

RECORD OF DECISION

Lost Cabin Mine (Mineral Exploration)

Brush Creek/Hayden Ranger District

Carbon County, Wyoming

Township 14 North, Range 86 West, Sections 1 and 12

February 2004

Lead Agency:

USDA FOREST SERVICE

Medicine Bow-Routt National Forests &
Thunder Basin National Grassland

Responsible Official:

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INTRODUCTION

This Record of Decision documents my selection of Alternative 2, Modified Plan of Operations, with additional specified modifications. This decision will approve a Plan of Operations for exploration submitted by Broken Arrow Mining, LLC for operations at the Lost Cabin Mine when the proponent revises their Plan of Operations to contain all of the modifications and stipulations identified in this decision.

The sampling conducted under this Plan of Operations is the first logical step in identifying or locating a possible mineral deposit. Once this sampling has been completed and assay results have been received and evaluated, the claimants will make a decision whether to continue with additional exploration or abandon their efforts. At this time the agency does not know of any future extensive mine development. Future extensive mine development could occur, but it would be speculation to say when it might occur. This analysis is for access and prospecting. Future extensive mine development will require additional environmental analysis, further public input, and another project decision.

BACKGROUND

During March of 2000, the Brush Creek/Hayden District of the Medicine Bow-Routt National Forests received a proposed Plan of Operations to conduct mineral exploration work in Sections 1 and 12 of T14N, R86W, 6th Principal Meridian. The proposal included a request for authorization to conduct mineral exploration at the Lost Cabin Mine, to use National Forest System Roads (NFSR) 439, 431, and 431.1A while conducting exploration activities, to clear deadfall from and use approximately 0.4 miles of NFSR 4172, and to improve and use 1.6 miles of an historic mining road (Way 4170H) that accesses the mine site. All roads are currently closed to motorized vehicle use (Forest Order No. 2003-92). The historic road and the Lost Cabin Mine fall within the Mowry Peak Inventoried Roadless Area (IRA) boundary.

Since March of 2000, and until the environmental analysis process is complete, Broken Arrow Mining, LLC has been authorized to conduct limited mineral exploration activities at the Lost Cabin Mine prospecting pits 1, 2, and 3. All exploration activities have been conducted using hand tools. Pick-up trucks have been authorized on the closed roads via a Road Use Permit. However, to protect the Mowry Peak IRA character, ATVs only have been allowed on Way 4170H.

Considering the fact that limited exploration activities have been approved since March of 2000, approval of the Plan of Operations would be a continuation of activities and not a new activity. However, approval would allow Broken Arrow Mining, LLC to intensify exploration activities by authorizing the use of mechanized equipment to improve Way 4170H and by allowing use of a backhoe for exploration activities at the mine site.

An historical search of Government Land Office plats indicates that a “wood road” accessed the Lost Cabin Mine site as early as 1899 (currently Way 4170H). By 1901, an “improved road” that accessed Vulcan Mountain from Saratoga, Wyoming was in place. This road also provided a direct link with the Southern Wyoming Tramway, which carried mined ore to a smelter in Encampment, Wyoming. It further provided access to other major mining communities in the vicinity. Although the road is depicted on Forest Service maps until 1956, more recent inventories do not indicate that it is still a part of the Forest Transportation System (FTS).

The historic mine in the project area consists of several features: a log cabin with intact roof and walls; a main mine shaft with associated collapsed shaft house; a large dump-rock pile with cart rails on top; two secondary shafts, one with a collapsed shaft structure and one with cribbing still in place; a number of prospect pits and trenches; and a light scatter of historic debris.

DESCRIPTION OF DECISION

It is my decision to authorize approval of a Plan of Operations by Broken Arrow Mining, LLC when certain conditions are met. Approval of the Plan of Operations will allow Broken Arrow Mining, LLC motorized access behind the gate closure on National Forest System Roads (NFSR) 439, 431, and 431.1A while conducting mineral exploration. In addition, they will be allowed to make minor improvements to and use 1.6 miles of historic mining roads (Ways 4170 and 4170H) that access the mine site. Improvements will include: 1) individual tree removal in isolated locations to improve maneuverability and sight distance; and 2) installation of drainage structures to reduce erosion and sedimentation.

Pick-up trucks and ATVs will be allowed on NFSRs 439, 431, and 431.1A. ATVs and a rubber-tired backhoe (560 or 580 series) will be allowed on the historic mining roads (Ways 4170 and 4170H). ATVs and the backhoe will be allowed at the mining site. The backhoe will be needed to make minor improvements to Way 4170H so that the mine site can be accessed. The ATVs and the backhoe will be used to access eight separate sites within the Mowry Peak IRA boundary; four existing prospecting pits, and four new prospecting pits (See Lost Cabin Mine Decision Map 3, ROD, Page 22). All ATV and backhoe trails must be approved by the District Ranger of the Brush Creek/Hayden Ranger District as part of the Plan of Operations. The backhoe shall not be moved from the camp location to the exploration site on a daily basis. A crusher site and self-contained trailers, for living purposes, shall be located at the junction of NFSR 431.1A and Way 4170. Crusher operations shall occur at this site only. This area has been previously disturbed. A nonporous durable liner will be placed under the crusher in order to contain the crushed materials.

Exploration activities shall involve entering existing shafts at prospecting pits 1 and 2 to repair entrances and to obtain surface and subsurface samples. Tailings from previous mineral exploration shall also be hand sampled. Prospecting pits shall be dug at sites 3 and 4 and they, too, will be sampled. In addition to sampling the four existing prospecting sites, prospecting pits shall be dug at four other locations to determine their mineral potential. After each new pit is sampled, it shall be reshaped and seeded. No sites shall be left unreclaimed at the end of the operating season.

The rubber-tracked backhoe shall be used to obtain the samples at some locations, while hand tools will be used at others. Roughly ten 50-pound bags of sample rock will be removed from each site. This will result in a total of eighty 50-pound bags removed throughout the duration of the exploratory activities. Each sample site will have ramps at each end and would be 20 feet deep at the center, 30 to 40 feet long, and 30 feet wide, for a total of approximately 889 cubic yards of material removed at each pit. Total surface area disturbance (all pits collectively) is anticipated to be approximately 1/5 of an acre. Samples will be transported via 6-wheel ATVs to the junction of NFSR 431.1A and Way 4170, where a small, jaw crusher will be located. As mentioned above, the crusher will be located in a previously disturbed site. The crusher shall reduce the sampled material to roughly $\frac{3}{4}$ of an inch in size prior to having it assayed.

