



**United States
Department of Agriculture**

**Forest Service
Fishlake National Forest
Richfield Ranger District**

July 2014

**Decision Notice
Finding of No Significant Impact**

SUFCO Special Use Permit Modification

Sevier County, Utah

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Introduction

In May 2014, an Interdisciplinary Team completed an Environmental Assessment (EA) of the SUFCO Special Use Permit Modification. The EA disclosed the direct, indirect, and cumulative environmental impacts from the proposed action. This EA is available on the Fishlake National Forest website at: www.fs.usda.gov/goto/fishlake/projects.

The SUFCO Special Use Permit Modification project is located directly adjacent to the operating SUFCO Mine, owned by Canyon Fuels Company. The requested modification includes a 19.2 acre addition to the existing Special Use Permit area. The modification will establish right-of-entry for SUFCO to develop coal handing facilities, which will be reviewed and permitted by the Utah Division of Oil, Gas and Mining (DOGM).

The proposed 19.2-acre addition occurs on National Forest Systems lands in all or portions of the S1/2 of Section 12, Township 22 South, Range 4 East in Sevier County, Utah.

Desired Conditions

The *Fishlake National Forest Land and Resource Management Plan* (Forest Plan) (USFS, 1986), approved in June 1986, established guidance for all natural resource management activities in relation to proposal analysis. The Forest Plan's goals for mineral resources include the following: protect surface resources and environmental quality; encourage mineral exploration, development and extraction consistent with management of surface resources; coordinate minerals management with State and other Federal agencies; and inventory geologic hazards and ground water resources (USFS, 1986, p. IV-5).

Purpose and Need for Action

The need for the action is for the Forest Service to respond to an application to amend an existing SUP to establish a right-of-entry onto NFS lands for the purpose of permitting, and if approved, constructing ancillary facilities incident to a coal mine.

The purposes include furthering the direction in the Forest Plan to (1) "*encourage mineral exploration, development and extraction consistent with management of surface resources*", (2) "*manage land uses to insure permit compliance and resource protection*" and (3) "*act on special use applications according to the following priorities: land and land use activities contributing to increased economic activity associated with National Forest resources, e.g., oil and gas, and energy minerals*" (USFS 1986, Pages IV-5 and IV-38) and to fulfill the Forest Service's obligation under the Mining and Minerals Policy Act of 1970 to foster and encourage private enterprise in the development of economically sound and stable domestic mining minerals and mineral reclamation industries, ...{and} "the orderly and economic development of domestic mineral resources..."

In addition, the Forest Service Minerals and Geology 2800-2012-1 Manual states the following objectives: 1. Encourage and facilitate the orderly exploration, development, and production of mineral and energy resources within the NFS in order to maintain a viable, healthy minerals industry and to promote self-sufficiency in those mineral and energy resources necessary for economic growth and national defense (Page 9); 2. Ensure that exploration, development, and production of mineral resources are conducted in an environmentally sound manner and that these activities are considered fully in the planning and management of other NFS resources (Page 9); and 3. Ensure that lands disturbed by mineral and energy activities are reclaimed for other productive uses (Page 10).

The Richfield Ranger District has determined the Purpose and Need for this project is consistent with Fishlake National Forest goals and objectives found in Chapter IV of the Forest Plan. The Richfield Ranger District compared the proposed action described in the EA with the general direction and standards and guidelines listed in the Fishlake Land and Resource Management Plan to determine compliance. The District determined the proposed action is compliant with the general direction and standards and guidelines listed in the Fishlake Land and Resource Management Plan. The District determined a Forest Plan Amendment is not required as part of this project. This review along with supporting rationale is found in the project record.

