

DECISION RECORD

Bureau of Land Management Las Cruces District Office

Environmental Assessment

DOI-BLM-NM-L000-2020-0024-EA

American Magnesium Foothill Dolomite Mine Project

I. DECISION

It is my decision to authorize the proposed action in the attached Environmental Assessment (EA) DOI-BLM-NM-L000-2020-0024-EA, American Magnesium Foothill Dolomite Mine Project which allows for the construction, operation, and reclamation of the Foothill Dolomite Mine adjacent to the Florida Mountains near Deming, New Mexico. The Foothill Dolomite Mine consists of approximately 40 acres of surface disturbance that includes a pit, a laydown yard, 1,334 feet of new access road, and 2 miles of improvement on an existing unnamed BLM road.

Mitigation measures and design features identified in Chapters 2 and 3 of the EA have been formulated into stipulations found in Section II of this decision.

II. TERMS / CONDITIONS / STIPULATIONS

The following mitigation measure was analyzed in the EA to help mitigate impacts to greenhouse gas emissions and is now a stipulation of this decision:

- Fossil fuel-fired construction equipment will be maintained in accordance with manufacturers' recommendations to minimize construction-related combustion emissions. Combustion emissions would be further controlled through engine manufacturing requirements for both mobile sources and portable equipment such as air compressors. Idling time of equipment will be limited, unless idling must be maintained for proper operation (e.g., trenching, hoisting, drilling).

American Magnesium has also committed to several design features as listed below and in Section 2.1.7 of the EA and are now stipulations of this decision:

General

- American Magnesium will comply with all applicable environmental laws and regulations regarding protection measures, including but not limited to water and air quality protection, to prevent unnecessary or undue degradation during construction, operation, and reclamation of the proposed project. The measures are derived from the general requirements established in the BLM's Surface Management Regulations at 43 CFR 3809 and water, air quality, and other environmental protection regulations, including the reclamation requirements applicable to minimal impact new mining operations under the New Mexico Mining Act Reclamation Program rules administered by New Mexico Mining & Minerals Division (MMD).

Cultural Resources

- Pursuant to 43 CFR 10.4(g), American Magnesium will notify the BLM authorized officer, by telephone and with written confirmation, immediately upon the discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony (as defined in 43 CFR 10.2). Further, pursuant to 43 CFR 10.4(c) and (d), the operator will immediately stop all activities in the vicinity of the discovery and not commence again for 30 days or when notified to proceed by the BLM authorized officer.
- Any cultural resource discovered by the permit holder, or by any person working on their behalf, during the course of activities on federal land will be reported, as required by any applicable cultural resources laws applicable to the site including, at a minimum, the authorized officer by telephone with written confirmation. The permit holder will suspend all operations in the immediate area of such discovery and protect it until an evaluation of the discovery can be made by the authorized officer. This evaluation will determine the significance of the discovery and the mitigation measures or documentation requirements that are necessary to allow activities to proceed. The holder is responsible for the cost of evaluation and mitigation. In instances for which applicable cultural resource laws require the immediate cessation of operations, operations will resume only upon written authorization to proceed from appropriate officials vested with such authorization authority under applicable laws.

Paleontological Resources

- The operator will immediately notify the BLM Authorized Officer of any paleontological resources discovered as a result of operations under this authorization. The operator will suspend all activities in the vicinity of such discovery until notified to proceed by the Authorized Officer and shall protect the discovery from damage or looting. The operator may not be required to suspend all operations if activities can be adjusted to avoid further impacts to a discovered locality or be continued elsewhere. The Authorized Officer will evaluate, or will have evaluated, such discoveries as soon as possible, but not later than 10 working days after being notified. Appropriate measures to mitigate adverse effects to significant paleontological resources will be determined by the Authorized Officer after consulting with the operator. Within 10 days, the operator will be allowed to continue construction through the site, or will be given the choice of either (1) following the Authorized Officer's instructions for stabilizing the fossil resource in place and avoiding further disturbance to the fossil resource, or (2) following the Authorized Officer's instructions for mitigating impacts to the fossil resource prior to continuing construction through the project area.

