

Smoky Canyon Mine Panels F and G Authorization for Off-Lease Activities

UNITED STATES
DEPARTMENT OF
AGRICULTURE

FOREST SERVICE

June 2008



RECORD OF DECISION

JOINT LEAD AGENCY:

U.S. Department of Agriculture
Forest Service
Caribou-Targhee National Forest

LEAD AGENCY:

U.S. Department of the Interior
Bureau of Land Management
Idaho Falls District
Pocatello Field Office
4350 Cliffs Drive
Pocatello, ID 83204



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Authorization for Off-Lease Activities
Record of Decision

JOINT LEAD AGENCY: U.S. Department of Agriculture
Caribou-Targhee National Forest
1405 Hollipark Drive
Idaho Falls, ID 83401
(208)524-7500

LEAD AGENCY: U.S. Department of the Interior
Bureau of Land Management
Idaho Falls District
Pocatello Field Office
4350 Cliffs Drive
Pocatello, ID 83204
(208)478-6340

COOPERATING AGENCY: Idaho Department of Environmental Quality

PROJECT LOCATION: Caribou County, Idaho

DATE DECISION SIGNED: 6-6-08

ABSTRACT

Caribou-Targhee National Forest Supervisor, Lawrence A. Timchak has decided to issue a special use authorization to permit J.R. Simplot Company to construct access and haul roads, power lines, and to temporarily stockpile topsoil on National Forest System lands in connection with development and mining on two adjacent federal phosphate leases (Manning Creek I-27512 – referred to as Panel F, and Deer Creek I-01441 – referred to as Panel G) administered by the Bureau of Land Management (BLM). The potential environmental consequences of approving the proposed Mining and Reclamation Plan, six mining alternatives, and eight transportation alternatives have been analyzed jointly with the BLM in the Smoky Canyon Mine, Panels F and G Final Environmental Impact Statement. This Record of Decision documents the Forest Supervisor's decision and rationale for authorization of the use of National Forest System land for off-lease activities.

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Preface

Authority to issue phosphate leases and approve mine and reclamation plans for mining operations within lease boundaries lies with the Department of the Interior under the Mineral Leasing Act of 1920. The Secretary of Interior has no authority to authorize the use of National Forest System lands outside of the lease boundaries (“off lease”) for activities related to phosphate mining. Therefore, the use of National Forest System (NFS) land for off-lease activities necessary to conduct phosphate mining operations, such as construction of access roads and utilities, and temporary stockpiling of topsoil must be authorized by the responsible Forest Service official; in this case, the Caribou-Targhee National Forest Supervisor.

Prior to authorizing the use of NFS land off lease and approving a mining and reclamation plan for on-lease operations, the Forest Service and BLM must analyze the potential effects of the activities each agency will authorize in accordance with the National Environmental Policy Act. In this case, the proposed Mining and Reclamation Plan (M&RP) and associated off-lease activities in the Smoky Canyon Mine, Panels F & G were analyzed in an Environmental Impact Statement (November 2007). Mining and transportation alternatives were jointly developed to address issues related to the mining and reclamation plan proposed by J.R. Simplot Company.

Because of separate agency authorities, each lead agency has prepared a Record of Decision for its respective decision. The decision of each agency was developed in close coordination since off-lease and on-lease operations are interconnected.

I am the responsible official to decide whether or not to issue Special Use Authorization to permit mining-related activities outside of lease boundaries, and determine the terms and conditions of any authorizations issued, under regulations codified at 36 CFR 251.54 et seq. As the responsible official for the Caribou-Targhee National Forest, I am signing this Record of Decision to document the decision to issue Special Use Authorization to J.R. Simplot to permit the following off-lease activities:

- Construction of the Panel F Haul/Access Road;
- Construction of the West Haul/Access Road to Panel G;
- Power transmission lines within the Haul/Access road corridors;
- Several temporary stockpiles of topsoil;
- Reclamation requirements for disturbed areas off lease.

Sincerely,



LAWRENCE A. TIMCHAK
Forest Supervisor, Caribou-Targhee National Forest

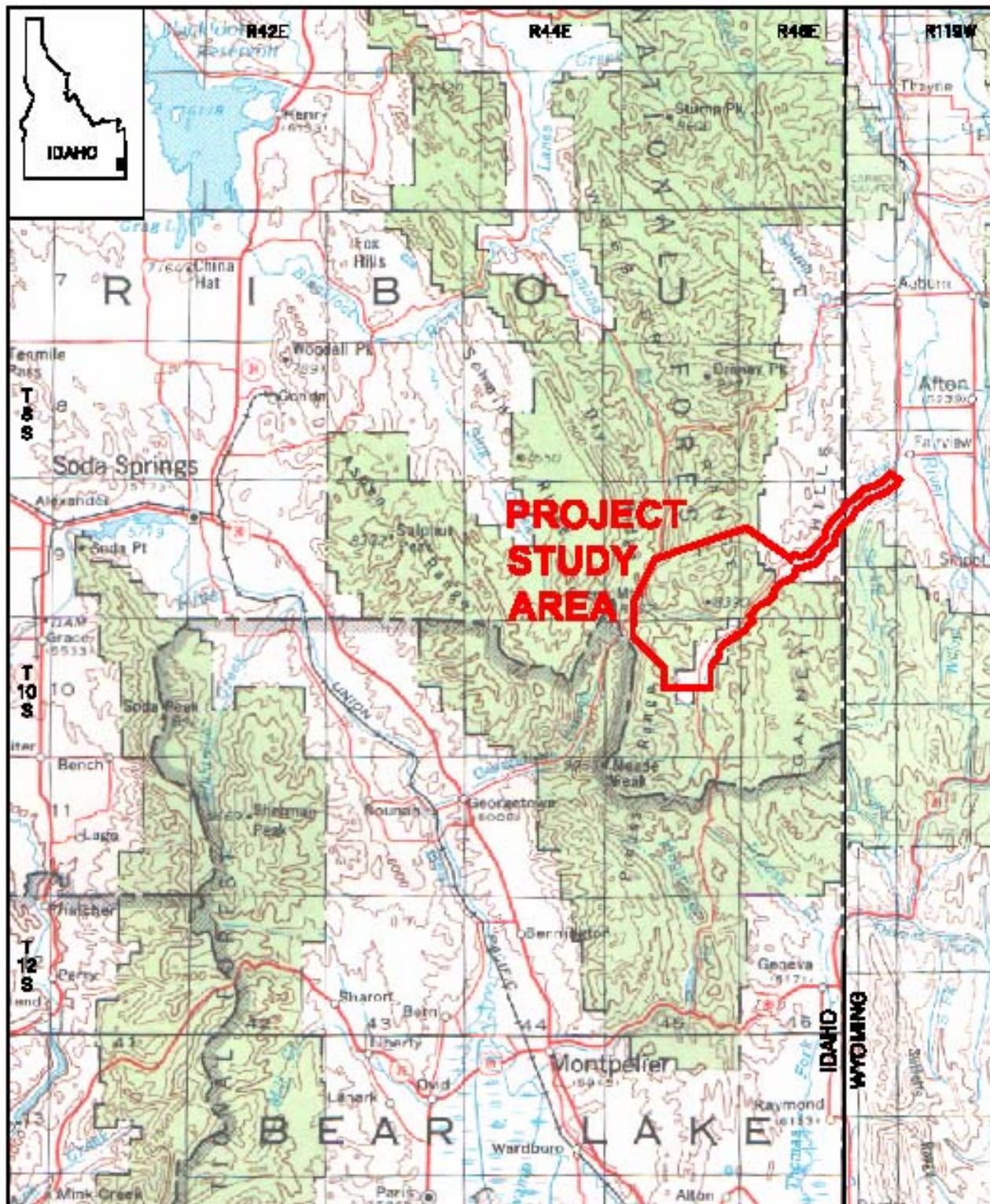
Part 1 INTRODUCTION

1.1 *About this document*

The Bureau of Land Management (BLM) and Forest Service (USFS), in cooperation with the Idaho Department of Environmental Quality (IDEQ), prepared an Environmental Impact Statement (EIS) to review the potential environmental impacts of approving the proposed Mining and Reclamation Plan (M&RP) for on-lease operations at Panels F & G at the Smoky Canyon Mine and off lease uses of NFS land that will be authorized by the Forest Service (**Figure 1**). Six mining alternatives and eight transportation alternatives were considered along with the No Action Alternative. Public scoping for this project began in 2003 and resulted in the identification of the issues described in Section 5.4 of this Record of Decision (ROD). The Final Environmental Impact Statement (FEIS) was released to the public on October 17, 2007. However, because so many documents were mailed it took several days to complete the mailing. The waiting period required by BLM regulations prior to making its decision was extended until December 26, 2007. The Agencies considered 47,000 comments received in response to the FEIS.

