



United States  
Department of  
Agriculture

Forest  
Service

Coronado National Forest  
Sierra Vista Ranger District

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File Code: 1950/2810

Date: September 12, 2014

## **DECISION MEMORANDUM: Sunnyside Project (2810-030503-POO-2011-003)**

**USDA Forest Service  
Coronado National Forest  
Sierra Vista Ranger District  
Santa Cruz County, Arizona  
Sections 5 and 6, Township 28 South, Range 16 East  
Gila and Salt River Meridian**

### **PURPOSE AND NEED FOR ACTION**

Regal Resources, Inc. (USA) (Proponent) has submitted a Plan of Operations (POO) for the Sunnyside Project for mineral exploration drilling on the Coronado National Forest (CNF). The project is proposed on the Sierra Vista Ranger District (SRVD) in Santa Cruz County, Arizona, about seven miles south of the town of Patagonia (see Figure 1). The project area legal location is Sec. 5 & 6, T 28S, R 16E Gila and Salt River Meridian. Total proposed surface disturbance for the project is estimated at 0.4 acres, which includes repair of existing roads and the construction of six drill pads and sumps. The entire project is expected to last less than one year.

Regal's proposed activities are pursuant to the Mining Law of 1872, as amended. The Forest Service (FS) is required by regulation to respond to a proposed POO to conduct operations pursuant to the Mining Law of 1872, as amended. Under 36 CFR 228.5, the FS must determine whether to approve the POO as proposed, or to require changes or additions deemed necessary to meet the requirements of the regulations for environmental protection set forth in 36 CFR 228.8.

The proponent is entitled to conduct operations that are reasonably incidental to exploration and development of mineral deposits on its mining claims pursuant to applicable U.S. laws and regulations and is asserting their rights under the General Mining Law to explore for, mine, and remove the mineral deposit.

Therefore, the purpose and need of this project is for the FS to process the proposed POO, analyze the environmental effects of the proposed activities described in the POO, and determine whether or not any changes or design features are need to meet regulatory requirements for resource protection.

### **PROJECT DESCRIPTION**

Regal proposes to develop six temporary drill sites (labeled A through F, see Figure 1). The purpose of the drilling operations is to collect core samples at various depths to assess potential copper mineralization. Samples will be transported offsite for analysis and testing. Operations may run continuously up to 24 hours per day, seven days per week.



Regal employees and contractors would access the project area from the town of Patagonia by way of Harshaw Road, a Santa Cruz County road that is designated as National Forest System Road (NFSR) 49 and 58. Access within the project area would be via NFSRs 812 and 4685 (see Figure 1).

Sites A through D would occupy an area 15 feet wide by 90 feet long and would be located adjacent to or on NFSR 4685 to minimize ground disturbance. Minimal road maintenance (e.g., grading) within the existing prism of NFSR 4685 would be completed as needed, and brush and limbs would be removed where necessary to facilitate the passage of the drill rig and water truck. Drill pad preparation may require some minor clearing and leveling. During operations at site A, a temporary Forest road closure will be in place near site B to protect public safety for about two months. The closure would restrict public vehicular access on about 0.4 mile near the dead end of NFSR 4685.

Site E would be about 15 feet wide by 90 feet long and site F would be about 50 feet by 75 feet in area and would occur along an existing non-system road that branches off of NFSR 812. This 0.2 mile long non-system road will require minimal road maintenance for access. During drilling operations, a temporary gate will be installed for public safety at the temporary road intersection with NFSR 812 (Figure 1).

All down-hole drilling fluids, which will consist primarily of bentonite and water, will comply with Arizona Department of Water Resources requirements. A sump approximately 4 feet deep by 20 feet long by 3 feet wide would be excavated and used at each drill site to collect used drilling fluids.

Up to two drill rigs at a time, a reverse circulation (RC) rig and a diamond core rig, may be in the project area. The RC rig may be used for shallow initial drilling (up to about 1500 feet). Up to two holes will be open at a time. After site preparation and mobilization of the drill rig, water truck and service truck, project-related traffic from Patagonia to the sites would include one roundtrip per day by each of the drilling crews. Other traffic may include the project manager and occasional travel by other company representatives and service trucks, as needed. Up to 12,500 gallons of water per day would be used during drilling. Water will be hauled from a commercial vendor in up to two 4000-gallon capacity water trucks with a total of about three trips per day. Water would be stored in two 15,000-gallon holding tanks in the project area.