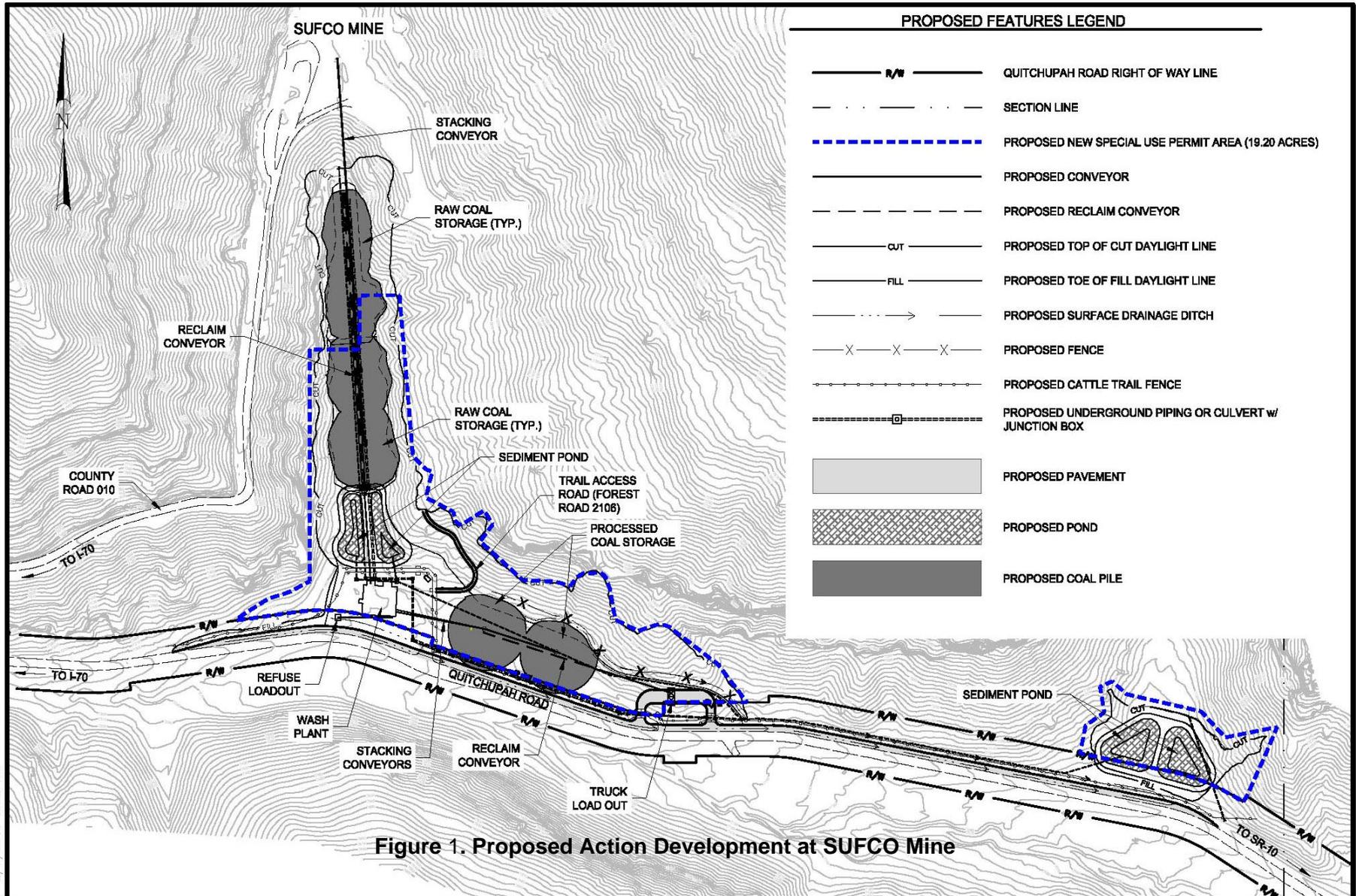
Decision

I have reviewed the analysis presented in the Environmental Assessment, the supporting materials in the project record, reviewed and considered the public comment and internal interdisciplinary team's concerns, and discussed the project with Fishlake National Forest staff. I have decided to implement the Proposed Action as described below.