This Record of Decision is organized into eight parts.

- *Part 1 – Introduction.* This part includes background information about the Smoky Canyon Phosphate Mine and a description of the original proposal from J.R. Simplot Company, who owns the leases on Panels F and G.
- *Part 2 – Decision.* This section explains the authorities of the Forest Service to regulate use and occupancy of National Forest System land for off-lease operations associated with development of the Smoky Canyon Mine.
- *Part 3 – Reasons for the Decision.* The principal reasons for the Forest Service decisions are described.
- *Part 4 – Mitigation and Monitoring.* Mitigation and monitoring requirements necessary for implementation of off-lease activities including water quality and fisheries are specified.
- *Part 5 – Public Involvement and Issues.* The public involvement process, a summary of public comment, a description of government and tribal consultation, and summary of the issues are included in Part 5.
- *Part 6 – Alternatives Considered.* The alternatives for this project were complex. This section briefly summarizes the eight “Transportation Alternatives” that looked at roads needed for mining Panels F & G, and six “mining alternatives” that were considered in detail.
- *Part 7 – Legally Required Findings.* Part 7 lists the laws and regulations that were considered during the process.
- *Part 8 – Administrative Review.* This section provides the legal requirements to appeal this Decision under 36 CFR 215.11.



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Figure 1
Location Map
Smoky Canyon Mine Panels F and G

1.2 Purpose and need for action

The BLM and the USFS are required to respond to a proposed Mining and Reclamation Plan (M&RP) and request for authorization to use adjacent NFS land for access to leases and other mining related activities from the J.R. Simplot Company (Simplot) for expansion of the Smoky Canyon Mine (**Figure 2**). Simplot proposed the recovery of phosphate ore reserves contained within Federal Phosphate Leases I-27512 and I-01441 issued under the Mineral Leasing Act of 1920. The existing Smoky Canyon mine would be expanded to adjacent lease areas (“Panels”) as reserves at the existing mine are depleted. Initial ore processing would be conducted at the existing Smoky Canyon milling facilities.

The BLM is required to evaluate mining proposals and determine whether and how to authorize mining operations on the phosphate leases. This includes consideration of the alternative scenarios for operations within the lease boundaries, and decisions to modify or enlarge the existing leases to maximize the recovery of available phosphate ore.

USFS authorization is required for all off-lease operations related to mining. The USFS is required to evaluate alternatives for providing access to existing phosphate leases and issue a decision whether or not to authorize use of NFS land outside of lease boundaries and to establish terms and conditions for any Special Use Authorizations (SUA's) for haul roads, access roads, power lines and topsoil stockpiles located outside of the phosphate lease boundaries on National Forest System Lands (NFS).

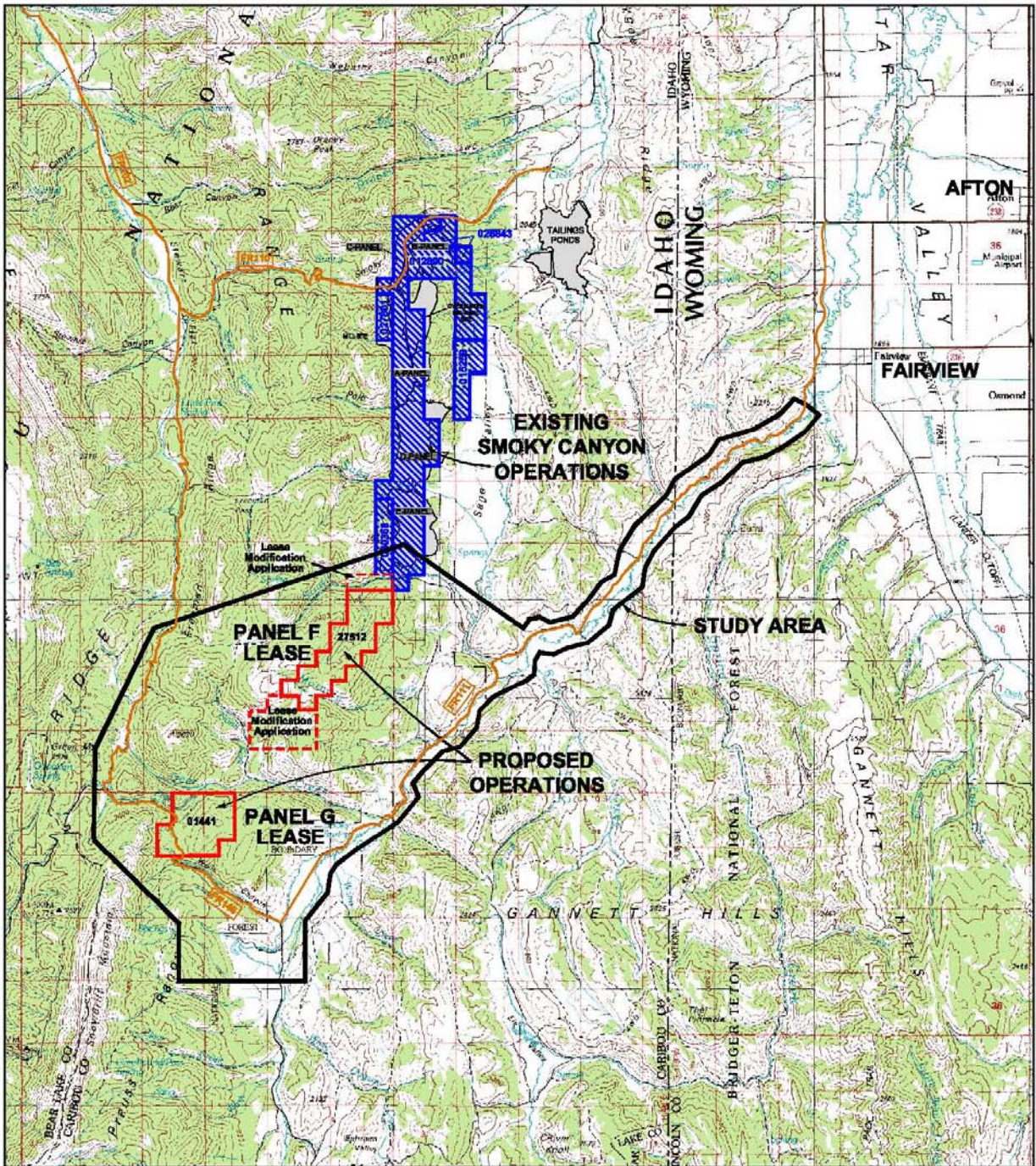
1.3 Setting

1.3.1 Location and overview of existing operation

The existing Smoky Canyon Mine is located in Caribou County, Idaho approximately ten air miles west of Afton, Wyoming on the east slope of the Webster Range between Smoky Canyon to the north and South Fork Sage Creek to the south (**Figure 1**). Year-round access to the mine is gained by traveling west from Afton on State Highway 237 approximately three miles, then north about four miles on State Highway 238 toward Auburn, WY. Just before Auburn the Stump-Tygee Creek Road (paved) heads west and becomes Forest Road 110. The mine is approximately eight miles west and southwest of Auburn (**Figure 2**).

The existing operations extend for a length of approximately 5.9 miles north to south along the east flank of the Webster Range (**Figure 2**). The mill and administrative and maintenance facilities are located in Smoky Canyon near the northern end of the mining operations. Mine Panel A is immediately east of the mill. Panels B and C are located north of the mill, and Panels D and E lie to the south (**Figure 2**). The tailings ponds are located in the Tygee Creek drainage on private land about 3.2 miles northeast of the mill site. The mill is connected to the tailings ponds with a pipeline down Smoky Canyon.

Elevations in the Smoky Canyon Mine area range from about 6,600 feet above mean sea level (AMSL) at the tailing pond area to about 8,300 feet AMSL along the ridge of unnamed peaks of Freeman Ridge immediately west of the mine.