Broken Arrow Mining, LLC plans to perform exploration at Lost Cabin Mine will be limited to July 1 and October 15th for the next five years to reduce disturbance during elk calving season. Between two and four people shall work the site at any given time for roughly 8 to 10 days per month.

As the Responsible Official, it is my decision to select Alternative 2, Modified Plan of Operations, as described in the FEIS (FEIS pgs. 12-13), with the following additional modifications and stipulations:

1. Proponent will not be allowed to clear NFSR 4172, but instead will be required to drive up Way 4170H (historic access).
2. A larger rubber tired backhoe with a front-end loader (560 or 580 series) shall be used instead of the 800 or 900 series bobcat.
3. A non-porous durable liner will be placed under the crusher in order to contain the crushed materials.
4. The camp and crusher site, roughly ¼ acre in size, will be located at the junction of Way 4170H and NFSR 431.1A.

My reasons for altering Alternative 2 are further discussed in the **Decision Rationale** section of this ROD. The complete list of actions being authorized is presented in more specific detail in this ROD under **Description of Decision**.

This decision includes a determination as to where and under what terms and conditions the proponent may access the Lost Cabin Mine to gather materials for assay. The Forest Service is not analyzing potential future mine development. Analysis is based upon the plan of operation submitted by Broken Arrow Mining, LLC. This decision authorizes approval of a Plan of Operations when the following conditions are met:

1. The mining proponents must revise their Plan of Operations to contain all of the stipulations and mitigations included in this decision, or otherwise agree in writing to comply with these stipulations.
2. A reclamation plan is a required part of the Plan of Operations and must be approved prior to operating.
3. Pumping of groundwater out of excavations, pits, or shafts will be allowed under this project only if a discharge permit is obtained by the proponent from the State and a copy is furnished to the Forest Service prior to pumping.
4. The project proponent will comply with the State of Wyoming storm water discharge permit requirements for construction activities (NPDES permit WYR10-0000) prior to starting work.
5. Approval of the Plan of Operations may not take place on this project until Wyoming State Historic Preservation Office (SHPO) consultation is finalized.

MITIGATION and MONITORING

The following mitigation measures have been developed specifically for this project. They were developed following a site-specific review of the project area by the ID Team and will be incorporated into the Plan of Operations.

- Surface water will be diverted around the crusher area and piles of sample rock. Sample rock piles will be covered with plastic when the crusher is not active to prevent runoff from the crushed rock. All crushed materials will be removed from the Forest at the end of the operating season. Sample rock and crusher will be located on a non-porous, durable liner.
- All disturbed sites will be reshaped and revegetated following the Authorized Officer's specifications.
- Surface runoff will be diverted around the shafts, adits, and discovery pits. This shall be done by constructing a small berm (6 to 12 inches high) on the upslope side of the excavation. Methods used to divert surface water must be approved by the Brush Creek/Hayden District Ranger as part of the Plan of Operations.
- If the proposed action exceeds amount of ground disturbance specified in the NPDES permit, then an "authorization to discharge storm water associated with small construction activity under the National Pollutant Discharge Elimination System (NPDES)" must be obtained. The Authorized Officer shall be provided a copy of the permit upon request. Failure to comply with this requirement will be cause for a notice of non-compliance to be issued.
- No operations will be conducted when wet ground conditions result in surface rutting deeper than 3 inches and longer than 50 feet. Operations will be suspended until ground conditions improve.
- Refueling of any equipment (ATVs, crusher, etc) will occur in areas more than 300 feet from wetlands, stream channels and/or riparian areas, and comply with State laws.
- The crusher site will be located more than 300 feet from any swale, drainage, stream channel, wetland, or riparian area.
- The project proponent will immediately clean up all diesel, hydraulic fluids or other contaminant spills, including the contaminated soils. All spill-related material will be hauled to a Wyoming Department of Environmental Quality (DEQ) approved disposal site. The District Ranger will be notified immediately by telephone upon spill discovery and in writing within 3 days of spill discovery.
- All vehicles and equipment will be pressure washed before coming onto the Forest each time to prevent noxious weed infestations.
- Clean camping methods and food storage will be employed due to potential bear activity in the upper South Heather Creek area.
- No motorized access will be allowed to claimants/operators for hunting or other activities behind the gated road system (NFSR 439).
- No flat blading or dozing of the length of the access road Way 4170H will be done. The road must retain its historic character, and it may not be upgraded to a clear-bladed surface or crowned-and-ditched road. A small rubber-tired backhoe or hand tools only may be used to clear downed trees and other deadfall and debris from the road. Waterbars may be constructed or reconstructed, but ground disturbance must remain within the existing road corridor and previously disturbed areas. Although a few trees may be cut to allow for improved maneuverability, no trees with blazes or other marking will be cut.

- All ATV/backhoe routes will be staked or flagged and will be the only authorized travel routes at the claim location. Trails with steeper slopes will have dips installed as specified by the Authorized Officer. At the end of this project, the trails will be reclaimed as specified by the Authorized Officer.
- All ATV/backhoe routes will be surveyed by a botanist for Threatened, Endangered and Sensitive (TES) plants at a time when plants could be detected prior to ground disturbing activities. If TES plants are found within the project area, the populations will be identified on the ground and buffered from all management actions that would have direct or indirect negative impacts to TES plant species.
- Prior to exploration activities, any logs around the main mine shaft that need to be moved to allow exploration will be mapped, photographed, removed for safekeeping, and stored on-site. Following exploration activities, the logs shall be replaced as close to their original position as is possible.
- If any exploration activities are conducted at the two secondary shafts which contain structural features, and any logs need to be moved to allow exploration, the logs will be mapped, photographed, removed for safekeeping, and stored on-site. Following exploration activities, the logs shall be replaced as close to their original position as is possible.
- It is the Authorizing Officer's decision that no use or alteration of the mine site cabin will be allowed.
- Existing cribbing in shafts will be left in place as much as is feasible and safe.
- The cart rails on top of the main dump pile will not be disturbed during the project.
- Access to the main shaft must be from the north, so that no heavy equipment passes between the main shaft and the cabin.
- No new large dump rock piles may be established at the site. Rocks must be removed to the crusher site for additional testing.
- Reclamation activities will be planned such that no additional disturbance or impacts will occur to the historic site features.

