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United States
Department of
Agriculture

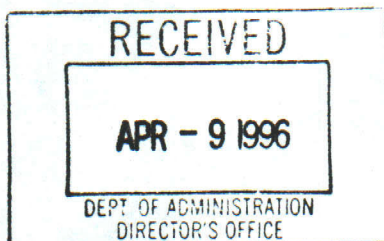
Forest
Service

Humboldt-Toiyabe
National
Forests

Ely Ranger District
P.O. Box 539
Ely, Nevada 89301 (702) 289-3031

File Code: 2810

Date: April 8, 1996



Dear Interested Party:

Enclosed is a copy of the Decision Notice and Finding of No Significant Impact (DN/FONSI) for the Danielle Garnet Trenching Project, Plan of Operations #09-04-95. This project is located on the Ely Ranger District in the North Snake Range, White Pine County, Nevada.

The DN/FONSI is based on an environmental analysis as documented in an environmental assessment (EA). A copy of the EA is available upon request.

For further information regarding this project, please feel free to contact me at (702) 289-3031.

Sincerely,

JERRY L. GREEN
District Ranger

enclosure (1)



**DECISION NOTICE
AND
FINDING OF NO SIGNIFICANT IMPACT
for**

**Danielle Garnet Trenching Project
Plan of Operations #09-04-95**

USDA Forest Service
Humboldt-Toiyabe National Forests
Ely Ranger District
White Pine County, Nevada

I. DECISION TO BE MADE

Decide whether to approve the Proposed Plan of Operations as submitted, or to approve a Plan which has been modified in order to comply with the requirements of FS Mining Regulations at 36 Code of Federal Regulations (CFR) 228A.

Determine if approval of Proposed Plan of Operation for the Project would be a major federal action resulting in significant effects to the human environment, requiring preparation of an environmental impact statement.

Under Forest Service Mining Regulations 36 CFR 228A, mining activities such as those proposed for this project must be conducted in compliance with all applicable federal and state environmental laws regarding air and water quality, and disposal and treatment of solid waste. Also, regulations require that the operator minimize adverse environmental impacts on National Forest surface resources where feasible. Under the regulations, the Forest Service must insure that a Plan of Operations meets these standards before it may be approved, but may not unreasonably restrict or prohibit mining operations.

Accordingly, the Forest Service decision to be made does not include determination of whether or not mining will occur on the subject claims. Under the Mining Law of 1872, 30 U.S.C. 22 ET SEQ., the subject lands are open to private entry and appropriation for mining purposes. Under 30 U.S.C. 612 the Forest Service may not impose conditions that materially interfere with exploration or mining activities.

Some Native American Tribes have expressed opposition to the project due to the potential to disturb and possibly destroy the identified spiritual and religious values of the Traditional Cultural Property (TCP) which encompasses and surrounds the project site. Although the Forest Service is sensitive to these concerns, and can impose reasonable mitigation measures to minimize impacts on the TCP, it does not have the authority to deny a locatable Plan of Operation which otherwise complies with applicable state and federal laws.

While the Native Americans' concerns appear to be valid and the Forest Service values these concerns, it appears that this proposed project is simply incompatible with the values represented by the TCP regardless of the extent of mitigation. The Forest Service is sympathetic to these concerns; however, it is not within my authority to decide not to approve the Proposed Plan of Operations altogether. What the Forest Service has been able to accomplish during this environmental analysis is to work closely and consult with interested Native American Tribes, the State Historic Preservation Office, and the Advisory Council on Historic Preservation to develop measures that would lessen the effects on the spiritual and religious values of the site within this constraint. These mitigation measures are included in the selected alternative.

II. INTRODUCTION

This Decision Notice documents the alternatives considered, and the rationale for selecting the preferred alternative. The decision identifies the alternative that will be in the Plan of Operations. This decision does not approve the Plan of Operations, or authorize proposed operations. Mining activity is not authorized until all requirements for approval of the Plan of Operations have been met, such as posting of any required surety, and the Plan signed by the Forest Service and the Operator.

In August 1995, William R. Taylor submitted a Plan of Operations (#09-04-95) for the Danielle Garnet Trenching Project. Under this plan, Mr. Taylor proposes to dig 10-20 trenches within a small area of the Danielle garnet mining claims. This exploration trenching will provide Mr. Taylor with additional geologic information for future mineral activity planning, and will supplement information needed for planning if mining is proposed at this location.