USGS 1:100,000-scale metric topographic maps of Preston and Soda Spring, Idaho and Fontelnelle and Afton, Wyoming

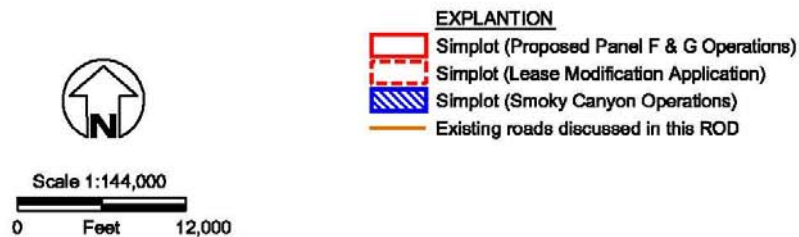


Figure 2
Existing and Proposed Operations
Smoky Canyon Mine Panels F and G

1.3.2 History of the Smoky Canyon Mine

The J.R. Simplot Company (Simplot) has been involved in phosphate mining in Southeastern Idaho since 1945, originally at the Gay Mine on the Fort Hall Indian Reservation. It acquired Anaconda Company's fertilizer operations at Conda, Idaho, north of Soda Springs in 1959.

In 1984, Simplot began extracting phosphate ore from deposits located on federal land at its Smoky Canyon Mine in eastern Caribou County, Idaho. Smoky Canyon mining and milling operations were authorized by a Mining and Reclamation Plan (M&RP) as documented in a Record of Decision (ROD) issued in 1982, based on the Smoky Canyon Phosphate Mine Final Environmental Impact Statement (EIS). The original M&RP proposed mining and reclamation activities for five adjacent pits referred to as Panels A, B, C, D and E. As mining progressed southward through each mine panel, mine and reclamation operations were reviewed, and the environmental effects assessed under the National Environmental Policy Act. Supplemental M&RPs detailing the development and reclamation of each panel were approved with subsequent decisions made by BLM for on-lease operations and Forest Service officials for operations conducted off lease.

Mining operations are complete in Panels A, C, D, and E. Panel B supports current mining operations. However, Simplot personnel report reserves in Panel B will be consumed by 2009. Reclamation at Panels A, B, C, and E continue to progress as mine and reclamation activities are undertaken. In 1997, agency personnel identified releases of selenium from mine waste rock stored in Pole Canyon since 1985. Subsequent, analyses of the impacts from proposed mining operations were elevated from Environmental Assessments to Environmental Impact Statements to further evaluate the potential effects of mine waste rock disposal and contaminant releases. Consequently, in 2002, the BLM signed a ROD approving the M&RP for operations in Panels B and C. This decision was based on a Supplemental Environmental Impact Statement (SEIS) that undertook a detailed evaluation of waste rock disposal and the development of site-specific mine practices and mitigation measures to address the release of selenium and other contaminants from mine overburden.

Anticipating the need to expand ore reserves at the Smoky Canyon Mine, Simplot conducted exploration under the authority of a BLM issued license within the Known Phosphate Leasing Areas (KPLA) south of the existing mine during the 1990s. Subsequently, Simplot filed an application with the BLM to lease the Manning Creek tract (Panel F). BLM held a lease auction in 2000 and Simplot was awarded the Manning Creek Lease January 1, 2001. Excluded from the lease at that time was a 400 acre parcel lying along the upper reaches of the North Fork Deer Creek, an occupied and historic habitat for Yellowstone Cutthroat Trout.

Incomplete data characterizing ore reserves in the southern portion of the proposed lease, evolving mining practices to manage contaminant releases from mine waste rock, steep slopes, and sensitive ecologies along the North Fork of Deer Creek shaped a Forest Service recommendation to the BLM to withhold the 400-acre Deer Creek parcel from the lease sale. The Forest Service recommendation acknowledged limited mineral information about the tract and stated that further information could demonstrate the value of the reserves in the North Fork Deer Creek and justify leasing. The BLM

concluded with the Forest Service recommendation, and excluded lands in the North Fork Deer Creek drainage at Sec. 26: SW ¼, SW 1/3SE1/4, T. 9 S., R. 45 E., Boise Meridian from the initial lease offering.

In 2005, J.R. Simplot Co. submitted an exploration plan to examine the reserve potential in the area north of Sage Creek and South of Sage Meadows excluded from Federal Phosphate Lease I-27512 on issuance. An Environmental Assessment was prepared and a Decision Notice/Finding of No Significant Impact was signed in 2005 to allow Simplot to construct road and drill exploratory drill holes. Data from the exploration project confirmed the presence of phosphate ore in sufficient quantity to support a mine operation. However, portions of the area excluded by Supervisor Reese were excluded from leasing because fisheries and water quality resource values along the North Fork Deer Creek and Deer Creek were considered too valuable to risk.

While not a product of off-lease road construction and other off-lease activities, contaminant releases described in the FEIS may occur as a result of mining. Since 2001, J.R. Simplot Co., the Forest Service, and EPA have been investigating contaminant releases from historic portions of the Smoky Canyon Mine. Potential for contaminant releases were considered in the FEIS for mine related activities and road construction; however, the potential effects were related to mine waste disposal and long-term waste rock storage.

1.3.3 Previous Environmental Analyses

There have been a number of environmental reviews conducted under the National Environmental Policy Act (NEPA) for authorization of mining operations at the Smoky Canyon Mine property both on and off lease.

In 1982, the United States Geological Survey (USGS), then responsible for phosphate lease and mine administration, completed a Final EIS (FEIS) and the Record of Decision (ROD) for the authorization of mining operations and included authorization of the following:

- Open pit mining operations in five panels, A through E;
- Onsite disposal of mine overburden in two main disposal sites external to the pits;
- Construction and operation of a mill and associated power line, water supply wells, and access road;
- Tailings pipeline to the tailings ponds and a return water line;
- Two tailings ponds located east of the mine for disposal of mill tailings;
- Installation of the slurry pipeline to Conda;
- Reclamation of the facilities upon completion of operations.

The conditional permits granted by the BLM and USFS at the beginning of the Smoky Canyon mining operations required that subsequent, site-specific mine plans for the individual mine phases be submitted to the Agencies for their approval and that appropriate mitigation measures be developed using further environmental analyses. These additional mine plans were reviewed with environmental assessments (EAs) that incorporated information and analyses included in the 1981 DEIS and 1982 FEIS for the Smoky Canyon Mine. These EAs included:

- EA for Smoky Canyon Mine Tailings Pond 2 (USACE 1990)
- EA for Smoky Canyon Mine Panel A-4 (BLM 1991)
- EA for Smoky Canyon Mine Panel D (BLM and USFS 1992)
- EA for Smoky Canyon Mine Panel E (BLM 1997)

Tailings Pond No. 1 was constructed concurrently on private land with the initial mining and milling facilities in 1984. In 1988, plans were completed for construction of an expansion of the tailings pond within the same area identified within the FEIS. In 1990, an EA was prepared by the United States Army Corps of Engineers (USACE) for approval of three future phases of Tailings Dam No. 2 and the associated tailings pond to contain all tailings from full development of each of the Panels. In the 1990 EA, the USACE reviewed the detailed plans for this facility and developed the plans for environmental impact mitigation. Simplot, who owns the property where the tailings ponds are located, subsequently completed the wetland mitigation for all three phases of the tailings dam and pond.

Mine operations to develop Panels B and C were authorized by an M&RP as documented in a 2002 ROD upon the completion of the Final Smoky Canyon Phosphate Mine Supplemental EIS (SEIS). The SEIS evaluated potential effects on threatened, endangered, and sensitive species as well as effects from selenium and other constituents of potential concern (COPCs) that were not considered in the 1982 Smoky Canyon FEIS.

Exploration drilling to support mine development in the Deer Creek and Manning Creek lease areas was analyzed over the last several years through the EAs and EIS listed below.

- EA for Manning Exploration for EIS Leasing (BLM and USFS 1994)
- EA for Phosphate Exploration Program for Lease I-01441 (BLM and USFS 1996)
- EA for I-01441 Lease Modification and Exploration Plan (BLM and USFS 1998a)
- Leasing EIS for the Manning and Dairy Syncline Properties (BLM and USFS 1998b)
- EA for Manning Creek Exploration Project (BLM and USFS 2003)
- EA for South Manning Creek Exploration Project (BLM and USFS 2005)

1.4 Lease holder's proposed mine and reclamation plan

On April 21, 2003, the J.R. Simplot Company (Simplot), proposed to extend their phosphate mining operations south of its current open pit Smoky Canyon Mine. The proposal involved two federal phosphate leases (Manning Creek I-27512 – referred to as Panel F, and Deer Creek I-01441 – referred to as Panel G). These leases are administered by the Pocatello Field Office of the Bureau of Land Management (BLM) and are located on the Montpelier Ranger District of the Caribou-Targhee National Forest (C-TNF), which is administered by the U.S.D.A. Forest Service (USFS). (**Figures 1 and 2**). The proposed extension of mining operations requested two modifications of the Panel F lease (“North” and “South”) and approval of a mining and reclamation plan by the BLM.