The following monitoring will be conducted as part of this decision:

- The mitigation measures as outlined above will be monitored for implementation and effectiveness by the Forest Service. If monitoring reveals unexpected effects, additional monitoring for potential impacts to stream water quality and amphibian habitat may be initiated, and actions may be required to reduce detrimental effects.
- The Forest Service will monitor proposed use areas that occur in the vegetation/elevation range preferred by nesting northern goshawks during activities for new nesting activity.
- A qualified archaeologist will be present during all log removal and replacement operations.
- A qualified archeologist will be present during removal of rock from the main shaft dump rock pile.

- A qualified archaeologist will monitor the site area at least once during the course of each year's project activities and at the completion of project activities for each year work is performed.
- A post-project monitor report will be completed and submitted to SHPO yearly. The report will document log removal and replacement and will discussing monitoring activities.

DECISION RATIONALE

My decision meets the requirements of laws and attempts to find balance with agency direction, operator needs, Forest needs, scientific analysis, and social acceptance. I have made this decision following extensive public involvement. My decision meets the requirements of the National Environmental Policy Act (NEPA) by responding to the Purpose and Need, responding to Significant Issues identified in the analysis process, and responding to public comments received during the EIS comment period provided.

I have summarized the key points of my rationale below:

- Way 4170H is an existing historic route that has been used since at least 1899 to access the area requested by Broken Arrow Mining, LLC. Choosing this route minimizes the need for any reconstruction of roads for access.
- By using a slightly larger rubber-tired backhoe there will be no need to use the D-4 bulldozer to level the Way 4170H. It has a higher clearance, requiring less ground disturbance for passage, and is better suited for placing erosion controls (rolling dips) in the existing Way 4170H.
- Choosing the junction of NFSR 431.1A and Way 4170 for the camp and crusher location because it is located in a previously disturbed area, and it requires less ground disturbance than any other location.
- Location of the crusher site, clearing vegetation from NFSR 4172, and improving Way 4170H, as described under the Proposed Action, would cause a slight but insignificant reduction (less than 15 acres) in wildlife hiding cover (less than 15 acres) and thermal cover (less than 5 acres). A slight but insignificant reduction (2 acres) in old growth would also occur. Though this is the case, even with this slight decrease the amount of old growth within the analysis area will still exceed the 1985 Forest Plan requirement. Effects would be less under Alternative 2, due to a change in the placement of the crusher site. The new location would not require clearing NFSR 4172.
- The Proposed Action and Alternative 2 may affect, but are not likely to adversely affect, Proposed, Threatened, Endangered, or Region 2 Sensitive wildlife species.
- Though existing conditions in Management Prescription Area 4B within the Project Analysis Area does not meet Forest Plan standards and guidelines for elk, marten, and hairy woodpecker habitat capability, the proposed project does not either reduce or impact habitat capability for any of these MIS.
- Under the Proposed Action (Alternative 1), soil would be compacted on NFSR 4172, Way 4170H, the crusher pad, and on ATV and backhoe trails used to access the prospecting pits during the life of the project. Soil compaction would occur to a lesser degree under Alternative 2, since NFSR 4172 would not be re-opened and used.

- The Proposed Action has the potential for short-term, localized sediment movement downslope from clearing NFSR 4172, use of the crusher pad, improving and using Way 4170H, and from use of ATVs and bobcat at the mine site. Effects would be slightly less under Alternative 2, since NFSR 4172 would not be re-opened and used.
- Contamination of localized surface and groundwater quality could occur as a result of mining activities, as described under the Proposed Action and Alternative 2. However, mitigation measures have been designed to prevent the movement of water into and through the mine shafts, pits, and sample rock piles.
- None of the proposed alternatives would directly affect riparian areas and wetlands because no activities would occur in these areas and no activities are proposed in critical upslope areas.
- Indirect effects to aquatic habitat and/or populations could occur as a result of chemical or physical water quality degradation from sediment input or from soil and water contamination during mining activities; however, mitigation measures and monitoring specified in the decision should reduce the likelihood of sediment or chemical input into aquatic habitats.
- The Proposed Action and Alternative 2 mitigate adverse effects to the historic mine so that the project will have no adverse effect to cultural resources.
- The Proposed Action and Alternative 2 would allow the operators to exercise their rights granted by the United States Mining Laws (30 U.S.C. 21-54). Alternative 3 (No Action) would not.
- The Proposed Action and Alternative 2 would have a short-term, direct effect on the Mowry Peak IRA due to the use of motorized vehicles on Way 4170H and at the mine site. Motorized use would impact the natural integrity, appearance, opportunity for solitude, remoteness, primitive recreation opportunity, and unique features of the area. These effects would end when the mineral operation ends, and the ground disturbance within the IRA is fully rehabilitated and completely re-vegetated.
- The Proposed Action and Alternative 2 would cause a slight displacement of dispersed recreation users to other areas, and would cause a slight decline in hunt quality and hunter success rates during the period of operation (five years).
- The Proposed Action and Alternative 2 will only slightly reduce the area's high quality scenery.

The stated *purpose* for this project is to respond to a proposed Plan of Operations submitted by Broken Arrow Mining, LLC to conduct mineral exploration on their mining claims at the Lost Cabin Mine. ***The chosen modified Alternative 2 meets this purpose better than the other action alternatives. I am obligated to consider the proponent's Plan of Operations and determine whether the Plan of Operations will protect and minimize adverse environmental impacts on National Forest resources. The No Action alternative was not selected because it would have limited the proponent's activities to non-motorized access and would not meet the intent of the proposed Plan of Operations. The area is subject to entry under the Mining Law of 1872, and claimants have a right to explore the mineral resources there.***

United States Mining Laws grant a statutory right (36 CFR 228.1) to enter upon public lands to search for mineral deposits. It is not the purpose of the decision to determine management of mineral resources. The responsibility for that determination lies with the Secretary of the Interior.