I have decided to approve the 19.2 acre expansion to the existing special use permit area. This permit expansion will grant permission from the Fishlake National Forest for Canyon Fuel Company to use the specified National Forest System lands (**Figure 1**). By doing this, SUFCA can demonstrate right-of-entry for a subsequent coal permitting action under the purview of the DOGM. DOGM will review and decide whether to approve the specific on-the-ground activities.

Foreseeable activities that DOGM will review are considered in the environmental analysis as a connected action. Foreseeable activities include the construction of coal load out facilities including crushers, conveyor systems, coal bins, truck scales and an office; coal storage pile facilities in the form of linear stackers, reclaim feeders and conveyor systems. These additional storage piles may increase temporary storage capacity to 100,000 tons to allow for coal segregation and blending for achievement of optimum coal quality for customer needs. Other foreseeable activities include construction of sediment ponds.

Road upgrades to be completed to facilitate all weather coal loading and transport. Upgrades include paving the truck turnaround road (13,612 square feet outside the Quitchupah Road right-of-way) and surfacing the interior of the truck turnaround with gravel, roto-mill, or other suitable material. An additional lane into the truck turnaround and to exit the turnaround onto Quitchupah Road is planned. Construction and drainage control will be designed consistent with DOGM requirements. All foreseeable activities are subject to approval by DOGM and other permitting actions required by Federal, State, and county agencies. See **Figure 1** for an overview of the foreseeable activities.



10/11/13 10:00 AM 27/7/2014 2:43 PM



Canyon Fuel Company, LLC
SUFCO Mine
 597 South SR 24 - Salina, UT 84654
 (435) 286-4880 Phone
 (435) 286-4499 Fax

Sufco Convulsion Canyon - CPP		
Special Use Permit Boundary Exhibit - Proposed Features		
SCALE: 1" = 500'	DATE: 2/7/2014	DRAWN BY: T.B.\K.B.
ENGINEER: K.B.B.	CHECKED BY: K.B.\J.B.	PROJ: 0114-004
FILE NAME: M:\PROJ\0114-004\dwg\FS-SUP.dwg		

SHEET NO.
EX-02

Decision Design Features

If any newly discovered cultural features or deposits are found, project activities will cease in the immediate area. SHPO will be consulted on the nature and significance of the remains identified. American human remains or funerary objects discovered during construction will also be immediately reported as required by law.

Decision Rationale

I am selecting the Proposed Action for the following reasons:

1. The Proposed Action meets the purpose and need.
2. The Proposed Action is consistent with the Forest Plan standards and guidelines for the area and contributes to meeting the goals and objectives of the Forest Plan to protect surface resources and environmental quality; encourage mineral exploration, development and extraction consistent with management of surface resources; coordinate minerals management with State and other Federal agencies; and inventory geologic hazards and ground water resources.
3. Internal and external concerns identified have been addressed during the development of the Proposed Action and the analysis documented in the EA.
4. The Hope Tribe submitted one comment letter. Recommendations from the Hope Tribe are included as Decision Design Features.
5. One comment letter expressed concerns about being able to move cattle to and from the Fishlake National Forest. To ensure cattle are able to move to and from the Fishlake National Forest, part of the design shown in **Figure 1** includes a cattle trail fence to facilitate movement of cattle through the project area to and from the National Forest.
6. One comment letter raised concerns about the size (initial proposal was an additional 102 acres) and the impacts to habitat and all other natural resources and values. The commenter requested the Forest Service deny the special use permit expansion and the justification provided for the proposed action was not adequate. The commenter also expressed confusion regarding the project location and recommended the Forest proceed with a Notice of Intent for an Environmental Impact Statement (EIS). After considering these comments, project area maps were updated (**Figure 1** as well as project area maps in the EA). The initial 102 acres being proposed was reduced to 19.2 acres. The Purpose and Need was clarified in the Notice of Proposed Action. Based on the EA and Finding of No Significant Impact, the Forest has determined that an EIS for this decision is not required. The Forest also determined the Purpose and Need and Proposed Action are compliant with the general direction and standards and guidelines listed in the Fishlake Land and Resource Management Plan.

