



# United States Department of the Interior



## BUREAU OF LAND MANAGEMENT

Mount Lewis Field Office

50 Bastian Road

Battle Mountain, Nevada 89820

Phone: 775-635-4000

Fax: 775-635-4034

[http://www.blm.gov/nv/st/en/fo/battle\\_mountain\\_field.html](http://www.blm.gov/nv/st/en/fo/battle_mountain_field.html)

In Reply Refer To:

3809 (NVB0100)

NVN-067930 (14-2A)

DOI-BLM-NV-B010-2015-0016-EA

**MAY 15 2015**

**CERTIFIED MAIL NO.: 7013 1710 0000 3371 1874**

**Return Receipt Requested**

### DECISION

Newmont Mining Corporation	:	
Attn: Cecile Thaxter, General Manager	:	Surface Management
Phoenix Mine	:	
P.O Box 1657	:	
Battle Mountain, Nevada 89820	:	

### **Amendment to the Plan of Operations Approval Determination of Required Financial Guarantee**

### **INTRODUCTION**

The Bureau of Land Management (BLM) has evaluated the Amendment to the Plan of Operations (APO) titled, *North Optional Use Area Pit and Philadelphia Canyon Waste Rock Facility Expansion Project Update to Phoenix Mine Plan of Operations Amendment BLM Case File Number NVN-067930, NDEP Project # 0223*, and has prepared an Environmental Assessment (EA), EA number DOI-BLM-NV-B010-2015-0016-EA, that analyzed the affected environment, disclosed environmental impacts, and identified environmental protection measures associated with Newmont Mining Corporation's (Newmont) Phoenix Project (Project). The final APO was submitted July 29, 2014, in accordance with the BLM Surface Management Regulations 43 Code of Federal Regulations (CFR) 3809, as amended. It has been assigned BLM case file number NVN-067930 (14-2A). The Phoenix Pit expansion into the North Optional Use Area (NOUA) is located in all or parts of Township 31 North, Range 43 East (T. 31 N., R 43 E.), Sections 21, 22, 27, and 28, MDB&M; and the expansion of the Philadelphia Canyon Waste Rock Facility is located in all or parts of T. 31 N., R. 43 E., Sections 26, 34, and 35; MDB&M, located in Lander County, Nevada.

### **BACKGROUND**

Newmont proposes to expand the Phoenix Pit into previously authorized surface disturbance within the NOUA and expand the Philadelphia Canyon Waste Rock Facility by expanding the Plan Area and surface disturbance by approximately 186 acres. Approximately 75 acres are on

public land and 111 are on private land. The Project Area will expand 186 acres from 21,517 acres to 21,703 acres. The APO was submitted on April 2, 2014, and a revised and final version was submitted on July 29, 2014. A Reclamation Cost Estimate (RCE) was submitted to BLM and Nevada Division of Environmental Protection, Bureau of Mining Regulation and Reclamation (NDEP) on March 6, 2015, titled *Phoenix Phase 3 Review and Phase 4 Facility Expansion Amendment*. The RCE was revised on April 23, 2015, and a final revision was submitted on May 12, 2015.

## **PUBLIC INVOLVEMENT**

The BLM conducted Native American consultation on January 23, 2015, by contacting the Te-Moak Tribe of the Western Shoshone (the Battle Mountain Band, the Elko Band, and the South Fork Band) and the Duckwater Shoshone Tribe.

The EA was made available for a 30-day public comment period ending on April 24, 2015. Notifications of the availability of the EA were sent to persons and agencies on the Project mailing list and the EA was posted on the Battle Mountain District ePlanning webpage. Additionally, the BLM issued a press release the same day providing a link to the EA and instructions on how to comment. Six comment letters were received from the public or other federal, state, or local agencies. Substantive comments were evaluated and considered by the BLM during the decision making process. Minor corrections or updates to the EA were made as a result of the substantive comment review. The BLM reviewed and considered these comments and determined that they did not identify or present any significant new information or changed circumstances that warranted additional NEPA analysis. Responses to substantive comments are provided in Appendix A of the EA.

All correspondence relative to this planning process is part of the public record and available for review at the Mount Lewis Field Office.

## **DECISION**

**1. As a result of the analysis presented in the EA and making a Finding of No Significant Impact (FONSI), and carefully considering the comments and input received from the public, it is the Decision of the Authorized officer to select the Proposed Action as the BLM's Preferred Alternative and approve the APO and the financial guarantee requirements. The BLM approval of the APO will be subject to operating, reclamation and monitoring measures in the APO, the performance standards set forth in 43 CFR 3809.420, and the Applicant-Committed Environmental Protection Measures (EPM) as set forth in the EA and restated in this Decision under the Conditions of Approval.**

Approval of the APO by the BLM does not constitute a determination regarding the validity or ownership of any unpatented mining claims involved in the exploration operation. Newmont is responsible for obtaining any use rights or local, state or federal permits, licenses or reviews that may be required before operations begin.

