

**United States Department of the Interior
Bureau of Land Management**

Decision Record
Environmental Assessment
WY-010-EA10-08

February, 2010

**Black Hills Bentonite LLC Mining Plan of Operation (Amendment #7)
WYW-142434
Washakie County, Wyoming**

Location: Worland Field Office

Applicant/Address: **Black Hills Bentonite, LLC; Box 9, Mills WY 82644**

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DECISION RECORD
for the Black Hills Bentonite LLC Mining Plan of Operation
Amendment #7
WYW-142434
Washakie County, Wyoming

I have reviewed the EA WY-010-EA10-08 dated December, 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 Washakie Resource Management Plan (September 1988), and is in conformance with the plan 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 Black Hills Bentonite, 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 Washakie Resource Management Plan (September 1988).
- 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 Black Hills Bentonite's 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 January 4, 2010 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 Black Hill Bentonite Mining Plan of Operation WYW1423434 Washakie County, Wyoming was available for a formal 30-day review and comment period from January 4-February 3, 2010. Comments were received from the Wyoming Game and Fish Dept., and one member of the public. All comments were carefully considered and evaluated in developing this decision record.

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

Comment: One comment was received expressing a concern with the evaluation of Paleontological Resources and the BLM's application of the standard stipulation for Paleontological resources.

Response: The Paleontological section of the EA has been re-evaluated to clarify:

3.12 Paleontology

Surface disturbances related to the proposed action will occur on the Frontier and the Mowry Shale formations. Within the Bighorn Basin there are no known significant fossil localities within the Frontier. In general, the frontier is known for plants, invertebrates, and occasionally fish. The Mowry Shale has yielded vertebrate fossils of marine reptiles and other vertebrates at other sites within the Bighorn Basin, and fossilized fish scales are abundant in some Mowry strata. However, no known significant paleontological resources have been found in the strata proposed to be mined under the A-7 Plan. The Mowry Shale contains several primary bentonite beds that are commercially mined in this area including the "Mowry" and "Double" beds. The A-7 Plan proposes to mine bentonite from the "Mowry" bed. Depths/thicknesses of overburden within the A-7 area range outcrop to a maximum of 40'.

The affected geologic formations (Mowry and Frontier) have a moderate potential for fossil localities and are mapped as a PYFC Class 3.

4.12 Paleontology

4.12.1 Alternative 1 (Proposed Action)

Although there is the potential for vertebrate fossils within the Mowry Shale formation; significant fossils are either both rare and not likely to be encountered or of a size quickly identified. Within the Bighorn Basin there are no known significant fossil localities within the Frontier. No significant vertebrate paleontological resources are known to occur in the project area; therefore the resource is not expected to be impacted as a result of the Proposed Action.

4.12.2 Alternative 2 (Proposed Action with COA's)

Mitigation would be employed if vertebrate fossils were discovered during mining operations including overburden stripping, and mining. Disturbing actions would have to stop temporarily at the location, and the BLM Authorized Office would have to be notified immediately by BHB, so the fossil resources could be properly investigated and assessed. Significant scientifically valuable fossil resources would be removed from the area prior to resumption of mining. Spot checking may be conducted by BLM staff during routine inspections.

After additional consideration it was determined that the standard stipulations are adequate to mitigate any inadvertent discovery of significant fossils and satisfy the requirements of PP111-011 and the Paleontological Resources Preservation Act (PRPA).

Comment: One comment was received recommending reclamation procedures.

Response:

The Proposed Action addresses reclamation in section 2.2.1.3. Black Hills Bentonite is responsible for reclamation on disturbed areas related to mining activities. The BLM has determined the proposed reclamation plan is consistent with the WYDEQ and BLM policy objectives. Furthermore, joint agency inspections are conducted to determine the adequacy and success of reclamation efforts prior to the companies bond relinquishments.

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

Response: The BLM has requested as part of the mitigation that any changes to low water crossings or culverts be made known before work is completed in order to provide that best management practices be applied, especially to low water crossings and other areas around the drainage that would serve as possible excessive sediment inputs into the stream. The BLM will consider appropriately sloped low water crossings as the preferred alternative, and any culverts will be installed or replaced in a manner as such not to impede aquatic life passage etc. The BLM could require berms, straw bales or silt fences in order to avoid unnecessary erosion particularly around the drainage and stock piles. The BLM has established photo points at the crossings on public land and along the reaches of Cottonwood Creek in order to document any future changes or other impacts to the crossings.

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

February 10, 2010
Date