Air Quality

- Application of water from a water truck will be used as a method of dust control, including use of water around the area to be blasted, to reduce potential for dust.
- Base course or gravel will be placed on the access road (approximately 1,334 feet long) and 2 miles of the unnamed BLM road on BLM land to reduce potential for dust.
- Wet suppression and vacuum controls will be used during drilling.
- No blasting during high wind events (over 25 mph).
- Baghouse technology for offsite crushing will be used.
- A Health and Safety Plan that includes identification of appropriate personnel protective equipment for personnel handling dolomite will be developed.

- Covered haul trucks will be used.
- Vehicle speed will be limited to 15 mph on roads in the mine area.
- Fugitive dust should remain localized; however, if air quality concerns do arise, the Authorized Officer may require air samplers be placed in appropriate locations outside of mining activities to determine effects to ambient air quality in the region.
- Using water to suppress fugitive dust on County Road B016, is expected to be effective for fugitive dust suppression. However, if air quality concerns do arise on the unpaved portion of County Road B016, the Authorized Officer may require base coarse be used, in addition to water, for fugitive dust suppression.

Vegetation and Noxious Weeds

- Noxious weeds will be controlled through implementation of the following Best Management Practices:
 - Concurrent reclamation efforts to the extent feasible.
 - Operator control of noxious weeds as directed by the Authorized Officer.
 - Removal of invasive, nonnative, and noxious weeds on reclaimed areas.
 - Washing heavy equipment prior to entering the project area.
 - Avoiding areas of known invasive, nonnative, and noxious weeds during periods when the weeds could be spread by vehicles.
- Any natural soil amendments used will be certified free of invasive and noxious weeds.

Wildlife

- Access to the proposed mine site will be fenced to prevent wildlife from entering the proposed project area.
- Reclamation will be conducted to achieve a stable configuration and self-sustaining ecosystem for wildlife.
- Wildlife signage will be placed along the unnamed BLM road and proposed new access road to be used to avoid vehicle collisions with wildlife as directed by the Authorized Officer.

Migratory Birds

- Any ground clearing or other disturbance (such as creating cross-country access to sites, drilling, and/or construction) during the migratory bird (including raptors) nesting season (March 1 - August 31) risks a violation of the Migratory Bird Treaty Act. Disturbance to nesting migratory birds should be avoided by conducting surface disturbing activities outside the migratory bird nesting season. If surface disturbing activities must be implemented during the nesting season, a preconstruction survey for nesting migratory birds will be performed by a qualified wildlife biologist. If active nests are found, an appropriately-sized no surface disturbance buffer determined in coordination with the BLM biologist will be placed on the active nest until the nesting attempt has been completed. If no active nests are found, construction activities must occur within the survey validity time frame specified in the conditions of approval.

Reclamation and Revegetation

- Excess material from the road improvement suitable for use as topdressing (defined in 19.10.1.7.T(1) New Mexico Administrative Code (NMAC) as “geological material and other

amendments capable of supporting vegetation") will be collected, transported to the laydown yard, and stockpiled for future use during reclamation activities.

- Disturbed areas that are not needed for future operations will be reclaimed; interim reclamation will be performed in areas that receive intermittent use. The disturbed area will be seeded with a certified weed-free native seed mixture and mulched with a certified weed-free mulch. As directed by the Authorized Officer a tackifier may be used to enhance stability of the seedbed.
- Reclamation will occur concurrently during operations at the earliest economically and technically feasible time.
- Proposed project areas will be restored to a safe and stable condition that blends with the surrounding undisturbed area and that meets BLM and MMD requirements to achieve a self-sustaining ecosystem appropriate for the surrounding area that is consistent with approved post-mining land uses.
- A fenced vegetation reference area will be established to be used in the evaluation of revegetation success.
- Reclamation will be conducted in accordance with success standards outlined in 19.10.603.G NMAC, which specify the following:
 - Total herbaceous cover and productivity will be equal to 90% of the reference area within a 90% statistical confidence.
 - The diversity of plant life forms (woody plants, grasses, and forbs) will determine what is reasonable given the physical environment of the reclamation.
 - Woody plant species will be established to an approved density with an 80 percent statistical confidence.
- Monitoring parameters, including vegetative cover and plant diversity, and other standards designated by the BLM will be used to determine the success of the revegetation.
- Topsoil and subsoil will be replaced and contoured to achieve safe slopes, erosion control, long-term stability, and preservation of surface water flow patterns.

