DECISION MEMO
CATARACT CREEK-MOUNTAIN MEADOW
PLAN OF OPERATIONS

USDA Forest Service
Beaverhead-Deerlodge National Forest
Madison Ranger District

Madison County, Montana
T2S, R3W, sections 16 & 21

Background
Moen Excavation of Virginia City, Montana, submitted a plan of operations (POO) to remove waste rock from three mine sites on the Beaverhead-Deerlodge National Forest and use of a portion of the Cataract Creek road for hauling waste rock described below.

The Mountain Meadow, Ben Harrison and Bozeman mines are located in the Tobacco Root Landscape in the Brown Back and Tobacco Root Peaks management areas.

Purpose & Need
The Forest Service’s overall purpose and need is to process Moen Excavation’s proposed plan of operations to remove mine waste rock and use a portion of FS roads to haul the rock and to follow all applicable laws, regulations, and policies pertaining to the proposal. Under the 1872 General Mining Law, miners have a legal right to conduct mining activities on lands open to mineral entry under the Law. The Forest Service need is to ensure that mining activities be conducted to minimize adverse environmental effects on National Forest System (NFS) lands and comply with all applicable environmental laws. Congress has not given the Forest Service authority to unreasonably circumscribe or prohibit reasonably necessary activities under the Law that is otherwise lawful.

Decision
I have decided to approve the Plan of Operations for the Cataract Creek/Mountain Meadow waste rock removal project submitted by the Moen Excavation with the design features and mitigation measures listed below. My decision is responsive to the Moen Excavation’s right under the 1872 mining law to search and develop minerals, subject to the Organic and Multiple Use Mining acts. The acts allow the Forest Service to reasonably regulate the mining activity to minimize adverse environmental effects on NFS resources and ensure compliance with other applicable environmental laws. My decision is in compliance with applicable environmental laws, thereby minimizing adverse environmental effects.
My decision authorizes removal of waste rock (approx. 8,500 tons) from the three mine sites on the National Forest and use of the Cataract Creek road for hauling purposes. All disturbances will be reclaimed and seeded at the discretion of the Forest botanist.

There will be no road construction and the use of the FS road will not require any maintenance. The access to the Mtn Meadow Mine and the crusher site on BLM will be on BLM roads that have been permitted through a Determination of NEPA Adequacy through the BLM Dillon Field Office. Operations covered by this plan will take one year.

**Design Features and Mitigation Measures Required by This Decision**

- The site will be reclaimed to the natural grade to the extent feasible. The access route to the Bozeman Mine-Route UR7-95 will be obliterated upon completion of the project.

- If cultural resource sites or artifacts are discovered during project implementation, the Forest Archeologist will be notified immediately.

- The B-D NF South Zone Archaeologist will be present on site during each waste dump removal to monitor and prevent any potential damage to features associated with each site as well as to stop excavation if artifacts are discovered within a specific waste pile. Artifacts that have the potential to be damaged or destroyed during the removal operation will be photographed and mapped with a GPS before being removed and subsequently replaced once operations are complete. Please contact the B-D NF South Zone Archaeologist a day prior to starting field work to coordinate site visit (contact information in terms and conditions).

- Food and attractant storage, possession and handling will comply with Food Storage Order 2014-BD/BITT-009.

- Crews will properly store all attractants to minimize potential impacts to transient grizzly bears. Attractants include but are not limited to food and beverages. Attractants should be stored in a bear-resistant container or hard-sided vehicle or hung at least 10 feet high and 4 feet out from any vertical support when unattended.

- Project must occur outside spring period (March 1 – July 15) and road decommissioning work must not exceed admin use levels (3-19 vehicular trips per week).

- The project area is within winter non-motorized allocation. Hauling activity will not occur during the restricted winter time period (December 2 thru May 15).

- If present, avoid disturbance or damage of healthy Whitebark pine trees to the extent possible.