The *need* for the action is to determine how the surface use connected with operations authorized by the United States Mining law (Act of May 10, 1872; 30 U.S.C. 21 - 54) shall be conducted to minimize adverse environmental impacts on National Forest System surface resources. The action is also needed to determine the mitigation measures needed to protect National Forest resources and improvements from impacts associated with exploration activity. Mitigation measures as described above would be incorporated into the Plan of Operations.

Management emphasis within the area is distributed among several management area prescriptions, including 2A (Roaded Natural Recreation), 3A (Non-motorized Recreation), 4B (Wildlife Habitat for Management Indicator Species), 4D (Aspen Management), 7C (Timber Management on Steep Slopes), and 7E (Wood Fiber Production and Utilization). The largest management area is 7E, which makes up 43% of the area. This action responds to the goals and objectives outlined on pages III-3 and III-4 of the Medicine Bow Land and Resource Management Plan (Forest Plan, 1985), and helps move the project area towards desired conditions described in that plan. Applicable goals include:

- Accommodate and facilitate the exploration, development, and production of mineral resources in a manner which adequately protects other resources and the environment.
- Permit occupancy and use of National Forest System land only upon compliance with conditions for the protection and administration of the National Forest System lands and resources; for the promotion of public health, welfare, safety or convenience; or when public needs cannot be met on private lands.

The following table displays how the decision addresses the significant issues.

Issue	How Decision Addresses the Issue
Providing Reasonable Access to the Proponents	Providing 1.6 miles of motorized access behind gated roads, and allowing use of the historical Way to access the mine site.
Minimize Changes to the Mowry Peak IRA Character	The decision will result in a short-term direct effect on the Mowry Peak IRA due to the use of Way 4170H and the use of ATVs and the backhoe at the mine site. This would impact the natural integrity, appearance, opportunity for solitude, remoteness, primitive recreation opportunity, and unique features of the area (FEIS pgs. 37-41). This direct effect would end when the exploration operation ends, and ground disturbance within the IRA is fully rehabilitated and completely revegetated, unless additional activity is approved for mineral development after additional NEPA documentation and decision.

Issue	How Decision Addresses the Issue
Wildlife Protection	<p>The decision requires the Forest Service to monitor proposed use areas that occur in the vegetation/elevation range preferred by nesting northern goshawks during activities for new nesting activity.</p> <p>The operating window is restricted to July 1 to October 15, to provide protection during elk calving season.</p> <p>The proponent will employ clean camping methods and food storage due to potential bear activity in the upper South Heather Creek area.</p> <p>No motorized access will be allowed to claimants/operators for hunting or other activities behind the gated road system (NFSR 439).</p>

PUBLIC INVOLVEMENT

On January 7, 2002, a scoping letter outlining the Proposed Action was mailed to 122 individuals, agencies, and organizations. To inform the general public of the proposal, a press release was mailed to media contacts in Albany and Carbon Counties, Wyoming on January 2, 2002. Following these public participation activities, several requests for additional information concerning the proposal were received, and Forest Service policies regarding road construction/re-construction in IRAs changed. Consequently, the Forest Service decided to complete an Environmental Impact Statement (EIS). Following the decision to complete an EIS, a second scoping letter was mailed to the same mailing list on March 20, 2002. A Notice of Intent (NOI) initiating the formal scoping process for the EIS was also published in the *Federal Register* that same day. The NOI asked for public comment on the proposal until April 21, 2002. As a result of both scoping efforts, 40 comment letters were received. The proposal was listed in the Schedule of Proposed Actions (SOPA) quarterly reports starting October 10, 2000 and every subsequent quarterly report.

On October 10, 2003, a revised NOI was published in the *Federal Register*. The revised NOI changed the Responsible Official for this project from the Regional Forester of the Rocky Mountain Region to the Forest Supervisor of the Medicine Bow-Routt National Forests. The change in Responsible Official was due to changes in policy regarding IRAs. Although a revised NOI was published, the administrative scope of the project did not change. Therefore, a new scoping period was not initiated.

On October 16, 2003, a letter notifying the public that the Lost Cabin Mine Draft EIS was available for public comment was mailed to all individuals who had commented during the scoping efforts for this project. On October 24, 2003, a press release notifying the general public of the availability of the Draft EIS was mailed to local media contacts. On October 26, 2003, a legal notice announcing the availability of the Draft EIS was published in the *Laramie Daily Boomerang*. The *Laramie Daily Boomerang* is the paper of record for this project. Finally, on October 31, 2003, a Notice of Availability of the Draft EIS was published in the *Federal Register*. The 45-day public comment period for the Draft EIS began November 1, 2003 and expired December 15, 2003. A total of 21 letters and e-mails were received during the comment period for the Draft EIS.

ALTERNATIVES CONSIDERED

The issues identified above led the agency to develop alternatives to the Proposed Action. These include:

ALTERNATIVE 1: *Proposed Action: Approve Plan of Operations*

Approval of the Plan of Operations would allow Broken Arrow Mining, LLC to use National Forest System Roads (NFSR) 439, 431, and 431.1A while conducting mineral exploration. In addition, they would be allowed to clear deadfall from and use roughly 0.4 miles of NFSR 4172. Finally, they would be allowed to make minor improvements to and use 1.6 miles of an historic mining road (Way 4170H) that accesses the mine site. Improvements would include: 1) individual tree removal in isolated locations to improve maneuverability and sight distance; and 2) installation of drainage structures to reduce erosion and sedimentation.

Pick-up trucks and ATVs would be allowed on NFSRs 439, 431, 431.1A, and 4172. ATVs, a D-4 bulldozer, and an 800 or 900 series rubber-tracked bobcat would be allowed on the historic mining road (Way 4170H). ATVs and the bobcat would be allowed at the mining site. The bulldozer would be needed to make minor improvements to Way 4170H so that the mine site could be accessed by the bobcat. The ATVs and the bobcat would be used to access eight separate sites within the Mowry Peak IRA boundary; four existing prospecting pits, and four new prospecting pits (See Map 3, ROD, Page 22). All ATV and bobcat trails would be approved by the District Ranger of the Brush Creek/Hayden Ranger District as part of the Plan of Operations. A crusher site and self-contained trailers, for living purposes, would be located at the junction of NFSR 4172 and Way 4170H. This area is an old timber landing that has been previously disturbed.

