



U.S. Department of the Interior
Bureau of Land Management

May 2021

American Magnesium Foothill Dolomite Mine Project

Decision Record

Document No. DOI-BLM-NM-L000-2020-0024-EA

Luna County, New Mexico



Las Cruces District Office
1800 Marquess Street
Las Cruces, New Mexico 88005
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DECISION RECORD
FOOTHILL DOLOMITE MINE
PLAN OF OPERATIONS
BLM Case File Number NMNM-136678

SUMMARY

This document constitutes the Decision Record (DR) of the United States Department of the Interior and the Bureau of Land Management (BLM) for the Foothill Dolomite Mine (Project) (BLM Case File Number NMNM-136678). This DR approves the construction, operation, and reclamation of the Project on public lands near Deming, New Mexico., as analyzed in the Environmental Assessment, DOI-BLM-NM-L000-2020-0024-EA (EA), dated July 2020. This approval will take the form of an approved mining plan of operations and concurrence under the BLM's 43 CFR Part 3809 and 43 CFR 3715 regulations, consistent with management goals in the Mimbres Resource Management Plan (1993), and in accordance with the Mining Law and Federal regulations regarding mining operations found in 43 CFR subparts 3715 and 3809.

BACKGROUND

American Magnesium submitted the Plan of Operations on March 1, 2017 to the Las Cruces District Office, New Mexico. On May 12, 2017, BLM notified American Magnesium that the Plan of Operations did not meet the plan content requirements of 43 CFR 3809.401(b), and, pursuant to 43 CFR 3809.411(a)(2), requested additional description of the mining operations and reclamation plan. American Magnesium submitted a revised Plan of Operations to BLM in July 2017, and BLM again notified American Magnesium in December 2017, that the Plan was deficient per 43 CFR 3809.411(a)(2), reiterating many of the concerns from the first notification. American Magnesium submitted additional revisions to the Plan of Operations in February 2018. In May 2018, the BLM requested additional details regarding access, drilling, and pit design. American Magnesium submitted a revised Plan a third time in August 2018. BLM notified American Magnesium on October 12, 2018 that the Plan was complete in accordance with 43 CFR 3809.411(a)(3). The complete Plan of Operations, including revisions made in March 2017, July 2017, February 2018, and August 2018 was used to develop the proposed action in the Environmental Assessment.

The proposed Project is situated on public lands administered by BLM that are open to operation of the Mining Law of 1872 (30 USC 22-54). The proposed Project is subject to BLM review and approval under the Federal Land Policy and Management Act of 1976 (FLPMA) (43 USC 1701-

1789), the BLM's surface management regulations at 43 CFR subpart 3809, and BLM's use and occupancy regulations at 43 CFR subpart 3715. BLM prepared the EA to determine whether the Project would significantly affect the quality of the human environment. On August 7, 2020, BLM published a Finding of No Significant Impact (FONSI) which determined that an environmental impact statement (EIS) for the proposed Project is not needed.

ALTERNATIVES CONSIDERED

The BLM considered two alternatives, the Proposed Action and the No Action Alternative, and has selected the Proposed Action as described in the EA. The Proposed Action allows for the construction, operation, and reclamation of the Foothill Dolomite Mine near Deming, New Mexico in accordance with the Plan of Operations, which incorporates design features, best management practices, and applicant-committed environmental protection measures intended to mitigate potential impacts.

The Proposed Action would result in approximately 40 acres of total surface disturbance. Mineral extraction would occur on approximately 30 acres, and an approximately 2-acre laydown yard would include a mobile office, equipment storage, sanitation facilities, stockpile areas, and topdressing. The Proposed Action also includes 1,334 feet of new access road, and 2 miles of improvement on an existing unnamed BLM road, and the construction of drill sites for resource verification drilling.

Under the Proposed Action, American Magnesium would excavate dolomite in three phases, as described in the EA, with annual production of up to 300,000 tons of dolomite, containing magnesium, per year, with a projected mine life of 30 years. Operations would include blasting to loosen and break up the dolomite rock, on-site crushing, and staging and loading into haul trucks for transport to an off-site facility for further processing.

The selected alternative is consistent with the Mimbres Resource Management Plan (1993) (RMP). The BLM's objective in the management of its locatable minerals is to provide for public use of locatable minerals consistent with the laws that govern these activities and, subject to applicable laws and regulations, to minimize environmental damage as stated in the Mimbres RMP on pages 2-3. Furthermore, the Proposed Action will allow development of magnesium, a critical mineral, as described in Executive Order 13817.

The EA also analyzed the potential impacts of the No Action Alternative, under which the BLM would not approve American Magnesium's Plan of Operations, and there would be no construction or operation of the Project on BLM-administered public lands.