The 120-acre north lease modification and 400-acre south lease modification would allow the maximum recovery of the available phosphate ore in Panel F. Disturbance from the Panel F operations including both modifications totals 592 acres including: 435 acres of pits, 67 acres of roads, 38 acres of external overburden fills, and 52 acres of other disturbance including settling ponds and ditches, topsoil stockpiles, and a power line (FEIS, Table 2.4-5).

Simultaneously, Simplot requested authorization from the USFS for construction, maintenance, and reclamation of roads, utilities, topsoil stockpiles and other facilities on National Forest System land outside of the lease boundaries (“off lease”) needed to support mining operations. Most of Panels F and G, and the access road to Panel G, are located within the Sage Creek Inventoried Roadless Area. The southern portion of Panel G and about one-mile of the West Haul/Access Road is located within the Meade Peak Inventoried Roadless Area. Another 1.5 miles of haul road crosses the Sage Creek inventoried Roadless Area west of Panel F (**Figure 3**).

Simplot proposes a mine operation that would begin on the north end of Panel F in 2008. Mining would commence southward in Panel F, and within a few years construction of a new haul/access road to Panel G would begin. Simplot predicted that the proposed mining and reclamation activities would be complete in a period of about 16 years. Reclamation and mitigation monitoring would follow for an undetermined period of time to ensure that mitigation and reclamation would meet the various land management and regulatory agency requirements. Simplot’s proposed mining and related activities are described in detail in Section 2.4 of the FEIS.

Plans provided to the BLM and Forest Service show that operations would begin with the construction of a 2.6-mile long haul/access road crossing the South Fork of Sage Creek connecting Panel E to Panel F. Open pit mining operations would commence where the haul road enters the Panel F footprint in the north lease modification. Mining would generally proceed from north to south within the lease boundary.

Logging and removal of forested vegetation would be followed by topsoil salvage and stockpiling. Next, Simplot would remove overburden (mostly Dinwoody Shale) from the north end of Panel F. Dinwoody and middle waste shale overburden would be hauled north across the South Fork of Sage Creek crossing to backfill 29 acres of open pit remaining in Panel E (**Figure 2**). Salvageable soil would either be used for reclamation on Panel E or stored in a stockpile shown in Figure 3. Waste rock that could not be backfilled would be scheduled for placement in a 38-acre external overburden fill and as backfill in the Panel F open pit, all within the lease boundary.

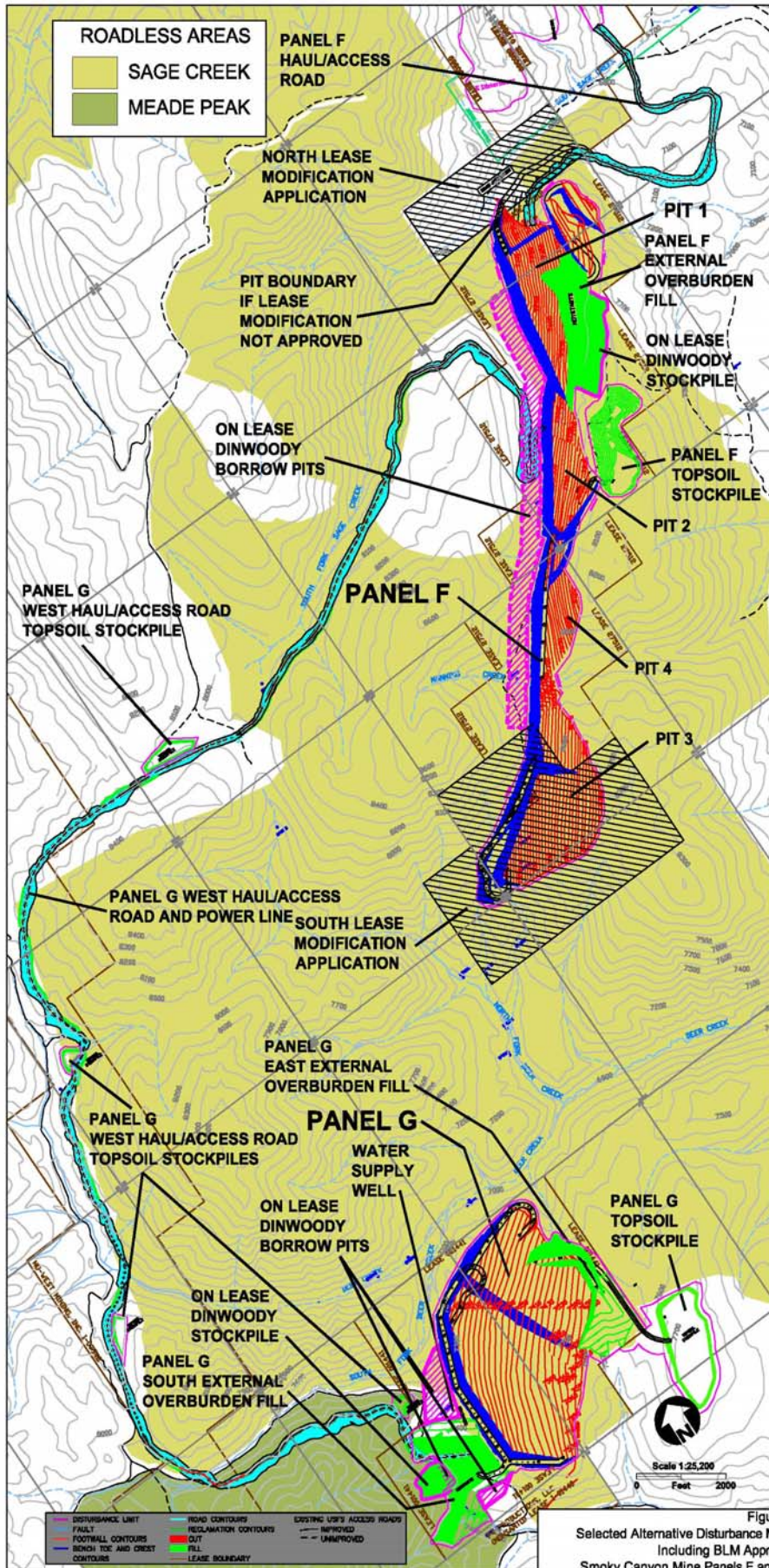


Figure 3
 Selected Alternative Disturbance Map
 Including BLM Approval
 Smoky Canyon Mine Panels F and G

One hundred and thirty-eight acres of the southern-most part of Panel F are located within a 400 acre lease modification proposed to be added to Lease I-27512. Disturbance from the Panel F operations totals 592 acres including: 435 acres of pits, 67 acres of roads, 38 acres of external overburden fills, and 52 acres of other disturbance including settling ponds and ditches, topsoil stockpiles, and a power line (FEIS, Table 2.4-5).

After several years of mining in Panel F, Simplot would build a 7.8-mile haul/access road and a power line to connect Panels F and Panel G. They would need to drill a 100 gallon per minute (gpm) water well to support operation and maintenance at Panel G including new support facilities. Topsoil salvage and stockpiling would begin followed by the initial overburden removal. Waste rock removed from the open pit at Panel G would be placed in a 74-acre overburden fill southwest of the pit (**Figure 3**: “On lease Dinwoody borrow pits”) and a 64-acre external overburden fill located east of the pit (**Figure 3**: East external overburden fill”). The rest of the overburden would be used as pit backfill in Panel G. Disturbance from the development of Panel G operations would total 748 acres including: 328 acres of pits, 217 acres of roads, 138 acres of external overburden fills, and 65 acres of other disturbance including settling ponds and ditches, topsoil stockpiles, and power line (FEIS, Table 2.4-5). In Simplot’s proposal, approximately 18 acres of the Panel G East External Overburden Fill would extend off lease. They also describe in their proposal waste rock placement outside the lease requiring a Forest Service authorization.

