



DECISION MEMO

**AUTHORIZATION TO USE NATIONAL FOREST SYSTEM ROAD
489A BY EL CAPITAN PRECIOUS METALS, INC. FOR
COMMERCIAL USE INCIDENT TO MINING PURPOSES ON
PRIVATE LAND**

**U.S. FOREST SERVICE
SMOKEY BEAR RANGER DISTRICT
LINCOLN NATIONAL FOREST
LINCOLN COUNTY, NEW MEXICO**

TOWNSHIP 87 SOUTH, RANGE 14 EAST, SECTION 10

BACKGROUND

In 2016 El Capitan Precious Metals, Inc. (ECPMI) modified National Forest System Road (NFSR) 489A without authorization from the Lincoln NF to comply with citations from the Mine Safety and Health Administration (MSHA). Modifications to comply with MSHA regulations included: (1) Using mine waste to berm the side of the road due to elevated banks of the road beginning at 0.5 and at 1 mile(s) from the gate along the highway. (2) Widening and straightening a curve located at 0.5 miles from the gate at the highway to improve sightlines. The project area of NFSR 489A is 1.1 miles in length and is located approximately 5 miles north of Capitan, NM off highway 246.

PROPOSED ACTION

This decision will authorize ECPMI, through a Plan of Operations, for improvements made to NFSR 489A in 2016 and for continued commercial use and maintenance of the road as part of functions critical to ECPMI mining operations on private land. The Plan of Operations submitted by ECPMI proposes to remove the mine waste berms at the 0.5 mile and 1 mile locations and install jersey barriers to comply with state and federal regulations. The Plan of Operations anticipates initial production resulting in 50 trucks per day. If production reaches higher levels requiring additional engineering and improvements are needed, then the Plan of Operation will be modified accordingly. Normal mine traffic will consist of over-the-road semi trucks. Hauling will be year-round with temporary halting in wet conditions. No "Off Highway" trucks will be used on NFSR 489A. A bond for reclamation of the road has been posted.

DECISION

I have decided to approve a Plan of Operations for improvements made to NFSR 489A in 2016 and for continued commercial use and maintenance of the road by ECPMI that is incident to mining operations on private land as described in the Proposed Action section above.

PROJECT DESIGN FEATURES AND MITIGATIONS

The following mitigations are included in my decision:

- The plan of operations includes suggestions for improving safety should 2-way hauling occur on this road, including signing, communication, staffing, lighting or other appropriate actions.
- Weed Mitigation: Equipment used should be cleaned before entering National Forest System lands to prevent the introduction of nonnative invasive species.
- Rangeland Management: Use of caution regarding livestock on the National Forest System grazing allotment is requested during hauling .

This action is categorically excluded from documentation in an environmental impact statement or an environmental assessment. The applicable category of actions is identified in agency procedures as 36 CFR 220.6(e)(3)—Approval, modification, or continuation of minor special uses of NFS lands that *require less than five contiguous acres of land*. Categorical exclusions are a category of actions that do not individually or cumulatively have a significant effect on the environment; therefore, neither an Environmental Assessment nor an Environmental Impact Statement is required (40 CFR 1508.4). I have reviewed the project proposal in cooperation with Forest Service environmental specialists. This preliminary review has identified no extraordinary circumstances that would preclude use of the categorical exclusion cited above.

I find that there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative effect on the quality of the natural or human environment that would warrant further analysis and documentation in an environmental assessment or environmental impact statement. I took into account resource conditions identified in agency procedures that should be considered in determining whether extraordinary circumstances might exist:

- Federally-listed threatened or endangered species or designated critical habitat, species proposed for Federal listing, proposed critical habitat, or Forest Service sensitive species – A Biological Evaluation was completed by the Smokey Bear Ranger District on August 23, 2010. Analysis indicated that no federally-listed threatened or endangered species, designated critical habitat, or Forest Service Region 3 sensitive species occur within the project area. Per review by agency biologists, no Mitigations are required (Hoagland and Cordova, 2010). A followup evaluation in 2014 substantiated that no mitigation is needed for protection of listed or sensitive species (Cordova 2014).
- Flood plains, wetlands, or municipal watersheds – This road does not exist in a flood plain, wetland, or municipal watershed.
- Congressionally designated areas such as wilderness, wilderness study areas, or national recreation areas – This road is not within or adjacent to any of the above congressionally designate areas.
- Inventoried roadless areas or potential wilderness areas – This road is not within an inventories

roadless area.