This Decision also constitutes concurrence with Newmont's use and occupancy of public lands as described in the approved APO. Newmont must maintain compliance with the Use and Occupancy regulations at 43 CFR 3715.2, 43 CFR 3715.2-1, and 43 CFR 3715.5, throughout the duration of the approved Plan. Concurrence by BLM on Newmont's proposed use and occupancy is not subject to State Director review, but may be appealed by adversely affected parties directly to the Interior Board of Land Appeals as outlined in enclosed BLM form 1842-1.

### **Financial Guarantee**

Amount of Financial Guarantee: This office has determined that the amount of **\$569,495,072** is sufficient to meet all anticipated reclamation requirements. The amount of the reclamation cost estimate is based on the operator complying with all applicable operating and reclamation requirements. The financial guarantee provides surface reclamation coverage for operations conducted by the principal on lands in Nevada governed by 43 CFR 3809. Line items in the approved reclamation cost estimate are not to be considered as the limits of the reclamation expenditures should forfeiture of the financial guarantee be necessary. The line items listed are solely for the purpose of arriving at a total amount for the financial guarantee. This amount may be spent as the BLM deems necessary to implement the approved reclamation plan. Nor does the financial guarantee amount represent reclamation liability limits or constraints should the actual cost of reclamation exceed this amount. This amount is subject to change pending further review by the BLM or the Nevada Division of Environmental Protection, Bureau of Mining Regulation and Reclamation (NDEP-BMRR).

Required Financial Guarantee: Within sixty (60) days of receipt of this Decision, the operator must submit an acceptable financial guarantee in the amount of **\$569,495,072** to the Bureau of Land Management, Branch of Minerals Adjudication, 1340 Financial Blvd., Reno, NV 89502-7147. You must receive written notification from that office accepting and obligating your financial guarantee before you may begin surface disturbing activities under the APO. Failure to provide an acceptable financial guarantee within the specified time frame will result in an enforcement action against the operator for failure to maintain an acceptable financial.

The types of financial instruments that are acceptable to the BLM are found at 43 CFR 3809.555. Please contact the Branch of Minerals Adjudication at 775-861-6599 for further information on the adjudication of financial guarantees.

## **2. Conditions of Approval**

Newmont will continue to commit to following applicant-committed practices (ACPs) described in Phoenix Mine Project Final Environmental Impact Statement (BLM 2004), Phoenix Copper Leach Project Final Environmental Impact Statement (BLM 2012) and Plan of Operations (Newmont 2012) and incorporated into the Phoenix Mine Project Record of Decision and Plan of Operations Approval (ROD) (BLM 2012). Additional BLM-stipulated mitigation measures also were identified in the Final EIS and incorporated into the ROD. All of these measures currently are, and will continue to be, implemented as standard operating procedures to mitigate potential impacts to environmental and human resources to prevent undue or unnecessary degradation of the environment. These measures will specifically apply to construction, operation, and

reclamation of the currently proposed project modifications. No changes to these committed practices are proposed in this APO. However, new cultural resource and Greater sage-grouse measures have been added to this Project.

- Within the expanded portion of the Project Area, Newmont shall develop, and submit to the BLM for approval, a Historic Properties Treatment Plan (HPTP) to address the potential impacts to the unevaluated rockshelter site and the four contributing elements to the Battle Mountain Mining District that may be adversely affected by the Project. Newmont shall implement the HPTP prior to any surface disturbance of the rockshelter or the contributing district elements.
- In order to reduce impacts from disturbance which occurs within Greater sage-grouse Moderate Habitat, the following applicant committed EPMs could be implemented. The obligation for restoration and enhancement of Greater sage-grouse habitat will be calculated at a 2:1 ratio (2 acres of restoration/enhancement for every one acre of disturbance) for disturbance in Moderate Habitat.
  - Off-site pinyon-juniper (PJ) thinning to benefit Greater sage-grouse habitat will be considered. There are four wildlife habitat enhancement project EAs prepared by the BLM that have analyzed the effects of PJ thinning throughout various locations in Lander County and are referenced for locations of PJ within this EA. A BLM biologist, in coordination with an NDOW biologist, would choose a PJ thinning area analyzed in any of the following EAs for potential off-site mitigation: *Bald Mountain Wildlife Habitat Enhancement Project* (BLM 2010, NV062-EA08-083), *Eagle Butte Wildlife Habitat Enhancement Project* (BLM 2011, DOI-BLM-NV-B010-2011-0021-EA), *Toiyabe West Wildlife Enhancement Project* (BLM 2013, DOI-BLM-NV-B010-2013-0020-EA), and *Mount Lewis North Wildlife Habitat Enhancement Project* (BLM 2015, Draft EA). These four EAs identified and assessed crucial Greater sage-grouse habitat where PJ thinning projects would be beneficial due to PJ encroachment into sagebrush communities. BLM and NDOW would preferably choose PJ thinning projects located within the nearest Greater sage-grouse Population Management Unit (PMU) to the Project Area and analyzed under the above described PJ thinning EAs. Any off-site mitigation plan would be subject to BLM approval. Impacts associated with the off-site mitigation areas were addressed in the corresponding EAs; therefore, no additional NEPA analysis would be required for this mitigation option. Newmont would implement the EPM measures within two years of the Decision for the APO; Greater sage-grouse EPMs completed would be reported in the annual disturbance summary report, which is provided to the BLM and NDEP by April 15.
  - Outlined in the Memorandum of Understanding (MOU) *Regarding the Establishment of a Partnership for the Conservation and Protection of the Greater sage-grouse and Greater sage-grouse Habitat*, payment may be made into a Greater sage-grouse mitigation bank account. The Nevada Standardized

Reclamation Cost Estimator (SRCE) model would provide the basis for negotiating costs for public lands.