Other Alternatives Considered

The No Action alternative is the other alternative evaluated in the EA. Under the No Action alternative, the expansion of the existing special use permit area will not have been approved. Canyon Fuel Company would not have had right-of-entry onto the National Forest System lands. Canyon Fuel Company would continue their current operations at SUFCA mine. Mine productivity and saleable coal reserves would have maintained their current levels and not increase or decrease under the No Action alternative.

Public Involvement and Collaboration

Under NEPA, agencies must determine the issues to be analyzed in depth and to identify and eliminate from detailed study the issues that are not significant (40 CFR 1501.7). This course of action is known as scoping and uses public involvement and agency consultation as a means to identify potential issues.

- Notices were directly mailed to owners in the vicinity of the project area and to individuals and organizations on the Fishlake National Forest mailing list. The mailing list included state agencies with jurisdictional or regulatory authority, Native American tribes, Sevier County Commission, DOGM, permittees, and Utah Environmental Congress.
- Scoping information was posted on the FS website describing the project location, anticipated schedule, and project contact on the Schedule of Proposed Actions, which has a URL address of <http://www.fs.usda.gov/goto/fishlake/projects>. Four comments were received in response to scoping.
- Notice of Proposed Action: A second public notice was published in the *Richfield Reaper*, on Wednesday, March 19, 2014 after expansion of SUFCA Mine's Special Use Permit was reduced from an original 102 acres to the current 19.2 acres. The notice described the proposed action, detailed the Forest Service's decision-making process and invited comments on the proposed permit expansion project. Additionally, a Notice of Proposed Action, Opportunity to Comment was listed on the Fishlake National Forest Schedule of Proposed Actions (<http://www.fs.usda.gov/goto/fishlake/projects>). During the 30-day Notice and Comment Period following the legal notice publication, the Fishlake National Forest received no additional comments concerning the permit expansion project.

Findings Required by Other Laws and Regulations

My decision is consistent with all applicable laws, executive orders, regulations and policies as summarized below:

National Forest Management Act (NFMA)

This decision is consistent with the Fishlake National Forest Land and Resource Management Plan (1986) and it responds to the goals and objectives outlined in the Plan. The Desired Conditions and Purpose and Need for this project are consistent with Fishlake National Forest goals and objectives found in Chapter IV of the Forest Plan. The Proposed Action was compared with the general direction and standards and guidelines listed in the Fishlake Land and Resource Management Plan and it was determined that the Proposed Action is compliant with the general direction and standards and guidelines listed in the Fishlake Land and Resource Management Plan. No Forest Plan Amendments are required as part of this project. This review along with supporting rationale is found in the project record.

Migratory Bird Treaty Act and Executive Order 13186

Executive Order 13186 directs Federal agencies to protect migratory birds by integrating bird conservation principles, measures, and practices and by avoiding or minimizing, to the extent practical, adverse impacts on migratory birds' resources when conducting agency actions. This Order directs agencies to further comply with the Migratory Bird Treaty Act (MBTA), the Bald and Golden Eagle Protection Act, and other pertinent statutes. Because of the small project area size (19.2 acres) and the

currently disturbed condition, impacts on migratory birds will be negligible. This analysis is compliant with the National Memorandum of Understanding between the USDA Forest Service and the USFWS to promote the conservation of migratory birds. The EA considered impacts to migratory birds in Section 3.5.3.2, which determined that no adverse impacts to migratory birds' resources are expected as a result of implementing the Proposed Action.

Endangered Species Act of 1973

The action will not adversely affect any Threatened or Endangered species or habitat that has been determined to be critical under the Endangered Species Act of 1973. A Biological Assessment (BA) of Threatened and Endangered Wildlife, Fish and Plants species was completed.