Surface disturbance from Simplot’s proposed operations would total approximately 1,340 acres. Table 2.4-2 in the FEIS shows that 196.72 acres of the Proposed Action, West Panel G Haul/Access road is located off lease. Another 25 acres of haul/access road disturbance would not be reclaimed; including some areas of cut and fill road construction in steep terrain that could not be completely returned to grade and stabilized (**Figure 4**). A portion of the Panel G West Haul/Access road would be left for continued use as a new Forest road to replace segments of the existing Wells Canyon Road (FR 146). Portions of the existing road lie directly in the bottom of the Wells Canyon drainage. As proposed, that road segment would be abandoned and reclaimed to remove the existing road from Aquatic Influence Zones.

Measures proposed to reduce environmental impacts of mine operations are described in detail in Section 2.5 of the FEIS. These generally include: topsoil salvage and conservation, implementation of Best Management Practices (BMPs) to reduce or prevent contaminant releases, sediment erosion from road construction, storm water pollution prevention measures for runoff and sedimentation control from mined lands (FEIS Appendix 2C: Environmental Commitments and BMPs for Haul/Access Roads). In the event of a contaminant spill Simplot is required to employ spill prevention control and countermeasures (SPCC) described in their plan that must be kept on site. While this commitment from Simplot, in their mine plan, is hard to quantify, they have committed, as a “Best Management Practice” to keep disturbance areas as small as practical and to concurrently reclaim disturbed areas to the extent practical. Reclamation would include grading backfill and disposed waste rock to the extent possible, replacement of topsoil and the establishment of native vegetation communities on road disturbance corridors and other off-lease disturbed areas. Monitoring and reporting the effectiveness of the reclamation would be provided to the BLM and USFS by the operator.

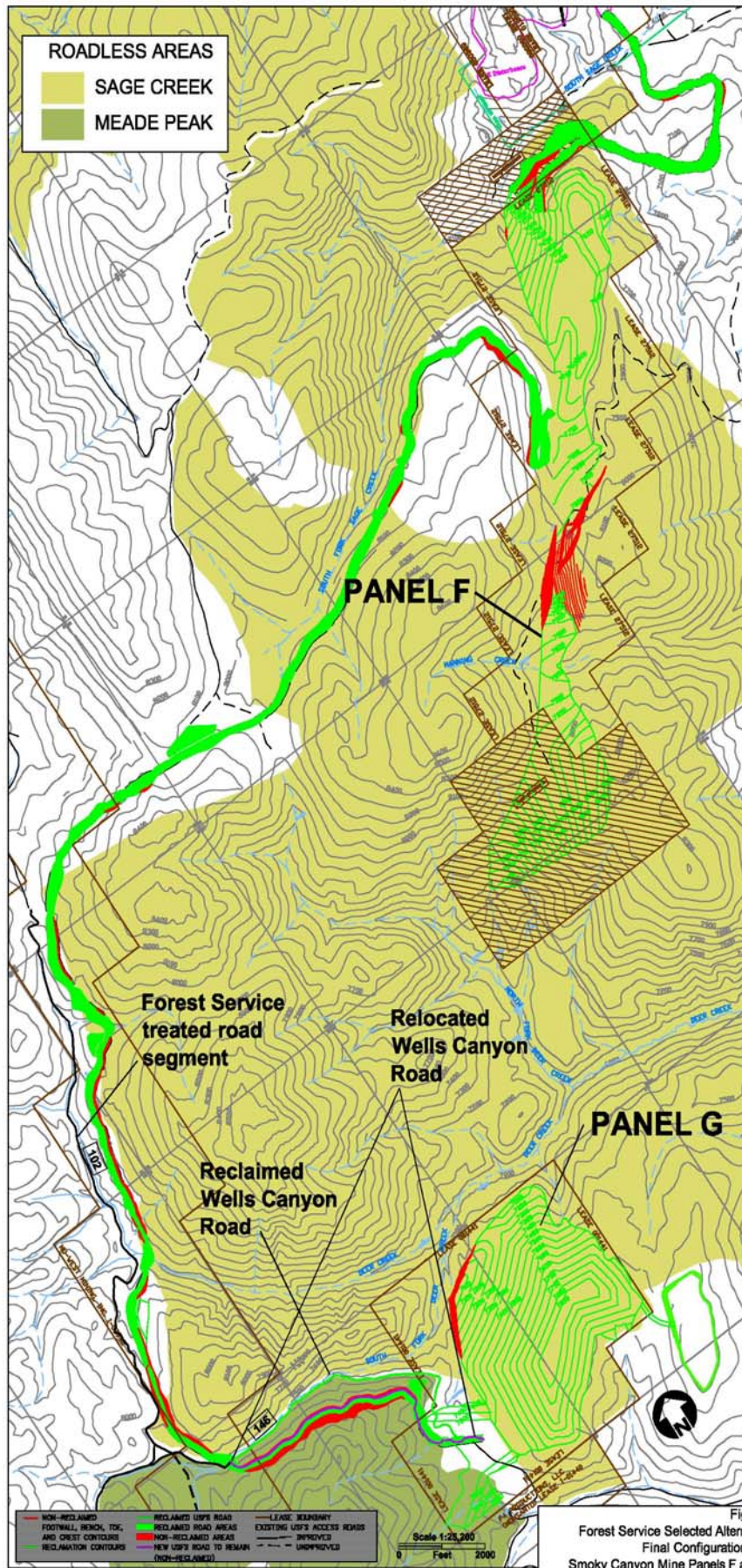


Figure 4
Forest Service Selected Alternative
Final Configuration Map
Smoky Canyon Mine Panels F and G

Part 2 DECISION

2.1 Introduction and decision authority

Authority to issue phosphate leases and approve mine and reclamation plans lies with the Department of the Interior under the Mineral Leasing Act of 1920. The Secretary of Interior does not have authority to authorize the use of National Forest System lands outside of the lease boundaries (“off lease”) for activities related to phosphate mining. Therefore, off-lease activities necessary to conduct phosphate mining operations are authorized by the responsible Forest Service official; in this case, the Caribou-Targhee National Forest Supervisor.

Prior to the commencement of operations on a phosphate lease, the Forest Service and Bureau of Land Management must analyze the potential effects of the activities they will authorize in accordance with the National Environmental Policy Act. In this case, the proposed Mining and Reclamation Plan (M&RP) and associated off-lease activities in the Smoky Canyon Mine, Panels F & G were analyzed in an Environmental Impact Statement (October, 2007). Mining and transportation alternatives were jointly developed by the Forest Service and BLM to address issues related to the mining and reclamation plan proposed by J.R. Simplot Company, and the request for authorization to use NFS land.

Special Use Permit applications received by the Forest Service must be screened using the regulations published in the Code of Federal Regulations at 36 CFR 251.54. (e)(1)(i-ix) Applications for uses of the National Forest that do not meet the requirements described there must be rejected. Projects accepted for consideration on public lands must undergo an environmental analysis of their effects in accordance with the National Environmental Policy Act. Because activities both on and off lease are related, the agencies jointly prepared an Environmental Impact Statement (October, 2007). After prescreening, the Caribou-Targhee National Forest accepted J.R. Simplot Co.’s application for authorization to construct two Haul/Access Roads, build some topsoil stockpiles, and install a power supply line on the National Forest.

Because of separate agency authorities, each lead agency has prepared a Record of Decision. The decision of each agency was developed in close coordination for neither decision can be implemented independently. BLM’s decision cannot be implemented without a decision by the Forest Service to authorize access to each lease. Similarly, the Forest Service decision would not be necessary if the lessee had not proposed development of the Department of Interior’s mineral leases. Forest Service and BLM decisions are connected actions as defined in the Council on Environmental Quality regulations 1508.25(a)(1)(ii).

I am the Forest Service official responsible for the decision whether to issue Special Use Authorization to permit mining-related activities outside of lease boundaries on National Forest System lands under regulations codified at 36 CFR 251.54 et seq. As the responsible official for the Caribou-Targhee National Forest, I am signing the Record of Decision to issue Special Use Authorization to J.R. Simplot to permit the following off-lease activities:

- Construction of the Panel F Haul/Access Road;
- Construction of the West Haul/Access Road to Panel G;
- Power transmission lines within the Haul/Access road corridors;
- Several temporary topsoil stockpiles;
- Reclamation requirements for disturbed areas off lease.

2.1.1 Decision authority in NFS Inventoried Roadless Areas

Parts of my decision will authorize uses of NFS land in Inventoried Roadless Areas. I, as the Forest Supervisor, am the Responsible Official for making the determination of whether or not road construction, road reconstruction, and timber cutting associated with mining Panels F and G, and located in the Sage Creek and Meade Peak Inventoried Roadless Areas, may be authorized under exceptions to the prohibitions in the 2001 Roadless Rule under Subpart B (36 CFR 294.12(b) & 13(b)).

