

**Rights of Mining Claimants
Coronado National Forest
June 2009**

The General Mining Act of 1872 confers a statutory right to enter upon public lands open to location in pursuit of locatable minerals, and under valid existing mining claims to conduct mining activities, in compliance with federal and state statutes and regulations. The Multiple-Use Mining Act of 1955 confirms the ability to conduct mining activities on public lands, locate necessary facilities, and conduct reasonable and incidental uses to mining on public lands, including National Forest System lands. Forest Service mining regulations at 36 C.F.R. Part 228 subpart A, correspondingly recognizes the rights of mining claimants.

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to prepare an environmental impact statement prior to undertaking a major Federal action significantly affecting the quality of the human environment. NEPA also requires Federal agencies to study, develop, and describe appropriate alternatives to any proposal which involves unresolved conflicts concerning alternate uses of available resources.

A proposed mine plan of operations is a starting point in the environmental impact statement process and is one of the alternatives considered. Forest Service mining regulations and policies establish a process to approve a plan of operations for mining activities on National Forest System lands and to ensure such plans minimize adverse environmental impact. Feasible alternatives which allow the claimant to reasonably exercise their statutory rights and vested property rights in minerals, while seeking to minimize adverse environmental impacts on National Forest surface resources, are also included in the statement.

The regulations implementing NEPA also require that a no-action alternative be included in an environmental impact statement. Forest Service Handbook 1909.15 Chapter 14.2 clarifies that the no-action alternative provides a baseline for estimating the effects of other alternatives. The no-action alternative presents that no action or activity would take place from the planning effort, thus the mine plan of operations would not be approved.

Although the Forest Service may reasonably regulate mining activities to protect surface resources, there are statutory and constitutional limits to its discretion when reviewing and approving a mining plan of operations. The Forest Service cannot categorically prohibit mining activity or deny reasonable mineral operations under the mining laws. Selection of a no-action alternative is outside the discretion of the Responsible Official.

In practice, the Forest Service works with the mining applicant to develop an acceptable legally-compliant plan of operations as an alternative to be considered during the NEPA process, thereby precluding selection of the no-action alternative.