All drill sites will be inspected by FS personnel before, during, and after the proposed operations to monitor compliance with operating guidelines.

Reclamation would be accomplished in two phases. The first phase would be ongoing and concurrent with operations. This would involve the removal of all supplies and non-native materials in addition to sealing of the drill holes before the drill rig leaves each site. Each core hole will be sealed in accordance with Arizona Department of Water Resources well-abandonment procedures found in Arizona Administrative Code R-12-15-816. These regulations require the licensed drilling contractor to seal the bore hole at a level above the uppermost aquifer using bentonite drilling mud and cuttings or cement grout of sufficient volume, density and viscosity to prevent fluid communication below the water table. The contractor must also install a cement grout plug that extends from two feet below the land surface to a minimum of 20 feet below the land surface. Sumps would be allowed to dry before final reclamation.

During the second phase or final reclamation, all equipment and materials would be removed from the site, disturbed areas would be restored to their original contours, and the temporary access road to sites E and F would be reclaimed to FS standards. Stockpiled topsoil will be replaced and seeding of disturbed areas with a Forest-approved seed mixture of plant species would follow, as necessary.

## **DESIGN FEATURES**

Design features are intended to minimize the project's effects to the environment. The FS has created the following design features that are considered part of the proposed action and will be required of the proponent to be incorporated into the final POO prior to POO approval. Specific design features include:

### **Administrative**

1. The operator will establish a reclamation bond or acceptable surety as a guarantee of faithful performance with the terms and conditions identified for the reclamation requirements (36 CFR 228.13). Bond calculations will be based on local and Davis-Bacon wage and equipment rates. Bonds will be updated as necessary throughout the life of the project to reflect the actual cost of reclamation.
2. Upon completion of the project, a partial bond can be refunded withholding funds for revegetation, monitoring, and portions of indirect costs for up to three (3) years pending attainment of acceptable ground cover as determined by the Authorized Officer.
3. If the design or location of this project changes in ways that differ from the approved POO, the project work will stop, and the CNF Project Administrator will be notified immediately. The new information will be evaluated prior to the recommencement of work, which may require additional analyses under the National Environmental Policy Act (NEPA).
4. The operator will contact the FS prior to the start of operations, during operations if operating conditions or requirements deviate from those analyzed, and once operations have been completed to schedule a visit to the site as a final inspection of the operations.
5. All project-related materials and trash, including flagging, fencing, stakes, sample bags, and other items, must be removed from the site after project completion.
6. All contractors and subcontractors must review and comply with the POO, including all design features.

### **Invasive Species**

7. All equipment used in ground disturbing activities will be cleaned of soil and plant parts prior to entering National Forest System (NFS) land and before beginning work on the project in order to prevent introduction or translocation of weed species. Vehicles will have a thorough visual inspection of tires, tracks, and underbody to ensure the vehicle is completely cleaned of all residue and soil. Equipment will be cleaned when moving between weed infested areas within the project site. If during drilling operations invasive weeds are found at the site, equipment will be washed prior to relocation to other drill

sites. The operator will coordinate with FS personnel to ensure that inspections are performed.

8. New invasive non-native plant infestations at the drill pads or on access roads where ground disturbance occurred during the project will be eradicated by the proponent using a licensed, certified, and Forest-approved applicator using Forest-approved treatments. The Forest will make the final determination that new infestations have been eradicated. This final determination will be made no sooner than three (3) years following the completion of the project.