Grazing

- American Magnesium will take measures to protect the allotment boundary for damages. If the allotment boundary on the West side is damaged in any way near the proposed mine as a result of the mine activity, the operator is responsible for repairing the allotment boundary immediately. The operator must notify the BLM office and the private surface landowner or the grazing allotment holder if any damage occurs to any range improvements. The operator will also ensure that the gate in the allotment boundary remains closed during operations and/or will be responsible for installing a cattle guard.
- In the event that livestock enter the proposed area of disturbance via a gate or opening in a fence, the grazing permittee will be contacted immediately.

Water Quality

- American Magnesium will develop a written Stormwater Pollution Prevention Plan (SWPPP), including a Sediment Control Plan, to be implemented once final engineering of facilities, the mine site, and road improvements have been received by the Authorized Officer.
- Drill cuttings will be contained on-site. If a Reverse Circulation drill is used, the fluids will be managed using appropriate control measures as directed by the Authorized Officer.

- Only nontoxic fluids will be used in the drilling process.
- Sediment traps will be used as necessary and filled at the end of the drilling program as directed by the Authorized Officer.
- Following resource verification activities, each drill hole will be permanently sealed from bottom to top with a neat cement slurry grout in accordance with 19.10.3.302.L. NMAC. If groundwater is encountered or the project is interrupted for more than 120 days, drill holes will be plugged pursuant to 19.27.4. NMAC.
- Stormwater pollution prevention BMPs will be used at the mine and laydown yard sites to minimize erosion from stormwater (see Section 3.5.2).
- Direct runoff of water used for dust control will be limited to the extent practicable and will not cause downstream erosion or flooding or cause an exceedance of applicable water quality standards.
- Sediment control will be achieved through the use of BMPs including regrading, fabric and/or hay bale filter fences, seeding and mulching, siltation or filter berms, silt fences, straw bale dams, diversion ditches with energy dissipaters, rock check dams at appropriate locations during construction and operation, and in downgradient drainage channels in order to prevent unnecessary or undue degradation as directed by the Authorized Officer.
- Diversion structures, including existing natural structures, will divert runoff away from disturbed areas.
- All sediment control structures will be monitored and maintained on a regular basis.
- During reclamation, all areas where water could pond will be recontoured and graded, and surfaces will be covered with topdressing and vegetated.

Spill Prevention

- In the event that hazardous or regulated materials are spilled, immediate measures will be taken to control and clean up the spill as detailed in the spill prevention, control, and countermeasures (SPCC) plan.
- Equipment will be regularly inspected and properly maintained to limit adverse impacts from any unintentional release.
- All containers of hazardous substances will be labeled and handled in accordance with requirements of the New Mexico Department of Transportation (NMDOT) and Mining Safety and Health Administration (MSHA).
- Safety Data Sheets (SDS) will be maintained on-site at all times in accordance with MSHA's Hazard Communication for the Mining Industry (30 CFR 47).
- Oil absorbent boom, sorbent materials, and other spill response materials will be maintained on-site and within vicinity to daily work activities. The spill response materials will be checked monthly during the duration of the proposed project and replenished as needed.
- In accordance with 40 CFR 112.7(d)(2), American Magnesium will provide the labor, equipment, and materials required to expeditiously control and remove any quantity of oil spilled during the implementation of this project.