Exploration activities would involve entering existing shafts at prospecting pits 1 and 2 to repair entrances and to obtain surface and subsurface samples. Tailings from previous mineral exploration would also be hand sampled. Prospecting pits would be dug at sites 3 and 4 and they, too, would be sampled. In addition to sampling the four existing prospecting sites, prospecting pits would be dug at four other locations to determine their mineral potential. After each pit is explored, it would be reclaimed (i.e., recontoured and revegetated) before another pit is entered. No sites would be left un-reclaimed at the end of the operating season.

The small, rubber-tracked bobcat would be used to obtain the samples at some locations while hand tools would be used at others. Roughly ten 50-pound bags of sample rock would be removed from each site. This would result in a total of eighty 50-pound bags removed throughout the duration of the exploratory activities. Each sample site would have ramps at each end and would be 20 feet deep at the center, 30 to 40 feet long, and 30 feet wide, for a total of approximately 889 cubic yards of material removed at each pit. Total surface area disturbance (all pits collectively) is anticipated to be approximately 1/5 of an acre. Samples would be transported via 6-wheel ATVs to the junction of NFSR 4172 and Way 4170H where a small, jaw crusher would be located. As mentioned above, the crusher would be located in a previously disturbed site. The crusher would reduce the sampled material to roughly $\frac{3}{4}$ of an inch in size prior to having it assayed.

Broken Arrow Mining, LLC would like to perform exploration at Lost Cabin Mine between June and the end of October for the next five years. Between two and four people would be working the site at any given time for roughly 8 to 10 days per month.

ALTERNATIVE 2: *Modified Plan of Operations (Forest Service Preferred Alternative)*

Like the Proposed Action, the Forest Service would allow Broken Arrow Mining, LLC to conduct mineral exploration at the Lost Cabin Mine but in a slightly modified manner. Modifications to the Proposed Action are as follows:

1. Broken Arrow Mining, LLC would not be allowed to clear 0.4 miles of NFSR 4172 and use the junction of NFSR 4172 and Way 4170H as a crusher site. Instead, a crusher site, roughly ¼ acre in size, would be cleared approximately 1.16 miles up NFSR 431.1A;
2. The self-contained camper trailers would be located at the cleared area;
3. A D-4 bulldozer would not be allowed to improve Way 4170H; instead the work would have to be done with an 800 or 900 series rubber tracked bobcat; and
4. Exploration activities would be limited to July 1 through October 15 to protect elk calving. All other activities associated with the Proposed Action would remain the same.

ALTERNATIVE 3: *No Action*

Under Alternative 3, the Forest Service would not approve the Plan of Operations submitted by Broken Arrow Mining, LLC. As such, the claimants would not be allowed to clear dead fall from and use roughly 0.4 miles of NFSR 4172, nor would they be allowed to repair 1.6 miles of Way 4170H as requested in the Plan of Operations. In addition, they would not be allowed to establish a crusher site or locate self-contained trailers for living purposes at the junction of NFSR 4172 and Way 4170H. Finally, they would not be able to use a small, rubber-tracked bobcat for mineral exploration at the mine site. According to 36 CFR 228.4, however, Broken Arrow Mining, LLC would still be able to conduct prospecting and sampling activities at the Lost Cabin Mine. These activities would be accomplished using hand tools and access to the site would have to be non-motorized.

Since the No Action alternative would not provide the claimants with “reasonable access” and the ability to conduct exploration activities using mechanized equipment, it would not be consistent with United States Mining law (30 U.S.C. 21-54). However, National Environmental Policy Act (NEPA) regulations require the Forest Service to analyze the No Action alternative in detail and to use it as a baseline for comparing the effects of the other alternatives.

Alternatives Considered but Eliminated from Detailed Study

Federal agencies are required by NEPA to rigorously explore and objectively evaluate all reasonable alternatives and to briefly discuss the reasons for eliminating any alternatives that were not developed in detail (40 CFR 1502.14). Public comments received in response to the Proposed Action provided suggestions for alternative methods for achieving the purpose and need. Some of these alternatives may have been outside the scope of the analysis, similar to the alternatives considered in detail, or determined to be components that would cause unnecessary environmental harm. Therefore, a number of alternatives were considered, but dismissed from detailed consideration for reasons summarized below.

ALTERNATIVE 4: *Continue with Current Management*

Under Alternative 4, Broken Arrow Mining, LLC would be able to continue mineral exploration using hand tools at prospecting pits 1, 2, and 3. Pick-up trucks would continue to be allowed behind the closed gate on NFSRs 439, 431, and 431.1A, and limited use of ATVs would continue to be allowed on Way 4170H. Use of motorized vehicles would be authorized under a Road Use Permit. Authorization of motorized vehicle use would be evaluated on an annual basis.

This alternative was eliminated from detailed study because it would not provide the claimants with “reasonable access” and the ability to conduct exploration activities using mechanized equipment. Therefore, it would not be consistent with United States Mining Laws (30 U.S.C. 21-54).

ALTERNATIVE 5: *Motorized Access to the Mowry Peak IRA Boundary*

Under Alternative 5, the Forest Service would allow Broken Arrow Mining, LLC to use NFSRs 439, 431, 431.1A while conducting exploration activities. In addition, they would be allowed to use Way 4170 and to clear dead fall from and use roughly 0.4 miles of NFSR 4172. They would not, however, be allowed to improve and use 1.6 miles of Way 4170H that accesses the mine site with motorized vehicles, nor would they be allowed use ATVs to access four existing prospecting pits. Further, the small, rubber-tracked bobcat would not be allowed within the Mowry Peak IRA boundary to obtain mineral samples. This would preclude motorized activity from occurring in the IRA. Pick-up trucks and ATVs would be allowed on NFSRs 439, 431, 431.1A, and 4172. Exploration activities would be limited to use of hand tools. Self-contained trailers, for living purposes, would be allowed at the lower junction of Way 4170H and NFSR 4172; however, a crusher site would not be allowed. Between two and four people would be working the site at any given time between June and the end of October over the next five years.

This alternative would not be consistent with United States Mining Laws (30 U.S.C. 21-54) because it would unreasonably restrict mining operations and would not allow the operators to exercise their rights granted under the U.S. Mining Laws, as amended. This alternative was eliminated from detailed study due to its similarity with Alternative 3 (No Action).