### **Roads/Engineering**

9. Ground disturbance will be minimized through careful equipment operation and will be restricted to the minimum amount necessary for drill rig access.
10. All drill sites will be enclosed with high-visibility fencing concurrent with pad construction and until operations are completed to protect public safety. Berms, fencing, Forest-approved signs, and barricades, as appropriate, will be installed where drilling is proposed on existing roads. Sumps will be located outside of the road surface where possible.
11. A sign plan will be turned into the FS for approval prior to operations. This plan will include where the signs will be posted, what the wording will be on them, and a description of the material and size of the signs.
12. The Proponent will notify the FS at least 45 days prior to operations at site A to allow the FS to put in place the temporary road closure order.
13. Road maintenance will not occur in any stream crossings.
14. Repair of existing roads where slopes are greater than 15% will include rolling earthen berms approximately 200 feet apart to deflect precipitation runoff and prevent flow concentration on the road bed. All road specifications will be in compliance with FS road maintenance standards.
15. Drill sites will include silt fencing or weed-free straw wattles around the sump to contain material in the event of a heavy rain and/or over-topping. Berms measuring 12 to 24 inches in height will be constructed around sumps to help contain drilling fluids. Proponent is responsible for monitoring and maintenance of these features to ensure their effectiveness.
16. Improvement of existing roads and drill pad and sump construction will be reviewed and approved by Forest personnel to ensure that roads are maintained to FS standards and that all design features are implemented.
17. Reclamation of drill pads and sumps will be recontoured to match pre-project grades.
18. The temporary non-system road that accesses sites E and F will be decompacted and reseeded with CNF-approved seed mix, drainage structures will be installed (e.g. waterbars, rolling dips, etc.). Additionally, the access from NFSR 812 will be blocked with berms and/or boulders, and recontouring to FS specifications.

19. Monitor drill pad locations for three (3) years following project completion to ensure settlement or excessive erosion is not occurring in the reclaimed areas. Repair of any improper settlement or erosion control measures will be the responsibility of the operator.

## **Hydrology**

20. Sediment and stormwater controls will be installed before initiating surface-disturbing activities. FS personnel and the proponent will routinely inspect sites to verify that erosion and stormwater controls are implemented and functioning as designed and are appropriately maintained. Corrective actions will be implemented by the proponent without delay when failures are discovered to prevent pollutant discharge to water bodies.
21. During pad and sump construction, where available and present, the top 4-6 inches of topsoil will be removed and stockpiled onsite and replaced during reclamation of the sites.
22. Stockpiles of soil, excavated material, and drill cuttings will be located outside of swales or ephemeral stream channels to prevent soil erosion into channels during rain events. A tarp or other protective cover will be used to aid in preventing erosion of the piles.
23. Sumps will be located on stable areas of drill pads, to the extent practicable, and will be located away from natural watercourses, riparian areas, wetlands, floodplains, and areas of shallow groundwater wherever practicable.
24. Sumps will be designed to contain all anticipated drilling muds, cuttings, fracture fluids, and precipitation while maintaining a suitable amount of freeboard to avoid or minimize overtopping.
25. The proponent is responsible for ensuring full containment of drilling fluids and to prevent contamination of groundwater, and to minimize surface waters and groundwater from entering open pits where sumps must be placed in a sensitive location or in porous material. This could include using polymer liners, berms, weed-free straw wattles, or silt fences or other FS approved measures.
26. Procedures will be included in the SPCC (see design feature #36) to ensure controls will be in place in the case of an incidental discharge so as to not discharge onto NFS lands and disposal will be in compliance with the Clean Water Act and any other Federal (i.e. EPA) and State requirements as appropriate.
27. All exploration-related wastes, including drilling fluids, and processed water, will be handled and stored to minimize the risk of groundwater and surface water contamination and to meet Federal and State requirements.
28. All drill operations will comply with the State of Arizona Department of Water Resources Title 12, Chapter 15, statutes and rules governing well construction standards and licensing of well drillers (ADWR 2011) and the abandonment procedures. Specifically, this includes the following items which are of concern on this project (note: if the state requirements are amended and/or modified, that will take precedence over the following summary of their requirements)
  - a. In closing any drill holes that have artesian flow, the operator must be in accordance with State of Arizona rules regarding closure of artesian wells or boreholes, R12-15-812 Special Aquifer Conditions. Applicable conditions are outlined as follows:

- i. The borehole casing shall extend into the confining formation immediately overlying the artesian aquifer and shall be grouted from a minimum of ten feet into the confining formation to the land surface to prevent surface leakage into and subsurface leakage from the artesian aquifer.
    - ii. If leaks occur adjacent to the well or around the borehole casing, within 30 days the borehole shall be completed with the seals, packers, or casing and grouting necessary to eliminate such leakage or the borehole shall be abandoned according to R12-15-816.
  - b. In all water-bearing geologic units containing mineralized or polluted water as indicated by available data, the borehole shall be abandoned in accordance with Arizona state requirements so that contamination of the overlying or underlying groundwater zones will not occur.
29. Toilet facilities will be located in an area of higher ground at a suitable distance from streams or water bodies or other sensitive areas to avoid releases of pollutants in floods or other emergencies.
  30. The operator will provide receptacles for trash in areas that are convenient to workers. Receptacles will be placed in locations away from streams and water bodies. Trash will be collected on a regular schedule to prevent the receptacles from overflowing. Trash will not be disposed of on NFS lands.
  31. During reclamation, stockpiled vegetation (if available), mulch, or weed-free straw will be spread over the bare soil areas at each site to slow soil erosion. Soils will be de-compacted to FS standards if severe compaction occurs.

#### **Hazardous Materials**

32. The operator will ensure that all employees involved in the use, storage, transportation, and disposal of hazardous materials receive proper training to reduce the risk of an incident on NFS lands.
33. The operator will manage the use, storage, discharge, or disposal of pollutants and hazardous or toxic substances generated in compliance with applicable regulations and requirements.
34. The operator will remove any leaking equipment that contains oils or hazardous chemicals from NFS lands for repair or provide spill mitigation to prevent contamination of forest soils.
35. The operator will store re-fueling equipment over 30 feet from any stream channel. Absorbent pads or other medium (e.g. Visqueen or similar) will be placed under all stationary or parked equipment not in active use that contain oils or hazardous chemicals to prevent any fluid leaks from infiltrating into the soil.
36. The operator will develop a Spill Prevention Control and Countermeasure Plan (SPCC) prior to approval of the POO that describes the petroleum products and/or other hazardous materials and chemicals that will be used in the operations. The SPCC must include the haul routes, amount and frequency of shipments, and containers and vehicles used. This plan will also include the procedures, contacts and numbers, equipment, and qualified personnel that would be used to respond to a spill.

37. The operator will implement the containment features or countermeasures called for in the SPCC.
38. The operator will plan and ensure that spilled hazardous materials are contained and do not reach groundwater or surface water. For example, any visible oil will be removed from the surface of the sump after cessation of drilling and completion of operations.
39. The operator will ensure that cleanup of spills and leaking tanks is completed in compliance with Federal, State, and local regulations and requirements.
40. Proponent will abide by the State law requirement for reporting, including that each facility operator notify the Arizona Department of Environmental Quality's (ADEQ) Emergency Response Unit within 24 hours of any oil spill.
41. The operator will disclose to the CNF and all downstream water users, such as municipal drinking water providers and fish hatcheries, if a spill enters surface waters or has the potential to enter groundwater.
42. The operator will ensure that hazardous spill kits are adequately stocked with necessary supplies and are maintained in accessible locations.

#### **Wildlife**

43. Drilling operations will not occur from March 1<sup>st</sup> to August 31<sup>st</sup> to avoid potential disturbance to the Mexican Spotted Owl (MSO) during its breeding season.
44. Existing small vegetation (grasses and forbs) displaced from each drill site during excavation will be stockpiled for later use as mulch during site reclamation.
45. If operations are to occur during the month of September, a survey of Alum Gulch for the presence of the yellow-billed cuckoo will be needed as advised by US Fish and Wildlife Service (FWS). If cuckoos are found, additional mitigation may be required.

#### **Visual Resources**

46. If possible, the proponent will not remove trees or branches from the southeastern side of the proposed non-system access in order to preserve visual integrity.

#### **Vegetation**

47. The operator shall avoid disturbance and removal of agaves wherever possible. Wherever agaves cannot be avoided during construction activities, they shall be carefully removed by Forest-approved personnel and replanted in a Forest-approved location.

#### **Cultural Resources**

48. If additional archaeological resources are located during project implementation, the project work will stop, and the CNF Project Administrator and CNF Forest Archeologist will be notified immediately. The new information will be evaluated prior to the recommencement of work.

#### **Fire Prevention**

49. The operator will develop and submit a Fire Prevention Plan in coordination with the CNF prior to approval of the POO.



## **DECISION AND RATIONALE**

It is my decision to approve the Sunnyside POO for drilling exploration at up to six (6) drill site locations as described above pending (1) the proponent incorporates the design features listed below into the final POO, and (2) the proponent posts an appropriate reclamation bond as approved by the FS. Rational for this approval includes the consideration of extraordinary circumstances below. Operations approved by this decision will be in compliance with the rules and regulations for operations on NFS lands (36 CFR 228, Subpart A). All operations will be conducted so as, where feasible, minimize adverse environmental impacts on NFS surface resources (36 CFR 228.8). Approval of this POO is consistent with 36 CFR 228.5.