Threatened/Endangered species considered because they may occur or habitat may occur included Last Chance townsendia (*Townsendia aprica*) and California condor (*Gymnogyps californianus*). There is no habitat in the project area for Utah prairie dog (*Cynomys parvidens*) or San Rafael cactus (*Pediocactus despainii*). The BA determined that the proposed action will have **no impact** on these species.

National Historic Preservation Act of 1966

Implementation of the proposed action will have no effect on cultural resources listed in or eligible for listing in the National Register of Historic Places. As stated in Section 3.7.3.1 of the EA, there are no anticipated direct or indirect effects. A letter from the Utah State Historic Preservation Office also concluded the proposed action will have no effect on any known cultural resources eligible for the National Register of Historic Places. The Hopi Tribe did not identify any potential issues and made recommendations for protection of prehistoric cultural features or deposits encountered during project activities. Additionally, the tribe expressed a desire to be appraised of any prehistoric cultural resources that may be adversely affected by mining activities. These recommendations from the Hopi Tribe are included as Project Design Features.

Clean Air Act of 1970, as amended

This decision approves the 19.2 acre expansion of a special use permit to provide right-of-entry for the SUFCO Mine. Climate change was not analyzed in the EA as the proposed project will not contribute to any degree necessary to justify a detailed analysis. The proposed activities are extremely small in scope and magnitude. It may be possible to quantify the direct amount of greenhouse gas emissions; however, there is no way to analyze the intensity of the effects on climate change. Effects from the project's greenhouse gas emissions will not be noticeable at the local, regional, or global scale. Therefore, implementing this decision is consistent with the Clean Air Act of 1970, as amended.

Clean Water Act of 1977, as amended

Section 3.6.3.1 of the EA explains what analysis was completed and determined that implementation of the Proposed Action will have minimal effects on water quality. The Proposed Action is therefore in compliance with the Clean Water Act of 1977, as amended.

Executive Order 11988, Floodplain Management

This executive order requires action be taken to (1) minimize adverse impacts associated with occupancy and modification of floodplains and reduce risks of flood loss, (2) minimize impacts of floods on human safety, health, and welfare, and (3) restore and preserve the natural and beneficial values

served by flood plains. Section 3.6.1 of the EA shows that there are no floodplains in the project area. Therefore, the Proposed Action complies with Executive Order 11988.

Executive Order 11990, Protection of Wetlands

EO 11990 requires actions be taken to minimize destruction, loss, or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands.

The description of the existing conditions in Section 3.1.3 of the EA shows that there are no wetlands within the project area. Therefore the Proposed Action is in compliance with Executive Order 11990.

Travel Analysis Process

Forest Service Handbook (FSH) 7709.55 Travel Planning Handbook directs that a Travel Analysis Process be completed for projects to inform the deciding official of travel management issues. The Proposed Action does not propose any changes to the current Fishlake National Forest Motorized Travel Plan; therefore, a performance of a Travel Analysis Process is not necessary.

Executive Order 12898, Environmental Justice

Executive Order 12898 entitled Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations requires Federal agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low income populations. This decision is in compliance with Executive Order 12989 because there is no indication that the SUFCO Special Use Permit Modification Project will adversely or disproportionately affect American Indians, other racial minorities, or low-income groups.

Finding of No Significant Impact

The following is a summary of the project analysis to determine significance, as defined by the Forest Service Handbook 1909.15_05. "Significant" as used in NEPA requires consideration of both context and intensity of the expected project effects.

Context

Context means that the significance of an action must be analyzed in several contexts (i.e., local, regional, worldwide), and over short and long time frames. For site-specific actions, significance usually depends upon the effects in the locale rather than in the world as a whole. The SUFCO Special Use Permit Modification Project is a site-specific analysis whose scope is confined to the effects of the project. The context is limited to the locale of the project area and activities are limited to the Proposed Action on National Forest System lands. The physical, biological and social effects vary according to the resource area analyzed. Some analyses considered the extent of effects beyond the project boundaries.