ALTERNATIVE 6: *No Motorized Access from the Closed Gate to the Lost Cabin Mine*

Under this alternative, Broken Arrow Mining, LLC would not be allowed motorized access behind the gate on NFSR 439. Aside from the location where motorized access would be denied, all other aspects would be the same as Alternative 4.

This alternative was eliminated from detailed study because of its similarity to the No Action alternative. Since no motorized access would be allowed, Broken Arrow Mining, LLC would not be able to conduct the type of exploration activities requested. Without the use of ATVs to at least the Mowry Peak IRA boundary, Broken Arrow Mining, LLC would likely not even be able to access the mine site to conduct prospecting activities.

ALTERNATIVE 7: *Use Helicopters to Haul Equipment*

Under Alternative 7, the Forest Service would approve a modified version of the Plan of Operations allowing Broken Arrow Mining, LLC to conduct mineral exploration at the Lost Cabin Mine. Unlike the Proposed Action, Broken Arrow Mining, LLC would not be allowed to repair 1.6 miles of Way 4170H. Instead, they would be required to use a helicopter to haul equipment needed for mineral exploration. Like the Proposed Action, however, they would still be allowed to use NFSRs 439, 431, and 431.1A while conducting exploration activities, and to clear dead fall from and use roughly 0.4 miles of NFSR 4172. They would also be allowed to use ATVs on the historic road to access the mine site. All of these roads are closed to motorized vehicles. All other activities associated with the Proposed Action would be approved.

This alternative received some preliminary analysis but was ultimately rejected from detailed analysis because the road system already in existence was specifically designed and constructed to provide access to the area for this specific purpose. With minor maintenance requirements, it is currently capable of handling the anticipated traffic. It provides an efficient and feasible infrastructure designed specifically for this type of use. Requiring the use of helicopters where roads capable of the intended use already exist is not consistent with the 1872 Mining Law requirement to provide access sufficient for the reasonable use of the claim site while minimizing impacts to NFS lands. It would not be reasonable to deny use of an existing transportation system specifically designed and constructed for this area and the planned type of use. Further, use of a helicopter would be an economic hardship on the operator.

FINDINGS REQUIRED BY LAW

1. Laws, Regulations, and Policies

I considered all of the relevant laws and regulations including, but not limited to:

NEPA at 40 CFR 1502.25(a) directs “to the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with ...other environmental review laws and executive orders.”

The environmental analysis documented in the EIS is tiered to the Final Environmental Impact Statement for the (1985) Medicine Bow National Forest Land and Resource Management Plan (40 CFR 1500.4, 40 CFR 1502.20 and 40 CFR 1508.28). I have determined that this decision is consistent with the Forest Plan approved by the Regional Forester on November 20, 1985. The activities and projects approved in this decision are consistent with the standards and guidelines in Forest Direction and Management Area Direction on pages III-4 through III-193 of the Forest Plan with the exception of habitat capability for elk in summer and thermal cover. The existing condition for thermal cover and elk habitat capability are currently below Forest Plan requirements and would continue to remain so despite the alternative selected.

Wyoming Game and Fish Department's (WGFD) herd unit objective for the Sierra Madre elk herd is 4,200 elk. The population is estimated at approximately 5,500 elk (WGFD, 2001 Job Completion Report). The current population is above herd objective and the trend is decreasing; however, the management goal is to decrease the herd population to approach the herd objective. Proposed activities would lower the hiding cover by less than 15 acres and thermal cover by less than 1 acre. Excavation would cause the loss of roughly 0.5 acres of foraging habitat. It is the professional judgment of the biologist working on the Lost Cabin proposal that the habitat capability for elk in summer and thermal cover would not change statistically from the existing condition over the lifespan of the project.

The alternatives analyzed in this Final EIS were compared to the alternatives included in the December 2002 Medicine Bow Forest Plan Revision Final EIS (40 CFR 1506.4). The analysis found that the mining and road improvement activities associated with the alternatives analyzed in this Final EIS would not forego future decisions to be made in this Geographic Area under the Forest Plan Revision.

The general environmental effects that result from implementing the activities of a project are described in Chapter IV of the 1985 Land and Resource Management Plan FEIS for the Medicine Bow National Forest (pages IV-1 to IV-189). Project specific effects of implementing alternatives are displayed in the Environmental Consequences section of the EIS (pgs.22-68) and Appendices A-C (pgs. 69-124).

Consistency with Wetlands/Floodplains Executive Orders: The Lost Cabin Mine project is expected to have no direct, indirect, or cumulative effects on floodplains and is therefore consistent with Executive Order 11988 for the protection of floodplains. There are no identified wetlands in the project area, and only very limited potential for wetlands in the analysis area as a whole. Recommended mitigation measures are intended to further reduce risks to wetlands. The overall project is consistent with Executive Order 11990.

Clean Water Act: There are no State-designated impaired streams affected by this project, nor would the project increase risk of impairment, provided mitigation measures are implemented to protect water resources from chemical contamination. The project is not expected to have adverse impacts to water quality, coldwater biota, recreation, or other beneficial uses. A storm water discharge permit, from the State of Wyoming Department of Environmental Quality, for construction activities would likely be necessary to comply with the Federal Water Pollution Control Act. Recommended mitigation measures address this issue, and if followed, the proposed activities are consistent with the Clean Water Act.

Endangered Species Act: The Endangered Species Act of 1973 (16 USC 1531-1536, 1538-1540) requires federal agencies to conserve threatened and endangered species and the ecosystems on which they depend. Forest Service policy is to protect the habitat of federally listed proposed (P), candidate (C), threatened (T), or endangered (E) (commonly referred to as T&E) species from adverse modification or destruction, as well as protect individual organisms from harm or harassment (FSM 2670.3). Biological assessments shall be prepared for each project authorized, funded, or conducted on National Forest System land to determine possible effects the proposed activity may have on T&E species (FSM 2672.43). The biological assessment (BA) process (FSM 2672.43) is intended to conduct and document activities necessary to ensure proposed management actions will not likely jeopardize the continued existence or cause adverse modification of habitat for T&E species.