- Documentation of inspections will be maintained at all times. Daily visual inspections will be conducted for both on-site equipment and the complete project site prior to operation and will include the following visual monitoring:
 - Signs of fuel or oil leakage from onsite vehicles and equipment.
 - Staining and discoloration of site soils.
 - Excessive ponding of stormwater.
 - The presence of visible accumulation of petroleum hydrocarbons.
- Annual SPCC inspections of the project area will be conducted to verify the following:
 - The SPCC plan is maintained.
 - The description of the on-site chemicals and equipment is accurate.
 - Applicable SDSs are maintained on-site.
 - Site maps are current and reflect accurate on-site conditions.
 - Controls to reduce the potential for spills identified in the SPCC plan will be implemented.
- All project personnel will be briefed about spill control procedures prior to mobilization to the project area, at the initial site briefing, and through daily tailgate safety meetings.
- Fuels and oils will be stored in containers on support or crew trucks for fueling of equipment. Vehicles and containers will not be stored where a leak or spill could enter a stormwater conveyance or arroyo.
- Site personnel will monitor fuel storage, delivery, and construction equipment for leaks. Any leaks will be immediately addressed and repaired. Any leaks and leak repair procedures will be documented according to Section 6.3 of the SPCC plan.
- All spills or leaks, regardless of their quantity, will be reported to the BLM and the New Mexico Environment Department (NMED).

Visual

- The laydown yard will be placed on a raised bench to minimize surface disturbance.
- The proposed project area will be kept clean. Unused equipment and materials will be removed.

Public Safety

- Access to the mine site will be restricted to the public. Measures to prevent unauthorized access to the mine site will include a tamper-resistant lockable gate, wire fencing, and appropriate signage. Constructed fences will be monitored and repaired on a regular basis.
- Gates or cattle guards will be installed along roadways within the proposed project area, as directed by the Authorized Officer.
- All solid wastes will be disposed of in a state, federal, or local designated site.

III. COMPLIANCE AND MONITORING

The project will be monitored by Bureau of Land Management personnel, either a geologist or an environmental protection specialist during construction, operations, and reclamation activities to ensure that project complies with this decision and the 43 CFR 3809 regulations and that the stipulations are implemented as required.

IV. AUTHORITIES

The authority for this decision is contained in the General Mining Law of 1872 as amended, the Federal Land Policy and Management Act (FLPMA) of 1976, as amended, BLM regulations (43 CFR 3809 and 43 CFR 3715), the National Environmental Policy Act (NEPA) of 1969, as amended, Clean Water Act of 1987, Endangered Species Act of 1973, as amended, the Clean Air Act as amended, National Historic Preservation Act as amended, and additional laws as listed in Section 1.4.2 of the EA.

V. ALTERNATIVES CONSIDERED

Under a no action alternative, mineral development would not occur on public land as described in the Proposed Action. The no action alternative would not fulfill the purpose and need of providing mineral development opportunities on public lands. Furthermore, the no action alternative is not consistent with the 1993 Mimbres RMP, the Mining and Minerals Policy Act of 1970, as amended, or with Executive Order 13817.

The BLM considered two other potential haul routes between the proposed mine location and the conceptual location of the Peru Industrial park, before formulating the analysis. The first alternative route was a direct path from the proposed mine site, north on Highway 11 through the city center of Deming and ending at the Peru Industrial park. The City of Deming indicated to BLM that this route concept would not be acceptable based on the volume of industrial traffic already traversing through the city center, and potential impacts on city businesses and safety of pedestrians from the increase in heavy truck traffic. Therefore, BLM eliminated this route concept from further consideration.

The second conceptual haul route option was located along McCann road, and was presented as the conceptual haul route during the initial public scoping phase that BLM facilitated in July of 2019. The public input during scoping as well as further comments by the City of Deming resulted in dismissal of the McCann route on the basis of the mileage of dirt roads that would be traversed, leading to a greater impact and increase in dust generated by haul traffic.

No other alternatives were developed because the Proposed Action is designed to minimize impacts; EA section 2.1.7 identifies the project design features. Additionally, BLM has added mitigation to further reduce impacts to greenhouse gas emissions. Lastly, mine development activity compliance is subject to the operator obtaining other federal, state, and local government approvals. Furthermore, no other reasonably feasible alternatives would meet the purpose and need.