The modification of the SUFCO Special Use Permit will establish right-of-entry as soon as the permit modification is approved. The activities proposed within the area are governed by the Utah DOGM and will be implemented upon approval of a revised plan by DOGM.

Intensity

Intensity refers to the severity of the expected project impacts and is defined by the 10 points below.

1. Impacts may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on the balance the effects will be beneficial.

Potential Beneficial Effects

Potentially beneficial effects include the proposed action establishing right-of-entry; meeting the direction in the Forest Plan and meeting the requirements of the Forest Service Manual 2800-2012-1 (see Section 3 above).

Potential Adverse Effects

The SUFCA Special Use Permit Modification EA documents the following effects of implementing the Proposed Action:

Sensitive species where the determination in the Biological Evaluation was that the Proposed Action **may impact individuals but is not likely to lead to a trend toward federal listing** include spotted bat (*Euderma maculatum*), Townsend's western big-eared bat (*Corynorhinus townsendii townsendii*), flammulated owl (*Otus flammeolus*), and American three-toed woodpecker (*Picoides dorsalis*).

The thorough analysis completed for vegetation, threatened and endangered species, other sensitive species not listed above, migratory birds, management indicator species, water, cultural resources and land uses determined that any impacts will be negligible or there will be no impact.

2. The degree to which the proposed action affects public health or safety.

This action will not affect public health or safety.

3. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

The project area has no park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

Implementation of the proposed action will have no effect on cultural resources listed in or eligible for listing in the National Register of Historic Places. As stated in Section 3.7.3.1 of the EA, there are no anticipated direct or indirect effects. A letter from the Utah State Historic Preservation Office also concluded the proposed action will have no effect on any known cultural resources eligible for the National Register of Historic Places. The Hopi Tribe did not identify any potential issues and made recommendations for protection of prehistoric cultural features or deposits encountered during project activities. Additionally, the tribe expressed a desire to be appraised of any prehistoric cultural resources that may be adversely affected by mining activities. These recommendations from the Hopi Tribe are included as Project Design Features.

4. The degree to which the effects on the quality of the human environment are likely to be highly controversial.

The effects of the Proposed Action on the quality of the human environment are not likely to be highly controversial. This is based on: the limited context of the project; a long history of forest management including similar activities on the Richfield Ranger District; a review of public comments received to date, and the projects analysis. Not all of the comments received were in support of the project; however, after reviewing all the comments, project record and EA myself, I am confident that the Interdisciplinary Team reviewed these comments, identified the concerns, and addressed the concerns in the appropriate resource section. No comments were received on the Notice of Proposed Action. No

highly-controversial or significant issues related to the human environment were identified from the scoping efforts (EA Chapter 1) and no significant issues were raised during the analysis process (EA Chapter 3).

5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

Possible effects on the human environment that are uncertain or involve unique or unknown risks are minimal or non-existent based on a review of the project analysis that employed scientifically accepted analytical techniques, available information, and best professional experience and judgment to estimate effects to the human environment. Activities similar to what is described in the Proposed Action have been conducted in the project area. These past projects exhibited environmental effects similar to those predicted to occur with implementation of the Proposed Action. The effects associated with the Proposed Action are recognized, familiar, and predictable. As shown in the vegetation section of Chapter 3 in the EA, most of the modification area has already been disturbed from natural conditions as the mine has been in operation since 1941. Impacts on vegetation will be minimal as much of the area has already been altered by past mine developments. Based on this prior experience with reclamation, the effects of the reasonably foreseeable mine facilities development are not uncertain, and do not involve unique or unknown risk.

6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

The Proposed Action is site-specific and will not set precedence for future actions or present a decision in principle about future actions. This action does not represent a decision in principle about a future consideration. Future actions that cannot be implemented under administrative authorities will be evaluated on its own merits and effects. The proposed activities are in accordance with the best available science.