In accordance with Section 7 of the Endangered Species Act of 1973, amended (16 U.S.C. 1531 et seq.), this project was submitted for formal consultation with the US Fish and Wildlife Service (USFWS) on April 29, 2003. The final Biological Opinion, received on October 14, 2003 states: “We concur with your ‘may affect, but not likely to adversely affect’ determination for the bald eagle based upon the results of your April 17, 2003 survey that did not detect any bald eagle nests, potential nesting sites or foraging habitat within 1 mile of the action area.” The letter also concludes that “it is the Service’s biological opinion that the Lost Cabin Mine mineral exploration is not likely to jeopardize the continued existence of the Canada lynx. No critical habitat has been designated for this species; therefore, none will be affected. The impact to habitat for Canada lynx would be insignificant or discountable.”

Biological Assessments and Evaluations for aquatic and other wildlife species are contained in Appendices 1 and 2 of the EIS.

National Forest Management Act: The National Forest Management Act of 1976 (16 USC 1600-1602, 1604, 1606, 1608-1614) prevents watershed condition from being irreversibly damaged and protects streams and wetlands from detrimental impacts. Land productivity must be preserved. Fish habitat must support a minimum number of reproductive individuals and be well distributed to allow interaction between populations. Forest Service policy is to protect habitat of species listed in Forest Service Region 2 (Rocky Mountain), as sensitive species, from adverse modification or destruction, as well as protect individual organisms from harm or harassment (FSM 2670.3). Biological evaluations shall be prepared for each project authorized, funded, or conducted on National Forest System land to determine possible effects the proposed activity may have on sensitive species (FSM 2672.43). The biological evaluation (BE) process (FSM 2672.43) is intended to conduct and document activities necessary to ensure proposed management actions will not likely jeopardize the continued existence or cause adverse modification of habitat for sensitive species. Biological Assessments and Evaluations for aquatic and other wildlife species are contained in Appendices 1 and 2 of the EIS.

Forest Service policy requires habitat maintenance for all existing native and desired non-native plants, fish, and wildlife species, and that these species be managed to maintain viable populations (FSM 2601.2). Land and water management activities will integrate plant, fish, and wildlife habitat needs with other resources and programs. Where appropriate, mitigate habitat losses, consistent with Forest Plan goals and objectives developed in the Forest planning process (FSM 2601.2). Appropriate mitigation measures to ensure protection of the above-mentioned species are contained in Chapter 2 of the EIS. Project activities described in the BA/BE are sufficiently small that they are “...not likely to result in a loss of viability on the planning area, nor cause a trend to federal listing or a loss of species viability range-wide.”

General Mining Law of May 10, 1872, as amended (30 U.S.C. 21 – 54): Alternatives 1 and 2 would be consistent with the Mining Law as the alternatives would allow the claimants “reasonable access” to the mine site using mechanized equipment, as proposed in their Plan of Operations. U.S. Mining Laws grant a statutory right to enter upon public lands to search for minerals. Alternative 3 (No Action) would not be consistent with U.S. Mining Laws.

Code of Federal Regulations: Title 36 CFR 228 Subpart A. Alternatives 1 and 2 would be consistent with the Surface Management regulations.

The Organic Administration Act of 1897: "...any mineral lands in any National Forest which have been or which may be shown to be such, and subject to entry under existing mineral laws of the United States and rules and regulations applying thereto, shall continue to be subject to such location and entry, notwithstanding any provisions herein contained."

Mining and Minerals Policy Act of 1970: "...it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, and (2) the orderly and economic development of forest mineral resources, reserves, and reclamation of metals and minerals to help assure satisfactory industrial, security and environmental needs."

National Historic Preservation Act of 1966, as amended: Alternative 2 with modifications is designed to mitigate potential impacts to the historic resources and integrity of the mine location. Lost Cabin Mine was surveyed and recorded by the District Archaeologist and crew during September 2003. Cultural resources at the site were found to be significant.

Telephone conversations have occurred between the District Archeologist and the Wyoming State Historic Preservation Office (SHPO) regarding appropriate mitigation measures to avoid any adverse effects to the cultural resource site as a result of the project. A report documenting the findings of this survey is being finalized for submission to Wyoming SHPO for review and consultation. It is anticipated that this consultation will be completed during the spring of 2004 before field season begins. The Plan of Operations will not be approved and the project proposal will not be implemented until after the SHPO consultation process has been finalized [36 CFR Part 800.1(c)].

Roadless Area Management: The Mowry Peak IRA was analyzed in the FEIS for the Roadless Area Review and Evaluation, January 1979 and identified non-wilderness. This IRA was not included for designation in the 1984 Wyoming Wilderness Act. The recreation report discloses that the Mowry Peak IRA was analyzed in the 1985 Medicine Bow National Forest Plan and was not designated Proposed for Wilderness or as a Wilderness Study Area. Under Alternative D FEIS of the Forest Plan Revision FEIS the Mowry Peak IRA is not proposed for Wilderness. This FEIS does disclose that there will be an effect on roadless character by temporarily reducing the roadless acreage. Since the area is to be reclaimed, this will only be a relatively short-term effect. Further, the FEIS discusses that 4170H is an existing travel route.

On January 12, 2001 the ***Roadless Area Conservation Rule*** was published in the *Federal Register*. This rule prohibited road construction projects, including temporary road construction/reconstruction projects, within Inventoried Roadless Area boundaries, except under the limited conditions specified by the rule. One of the conditions specified under the rule was to allow access to areas needed pursuant to reserved or outstanding rights or as provided by statute or treaty.

During the development of this project, the 2001 Roadless Area Conservation Rule was temporarily enjoined and the Forest Service operated under Interim Direction for management within IRAs. Interim Directive 1920-2001-1 was issued on December 14, 2001 to provide some stability to the management of IRAs, given the legal uncertainty of implementing the Roadless Rule. A preliminary injunction order was issued in the Idaho Federal District Court on May 10, 2001, enjoining the USDA and the Forest Service from implementing the January 2001 Roadless Rule. This order was appealed to the 9th Circuit Court of Appeals, and a 2 to 1 split decision was issued on December 12, 2002. The decision remanded and reversed the lower court's order. The 9th Circuit was requested to review the decision by the plaintiffs in the Idaho case and declined to do so on April 4, 2003. On April 14, 2003, a mandate was issued by the 9th Circuit to the Idaho court, reversing and remanding the May 10, 2001 preliminary injunction order. The 1920-2001-1 Interim Direction expired in June 2003.