VI. RATIONALE FOR DECISION

The decision to authorize the proposed action as described in the EA will allow development of magnesium, a critical mineral, as described in Executive Order 13817. The decision is based on the following findings and requirements for the project which were derived by concerns for potential impacts considered by BLM and the public during internal and external scoping and the comment periods.

- 1) The Proposed Action will not have adverse impacts on eligible historic and cultural resources or Native American religious concerns as two Class III archaeological surveys were completed to identify significant cultural resources that could be impacted by the project. The surveys were negative with no historic properties identified. Also, there were no significant cultural resources of Native American affiliation identified within the project area.

- 2) The Proposed Action will not negatively affect special-status species or threatened and endangered species as a survey for both wildlife and vegetative species was conducted and none were found.
- 3) The Proposed Action will not negatively affect wildlife, livestock, paleontology, night-skies, or vegetation. So long as the design features are followed, resources would be protected.
- 4) The Proposed Action will not adversely affect residential structures during blasting activities. Vibration associated with blasting activities is not anticipated to affect residential structures beyond 1,000 feet from the proposed project because there are no residential homes within 1,000-feet of the project area.
- 5) The Proposed Action will not have significant impacts to recreational values, which consists of hiking, bird watching, rock hounding, mountain biking, and hunting. Access to the Florida Mountains will not be impeded and access to the Florida Mountains Wilderness Study Area may be improved.
- 6) The Proposed Action will have no direct impacts to the Florida Mountains Area of Critical Environmental Concern (ACEC) because all mining activities would occur outside of the ACEC boundaries. However, there may be short term indirect impacts to the scenic values of the ACEC from the mining activities located outside of the ACEC boundaries. Analysis of short-term indirect impacts can be found in Section 3.3 of the EA.

Likewise, there are no direct impacts to biological values anticipated within the ACEC, because all activities occur outside the ACEC. Potential impacts to wildlife and rationale for dismissal are discussed in Table 2, ELM-3.

- 7) The Proposed Action will result in surface disturbance that has potential to result in increased dust. The potential impact resulting from construction, earth-moving, mining, on-site rock crushing, blasting, travel on unpaved roads, and additional processing at the offsite processing facility is not expected to result in National Ambient Air Quality Standards (NAAQS) exceedances for PM₁₀ and PM_{2.5}. Furthermore, NAAQS exceedances are not expected from mobile and stationary sources.
- 8) The Proposed Action will not negatively impact water quantity, because the total water use daily for the Proposed Action would be approximately 1% of the total daily water use for households in Luna County. No water well would be drilled. The water used for the Proposed Action is expected to be sourced from a commercial permitted water source using existing water rights.
- 9) The Proposed Action will not adversely impact environmental justice as the minority or low-income populations of Deming would be impacted to the same degree and intensity as non-minority or populations above the poverty threshold.