Federal Phosphate Leases I-27512 (Panel F) and I-01441 (Panel G) were issued prior to adoption of the 2001 Roadless Area Conservation Rule (RACR). The determination of whether exceptions to the prohibitions in the RACR apply must consider that these leases pre-date the adoption of the RACR.

Table 1: Summary of Activities in Inventoried Roadless Areas

Activity	Sage Creek IRA	Meade Peak IRA	Responsible Official (Total Acres by Activity)
Mining Panel F	355 acres	0 acres	BLM
Mining Panel F Modifications	160 acres	0 acres	BLM
Mining Panel G	380 acres	25 acres	BLM
Panel F access/haul road	24 acres	0 acres	19 acres – off lease (USFS) 5 acres – on lease (BLM)
Panel G access/haul road	66 acres	34 acres	96 acres –USFS 4 acres - BLM
Total	985 acres	59 acres	

2.1.2 BLM consultation with the Forest Service

BLM is delegated authority by the Secretary of Interior to administer phosphate leases under the Mineral Leasing Act of 1920. Acting under the authority of the Secretary of the Interior, the BLM is authorized to issue leases and to approve and administer on-lease operations for exploration, development, production, and transportation of phosphate on National Forest System lands. When administering phosphate development on National Forest System lands, the BLM and the Forest Service act as joint lead agencies in preparing the environmental analysis under NEPA to assess the potential effects of authorizing both on-lease and off-lease phosphate mining operation proposals under an Interagency Agreement signed in 1987. Under that agreement and regulations at 43 CFR 3520.2, the Forest Service, as the surface management agency, is consulted by the BLM regarding the protection of National Forest resource values and the continued post mine multiple use of lands mined for phosphate on-lease. However, the BLM is

solely responsible for authorizing on-lease operations, and the Forest Service separately responsible to authorize off-lease operations.

I have provided recommendations and advice to the BLM during BLM's evaluation of the M&RP for on-lease operation for the protection, reclamation and restoration of NFS lands directly and indirectly affected by the development of mine Panels F and G. My recommendations were based on the Forest Service mission to manage NFS lands for multiple use, and the sustained yield of product and services. The Caribou National Forest's Revised Forest Plan (2003), and other appropriate laws and regulations require that mining does not unnecessarily interfere with other land uses and preserves long-term post mine use of NFS lands affected by phosphate mining.

As a component of the BLM's decision, the BLM will also decide whether or not to issue modifications to the leases associated with mine Panels F and G. By approving the M&RP, BLM will authorize on-lease mine operations for the recovery of phosphate ore, and require mitigation necessary to protect leased lands from undue and unnecessary degradation from mining activities. In making its decision, the BLM accepted and incorporated recommendations from the Forest Service.

2.2 The Forest Service Decision

I have decided to authorize the following activities related to the mining of Smoky Canyon Mine Panels F and G on National Forest System lands outside of the areas under lease through the issuance of a Special Use Authorization (**Figure 3**).

2.2.1 Proposed Action, Panel F Haul/Access Road

Construction of this 2.6 mile road will provide access from the existing mine and mill to the Panel F lease. The alignment provides the only available access to Panel F at an elevation appropriate to fully develop the mineral resources in Panel F. This alternative provides for the recovery of an additional 6% of the ore inaccessible under the other transportation alternatives considered in the FEIS. The road will cross a portion of the Sage Creek Inventoried Roadless Area and will be obliterated upon completion of mining and reclamation activities.

2.2.2 Proposed Action, Panel G West Haul/Access Road

Construction of this 7.8 mile road will provide access from Panel F to G. Selection of this alternative departs from the identification of Alternative 2, the East Haul/Access Road, as the Preferred Alternative in the DEIS. The East Haul/Access Road alignment is the environmentally preferred alternative, but crosses private land. In order for the Forest Service to select this alternative, legal access across private land must be secured by Simplot. Selection of this alternative is not possible since Simplot has not obtained an easement across the private land. However, access to Panel G will not be required for several years. Prior to initial construction of the West haul road, if Simplot and the private landholder come to a mutually acceptable agreement for an easement, the East Haul/Access Road will replace the Panel G West Haul/Access Road.

2.2.3 Obliteration of the Panel G West Haul/Access Road

The Panel G West Haul/Access Road includes installation of two culverts (280-foot and 260-foot long) with large amounts of fill where the road crosses Deer Creek and the South Fork Deer Creek. Initially, the Forest Service proposed that these culverts and fills were to be retained. However, due to long-term concerns about sediment and fish passage in Deer Creek, I have decided to require the removal of both culverts and large fills at the completion of mining and reclamation. Additionally, Simplot will be responsible for the restoration of the riparian areas associated with the Haul/Access Road on Deer Creek and South Fork Deer Creek. J.R. Simplot Co. will be responsible for replacing a culvert currently identified as impassable to fish. The Forest Service will gravel and harden some sections of the Diamond Creek Road (FR 102) to reduce sedimentation as described on page 19 of the Biologic Evaluation for the Yellowstone Cutthroat Trout.

Post mine operation, Simplot will be responsible to obliterate and realign a one-mile section of the Wells Canyon Road (FR 146) that is causing irreparable resource damage in an intermittent reach of the South Fork of Deer Creek. Forest traffic on this road will be relocated to a parallel section of the West Haul/Access Road. Both roads will remain during mine operation to separate public traffic from mine vehicles. Once mining and reclamation has been completed in Panel G, the haul/access road segment in Wells Canyon will be partially reclaimed to retain a 20-foot tread width. While this section of road lies within the Meade Peak Inventoried Roadless area, relocation is not prohibited because I have determined it meets the criteria presented in section 294.12 (b)(4) of the rule that states:

(4) Road realignment is needed to prevent irreparable resource damage that arises from the design, location, use, or deterioration of a classified road and that cannot be mitigated by road maintenance. Road realignment may occur under this paragraph only if the road is deemed essential for public or private access, natural resource management, or public health and safety;

Forest Road 146 lies along the bottom of the Wells Canyon drainage up gradient from the proposed Panel G facilities. Forest Road 146 is currently maintained at forest maintenance level 3 or passable by passenger cars. As it exists, this dirt road traverses rock outcrops adjacent to the riparian strip along an intermittent stream. If allowed, mine traffic through this drainage would generate sediment, damage the road surface, and contribute unnecessary sediment to the upper Deer Creek watershed. Relocation of the road up slope along the Haul/Access road will alleviate all of these issues. Permanent relocation on the Haul/Access road alignment moves the road well away from the stream corridor and will reduce long-term sediment as native plants invade the roadway in the absence of maintenance. **Section 4.15.1.1 Panel G, including the Panel G West Haul/Access Road (Component Agency Preferred Alternative)** provides a description of the proposed action. No suitable alternative road location was available outside IRA.

The remaining 6.8 miles of road bed, fills and road cuts along the West Haul/Access road alignment will be obliterated and contoured when mine and reclamation operations are concluded (**Figure 4**). However, safety concerns associated with working earthmoving equipment on steep slopes will prevent total backfill of the tallest road cuts. This will occur on sections where the original ground slopes exceed 50% and road construction required full bench construction. In these sections, the road will have been

constructed without any fills or sidecasting of excess excavation. All excavation will have been hauled away to be used as fill elsewhere or stored for future reclamation. In these sections, road cuts will be contoured with fill slopes steeper than the standard mining reclamation practice of 3h:1v (33%) to a standard of 2h:1v (50%) slope to reduce cut unreclaimed exposures and to render the template impassable to overland vehicles. The 2h:1v fill slopes should be stable provided the fills are constructed correctly using compacted layers and where the remnant road base will buttress the fill to prevent slumping. Simplot will immediately plant and stabilize all reclaimed slopes once grade is established and take measures to reduce erosion from reclaimed road cuts.

All stream crossings and their affiliated culverts will be removed and the stream channel restored to approximate pre-road construction condition. I have determined that these actions constitute the obliteration of the West Haul/Access Road.

2.2.4 Mining Alternative E, Locate the power lines along the approved road corridors

A 25kV power line extending southward from the existing power transmission line in Panel E is necessary for operations in Panels F and G. While this alternative requires a longer line than the proposed action, installation along the haul/access road will disturb less land in the Deer Creek drainage. In selecting this alternative, there will be no need for a separate corridor between Panel F and Panel G. The proposed power line will be placed within the road disturbance corridor analyzed in the FEIS.