- If desired by the Forest Service, the seed mix listed in the Botany report may be used to assist in re-vegetation of the mine sites. The seed has been collected from the forest and should be available from the Coeur d’Alene nursery by the fall of 2015. Should seeding be desired, the use of our locally collected seed shall be considered before purchasing outside seed.
• Noxious weeds will be controlled following procedures in the Noxious Weed Control Program ROD (2002) for the Beaverhead-Deerlodge National Forest.

Reasons for Categorically Excluding the Proposed Action

An action may be categorically excluded from further analysis and documentation in an environmental impact statement (EIS) or environmental assessment (EA) if it is within one of the categories identified by the USDA in 7 CFR part 1b.3 or 7 CFR part 1b.3 or 36 CFR 220.6(d) or (e), and there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative effect on the quality of the human environment.

This project has been reviewed in accordance with FSH 1909.15 Chapter 30. I have determined the project fits the following category: 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 one mile of low standard road, or use and minor repair of existing roads.*

The project will be completed in one year or less and will remove mine waste rock and use a portion of FS road that was placed on National Forest System lands by previous mining in the early 1900’s and possibly again in the 1930’s. There will be no new road construction and the use of the FS road will not require any maintenance. This project is for removing waste rock for processing and to further investigate and evaluate the site. The investigation will also provide information useful for evaluating other similar potential projects.

My decision is based on a review of the project record that shows a thorough review of relevant scientific information, a consideration of responsible opposing views, and the acknowledgement of incomplete or unavailable information. The record includes the following resource specialist reports or documentation of review:

*Biological Assessments for Aquatic, Botany, and Wildlife TES species*
*Specialist reviews for Heritage Resources, Scenery, Soils, Hydrology, and Recreation*

By definition, categorical exclusions do not individually or cumulatively have significant effects on the human environment (40 CFR 1508.4). Resource specialists considered direct and indirect effects from the proposed action coupled with past, present, and reasonably foreseeable actions. I have examined the proposed action and the effects analyses disclosed in the resource specialist reports listed above and conclude that without notable individual effects from the proposed action, there would be no discernable cumulative effects.

The interdisciplinary team reviewed the resource conditions listed in FSH 1909.15 Chapter 30 (31.2) and other concerns applicable to this project to determine whether any extraordinary circumstances exist. The mere presence of one or more of the resource conditions listed below does not preclude the use of a categorical exclusion. It is the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions, if such a relationship exists, and the degree of potential effect of a proposed action on these resource conditions that determine whether extraordinary circumstances exist.
The following table provides a summary of the final determinations regarding the cause-effect relationship between the proposed action and degree of potential effect on the resource conditions in the left hand column in the table below. All specialist reports (available in the project record) have been finalized and I have reviewed them in detail prior to reaching this decision.

Table 1. Potential Effects to Resource Conditions Considered for Extraordinary Circumstances

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<th>RESOURCE CONDITION</th>
<th>POTENTIAL EFFECT</th>
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| Federally listed threatened or endangered species, species proposed for Federal listing, or Forest Service sensitive species. | Threatened or Endangered Species: Implementation of the proposed action is anticipated to result in not likely to adversely affect the threatened grizzly bear and have no effect on Canada lynx or their habitat.  
Sensitive Species: Short term, temporary displacement possible during activities. No direct impacts on feeding, sheltering or aspects critical to survival of Gray Wolf.  
No Impact – all other Sensitive terrestrial, aquatic, and plant species. |
| Floodplains, wetlands, or municipal watersheds                                      | The project does not occur within a municipal watershed, floodplain or wetlands. Therefore, negative impacts to floodplains, wetlands, or municipal watersheds are not projected. |
| Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas. | No congressionally designated areas occur in or near the project; therefore negative impacts to any congressionally designated areas are not projected. |
| Inventoried Roadless Areas (IRAs)                                                  | The project is not within or adjacent to any IRAs. Therefore, there is no impact or effect on any IRA. |
| Research Natural Areas (RNAs)                                                      | There are no RNAs within the project area. Therefore, negative impacts to any RNA are not projected. |
| American Indians and Alaska Native religious or cultural sites.                    | The area has been surveyed and historical features will be avoided. Section 106 consultation has consulted with the MT SHPO and pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470F. |

