



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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REGIONAL
ADMINISTRATOR'S
DIVISION

August 1, 2022

Adrian Cuzick, Environmental Coordinator
Whitman Ranger District
Wallowa-Whitman National Forest
1550 Dewey Avenue
Baker City, Oregon 97814

Dear Adrian Cuzick:

The U.S. Environmental Protection Agency has reviewed U.S. Forest Service's June 2022 Draft Environmental Impact Statement for the Powder River Mining project (CEQ Number 20220082; EPA Project Number 22-0032-USFS). EPA has conducted its review pursuant to the National Environmental Policy Act and our review authority under Section 309 of the Clean Air Act. The CAA Section 309 role is unique to EPA and requires EPA to review and comment publicly on any proposed federal action subject to NEPA's environmental impact statement requirement.

The DEIS evaluates the potential environmental impacts from activities associated with 22 proposed mining Plans of Operation. These activities include mining operations (e.g., exploration, placer mining, processing) and road activities (e.g., authorizing use of previously closed roads, creating temporary roads). The 126,831 acres of National Forest System lands that make up the project area are located on the Whitman Ranger District of the Wallowa-Whitman National Forest, approximately 14 miles southwest of Baker City, Oregon. The DEIS identifies and evaluates a no action alternative (Alternative 1) and two action alternatives, the proposed action (Alternative 2) and the preferred alternative (Alternative 3). Mining activities are the same for both action alternatives, but Alternative 3 differs because it includes additional Forest Service requirements.

EPA did not identify significant environmental concerns to be addressed in the Final EIS and is providing recommendations to improve the assessment and environmental outcome of the proposed action. This includes recommendations specific to addressing the potential impacts to water quality from the proposed project. Please refer to the enclosed Detailed Comments for our recommendations for the Final EIS.

Thank you for the opportunity to review the DEIS for this project. If you have questions about this review, please contact Caitlin Roesler of my staff at 206-553-6518 and roesler.caitlin@epa.gov, or me, at (206) 553-1774 or at chu.rebecca@epa.gov.

Sincerely,

Rebecca Chu, Chief
Policy and Environmental Review Branch

Enclosure

**U.S. EPA Detailed Comments on the
Powder River Mining DEIS
Baker County, Oregon
August 2022**

Alternatives

EPA supports the Forest Service's selection of Alternative 3 as the preferred alternative because it is more environmentally protective by incorporating additional Forest Service resource protection measures and requirements. Alternative 3 is additionally protective because it incorporates U.S. Fish and Wildlife Service Terms and Conditions and Forest Service yearly inspection of closed mining sites. EPA is concerned by a scenario where Alternative 2 is ultimately chosen as the preferred alternative, and those protective measures (e.g., best management practices [BMPs], monitoring) are not incorporated to the final action. For any mining project, successful and complete reclamation should be ensured, and environmental impacts should be minimized. Alternative 2, as described in the DEIS without further avoidance and minimization measures, would result in unacceptable harm to the environment. Unless the public comment process identifies a new alternative that is environmentally superior to Alternative 3, EPA encourages Forest Service to maintain Alternative 3 as the preferred alternative with the additional suggested minimization measures included in our detailed comments.

Water Quality

Road Activities

Road activities can be a source of high sediment loading into project area streams. EPA notes that even without sediment listings on the Oregon 303(d) impaired waters list, excessive sediment loading in forested areas can result in water quality degradation. EPA recommends that the FEIS include a description of BMPs the Forest Service expects to implement for this project to protect streams from sedimentation impacts of reopening roads, creating and using temporary roads, and bridge creation.

The DEIS states that “[u]nder Alternative 3, the fords and temporary roads would be designed to USFS standards and would use best management practices to minimize sedimentation from occurring because of their presence.”¹

Clean Water Act Section 404 permit exemptions for mining roads requires 15 BMPs that must be implemented for an exemption under CWA 404(f). These BMPs are not referenced in the DEIS. EPA recommends that the FEIS ensure that those 15 BMPs would be applied to any road that is built through or into Waters of the U.S., including wetlands.

The DEIS does not include information related to road crossings and their impacts to aquatic resources. We recommend the FEIS identify potential areas where roads are likely to cross and/or impact streams, rivers, wetlands, or other aquatic resources.