The trenches will be dug by a backhoe where access is possible, and by hand auger and hand tools where access is limited. Access to the trench sites used by the backhoe will be on existing two-track roads and overland travel. Concurrent reclamation will proceed along with the project work. Approximately 0.3 acres will be disturbed.

The mining claims where these operations are proposed are located in the east central part of the Mt. Moriah Division, North Snake Range, White Pine County, Nevada. Specifically, it is located in Township 16 North, Range 70 East, Section 16. The project site is approximately 150 feet at its closest point from the Mt. Moriah Wilderness boundary. No activities are proposed in the wilderness. Start-up of the project would be Spring or Summer 1996, and is expected to take 10 days to complete.

The environmental analysis is documented in the Environmental Assessment (EA), Danielle Garnet Trenching Project Proposed by William R. Taylor, Plan of Operations #09-04-95. The EA documents the issues, environmental consequences, mitigation, and alternatives. The following alternatives were identified in the EA.

- No Action
- Proposed Action
- Proposed Action with Mitigation (Selected Alternative)

The EA also includes a discussion regarding the question of whether this garnet deposit should be classified as locatable or salable. Mineral classifications are Forest Service administrative decisions and are not subject to the National Environmental Policy Act (NEPA). This subject was included in the EA because of public concern over the Forest Service determination that the garnet must be treated as a locatable mineral.

U.S. Forest Service regulations at 36 CFR 228, Subpart C, establishes procedures for sale or lease of non-locatable minerals on National Forest System Lands. Whether or not mineral deposits are locatable, and therefore subject to acquisition under the mining laws, or common variety materials that are subject to sale or lease, is defined by the mining law. The Forest Service regulations provide guidance in determining if mineral materials are locatable under the mining law, or must be purchased as a common variety mineral material under the mining law.

Many minerals, including garnet, may be either common or uncommon, depending on whether the particular deposit has "unique and special characteristics." Potential use of the mineral material may be determinative of whether a particular deposit of material is common or uncommon. The regulations at 36 CFR 228, Subpart C indicates that mineral materials that are used for (1) agricultural supply and animal husbandry materials, (2) construction materials, and (3) landscaping materials are considered common varieties. If garnet is mined from the National Forest and used for any of the above uses it will be considered a common variety and subject to sale. Garnet mined and sold for industrial uses other than those identified in 36 CFR 228, Subpart C will be considered locatable and disposed of under the general mining law.

As stated above the claimant has submitted a Proposed Plan of Operations to conduct exploratory trenching on his garnet claims. He has stated that the intended use of the garnet is for filtration and use as a proppant for geothermal and oil and gas recovery. Proppant is defined in The Illustrated Petroleum Reference Dictionary, edited by Robert D. Langenkamp, as "Material used in hydraulic fracturing (q.v.) for holding open the cracks made in the formation by the extremely high pressure applied in the treatment; the sand grains, beads, or other miniature pellets suspended in the fracturing fluid that are forced into the formation and remain to prop open the cracks and crevices permitting the oil to flow more freely".

A Forest Service Certified Mineral Examiner has determined that the garnet deposit must be classified as locatable based on these uses proposed above and therefore the proposal must be processed under 36 CFR 228, Subpart A, Locatable Minerals.

III. DECISION

Based on the analysis documented in the EA for the Danielle Garnet Trenching Project and in consideration of public comment offered during the process, it is my decision to implement the Proposed Action with Mitigation Alternative (herein after referred to as the "Selected Alternative"). The Selected Alternative was chosen in consideration of the following:

- It addresses, to the extent possible, the Native Americans' concerns.
- It implements the Memorandum of Agreement (MOA) developed between the Forest Service, the Nevada State Historic Preservation Office and the Advisory Council on Historic Preservation.
- It minimizes environmental impacts to the extent feasible because it includes mitigation measures that reduce the impacts to the natural resources.
- It complies with Forest Service locatable minerals regulations, 36 CFR 228.A.
- It is consistent with obligations under the 1872 Mining Law, as amended.
- It is in accord with the Forest Service minerals program policy.
- It does not have any cumulative effects that would elevate the magnitude of the effects to the need for a higher level of analysis.
- It mitigates some of the impacts that the Proposed Action does not.
- It meets the needs of the proponent while considering economic feasibility and minimizing natural resource impacts.
- It is consistent with the Goals and Objectives of the *Humboldt National Forest Land and Resource Management Plan*.
- It complies with the Federal Land Policy and Management Act.