I find the determinations reached in the extraordinary circumstances consideration table above maintain a high degree of certainty. Therefore, I am confident that this project would have no significant effect on the human environment, individually or cumulatively, and no uncertainty exists regarding this degree of potential effect. I have reviewed the individual specialist reports submitted for detailed descriptions of the methods and data used to come to these determinations.

**Scoping and Public Involvement**

The BLM with the Forest Service held a public meeting in Pony Oct 30, 2014 to address both projects and talk with residents of Pony. A scoping letter dated February 20, 2015, describing the project was mailed to interested individuals, organizations, agencies, and tribes for review and comment by March 20, 2015. The project was posted on the BDNF website, the schedule of proposed actions (SOPA) in February 2015. Multiple comments were received.
Many of the comments sent to the Forest Service addressed the BLM project in the Pony Creek Drainage.

**Response:** There was some confusion on project location and the BLM project in Pony creek which has been clarified with the individuals. The Forest Service has been working closely with the BLM to make sure that both projects were addressed within the scope of each agency’s authorities.

Many comments were concerned about the hauling on Cataract Creek and through the town of Pony.

**Response:** The haul route has changed due to the material being taken to the BLM crusher site in Pony Creek so the haul route will not go to the end of Cataract Creek haul road, it will go across private ground and to Pony Creek to the BLM crusher site. It was explained that this will minimize some of the hauling down Cataract Creek. Also discussed was that the project on Forest Service will be very short in duration finishing haul and reclamation in Cataract Creek within a month. It was further explained that the Forest Service does not have authority on haul routes in the town of Pony.

A comment on the type of analysis and use of a CE was submitted.

**Response:** The Forest Service has been in contact with this individual about their comment and addressed the fact that the project is very small in scale and fits within in the scope of the category used for analysis (please see section Reasons for Categorically Excluding the Proposed Action above on pg3).

**Forest Plan Direction**

The National Forest Management Act (NFMA) requires the development of long-range land and resource management plans. The Beaverhead-Deerlodge National Forest Plan was approved in 2009 and provides guidance for all natural resource management activities on the Beaverhead-Deerlodge National Forest. NFMA also requires that all projects and activities be consistent with the plans. The decision is consistent with Forest Plan direction including all applicable standards.

**Forestwide Locatable Minerals Goal**

Locatable Minerals are developed on all parts of the Forest not withdrawn from locatable mineral entry in accordance with the 1872 Mining Law, regulations, and national direction. (FP pg. 27)

**Findings Required by Law**

*National Forest Management Act* - The Beaverhead-Deerlodge National Forest Land and Resource Management Plan (Forest Plan) was approved in 2009, as required by this Act. The Forest Plan has been reviewed in consideration of this project and the project meets all applicable management direction, including consistency with all applicable standards.

On April 9, 2012 the Department of Agriculture issued a final planning rule for National Forest System land management planning (2012 Rule) 77 FR 68 [21162-21276]). None of the
requirements of the 2012 Rule apply to projects and activities on the Beaverhead-Deerlodge National Forest, as the 2009 Beaverhead-Deerlodge Forest Plan was developed under a prior planning rule (36 CFR §219.17(c)). Furthermore, the 2012 Rule explains, “[The 2012 Rule] supersedes any prior planning regulation. No obligations remain from any prior planning regulation, except those that are specifically included in a unit’s existing plan. Existing plans will remain in effect until revised” (36 CFR §219.17).

**Endangered Species Act** - See the “Reasons for Categorically Excluding the Proposed Action” Section of this document, and Table 1, for a summary of the effects of this project to Endangered, Threatened, or Candidate Species for the Beaverhead-Deerlodge NF (list dated January 8, 2015). The summary is based on a more thorough analysis available in the project record. This project is consistent with the requirements of the Endangered Species Act.