Historic Mercury

As the DEIS states, “[p]ast hard rock mining was often associated with milling plants that used cyanide and mercury to mill or separate the gold.”² EPA appreciates that operators must “cease operations and notify the [Wallowa-Whitman National Forest] if mercury is encountered in dredged material” and that “[o]perators must not use mercury, cyanide, or any other hazardous or refined substance to recover or

¹ DEIS p. 76.

² DEIS p. 58.

concentrate gold.”³ EPA is concerned that if these materials are encountered, they will not be properly disposed of, which causes harm to both the environment and the operator. We recommend that the FEIS explain the disposal process for mercury, cyanide, or any other hazardous materials that operators encounter. We encourage the Forest Service to make it as easy as possible for miners to legally and safely dispose of found materials (e.g., convenient drop-off locations).

Permit and Guideline Updates

The DEIS refers to the “May 2015 700PM” permit issued by Oregon Department of Environmental Quality for placer mining. The current permit applicable to this project is the 2020 modified 700 PM general permit.⁴ We recommend these references are updated in the FEIS and that appropriate updates to the project are made to meet the requirements of the 2020 general permit.

The DEIS refers to the 2008 State of Oregon Department of Fish and Wildlife guidance for in-water work timelines. The current in-water work timeline guidelines applicable to this project are from January 2022.⁵ We recommend these references are updated in the FEIS and that the appropriate updates to the project are made to meet the requirements of the 2022 guidelines.

Cumulative Impacts

The DEIS states that there are “a number of operators in the...project area that are proposing to extend or develop new operations.”⁶ Mining activities from multiple projects have the potential to negatively impact water quality, and this can be exacerbated since many operations are happening concurrently. EPA recommends the FEIS address any coordination of timing of mining operations to minimize impact to water quality.

We encourage the Forest Service to use EPA’s guidance document, *Consideration of Cumulative Impacts in EPA Review of NEPA Documents*.⁷ The guidance states that in order to assess the adequacy of the cumulative impacts’ assessment, five key areas should be considered:

- Identifies resources, if any, that are being cumulatively impacted.
- Determines the appropriate geographic area (within natural ecological boundaries) and the time period over which the effects have occurred and would occur.
- Describes a benchmark or baseline.
- Looks at all past, present, and reasonably foreseeable future actions that have affected, are affecting, or would affect resources of concern.
- Includes scientifically defensible threshold levels.

Monitoring

EPA appreciates that mining and road activities will be monitored using PACFISH/INFISH standards to assess the implementation and effectiveness of the protective measures. The DEIS states that the “draft National Core BMP Monitoring Technical Guide (Volume 2, FS-990b, in prep) was made available in 2015, with plans to finalize possibly in 2018. The draft protocols will be publicly available when the

³ DEIS p. 116.

⁴ <https://www.oregon.gov/deq/wq/wqpermits/Pages/Mining.aspx>.

⁵ <https://www.dfw.state.or.us/lands/inwater/Oregon%20In-water%20Work%20Guidelines%20January%202022.pdf?msclkid=6c7719e8a6c511eca3ff1bf4749751a8>.

⁶ DEIS p. 14.

⁷ <https://www.epa.gov/nepa/national-environmental-policy-act-policies-and-guidance>.

Draft monitoring guide is released for review.”⁸ If the Technical Guide has been finalized since 2018, EPA recommends that this statement is updated in the FEIS.

EPA recommends the Forest Service include the following in monitoring program descriptions. In the FEIS:

- Describe the monitoring program and how it will be used as a feedback mechanism for adaptive management so, if necessary, project adjustments can be made to meet environmental objectives throughout the project lifespan.
- Disclose lessons learned from past practices in developing similar projects, combined with the need to account for new challenges, such as climate change, to help inform the design and management of the currently proposed project.

Cultural Resources

EPA appreciates the Forest Service initiating government-to-government consultation, clearly outlining these meetings in the DEIS, and explaining the two significant issues raised (water quality and quantity; fish habitat and species).⁹ Additionally, the Wallowa-Whitman National Forest has “completed a survey and will write a cultural resources report and consult with the Oregon State Historic Preservation Office (SHPO) and interested Indian tribes for this project.”¹⁰ We recommend the FEIS include, to the extent that information is not confidential, any updates on tribal consultation that may have occurred after DEIS preparation, including if concurrence with a “no historic properties adversely affected” determination has been made.

⁸ DEIS p. 45.

⁹ DEIS p. 27-28.

¹⁰ DEIS p. 206.