There continues to be uncertainty with the Roadless issue. During July 2003, US Federal District Court Judge Brimmer of Wyoming issued a permanent injunction against implementing the 2001 Roadless Rule.

The WO Interim Directive issued 12/14/2001 was specific in addressing "Road access is needed pursuant to reserved or outstanding rights or as provided by statute or treaty." The area within the Mowry Peak IRA was, and still is open to mineral entry under the United States Mining Laws. The four claims in question were located in 1999, prior to the Roadless Area Conservation Rule. Therefore, this project still meets the intent of the enjoined Conservation Rule and all Interim Directives.

Irreversible and Irrecoverable Commitments of Resources:

Irreversible commitments of resources are those that cannot be regained, such as the extinction of a species or the removal of mineral samples. Irrecoverable commitments are those that are lost for a period of time such as the temporary loss of timber productivity in forested areas that are kept clear for use as a power line rights-of-way or road.

Removal of mined materials would constitute an irreversible commitment of resources under all alternatives. Irrecoverable commitments of resources would include the displacement of Forest users and wildlife, and the removal of vegetation along Way 4170H and at the crusher location. These resources would be impacted during the life of the project and would be most evident under Alternatives 1 and 2, and to a lesser degree under Alternative 3, since this alternative would not allow the use of motorized vehicles in the Mowry Peak IRA.

2. Effects on the Environment

The environmental effects of implementing my decision are found in Chapter 3 of the FEIS.

Furthermore, I considered the effects and consequences disclosed in the Final EIS and public comment received during the public involvement process. I find that my decision, with the applied mitigation measures, meets all applicable laws, regulations, and policies, fulfills the purpose and need for the action, and is in the public's interest. All practical means to avoid or minimize environmental harm from the alternative selected have been adopted.

3. Identification of Environmentally Preferable Alternative

The No Action Alternative is the Environmentally Preferable Alternative. The National Environmental Policy as described in the National Environmental Policy Act of 1969, Sec. 101 (s). Section 101 (a) states that the purpose of the environmental policy is to:

1. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. Assure for all Americans safe, healthful, productive and esthetically and culturally pleasing surroundings;
3. Attain the widest range of beneficial use of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
4. Preserve important historic, cultural, and natural aspects of our national heritage and maintain wherever possible, an environment which supports diversity and variety of individual choice;
5. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities;
6. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

Both the No Action and Alternative 2 with modifications meet these purposes. No action would result in limited exploration and the fewest adverse environmental effects of all the alternatives covered in detail within the FEIS. The No Action alternative is the most conservative and preservation-oriented. It excludes a beneficial use, exploration for minerals, but would pose the least risk of undesirable consequences. No Action would limit removing non-renewable mineral resources. Alternative 2 with modifications would better meet purpose (4) above, because it provides for the individual choice of the mining proponent, while preserving the important characteristics of the Mowry Peak IRA.

IMPLEMENTATION

Administrative Review or Appeal Opportunities

This decision is subject to appeal pursuant to Federal regulations at 36 CFR 215, “Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities.” Appeals, including attachments, must be in writing and filed (regular mail, fax, e-mail, hand-delivery, express delivery, or messenger service) with the Appeal Deciding Officer (§215.8) within 45 days following the date of publication of a legal notice of this decision in the *Laramie Daily Boomerang*. The publication date of the legal notice in the newspaper of record is the exclusive means for calculating the time to file an appeal (§215.15 (a)). Those wishing to appeal should not rely upon dates or timeframe information provided by any other source.

Where to File an Appeal

USDA Forest Service
Region 2, Rocky Mountain Region
Attn: Appeal Deciding Officer
POB 25127
Lakewood CO 80225-25127

Delivery:
USDA Forest Service
Region 2, Rocky Mountain Region
Attn: Appeal Deciding Officer
740 Simms Street
Golden CO 80401-4720

Fax: 303-275-5134 Hours: Mon-Fri 7:30 am-4:30 pm

E-mail: appeals-rocky-mountain-regional-office@fs.fed.us

(Acceptable formats for electronic appeals are: rtf, pdf, or word.)

For electronically mailed comments or appeals, the sender should normally receive an automated electronic acknowledgment from the agency as confirmation of receipt. If the sender does not receive an automated acknowledgment of the receipt of the comments, it is the sender’s responsibility to ensure timely receipt by other means.

Pursuant to 36 CFR 215.13(a), only those individuals or organizations who submitted substantive comments during the comment period may file an appeal. It is an appellant’s responsibility to provide sufficient activity-specific evidence and rationale, focusing on the decision, to show why the Responsible Official’s decision should be reversed (§215.14 (a)). At a minimum, an appeal must include the following (§215.14(b)):

1. Appellant’s name and address (§215.2), with a telephone number, if available;
2. Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the appeal);
3. When multiple names are listed on an appeal, identification of the lead appellant (§215.2) and verification of the identity of the lead appellant upon request;
4. The name of the project or activity for which the decision was made, the name and title of the Responsible Official, and the date of the decision;

5. The regulation under which the appeal is being filed, when there is an option to appeal under either this part or part 251, subpart C (§215.11 (d));
6. Any specific change(s) in the decision that the appellant seeks and rationale for those changes;
7. Any portion(s) of the decision with which the appellant disagrees, and explanation for the disagreement;
8. Why the appellant believes the Responsible Official's decision failed to consider the substantive comments; and
9. How the appellant believes the decision specifically violates law, regulation, or policy.

Notices of Appeal that do not meet the requirements of 36 CFR 215.14 will be dismissed.

Implementation Date

If no appeal is received, implementation of the decision may begin on, but not before, the 5th business day following the close of the appeal-filing period (36 CFR 215.15). If an appeal is received, implementation may occur on, but not before, the 15th business day following the date of appeal disposition (§215.2).

Contact Person

For additional information concerning this decision or the Forest Service appeal process, contact:

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 PO Box 249
 Saratoga WY 82331
 (307) 326-5258

/s/ Mary H. Peterson
 MARY H. PETERSON
 Forest Supervisor
 Medicine Bow-Routt National Forests &
 Thunder Basin National Grassland

February 27, 2004
 DATE

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Lost Cabin Mine Vicinity Map