## **RATIONALE**

The APO, in combination with the preceding Conditions of Approval, and the enclosed FONSI, show that all practicable means to avoid or minimize environmental harm have been adopted and that unnecessary or undue degradation of the public lands will not occur as a result of the activities at the Project.

The APO is in conformance with the Shoshone-Eureka Resource Management Plan Record of Decision (ROD) which states: 1) "Make available and encourage development of mineral resources to meet national, regional, and local needs consistent with national objectives for an adequate supply of minerals (page 29)," 2) "All public lands in the planning area will be open for mining and prospecting unless withdrawn from mineral entry (page 29)," and 3) final reclamation will ensure public safety and the return of the exploration disturbance to its pre-exploration land uses of grazing, wildlife habitat, and mineral exploration. Final reclamation will also reduce visual contrast created during the exploration operation.

The APO is in conformance with the President's National Energy Policy Act of 2005 as per Instruction Memorandum (IM-2002-053), as put forth in Executive Order 13212 and will not have an adverse impact on energy development, production, supply, and/or distribution. The EA and FONSI support this decision.

## **AUTHORITY**

This Decision is in conformance with the National Environmental Policy Act (NEPA) of 1969 (P.L. 91-190) as amended (72 USC 4321 et.seq.); General and Title V of the Federal Land Management and Policy Act of 1976 (FLPMA); 43 CFR Part 3800 Subpart 3809- Surface Management (16 USC et.seq.); and 43 CFR Part 3710 Subpart 3715 – Use and Occupancy Under the Mining Laws.

## **APPEAL OF THE DECISION**

If you are adversely affected by this decision, you may request that the Nevada BLM State Director review this decision. If you request a State Director Review, the request must be received in the BLM Nevada State Office at:

BLM Nevada State Office  
State Director  
1340 Financial Blvd.  
Reno, Nevada 89502-7147

no later than 30 calendar days after you receive or have been notified of this decision. The request for State Director Review must be filed in accordance with the provisions in

43 CFR 3809.805. This decision will remain in effect while the State Director Review is pending, unless a stay is granted by the State Director. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

If the State Director does not make a decision on your request for review of this decision within 21 days of receipt of the request, you should consider the request declined and you may appeal this decision to the Interior Board of Land Appeals (IBLA). You may contact the BLM Nevada State Office to determine when the BLM received the request for State Director Review. You have 30 days from the end of the 21-day period in which to file your Notice of Appeal with this office at 50 Bastian Road, Battle Mountain, NV 89820, which we will forward to IBLA.

If you wish to bypass a State Director Review, this decision may be appealed directly to the IBLA in accordance with the regulations at 43 CFR 3809.801(a)(1). Your Notice of Appeal must be filed in this office at 50 Bastian Road, Battle Mountain, NV 89820, within 30 days from receipt of this decision. As the appellant, you have the burden of showing that the decision appealed from is in error. Enclosed is BLM Form 1842-1 that contains information on taking appeals to the IBLA.

This decision will remain in effect while the IBLA reviews the case, unless a stay is granted by the IBLA. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

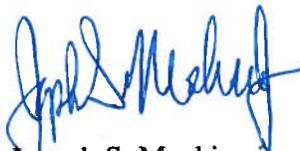
#### Request for a Stay

If you wish to file a petition pursuant to regulations 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by IBLA, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of this notice of appeal and petition for a stay must also be submitted to each party named in the decision and to the IBLA and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

#### Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal must show sufficient justification based on the following standards:

1. The relative harm to parties if the stay is granted or denied.
2. The likelihood of the appellant's success on the merits.
3. The likelihood of immediate and irreparable harm if the stay is not granted.
4. Whether the public interest favors granting the stay.



Joseph S. Moskiewicz, Jr.  
Acting Field Manager  
Mount Lewis Field Office

**Enclosures**

cc: Nevada State Office, Branch of Minerals Adjudication (NV-923)

Paul Comba  
Nevada Division of Environmental Protection  
Bureau of Mining Regulation & Reclamation  
901 S. Stewart Street, Suite 4001  
Carson City, Nevada 89701

W. Todd Suessmith  
Nevada Division of Environmental Protection  
Bureau of Mining Regulation & Reclamation  
901 S. Stewart Street, Suite 4001  
Carson City, Nevada 89701