2.2.5 Approve topsoil stockpiles (off lease)

Soil resources were inventoried as part of the baseline data gathered in the early preparation phases of the EIS. Native soils are a critical component necessary to successfully reclaim mine disturbed sites. Soil is also a critical component of the mitigation cover required to address seleniferous waste. Soil salvaged from the mine footprint will be stored temporarily during mine operation. Temporary off-lease soil stockpiles comply with Forest Service regulations published at 36 CFR 251.54, and are not prohibited by the RACR. However, soil stockpiles associated with Panels F and G that lie outside lease boundaries in an IRA will be relocated outside the affected IRA or moved within the lease boundary to assure compliance with prohibitions on road construction in IRAs. The stockpiles can be relocated to avoid any potential conflict with the RACR prohibitions.

The locations of these off-lease stockpiles are shown in Figure 3. Table 2 summarizes the locations and sizes of the topsoil stockpiles I am approving off lease:

Table 2: Forest Service Authorized Off-Lease Topsoil Stockpiles

	Acres topsoil stockpile	Feet of access road
Panel G	70.17	3696
West Haul/Access Road	23.42	0.0

2.2.6 No off-lease waste rock disposal

Off-lease waste rock disposal was proposed by Simplot in the East External Overburden Fill for Panel G (**Figure 3**). Following the pre-screening requirements required in 36 CFR 254.54(e) (ix) the Forest Service determined it cannot authorize the permanent disposal of waste rock off lease.

All waste rock scheduled in the proposed action for external overburden fill will remain within the Panel G lease boundaries. Minor modifications to the mine plan will be coordinated through the BLM.

2.2.7 Removal of timber

Simplot will purchase and harvest all merchantable timber from proposed disturbance areas (on and off lease) as directed by the USFS. Simplot will purchase the cruised timber at the market value appraised at the time of harvest. Non-commercial timber, brush, and slash will be stockpiled for use as run-off and sediment control brush barriers along the downhill margins of disturbed areas. Simplot will incorporate small stem diameter brush and slash in the topsoil during salvage operations. The removal of timber in IRAs falls under an exception to the prohibition on timber harvesting in the RACR since timber removal is incident to other management activities that are also exempt from the RACR prohibitions.

Part 3 PRINCIPAL REASONS FOR THE DECISION

My decision is based on review of the record, which shows a thorough examination of relevant scientific information, consideration of responsible opposing views, and the acknowledgment of incomplete or unavailable information, scientific uncertainty, and risk. Specific application of the Best Available Science is included in the discussion below.

I have taken into consideration the degree to which the proposed mitigation measures reasonably reduce potential impacts to the environment, and the predicted effects of the Selected Transportation Alternatives on groundwater and surface water quality in the area in light of State and Federal requirements. All practicable means to avoid or reduce environmental harm, while providing sufficient access to allow mining operations to proceed within the lease areas under the M&RP to be approved by the Department of the Interior, have been adopted. I have ensured that an evaluation of the environmental impacts in this EIS was accomplished through coordination with other ongoing and planned studies by State and Federal agencies in cooperation with the J.R. Simplot Company.

The requirements of the Caribou National Forest Revised Forest Plan (2003) were considered as I formulated my decision, and my decision is consistent with the Forest Plan, which recognizes phosphate mining as an appropriate use of National Forest System land in this portion of the Caribou National Forest.

Almost all of the Project Area is within the 8.2.1 management prescription. This management prescription area is shown on Map 11 of the Caribou Forest Plan (USFS 2003). It is basically a ½-mile buffer around Known Phosphate Lease Areas (KPLAs) and inactive leases that existed at the time the Forest Plan was prepared, and it was intended to include phosphate mining operations and ancillary facilities needed for development of mines within the 8.2.1 management prescription area. This same area is also covered by other management prescriptions shown on Map 8 of the Forest Plan. Those are the prescriptions that guide Forest management until a site-specific phosphate mine development plan is submitted to the Forest Service. Once site-specific analysis has been completed and a decision is made on the specific mine and reclamation plan, these lands will be managed according to management prescription 8.2.2.

This section presents the principal reasons supporting the Forest Service decision to authorize haul and access road construction, the installation of a power transmission line, and to deny authorization for off-lease soil stock piles. Rationale for approval of the M& RP and lease modifications for the Smoky Canyon Panels F and G Mine is found in the ROD prepared by the Department of the Interior.

3.1 Principal reason 1 –Protection of water quality

The selected alternative reduces the potential for impacts to water quality and provides sufficient access to conduct mining operations on the leased areas under the M&RP to be approved by the Department of the Interior.

The most significant potential impact associated with road construction is the production of sediment and the effect that can have on aquatic habitats. Data gathered as the baseline was used to model the effects of the components of the proposed action and alternatives to predict the effects of each alternative. Yellowstone Cutthroat trout and their habitat reoccur throughout scoping and interdisciplinary review as an issue with the construction of roads and support facilities. Erosion modeling (Water Erosion Prediction Project, USDA 2000) was utilized to estimate sediment increases from construction activities. Monitoring requirements will provide the data necessary to determine the effect of the selected alternatives and mitigation on down stream habitats and populations in comparison to pre-mining conditions. Section 4.3.1 of the FEIS (Groundwater- Direct and Indirect Impacts) provides a list of current references used in the analysis of effects.

This West Haul/Access Road is predicted to have greater short-term impact on the Deer Creek watershed than the East Haul/Access Road described in Alternative 2, which was considered the environmentally preferred transportation alternative. Compared to the East Haul/Access road, the West Haul/Access Road would have the second fewest acres of disturbance in IRAs of any transportation alternative. It would disturb the least amount of intermittent channels, have the fewest culverts in intermittent channels, a lower slope stability hazard compared to the east alignments, disturb the fewest acres of Sage Brush habitat, and disturb the second fewest acres of Aspen habitat. Additionally, the West Haul/Access Road would have no direct effect on private property and no anticipated noise or visual impacts on the property owners in the Crow Creek Valley. This transportation alternative was selected because it allows sufficient access for mining operations, and minimizes potential adverse effects of using the access routes currently available to the operator.

Powerline construction across National Forest System land is necessary to provide the electrical power necessary for mining operations. Relocation of the power transmission line to the haul/access road corridors was selected to reduce surface disturbance by eliminating the need for a separate disturbed corridor to construct and maintain the power line. There will be fewer disturbed acres in the Deer Creek watershed. Because there are fewer disturbed acres associated with the power line, fewer impacts to soil, vegetation, wildlife, fisheries, livestock grazing, and visual resources result.

Most constructed mine roads will be obliterated and restored upon completion of mine and reclamation activities and closed to prohibit motorized vehicle traffic. Some roads may be retained to access wells for long-term monitoring. Monitoring roads will be gated and locked to prevent unauthorized access. Once monitoring requirements are met, all remaining roads will be obliterated, gates removed, and reclamation completed. Furthermore, reclamation standards applied to the haul/access roads were strengthened between the DEIS and final to provide for more acres of reclaimed road. The only exception is the relocation of the Wells Canyon road out of the creek bottom to the mid-slope haul road location described above in Section 2.2.3.

This decision also reflects a change from the DEIS where 2 culverts and large fills on the West Haul/Access Road were to be retained on Deer Creek. To reduce long-term risk to fish habitat and water quality, these large fills and culverts will be removed and the riparian habitat and stream channel restored by Simplot.

Stream channel crossings by roads present one of the greatest risks to surface water and aquatic resources (Flanigan et al. 1998). BMPs specified in Appendix 2C of the FEIS will reduce certain types of impacts to surface water and reduce the likelihood that culverts would plug, overtop, and result in road fill failure. Several indices were used to compare the sediment production from the various Transportation Alternatives. Each alternative was evaluated for: the number of stream channel crossings, proximity to a stream channel, ground surface slope, the amount of road proposed within Aquatic Influence Zones (AIZ) or the equivalent on non-C-TNF lands, road proximity to streams, and percent of total road length located on slopes of varying degrees of steepness.