Issues and concerns over the Proposed Action Alternative were addressed by an interdisciplinary team and, consequently, mitigation measures were formulated into another alternative: the Selected Alternative. The mitigation measures for minimizing the environmental impacts of implementing the selected alternative are addressed in the environmental assessment and made a part of this decision. Many of the mitigation measures were developed to address potential impacts to Native American spiritual and religious values, sensitive species Bonneville cutthroat trout, water quality of Hampton Creek, erosion control, reclamation results, and general good management practices for project activities.

Implementation of the No Action Alternative would materially interfere with mining rights granted under the 1872 Mining Law, as amended. Accordingly, adoption of this alternative is not considered feasible, and it is included for comparative purposes to establish the environmental baseline. The only way to prohibit mining would be to acquire the mining claims by purchase or condemnation. Funds are not currently available to make such an acquisition and, since upon purchase the land would be open to further mineral entry (unless the area was withdrawn), purchase is not considered a prudent option.

IV. PUBLIC INVOLVEMENT

On August 17, 1995, notification of analysis was sent to a large group of agencies, private groups, Native American Tribal governments, and individuals. Alternatives were developed in consideration of issues and concerns raised by the public, Native American Tribal governments, and by Forest Service specialists. The Environmental Assessment was sent out

November 6, 1995, to various agencies, government officials and those who have been involved in the NEPA process for a 30 day pre-decisional review period. A notice of this review period was also published in the newspaper.

As a government-to-government consultation effort, the Forest Service met with Native American Tribal representatives at the project site twice and at the Ely Shoshone Tribal office twice. In addition, numerous telephone contacts to Native American individuals and tribal government representatives were made by a Forest Service Archaeologist in working to better understand and address their concerns.

The Forest Service met on the project site with two Sierra Club members to discuss mining at this location. A conceptual trenching project, similar to the proposed action was discussed at that time.

V. FINDING OF NO SIGNIFICANT IMPACT

Using the definition of "significantly" as described in NEPA, I have determined that this action will not significantly alter, either in context or intensity, the existing human environment and an environmental impact statement is not required. The following discussion describes the rationale of this decision.

"Significantly" as used in National Environmental Policy Act requires considerations of both context and intensity:

(a) *Context*

Significance varies with the setting of the proposed action. For this project, which is a site-specific action, significance is generally limited to the local area. With the exception of the spiritual and religious values, none of the actions proposed have any effect or relevance beyond the confines of the Hampton Creek watershed. The project is a very small part (less than .1%) of this watershed.

Given the limits of the Forest Service decision to be made, which is how mining may occur to minimize environmental impacts and not whether or not it may take place. The significance of the impacts from the Forest Service decision is limited. Measures will be implemented to mitigate impacts to the extent feasible, subject to the constraint that the Forest Service may not prohibit a mining-related activity altogether. Comments have not identified impacts that could be avoided by further mitigation, only that it is preferred that operations be prevented altogether. As discussed, this is not an option under the Mining Law. While mitigation measures are being adopted to minimize environmental impacts to the extent feasible, in order to comply with the mining regulations, under NEPA the impacts being mitigated are not considered significant.

The National Register eligibility of the TCP is important at a regional or local scale. Within the regional or local scale there are many Native American sites that have spiritual and religious values, although each may have different attributes or features. While it is recognized that this TCP is important to Native American values, the NEPA analysis does not document that the TCP site is unique or exceptional.

(b) *Intensity*

This refers to the severity of impact, cumulatively, to the many resources and attributes of the site.

The analysis found no affects to public health or safety. The few concerns expressed during scoping and preliminary review, such as spilling of diesel fuel, are mitigated to very minor risks or prevented.

The effects on the unique characteristics of the geographic area has generated much discussion. The project area, as described in the EA, has a number of existing disturbances. These disturbances along with the presence of mining claims are one of the considerations as to why this area was not included in the Mt. Moriah Wilderness. By rough estimate, about 13 acres have been affected by previous mineral activities, recreation improvements, grazing, and road building in the project proximity. In comparison, only 0.3 areas will be disturbed by the proposed actions. In addition, all disturbances will be reclaimed concurrently as the project proceeds. It is expected that re-established vegetation will blend into the surrounding environment within five years and

would hardly be noticeable. The analysis determined that the project will have no direct effect on the Mt. Moriah Wilderness beyond the ten days of actual activity.