No other alternatives were analyzed in the EA because the Proposed Action includes applicant-committed environmental protection measures to minimize impacts, as discussed in section 2.1.7 of

the EA. However, the BLM did consider two other potential haul routes between the proposed Project area and the conceptual location of the Peru Industrial park, before eliminating these as alternatives that would receive detailed analysis in the EA. The first alternative route was a direct path from the proposed mine site, north on Highway 11 through the city center of Deming, and ending at the Peru Industrial park. The City of Deming indicated to BLM that this route concept would not be acceptable based on the volume of industrial traffic already traversing through the city center, and potential impacts on city businesses and safety of pedestrians from the increase in heavy truck traffic. Therefore, BLM eliminated this route concept from detailed review.

The second conceptual haul route option was located along McCann road, and was presented as the conceptual haul route during the initial public scoping phase that BLM facilitated in July of 2019. The public input during scoping, as well as further comments by the City of Deming, resulted in dismissal of the McCann route on the basis of the mileage of dirt roads that would be traversed, leading to a greater impact and increase in dust generated by haul traffic. Therefore, BLM also eliminated this route concept from further consideration in the EA

PUBLIC INVOLVEMENT

The BLM solicited input from the public on the project to assist in identifying key issues and defining the scope of the proposed action and environmental analysis. The BLM held a 30-day scoping period with a meeting held on July 25, 2019. This scoping period resulted in 49 comment letter submissions.

Individual comments within each letter were identified, and each comment was analyzed per BLM's criteria for determining issues for consideration in the EA (Tables 1 and 2). Appendix A of the EA contains the summary of the scoping process and the comments received. Public input was used to identify the key issues (Table 1) analyzed in Chapter 3.

From May 18, 2020 to June 17, 2020, the BLM held a 30-day public comment period, with a virtual public meeting on May 28, 2020 to solicit comments to the EA and a draft unsigned FONSI. Copies of the EA were made available on eplanning.blm.gov. The BLM accepted public comments via email, the U.S. Postal Service, and through the BLM's ePlanning website. The BLM received 281 individual comment letter submissions. There were 12 public statements made during the virtual public meeting. All comments were reviewed by the BLM. The letter submissions and statements were then inserted into Appendix D of the EA and further parsed into individual comments and given comment identifier numbers. A total of 339 individual comments were parsed out. The individual comments were then reviewed for substantive input and resolutions to comments were developed, including whether the comment warranted a revision or modification to the EA.

Appendix D contains the comprehensive list of comments with BLM's responses to each comment. In summary, a number of comments primarily focused on the NEPA process, transportation, the mill site, wilderness study areas, water quantity, Persian ibex, and the Mining Law. Several comments resulted in BLM adding clarifying information to the EA, but the additional information did not result in altering the analysis or any substantive change in the Proposed Action, or BLM's determination in the finding of no significant impact.

Luna County, the City of Deming, and representatives from the New Mexico Mining and Minerals Division were invited to be cooperating agencies via letter in October 2019. All three agencies accepted. Several cooperating agencies meetings with respect to the proposed action and NEPA analysis resulted in positively integrating jurisdictional issues such as transportation, a state mining permit, and joint bonding requirements.

The BLM consulted with the New Mexico Historic Preservation Division and tribal entities on cultural resource clearances throughout the process.

On November 21, 2019, BLM LCDO sent notification letters to Fort Sill Apache Tribe, Hopi Tribe, Mescalero Apache Tribe, White Mountain Apache Tribe, and Ysleta del Sur Pueblo inviting comments regarding both the proposed action (e.g., impacts from visual impacts on sacred sites) and project actions (e.g., discovery of antiquities or remains). On December 6, 2019, White Mountain Apache Tribe sent a letter to BLM LCDO with the response that the proposed project will "not have adverse effect on any known White Mountain Apache tribe's historic properties and/or traditional cultural properties." The Hopi Tribe responded on November 1, 2019, with no comments regarding the proposed project. The Ysleta del Sur Pueblo responded on January 9, 2020 and did not "have any comments on the proposed undertaking and believe that this project will not adversely affect traditional, religious, or culturally significant sites, and have no opposition to it." The Ysleta del Sur Pueblo requested consultation "should any human remains or artifacts unearthed during this project be determined to fall under NAGPRA guidelines." BLM did not receive a response from Fort Sill Apache Tribe or Mescalero Apache Tribe. Tribal consultation has been completed.

COMPLIANCE AND MONITORING

The Project will be monitored by BLM personnel during construction, operations, and reclamation activities to ensure compliance with the Plan of Operations and the 43 CFR subpart 3715 and 3809 regulations.

