic" signs along routes as necessary to warn other users of mining equipment use, and perform dust abatement using water as outlined in their mining plan.

Comment: One comment was received concerning developed springs in the area of Pit 75T.

Response: The BLM addresses Ground Water and Ground Water quality in section 4.3.1.2. Ground water quality may be affected by the proposed mining. It could be effected either by water infiltration in the proposed mining area or by sedimentation or run-off leaving the site that may eventually make its way into the ground water. It is not likely that ground water would be directly affected through infiltration in the pits. The Rocks Springs Well as cited in section 3.3.2 indicated no significant water bearing formations at depths above 500 feet below the surface. Not only is there a few hundred feet of material above the water table to filter out any additives from the bentonite, but the water would have to penetrate through the remaining bentonite in the ground, which swells and has almost zero permeability once it is wet; it is more likely to evaporate than to infiltrate. If water escapes Wyo-Ben, Inc.'s berms and runs off site, it may

make it to an area where it would eventually make it into the groundwater. Sediment escape from the site caused by wind, water, or mining related activities (bentonite on haul truck tires falling off out of the mine area) could introduce trace amounts of bentonite into water that may eventually make it into the ground water.

Comment: One comment was received expressing a concern that mining activity would affect surface water quality.

Response: The BLM addresses Surface Water and Surface Water quality in section 4.3.1.1. Surface water quality could be affected by the Proposed Action. During the proposed mining process, natural drainage patterns would temporarily be disrupted, altering drainages and increasing overland flow mainly following precipitation events. Due to the lack of vegetation, biological crusts, and desert pavement, run-off from the proposed mining areas may transport excess sediment and water with higher level of sediment load into the watershed than was previously present in the system. Significant ephemeral channels (drainage basins of greater than 5 acres) would be temporarily directed around open pits during active mining stages and straw bale sediment barriers would be utilized as sedimentation control measures.

Through drainage would be required to be reestablished during final reclamation. Channel design for both temporary and permanent diversions would match pre-mine channel gradients and cross-sectional shapes and dimensions. After reclamation, drainage would temporarily be affected until vegetation has recovered to pre-mine conditions. Mitigation is listed and incorporated as part of the Hot Springs County Wyo-Ben Inc Plan of Operation. The cumulative impact to the developed springs in the area near Pit 75T is found to be not significant.

The impacts from the three new haul roads and the other proposed roads would create more compaction of soil and runoff from the road surfaces.

According to the mine plan there would be minor stream bank impacts due to necessary re-sloping of the low water crossing along the drainage to access pit #75T. The BLM NEPA analysis indicates that there would be no cumulative significant impacts to Surface Water and Surface Water Quality.

Comment: One comment was received expressing a concern about wildlife habitat and wildlife displacing activities.

Response: The BLM addresses wildlife concerns in section 4.8.1. Seasonal and year-long use of the area by large ungulates such as elk, mule deer, and antelope would likely be altered during periods of increased vehicular traffic and operation of heavy equipment associated with the mining activity. These animals would likely be displaced to adjacent areas where suitable habitat exists. A period of non-use by these species may occur as a result of mining areas being void of vegetation until revegetation takes place. Numerous small mammals, predators, passerines, and reptiles which may be present would likely move to adjacent areas where suitable habitat is found. The BLM NEPA analysis found that there would be no significant cumulative impacts to wildlife.

Comment: One comment was received expressing a concern with the standard stipulation for Cultural and Paleontological resources.

Response: The BLM addresses Cultural and Paleontological resources in section 4.11.1. The BLM and Wyo-Ben agree that the COA citing the standard stipulation for Cultural and Paleontological Resources is appropriate and shall remain.

Comment: One comment was received pertaining to the discussion of the potential for dust deposits to accumulate on petroglyphs in the last paragraph of section 4.15 Cumulative Impacts, titled “Cultural Resource Management.”

Response: No known petroglyphs would be directly impacted by Amendment 6 (the Plan of Operation being assessed). However, since this discussion is in the “Cumulative Impacts” section it is appropriate because there is the potential for impacts to these resources if not properly mitigated when future planned mining activity does occur on claims that are in close proximity to known petroglyphs.

Comment: One comment was received expressing concerns about the Conditions of Approval addressing potential impairment of visual resources.

Response: The BLM has determined that the COA pertaining to visual resources mitigation and the discussion of a COA pertaining to visual resources and mitigation requirements in the last two paragraphs of section “4.10.1.2 Visual Resource Management” are inappropriate. This is primarily because 3809 regulations supersede discretionary actions such as Visual Resource Management (VRM). The reality is that over the short term Class II visual objectives will temporarily be exceeded in pit 108T, however, in the longer term after reclamation is completed Class II visual objectives will be met once again.

Comment: One comment was received expressing concerns about the Conditions of Approval addressing livestock fencing.

Response: The BLM has determined that the COA pertaining to fencing for separation of range allotments cannot be a requirement, as mining rights under the 3809 regulations supersede discretionary actions such as grazing privileges. It was agreed that Wyo-Ben will notify BLM prior to removing any fences and that the BLM and Wyo-Ben will work cooperatively and in coordination with the grazing permit holder to resolve any issues where additional fencing of livestock may be necessary.

V. APPEALS

A party adversely affected by a decision may ask the State Director of the appropriate BLM State Office to review the decision. The original BLM decision remains in effect while State Director review is pending, except that the State Director may stay the decision during the pendency of his review. The State Director must receive your request for State Director review no later than 30 calendar days after you receive or are notified of the BLM decision you seek to have reviewed.

Director
BLM Wyoming State Office
PO Box 1828
Cheyenne Wyoming 82003

Your request for State Director review must be a single package that includes a brief written statement explaining why BLM should change its decision and any documents that support your written statement. Mark your envelope "State Director Review." You must also provide a telephone or fax number for the State Director to contact you. Once the State Director issues a decision, it replaces the original BLM decision, which is no longer in effect, and you may appeal only the State Director's decision. If the State Director does not make a decision within 21 days on whether to accept your request for review, you should consider your request for State Director review declined, and you may appeal the original BLM decision to OHA. The State Director's decision will be effective immediately and remain in effect, unless a stay is granted by OHA.

An adversely affected party may appeal the State Director's decision to OHA under part 4 of this title. An adversely affected party may also bypass State Director review and directly appeal a BLM decision to the Office of Hearings and Appeals (OHA).

In order for OHA to consider your appeal of a decision, you must file a notice of appeal in writing with the BLM office where the decision was made. Your written appeal must contain: your name and address and the BLM serial number of the notice or plan of operations that is the subject of the appeal. You must submit a statement of your reasons for the appeal and any arguments you wish to present that would justify reversal or modification of the decision within 30 calendar days after filing your appeal. All decisions go into effect immediately and remain in effect while appeals are pending before OHA unless OHA grants a stay.

/s/ Don Krump
Authorized Officer

11-19-2009
Date