## **CONSIDERATION OF EXTRAORDINARY CIRCUMSTANCES**

This action may be categorically excluded from documentation in an environmental impact statement (EIS) or an environmental assessment (EA). The applicable category of actions is identified in agency procedures as 36 CFR 220.6(e)(8): *“Short-term (1 year or less) mineral, energy, or geophysical investigations and their incidental support activities that may require cross-country travel by vehicles and equipment, construction of less than 1 mile of low-standard road, or use and minor repair of existing roads.”*

This CE is appropriate because there are no cause-effect relationships between the proposed action and the potential effect on the resource conditions described as an extraordinary circumstances (36 CFR 220.6(b)) (FSH 1909.15, Sec. 31.2). I have considered the resource conditions listed in the Forest Service NEPA regulations at 36 CFR 220.6(b) as outlined below.

Wildlife, water, and cultural resource conditions have the potential to be affected. However, I have determined that these effects will be minimal based on the small project extent and existing site disturbance. I took into account resource conditions identified in agency procedures that should be considered in determining whether extraordinary circumstances might exist:

- a. *Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species.* Some proposed, threatened, or endangered species along with designated or proposed critical habitat, or Forest Service, Region 3, sensitive species that may be affected by project implementation. This includes the jaguar, ocelot, lesser Long-nosed bat, and Mexican spotted owl. A Biological Assessment and Biological Evaluation (2014) have been completed for botanical and wildlife species. The CNF sent a letter to the United States Fish and Wildlife Service (FWS) on May 22<sup>nd</sup>, 2014, requesting concurrence on the CNF determination that the Project “may affect, not likely to adversely affect” listed species in accordance with Section 7 of the Endangered Species Act (ESA). The FWS, on August 11, 2014, concurred with this determination.
- b. *Floodplains, wetlands, or municipal watersheds.* A hydrology report was completed in 2014 by the Forest Hydrologist and is included in the project record. As stated in that report, the proposed drilling activity will not take place in a wetland; therefore, there will be no adverse effects to wetlands. Some of the proposed drill sites are in a floodplain; however, no adverse effects are anticipated for floodplains because the activities are temporary in nature, no stream or floodplain modifications are proposed, and the



implementation of the design features listed would minimize or eliminate any adverse effects.

Presently, the POO describes the supply water as a “commercially available source.” Location of the source was not disclosed. The ground disturbing activities of exploration drilling are located in the upper Alum Gulch watershed. The adjacent watershed, Harshaw Creek, contains the access road to the project site. The Harshaw Creek watershed has been proposed to be designated as a municipal supply watershed for the Town of Patagonia. If project water is commercially purchased from a supplier within the Harshaw Creek watershed or upper Sonoita Creek, the Town of Patagonia municipal supply may be affected. Due to the relatively limited duration and scale of the project, quantitative scientific studies have not been performed by the Forest Service regarding the water supply for the project and the possible effects to the town.

Since the location of the water supply is unknown, the water supply of the Town of Patagonia may be unaffected as the supply source may be drawn from an entirely different groundwater basin.

- c. *Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas.* The project will not occur within or affect any congressionally designated areas (Project file record: Location of Sunnyside Project Map, 2014).
- d. *Inventoried roadless areas.* The project will not occur within or affect inventoried roadless areas (Project file record: Location of Sunnyside Project Map, 2014).
- e. *Research natural areas.* The project will not occur within or affect inventoried research natural areas (Project file record: Location of Sunnyside Project Map, 2014).
- f. *Native American and Alaska Native religious or cultural sites.* There are no known Native American or Alaska Native religious or cultural sites within the project area (Project file record: Cultural Resource Survey of 4.6 Acres on the Coronado National Forest for the Sunnyside Mining Exploration Project, Santa Cruz County, Arizona, 2012).
- g. *Archeological sites, or historic properties or areas.* The Forest has completed compliance with Section 106 of the National Historical Preservation Act of 1966, as amended. The Forest has consulted with the Arizona State Historic Preservation Office (SHPO), which has concurred (June 26, 2013) that no historic properties would be affected by the Sunnyside Project (see also Cultural Resource Report, 2012).