7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.

Based on the analysis and disclosure of effects in Chapter 3 of the EA, the Proposed Action will have no significant impacts when considered in combination with other past actions or reasonably foreseeable future actions, including the future mine facility developments if approved by DOGM.

8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in the National Register of Historic Places or may cause loss or destruction of significant cultural or historical resources.

Implementation of the proposed action will have no effect on cultural resources listed in or eligible for listing in the National Register of Historic Places. As stated in Section 3.7.3.1 of the EA, there are no anticipated direct or indirect effects. A letter from the Utah State Historic Preservation Office also concluded the proposed action will have no effect on any known cultural resources eligible for the National Register of Historic Places. The Hopi Tribe did not identify any potential issues and made recommendations for protection of prehistoric cultural features or deposits encountered during project activities. Additionally, the tribe expressed a desire to be appraised of any prehistoric cultural resources that may be adversely affected by mining activities. These recommendations from the Hopi Tribe are included as Project Design Features.

9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act.

The Biological Assessment completed for Threatened and Endangered Species (aquatic, plant, or wildlife) with habitat that has been determined to be critical under the Endangered Species Act of 1973 in or near the project area determined that there will be no impacts on Last Chance townsendia (*Townsendia aprica*), San Rafael cactus (*Pediocactus despainii*), Utah prairie dog (*Cynomys parvidens*) or California condor (*Gymnogyps californianus*) because none of these species occur in or near the project area. No other listed or proposed species have habitat or the potential to occur in the project area.

Also, as stated in the Biological Evaluation and MIS Specialist Report, there are no candidate aquatic, plant, or wildlife species with potential to occur in the project area.

10. Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

The Proposed Action meets federal, state, and local laws for threatened and endangered species, heritage resources, water quality, air quality, water rights, wetland protection, floodplain management, migratory birds, and environmental justice as summarized above and/or throughout the EA. The Proposed Action is consistent with the National Forest Management Act and the Fishlake National Forest Land and Resource Management Plan (EA Chapter 1). All management activities will be in compliance with Management Area direction, including goals and objectives, as described for each resource in the SUFCA Special Use Permit Modification Project Forest Plan Consistency document and in accompanying reports. This proposal does not require any Forest Plan amendments.

Conclusions

Based on the analysis and disclosure of effects in the EA (Chapter 3), and the specialist reports, the Proposed Action will not have significant impacts when considered in combination with other past actions, present actions or reasonably foreseeable future actions. Thus, an environmental impact statement will not be prepared.

Best Available Science

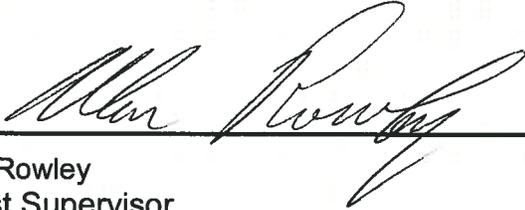
I am confident that the analysis of the Proposed Action was conducted using consideration of the best available science. My conclusion is based on a review of the project record that shows the analysis included a thorough review of relevant scientific information, considered responsible opposing views, and acknowledged incomplete or unavailable information, scientific uncertainty, and risk. Please refer to the project file for specific discussions of the science and methods used for analysis and for literature reviewed and referenced.

Administrative Review

This decision was subject to objection pursuant to 36 CFR 218, Subparts A and B. A 45-day objection period occurred between May 14 and June 30, 2014. No objections were received. This project may proceed 5 business days following the close of the objection period, which was July 8, 2014.

Contact

For additional information concerning this decision, contact: Jason Kling, District Ranger, Richfield Ranger District, 115 East 900 North, Richfield, UT (435)896-9233 or jkling@fs.fed.us.



Allen Rowley
Forest Supervisor

7/8/14

Date