- 10) The Proposed Action would not adversely impact scenic quality because the impacts meet the 1993 Mimbres RMP/ FEIS' visual resource management (VRM) Class III objectives for the project area.
- 11) The Proposed Action will not negatively impact public health and safety because it is designed to minimize the physical safety hazards associated with all mining activity.
- 12) The Proposed Action will not adversely impact surface or ground water. The project area does not contain sulfide minerals and will not create acid generating or deleterious material. With the implementation of the Spill Prevention Control and Countermeasures, and the Storm Water Pollution Prevention Plan, no change to groundwater or surface water quality in the watershed is expected to occur.
- 13) The Proposed Action will not negatively impact greenhouse gas emissions. The Proposed Action accounts for an increase of approximately 0.003% of all U.S. emissions and 0.0003% of global emissions. Furthermore, a mitigation measure for fuel reduction and efficiency improvements to further control GHG emissions from equipment and vehicle operations is being imposed.
- 14) The Proposed Action will not adversely affect exterior noise levels because mine activities will not exceed the EPA's goal for residential land use of 55 decibels for a sustained period. The EPA goal is met because of distances to the nearest receptors, the short duration of noise level increases, and the limit of operation to daylight hours Monday through Friday.
- 15) The Proposed Action will not negatively impact residential property values. Factors that have the potential to detract from quality of life and contribute to effects on residential property values include viewshed, noise, dust, and traffic. The BLM has analyzed these resources and has determined that the Proposed Action has no adverse impact on them. Furthermore, residential development in Luna county has been relatively stable. Additionally, according to current research (Grant 2017; Phoenix Center 2018), there would be little to no impact to residential property values in the analysis area resulting from the proposed mine operation.
- 16) The Proposed Action will not negatively affect Persian ibex hunting opportunities because of the 75,310 acres that encompass the Florida Mountains, approximately 40 acres, or 0.01% of the analysis area, will be disturbed. Furthermore, the project area does not contain exposed rock cliffs or ridgelines that are preferred by Persian ibex.
- 17) The Proposed Action will not adversely affect outstanding opportunities for solitude because activities will be intermittent. Although there will be an increase of baseline noise level from 40 dBA to 64 dBA (normal speech level) at the WSA boundary, as the distance from the mine site increases the level of noise would decrease. Some portions of the WSA will have views of the project; however, the mine will not dominate the viewshed.

Primitive and unconfined recreation may be enhanced by the Proposed Action's improved road access. All other WSA elements have no impacts.

18) The Proposed Action will not negatively affect job opportunities in Luna County. The Proposed Action together with the related actions of transportation and processing of the ore recovered from the mine, would result in the creation of 14 employment opportunities for mine operations and 15 for ore transportation.

The proposed action, as described in the attached EA and Finding of No Significant Impact (FONSI), conforms to the Mimbres RMP (1993), the BLM National NEPA Handbook H-1790-1, the BLM Surface Management Handbook H-3809-1, and BLM Permanent Instruction Memorandum PIM-2018-023. The proposed action will not result in any undue or unnecessary environmental degradation and there will not be any significant impacts to the human environment, therefore an environmental impact statement is not required.

The BLM solicited input from the public on the project to assist in identifying key issues and defining the scope of the project and environmental analysis. The BLM held a 30-day scoping period with a meeting held on July 25, 2019. This scoping period resulted in 49 comment letter submissions.

Individual comments within each letter were identified, and each comment was analyzed per BLM's criteria for determining issues for consideration in the EA (Tables 1 and 2). Appendix A of the EA contains the summary of the scoping process and the comments received. Public input was used to identify the key issues (Table 1) analyzed in Chapter 3.

From May 18, 2020 to June 17, 2020 the BLM held a 30-day public comment period; with a virtual public meeting on May 28, 2020 to solicit comments to the EA and a draft unsigned FONSI. A total of 281 submissions were received and individual comments within each letter were identified and analyzed in Appendix D (Public Comments and Resolution) of the EA.

Appendix D is the comprehensive list of comments, but the greatest concentration of comments concerned the NEPA Process, Transportation, Mill Site, WSA, Water Quantity, Persian ibex, and Mining Law. Several substantive comments resulted in BLM adding analysis to the EA, but the additional analysis did not yield any change in the Proposed Action, or BLM's determination in the finding of no significant impact.

Luna County, the City of Deming, and representatives from the New Mexico Mining and Minerals Division were invited to be cooperating agencies via letter in October 2019. All three agencies accepted. Several cooperating agencies meeting (formal and informal) were held.

The BLM consulted with the New Mexico Historic Preservation Division and tribal entities on cultural resource clearances throughout the process.