RATIONALE

The Proposed Action was selected because it will fulfill the purpose and need as described in the EA while being consistent with management goals in the Mimbres Resource Management Plan

(1993), and in accordance with the Mining Law and Federal regulations regarding mining operations found in 43 CFR subparts 3715 and 3809.

Foothill Dolomite Project Plan of Operations Approval

DECISION

Mining Plan of Operations Approved

Determination of Required Financial Guarantee Amount

The Plan of Operations (Plan) for the American Magnesium Foothill Dolomite Mine is hereby approved under 43 C.F.R. 3809.411(d)(1). Based on the Bureau of Land Management's (BLM) review of the Plan and the analysis disclosed in the Environmental Assessment DOI-BLM-NM-L000-2020-0024-EA (EA), the BLM concludes that operations conducted under the Plan will not result in unnecessary or undue degradation of the public lands.

American Magnesium must conduct operations in conformance with the operating, reclamation, and monitoring measures set forth in the Plan, all requirements established under BLM's Surface Management Regulations at 43 CFR subpart 3809, and all Federal and State laws related to air quality, water quality, and other environmental protection regulations, including the reclamation requirements applicable to minimal impact new mining operations under the New Mexico Mining Act Reclamation Program rules administered by New Mexico Mining & Minerals Division (MMD).

American Magnesium is responsible for obtaining any local, state or federal permits, licenses or reviews that may be required before operations begin. You are responsible for preventing unnecessary or undue degradation of the public lands and for reclaiming all lands disturbed by your operations.

Approval of the Plan by BLM does not constitute a determination regarding the validity or ownership of any unpatented mining claims involved in the mining operation.

Financial Guarantee Amount

This office, in coordination with MMD, has determined that the amount of \$1,411,072 is sufficient to meet all anticipated reclamation requirements for the Plan. The amount of the reclamation cost estimate is based on the operator complying with all applicable operating and reclamation requirements. The operator must submit an acceptable financial guarantee in the amount indicated above to the Bureau of Land Management, New Mexico State Office 301 Dinosaur Trail, Santa Fe, NM 87508. You must receive written notification from that office that BLM has accepted and obligated your financial guarantee before you begin any surface disturbing activity. The types of

financial instruments that are acceptable to the BLM are found at 43 CFR 3809.555. Please contact the BLM at (505) 954-2000 for further information on the adjudication of financial guarantees.

APPEAL OF THE DECISION

If you are adversely affected by this decision, you may request that the BLM New Mexico State Director review this decision. If you request a State Director Review, the request must be received in the BLM New Mexico State Office at 301 Dinosaur Trail, Santa Fe, NM 87508, 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 New Mexico 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 1800 Marquess St., Las Cruces, NM 88005 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 1800 Marquess St., Las Cruces, NM 88005 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 at 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by Interior Board of Land Appeals (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 shall show sufficient justification based on the following standards:

- 1) The relative harm to the 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, and
- 4) Whether the public interest favors granting the stay.

The BLM is following guidance from the Centers for Disease Control and Prevention and recommendations from state and local public health authorities to implement social distancing in response to Coronavirus Disease 2019 (COVID-19). Therefore, the BLM will accept a notice of appeal or petition to stay by electronic mail at pbailey@blm.gov in accordance with applicable IBLA regulations, including certification of service at 43 § CFR 4.401. For additional IBLA COVID-related filing information, please see the IBLA's website at <https://www.doi.gov/oha/organization/ibla>.

If you have any questions please contact this office at (575) 525-4300.

Handwritten signature of William Childress in black ink, followed by the date 5/11/21.

William Childress
District Manager
Las Cruces District Office

Foothill Dolomite Project Surface Use and Occupancy Concurrence

DECISION

The BLM hereby concurs with American Magnesium LLC's (American Magnesium) use and occupancy of public lands under 43 CFR subpart 3715, as described in the Plan. Concurrence by BLM on American Magnesium'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.

Appeal of a Decision under 43 CFR 3715

If you are adversely affected by this decision, you may appeal to the IBLA under 43 CFR part 4. If you appeal this decision, you must file a Notice of Appeal to this office at 1800 Marquess St., Las Cruces, NM 88005 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 Interior Board of Land Appeals (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 shall show sufficient justification based on the following standards:

- 5) The relative harm to the parties if the stay is granted or denied,
- 6) The likelihood of the appellant's success on the merits,
- 7) The likelihood of immediate and irreparable harm if the stay is not granted, and
- 8) Whether the public interest favors granting the stay.

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Handwritten signature of William Childress, dated 5/11/21.

William Childress
District Manager
Las Cruces District Office