Based upon these determinations, I conclude that the operations are limited in context and intensity (40 CFR 1508.27), and this action is expected to produce little or no individual or cumulative environmental effects to either biological or physical components of the human environment (see Table 1). My conclusion is based on a review of the record that shows thorough analysis using the best available science. Therefore, the proposed action with the addition of design features identified above is consistent with the management direction, standards, and guidelines as outlined below.

**Table 1:** Summary of Extraordinary Circumstances described above.

Extraordinary Circumstances	Present?	Significant Effect?
a. Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species	Yes (see BA & BE)	No
b. Flood plains, wetlands, or municipal watersheds	Yes (see Hydro Report)	No
c. Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas	No	No
d. Inventoried roadless areas or potential wilderness areas	No	No
e. Research natural areas	No	No
f. American Indians and Alaska Native religious or cultural sites	No	No
g. Archaeological sites, or historic properties or areas	Yes (see Archeological Report)	No

## **PUBLIC INVOLVEMENT**

This project has been listed on the CNF's Schedule of Proposed Actions (SOPA) since July, 2011. The SOPA was provided to individuals, organizations, and agencies that have asked to be notified of proposed actions occurring on the CNF. Additionally, the SOPA is posted on the Coronado National Forest website, <http://www.fs.usda.gov/coronado>.

The proposal was described to the public, tribes, and other agencies for comment during scoping from November 2<sup>nd</sup>, 2011 through December 2<sup>nd</sup>, 2011, and again from July 16<sup>th</sup>, 2013 to August 15<sup>th</sup>, 2013. Letters soliciting comments were sent to approximately 370 individuals, organizations, and government entities on July 13, 2013 and a Legal Notice was published in the *Sierra Vista Herald*, on July 16, 2013.

Seventy-eight comments were received during the 2013 30-day scoping period. These comments were considered, along with prior comments, during analyses.

## **FINDINGS REQUIRED BY OTHER LAWS AND REGULATIONS**

Numerous laws, regulations and agency directives require that my decision be consistent with their provisions. The following discussion is not an all-inclusive listing, but is intended to provide information on the areas raised as issues or comments by the public or other agencies.

## **National Environmental Policy Act**

The National Environmental Policy Act (NEPA) requires analysis of projects to ensure the anticipated effects upon all resources within the project area are considered prior to project implementation (40 CFR 1502.16). The analysis for this project followed the guidelines of NEPA as provided by the Council on Environmental Quality (CEQ). The proposed action was found to meet conditions that allowed it to be categorically excluded from documentation in an Environmental Assessment or Environmental Impact Statement because it fits category (e)(8) in the 36 CFR 220.6, "Short term (1 year or less) mineral, energy, or geophysical investigations and their incidental support activities that may require cross-country travel by vehicles and equipment, construction of less than one mile of low standard road, or use and minor repair of existing roads."

## **National Forest Management Act (NFMA)**

As required by the National Forest Management Act, this proposed action is consistent with direction given in the Coronado National Forest Land and Resource Management Plan (1986, as amended). The proposed action conforms to Forest Plan Standards and incorporates appropriate Forest Plan guidelines for management of minerals activity and protection of other resources (CNF Forest Plan, p. 40).

1. To the extent possible, avoid construction of roads across sensitive soils and scenic lands. Prohibit the construction of roads across mountain meadows.
2. Mining and leasing activities will be allowed within the framework of applicable laws and regulations including environmental laws and regulations designed to mitigate the impacts of mining activities. Emphasis should be on gaining cooperation and control through the use of operating plans and bonds for rehabilitation to protect and restore surface resources.

## **Clean Water Act (CWA)**

The Clean Water Act (as amended, 33 U.S.C. 1323) directs the FS to meet state, interstate and local substantive as well as procedural requirements with respect to control and abatement of pollution in the same manner and to the same extent as any nongovernmental entity. The FS has the statutory authority to regulate, permit and enforce land-use activities on the NFS lands that affect water quality.

Based on the findings in the Hydrology Report (project file record) in addition to the design features included in this Decision Memo to protect soil and water resources, I find the proposed action meets the requirements of the Clean Water Act and is consistent with Federal and State laws and requirements imposed for the protection of the environment, including compliance with the requirements of the Federal Water Pollution Control Act as amended by the Clean Water Act, 33 U.S.C. §1251.