On November 21, 2019, BLM LCDO sent notification letters to Fort Sill Apache Tribe, Hopi Tribe, Mescalero Apache Tribe, White Mountain Apache Tribe, and Ysleta del Sur Pueblo inviting comments regarding the proposed project. On December 6, 2019, White Mountain Apache Tribe sent a letter to BLM LCDO with the response that the proposed project will "not have adverse effect on any known White Mountain Apache tribe's historic properties and/or traditional cultural properties". The Hopi Tribe responded on November 1, 2019, with no comments regarding the proposed project. The Ysleta del Sur Pueblo responded on January 9, 2020 and did not "have any comments on the proposed undertaking and

believe that this project will not adversely affect traditional, religious, or culturally significant sites, and have no opposition to it". The Ysleta del Sur Pueblo requested consultation "should any human remains or artifacts unearthed during this project be determined to fall under NAGPRA guidelines". BLM did not receive a response from Fort Sill Apache Tribe or Mescalero Apache Tribe. Tribal consultation has been completed.

VII. RIGHT OF PROTEST AND/OR APPEAL

Appeal of the Decision -This decision may be appealed to the IBLA in accordance with the regulations at 43 CFR 3809.801(a)(1). Your Notice of Appeal must be filed in this office at 1800 Marquess St., Las Cruces, NM 88005 within 30 days from receipt or the issuance of this Decision Record. A copy of the Notice of Appeal and of any statement of reasons, written arguments, or briefs must also be served to the Office of the Solicitor at Office of the Solicitor, Southwest Region 505 Marquette Ave., NW, Ste. 1800, Albuquerque, NM 87102. It is also requested that a copy of any statement of reasons, written arguments, or briefs be sent to this office. However, *for purposes of appealing this Decision only*, the Office of the Solicitor for the Southwest Region will deem itself to have been served a notice of appeal and/or petition to stay upon proper service of such to the BLM. As the appellant you have the burden of showing that the decision appealed from is in error. Enclosed is BLM Form 1842-1 that contains information on taking appeals to the IBLA. This decision will remain in effect while the IBLA reviews the case, unless a stay is granted by the IBLA.

Request for a Stay - 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 Interior Board of Land Appeals (IBLA), 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.

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.

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 IBLA 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.

The BLM is following guidance from the Centers for Disease Control and Prevention and recommendations from state and local public health authorities to implement social distancing in response to Coronavirus Disease 2019 (COVID-19). Therefore, for purpose of this Decision only, the BLM will accept a notice of appeal or petition to stay by electronic mail at pbaily@blm.gov in accordance with applicable IBLA regulations, including certification of service at 43 § CFR 4.401. For additional IBLA COVID-related filing information, please see the IBLA's website at <https://www.doi.gov/oha/organization/ibla>.

Information On Taking Appeals To The Interior 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

A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the *Notice of Appeal* in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a *Notice of Appeal* in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).

2. WHERE TO FILE

Notice of Appeal

With Copy to Solicitor

Bureau of Land Management, 1800 Marquess Street, Las Cruces, NM 88005
Office of the Solicitor, P.O. Box 1042, Santa Fe, NM 87504

3. STATEMENT OF REASONS

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 Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filling a *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).

With Copy to Solicitor

Office of the Solicitor, P.O. Box 1042, Santa Fe, NM 87504

4. ADVERSE PARTIES

Within 15 days after each document is filed, each adverse party named in the decision and the Regional 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 filed (43 CFR 4.413).

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 Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).

6. REQUEST FOR STAY

Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a *Notice of Appeal* (43 CFR 4.21). If

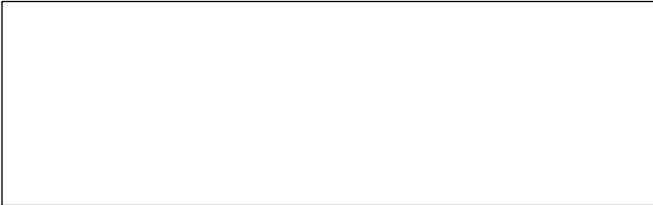
you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your Notice of Appeal (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the *Notice of Appeal* and Petition for a Stay **must** also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (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 regulations, 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.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 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 (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

This action may be appealed to the Interior Board of Land Appeals as described above.



District Manager

Attachments: List any document that are included with this Decision Record. Map(s), Response to Comments, Errata, etc. If there are no attachments, then delete this heading.