**Sensitive Species (Forest Service Manual 2670)** - This direction requires analysis of potential impacts to sensitive species and the Regional Forester approved the sensitive species list on February 25, 2011 (updated August 26, 2011 to include white bark pine). Our review of the potential effects of this decision upon the sensitive species has been completed and the analysis documented in the project file and Resource Condition Table above.

**Environmental Justice (Executive Order 12898)** - This Order requires consideration of whether projects would disproportionately affect minority or low-income populations in or around the project area. Based on internal review and public scoping, the proposed action did not identify any adversely impacted local minority or low-income populations.

**Clean Water Act** – The intent of the Act is to restore and maintain the integrity of waters. The Forest Service complies with this Act through the use of Best Management Practices (BMPs). This decision incorporates Best Management Practices to ensure protection of soil and water resources and complies with the Clean Water Act and State water quality standards.

**Clean Air Act** – Under this Act, areas of the country were designated as Class I, II or III airsheds for “Prevention of Significant Deterioration” purposes. There will be no air quality impacts as a result of this decision.

**The National Historic Preservation Act** – As discussed earlier in this document and in detail in the project file, impacts to cultural resources are not expected.

**Migratory Bird Treaty Act** – There will be no known substantial losses of migratory bird habitat expected from the implementation of this proposal.

**National Environmental Policy Act (NEPA)** – This Act requires public involvement and consideration of potential environmental effects. This decision memo and the project record provide documentation of NEPA compliance.

**Other Laws or Requirements** – The proposed action is consistent with all other Federal, State, and/or local laws or requirements.
Administrative Review Opportunities

Decisions made under Categorical Exclusions are not subject to objection pursuant to 36 CFR 218. The permittee however, may appeal this decision pursuant to Department of Agriculture regulations 36 CFR 214. To appeal this decision under 36 CFR 214, a written Notice of Appeal, meeting the content requirements at 36 CFR 214.8 must be postmarked or received (if delivered by hand) within 45 calendar days after the date of notice of decision in this letter (36 CFR 214.9). However, when the 45-day filing period would end on a Saturday, Sunday, or Federal Holiday, the filing time is extended to the end of the next Federal working day. The Notice of Appeal must be sent to USDA Forest Service, Forest Supervisor, Beaverhead-Deerlodge National Forest, Attn: Appeals, 420 Barrett St, Dillon, MT 59725. A copy of the appeal must simultaneously be sent to the District Ranger at the Madison Ranger District, 5 Forest Service Road, Ennis, MT 59729. Additionally, if an appeal is filed and the appellant would like to make an oral presentation concerning the appeal (36 CFR 214.16) and/or request a stay of implementation of the decision (36 CFR 214.13(b)(1)), those requests must be included in the appeal (36 CFR 214.8(b)(1( and (b)(2)).

Implementation Date

This decision is not subject to objection pursuant to 36 CFR 218 and operation may begin as soon as the Plan of Operations is modified to include the design features and mitigation specified above. The plan must be signed by the Moen Excavation and approved by me. The appropriate calculated reclamation bond must also be posted prior to implementation. This will likely occur in October 2015, and operations may begin immediately afterward.

Contact Person

Supporting documentation for this decision is available for public review at the Madison Ranger District, 5 Forest Service Road, Ennis, MT 59729.

Further information about the decision can be obtained from Licette Hammer, Minerals Administrator, at (406) 683-3911, or by written request to Mrs. Hammer, Supervisors Office District 420 Barrett Street, Dillon, MT 59725, or via email to lhammer@fs.fed.us.

Responsible Official

/s/Dale Olson 09/28/2015
DALE OLSON
District Ranger
Madison Ranger District

Beaverhead-Deerlodge National Forest
Cataract Creek-Mountain Meadow POO
September, 2015
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