## **Endangered Species Act (ESA)**

Within Section 7 of the ESA, federal agencies are required to carry out programs to conserve Endangered and Threatened species. Consultation is required to ensure that any action authorized, funded or carried out by a Federal agency is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

A Biological Assessment (BA) and Biological Evaluation (BE) were completed for the project on May 8, 2014, and determined “may affect, not likely to adversely affect” for jaguar, ocelot, lesser Long-nosed bat, and Mexican spotted owl, and “No Effect” for other federally listed Threatened and Endangered (T and E) species and for species proposed for federal listing as T or E. The BA was provided to the FWS on May 22, 2014, for informal consultation. On August 11, 2014, the FS was notified by the FWS of their concurrence of the effects determinations in the BA. A minor change to the proposed action occurred after submittal of the BA to the FWS in May. The new information was sent to FWS on September 8. On September 11, the FWS responded that the differences were insufficient to alter their findings described above. For species listed as sensitive species by the Regional Forester, it will have no impact, or may impact individuals or habitat, but will not contribute to a trend toward federal listing or cause a loss of viability. These findings are the basis for my determination that the proposed action is consistent with the Endangered Species Act.

### **National Historic Preservation Act**

The Sunnyside POO has been reviewed by the Forest Archaeologist and determined on April 9th, 2013 that no historic properties are present within the project area, and thus none would be affected. The Arizona State Historic Preservation Office (SHPO) concurred with this finding on June 26th, 2013. It will proceed with the condition that if areas of general impact or intense impact change or become more extensive, or if cultural resources are discovered within the project area, the Forest Project Administrator and the Forest Archaeologist will be immediately contacted for additional project review prior to implementation of those changes or to evaluate the discovery.

### **ADMINISTRATIVE REVIEW OR APPEAL**

On January 17, 2014, the President signed into law the Consolidated Appropriations Act of 2014 (Pub. L. No. 113-76). Section 431 of that Act directs that the 1992 and 2012 legislation establishing the 36 CFR 215 (post-decisional appeals) and 36 CFR 218 (pre-decisional objections) processes “shall not apply to any project or activity implementing a land and resource management plan ... that is categorically excluded ....under the National Environmental Policy Act [NEPA].” On February 7, 2014, the President signed into law the Agricultural Act of 2014 (Farm Bill) (Pub. L. No. 113-79). Section 8006 of the 2014 Farm Bill repealed the Appeals Reform Act (ARA) (Pub. L. No. 102-381). The ARA’s implementing regulation was 36 CFR 215. The 2014 Farm Bill also directs that the pre-decisional objection process established in the Consolidated Appropriation Act of 2012 shall not be applicable to categorically excluded projects or activities.

As a result of these two statutes, the FS no longer offers notice, comment and appeal opportunities pursuant to 36 CFR 215 for categorically excluded projects and this decision is not subject to objections pursuant to 36 CFR 218.

However, this decision involves a written instrument to use or occupy NFS Lands and is subject to permittee appeal under 36 CFR 214. The permittee will be informed of this decision and their appeal rights under those regulations.

### **IMPLEMENTATION DATE**

This project may be implemented following:

- The receipt of the operator's signature in Section VIII of the POO indicating that they have reviewed and agree to comply with all conditions including the design features listed above. The operator will submit in writing the incorporation of the design features as part of their final POO.
- The receipt and approval of a Spill Prevention Control and Countermeasure Plan (SPCC), a sign plan, and a fire prevention plan as described above in the design features.
- The receipt of an acceptable reclamation bond security (36 CFR 228.13).
- Approval of the operating plan by the District Ranger, the authorized officer with whom authority to approve operating plans has been delegated (36 CFR 228.3 (e)).

### **POINT OF CONTACT**

For further information concerning this decision, contact: Patrick Morton, Geologist, Coronado National Forest, 300 W. Congress St., Tucson, AZ 85701, 520-388-8348, [pmorton@fs.fed.us](mailto:pmorton@fs.fed.us).

Sincerely,



MARK J. RUGGIERO  
District Ranger

Attachments:  
Figure 1: Project Map

cc: Patrick T Morton