- Research natural areas – This road is not within or adjacent to a research natural area.
- American Indians and Alaska Native religious or cultural sites, Archaeological sites, or historic properties or areas – Archaeological surveys were completed. No eligible sites are affected (Gutzman 2017).

PUBLIC INVOLVEMENT

Public involvement included listing as a decision on the Lincoln National Forest Schedule of Proposed Actions in 2015. Scoping notices were sent to a District mailing list in 2010 and again in 2014 when the road use by ECPMI was authorized under a special use permit. No substantive issues were raised regarding use of this road to access private land mineral operations. In 2017, I met in person with adjacent landowners and explained the process I was taking to authorize use of the road to ECPMI.

FINDINGS REQUIRED BY OTHER LAWS AND REGULATIONS

National Environmental Policy Act (NEPA) -- NEPA requires federal agencies to integrate environmental values into their decision-making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. This document and the project record provide documentation for this decision which supports compliance with the NEPA.

National Forest Management Act (NFMA) -- This decision is consistent with standards and guidelines from the Lincoln National Forest Land and Resource Management Plan (U.S. Forest Service 1986). This project is in Management Area 1D, South Capitan Mountain, where the primary emphasis is on livestock grazing and fuelwood production. The project is consistent with management direction and standards and guidelines documented in the Forest Plan for this management area.

Endangered Species Act -- The Smokey Bear Ranger District wildlife biologist determined that the proposed action will not affect Federally-listed threatened or endangered species, designated critical habitat, or Forest Service Region 3 sensitive species.

Environmental Justice (Executive Order 12898) -- The interdisciplinary team did not identify any local minority or low-income populations that may be adversely impacted by the project. Project activities will occur in remote areas. The project area includes a road that is closed to general public use. Other permitted users, primarily the allotment permittee in the area, are most likely to be affected by this project.

National Historic Preservation Act (Section 106) -- No eligible sites occur in the project area.

Access by Owner to Nonfederally Owned Land (16 USC 3210) -- The Forest Service is required to provide access to private land within its boundaries by law per 16 USC 3210 Sec. 1323 (a):

“Notwithstanding any other provision of law, and subject to such terms and conditions as the Secretary of Agriculture may prescribe, the Secretary shall provide such access to nonfederally owned land within the boundaries of the National Forest System as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof: *Provided*, That such owner comply

with rules and regulations applicable to ingress and egress to or from the National Forest System.”

IMPLEMENTATION DATE

Implementation of this project is expected take place immediately upon issuance of this decision.

ADMINISTRATIVE REVIEW (APPEAL) OPPORTUNITIES

This decision is not appealable per 36 CFR 215.12(f).

CONTACT

For additional information concerning this decision, contact Jodie Canfield, District Ranger, at the Smokey Bear Ranger District during normal business hours (weekdays, 8:00 a.m. to 5:00 p.m.) at 901 Mechem Drive, Ruidoso, NM 88345; by phone: 1-575-257-4095; by fax: 1-575-257-6174; by mail: 901 Mechem Drive, Ruidoso, NM 88345; or by email: jecanfield@fs.fed.us.

 

JODIE CANFIELD Date

Smokey Bear District Ranger



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REFERENCES

- Cordova, Larry. 2014. (Email to Peggy Luensmann). Regarding project impacts to threatened, endangered, and sensitive species. Ruidoso, NM: U.S. Department of Agriculture, Forest Service, Lincoln National Forest, Smokey Bear Ranger District. October 23; Project Files.
- Gutzman, Mark. 2017. (Email to Andrew Ellis). Regarding project impacts to archeological resources and heritage sites. Alamogordo, NM: U.S. Department of Agriculture, Forest Service, Lincoln National Forest
- Hoagland, Serra; Cordova, Larry. 2010. Biological Evaluation: Randy Bouldin Road Project. Ruidoso, NM: U.S. Department of Agriculture, Forest Service, Lincoln National Forest, Smokey Bear Ranger District. August 23; Project files.
- U.S. Forest Service. 1986. Lincoln National Forest Land and Resource Management Plan. [Alamogordo, NM]: U.S. Department of Agriculture, Forest Service, Lincoln National Forest. Available: http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsbdev7_014272.pdf. [amended over time].

Figure 1. Project Area Map