While scoping disclosed considerable opposition to the proposed exploration, there is general agreement, through experiences on similar projects, on what the effects of the project and mitigation measures would be. The effects of the action are not unique and do not have unknown risks.

This decision does not set a precedent for future actions with significant effects nor represents a decision in principle about a future consideration. It also does not threaten a violation of Federal, State, or local laws that protect the environment.

There has been considerable discussion about whether the action is related to other actions with individually insignificant but cumulatively significant impacts. The EA considers the effects of previous actions cumulatively with the proposed actions. However, as discussed in the EA and in the Environmental Impact Statement for the Humboldt National Forest Land and Resource Management Plan, it is not reasonable to consider as a connected action, approval of a mine which may or may not be developed as a result of an exploration program. The feasibility and design of a mine cannot be determined without exploration, but exploration does not necessarily lead to mining. It is also not part of the Forest Service Decision to determine if mining will occur in the future. That is determined under mining laws. Therefore, approval of such a mining operation and evaluation of its potential environmental impacts are not addressed in the EA or this Decision Notice and Finding of No Significant Impact. If and when a mining proposal is submitted, additional environmental analysis will take place related to approval of that proposed plan.

The Traditional Cultural Property (TCP) is eligible for listing in the National Register of Historic Places because it is a Native American spiritual property, as identified by the local tribes spiritual leaders. It has been determined that the proposed exploration will 'adversely affect' the TCP as *described in a Section 106 context* of the National Historic Preservation Act. The 36 CFR 800 defines an adverse affect as any activity that can result in changes in the character or use of a historic property that is eligible for inclusion in the National Register of Historic Places. Under National Environmental Policy Act (NEPA), the degree to which the action affects the site is the determining factor when considering significant impacts. For this project, a number of factors come into play.

As described to us, the TCP is rather large, roughly defined, triangular area which includes all of the current project, much of Hampton Creek from near the project on downstream, and most of all the previous mining and other disturbances described in the EA. According to the EA, it is probable that the effects of disturbances are cumulative and the proposed actions would add to the degradation of the TCP.

The Forest Service consulted with the Nevada State Historic Preservation Office (SHPO), Advisory Council, and Native American Tribes to seek ways to avoid or reduce the effects on the TCP site. A Memorandum of Agreement (MOA) intended to mitigate or lessen the effects of this project has been developed between the Forest Service, SHPO, and the Advisory Council on Historic Preservation. Native American Tribes were included in this process and reviewed the MOA before it was officially completed. The resulting mitigation measures in the MOA are included in the Selected Alternative.


The biological evaluation (BE) prepared for this project determined that there will be no effect to U.S. Fish and Wildlife threatened and endangered species. It also determined that the project will have no impact to Forest Service Region Four sensitive species except Bonneville cutthroat trout. The project will have very minimal impacts to Bonneville cutthroat trout or its stream habitat. There is a very small risk that unforeseen events may produce a small impact to a localized portion of the habitat. Based on a worse case scenario, the BE determined that the project may impact individuals or habitat, but not likely contribute to a trend towards federal listing or cause a loss of viability to the population or species. The mitigation measures incorporated into the project would limit the magnitude of the effects of such a scenario to a level where only a few individual fish or a small portion of the habitat would be impacted, which would protect the viability of this population.

In summary, I find the site to have many existing human caused disturbances of a similar nature to the current proposal, that there are no indications of approaching any threshold conditions, and the small size and nature of the proposal is unlikely to produce any significant effects, as described in NEPA.

VI. APPEAL OPPORTUNITIES

This decision is subject to appeal pursuant to Forest Service Regulation 36 CFR 215. The procedures set forth in those regulations must be followed. Any written notice of appeal of this decision must be fully consistent with 36 CFR 215.14, "Content of Appeal," including the reasons for appeal. Appeals must be filed within 45 days from the date of publication of this notice in the *Ely Daily Times*. The Notice of Appeal must be filed with the USDA Forest Service, Intermountain Region, Attention: Appeal Deciding Officer, 324 25th Street, Ogden, UT 84401.

This decision may be implemented 5 business days after the close of the appeal filing period if no appeal has been filed or 15 days after the date of the last appeal disposition if an appeal is filed. For further information, contact Jerry L. Green, District Ranger, Ely Ranger District P.O. Box 539, Ely, Nevada 89301 or at (702) 289-3031.



JERRY L. GREEN
District Ranger

4/4/96
Date