The haul or access roads associated with mining activity have some potential to affect surface water quality and streambed substrate including the mobilization of selenium and other COPCs. Where roads are built over the seleniferous Meade Peak Shale of the Phosphoria formation, seleniferous shale becomes exposed in the cut slopes. This provides a potential mechanism for runoff waters to mobilize selenium and perhaps other COPCs through oxidation and dissolution. Dissolved pollutants could find their way into area streams. Sediments eroded from cut slopes that make their way to stream channels could contribute to streambed COPC levels. Impacts from road construction across the Meade Peak shale are considered to be minor, site-specific, and short-term, because full, end-bench haul construction methods will be implemented to ensure that all of this material would be removed from the road and handled in the same manner as other seleniferous geologic material. Road construction BMPs described in Appendix 2c (page 5) of the FEIS are incorporated in the decision. This specific BMP prohibits the use of "...center waste shale, or other highly seleniferous materials ... for road construction fill material." Once reclamation has been successfully completed, the potential for selenium contribution from obliterated roads becomes negligible. No outcrops of the Meade Peak member appear in Wells Canyon. Outcrops are currently exposed where the Diamond Creek road (FR 102) parallels the upper South Fork Deer Creek will remain.

Hydrological Disturbance: Roads contribute to the amount of land that will become hydrologically disturbed. The Caribou Forest Plan states that not more than 30 percent of a watershed or subwatershed should be in a hydrologically disturbed condition (defined as vegetation removal or changes in surface soil characteristics that may alter natural streamflow quantities and character) at any one time. The selected action for transportation and mining will not exceed these standards and guidelines as outlined in the Plan.

Best Available Science: All stream channel culvert-crossings will be designed, constructed, and maintained, in accordance with criteria discussed in Appendix 2C Environmental Commitments and BMPs for Haul/Access Roads of the FEIS, to reduce sedimentation and stability impacts and minimize the chance of culvert failure. Culvert designs installed at stream crossings will utilize fish passage elements and be completely removed and the stream channel restored at the completion of mine operations. The USFS, through its San Dimas Technology and Development Center, developed an extensive series of publications on Water/Road Interactions (USFS 2004c) that describe the types of impacts Forest roads can have on water quantity and quality and the ways in which those impacts can be minimized. Simplot will incorporate this information into its road design through a series of BMPs and design considerations, included in Appendix 2C of the FEIS. Special Use Authorizations for road construction

will include environmental protection measures and/or BMPs for road construction as specified in the FEIS. These are based upon best available science that comprises sound, tested techniques from established sources, including, but not limited to, U.S. Forest Service Road-Water Interaction publications (Furniss, 1997; Copstead, 1998; Flanagan, 1998; Johansen, 1997; Moll, 1999); the recent draft Selenium Management Practices publication (Agrim et al, 2004); Idaho Department of Lands (1992); Idaho Forest Practices Commission (2004); and the Caribou National Forest Plan (USFS 2003).

Sediment: The North and South Forks of Deer Creek and the main stem of Deer Creek upstream of its confluence with the South Fork are part of Assessment Units listed as impaired water bodies for sediment on the most recent EPA approved 303(d) list, based on IDEQ's 2002 303(d) recommendation. Various Transportation Alternatives in the Proposed Action predict increased sediment loading to these streams as a result of road construction, maintenance, and reclamation. IDEQ's recent Draft 2008 Integrated Report indicates that water quality and biological data are impaired by siltation and sedimentation in these assessment units. (2004 data have been combined with later data in the combined 2008 draft report.). These two streams support the beneficial use of "cold water aquatic life." IDEQ's Antidegradation Policy (IDAPA 58.01.02.051.01) requires the application of best management practices such that in-stream water uses and level of water quality necessary to protect the existing uses shall be maintained and protected. IDEQ's assessment of the Transportation Alternatives and subsequent water quality impacts analysis as presented in the Final EIS meets the intent of the Antidegradation Policy (Lynn Van Every, IDEQ, personal communication, September 5, 2006). In addition, IDEQ through a Consent Decree signed January 22, 2008, has required Simplot to implement a water quality monitoring plan to evaluate the effectiveness of BMPs implemented as part of an approved mine plan, such that in-stream water uses and level of water quality necessary to protect the existing uses shall be maintained and protected, in accordance with IDEQ's Antidegradation Policy (IDAPA 58.01.02.051.01).

3.2 Principal Reason 2 – Effect on Inventoried Roadless Areas

J.R. Simplot Co. holds leases in the Sage Creek and Meade Peak inventoried Roadless Areas where mining operations are proposed. The 2001 Roadless Area Conservation Rule provides exceptions to the prohibitions on road construction and reconstruction in IRAs, where the construction of a road in an inventoried roadless area is required to access mineral leases. My decision reduces the potential for adverse effects to Inventoried Roadless Areas while allowing sufficient access for mining operations to occur within the lease areas under the M&RP to be approved by the Department of the Interior, and is consistent with the Roadless Area Conservation Rule.

3.2.1 Overview of my authority

I carefully considered the effects of the preferred alternative on the Sage Creek and Meade Peak Inventoried Roadless Areas (IRA), including effects to Roadless Characteristics and Wilderness Attributes. As the Responsible Official, I also determined that my decision is consistent with the 2001 Roadless Area Conservation Rule. I also considered the implications of the Draft Idaho Roadless Rule on my

Decision. The haul/access road construction will disturb approximately 90 acres in the Sage Creek IRA and approximately 34 acres in the Meade Peak IRA.

The leases for Panel F and G were issued prior to promulgation of the 2001 Roadless Area Conservation Rule on January 12, 2001. Roads constructed as a result of this decision are necessary to access these leases. Section 294.12(b) of the rule allows the Responsible Official to determine if circumstances exist that allow road construction in a roadless area. As the responsible official in this case, I determined the roads are needed to access outstanding rights in the existing mineral leases, and in conjunction with the continuation, extension, or renewal of existing leases. Further, I determined on FR 146 (Wells Canyon Road) the road will be relocated and not obliterated because "Road realignment is needed to prevent irreparable resource damage that arises from the design, location, use, or deterioration of a classified road and that cannot be mitigated by road maintenance." Furthermore, the "Road realignment [is]...essential for public or private access, natural resource management, or public health and safety." All roads to be constructed or reconstructed in IRAs will be obliterated, with the exception of the realignment of some road sections. The portions of roads to be realigned will correct resource damage that is occurring in the present road location which cannot be mitigated by maintenance in the current location.

3.2.2 Roadless Characteristics and Wilderness Attributes

Reclamation of the Haul/Access roads will be conducted to obliterate the road prism on all but 21.6 acres of both roads in inventoried roadless areas. Consequently, effects to the roadless and wilderness attributes could change from current ratings. Impacts to the Apparent Naturalness and Solitude/Remoteness attributes of wilderness will be apparent for the life of the Project, primarily from the on-lease mining operations (Page ES-18, FEIS).

The Smoky Canyon Mine FEIS includes a detailed evaluation of the effects of this decision on the Sage Creek and Meade Peak IRAs (FEIS pages 3-179 – 3-185). Many of the roadless attributes are also resources that have been described in the FEIS in separate sections including air, water, soils, diversity of plant and animal communities (including wildlife and fish and threatened, endangered, sensitive, and rare species occurrence/habitat), recreation, visual and aesthetics, and traditional cultural properties and sacred sites.

The USFS re-inventoried all of the IRAs on the Caribou National Forest in 1996 in preparation for the Forest Plan Revision. The Revised Forest Plan assessed to what degree each IRA possesses the six characteristics of wilderness: natural integrity, apparent naturalness, opportunity for solitude, opportunity for primitive recreation, challenging experiences and special ecological, geological, or cultural features (USDA 2003, Appendix C).

The Sage Creek IRA rated low in all areas because of historical mining activities and other past disturbance. No special features were identified. Existing motorized trail use, several large timber sales, proposed and expected phosphate lease development, phosphate leases, Simplot's phosphate slurry line, communication lines and lack of public interest in recommending the area for wilderness were considered. The area was not recommended for wilderness designation. The selected alternative will affect 8 percent of the 12,710-acre Sage Creek IRA.

The Meade Peak IRA rated moderate in all areas. Fish and wildlife habitat and a Research Natural Area were identified as special feature, however motorized trail use, private in holdings phosphate lease potential, and phosphate leases created poor conditions in terms of manageability. Public interest in recommending the IRA as wilderness was low. The area was not recommended for wilderness designation in the Revised Caribou National Forest Plan. The selected alternative will affect 0.1 percent of the 44,585-acre Meade Peak IRA.

3.2.3 Consistency with the 2001 Roadless Rule (36 CFR 294)

The Forest Service 2001 Roadless Area Conservation Rule (RACR) (36 CFR Part 294) currently applies to Forest Service actions in Inventoried Roadless Areas (IRAs). The RACR prohibits a Forest Service responsible official from authorizing road construction and reconstruction or the cutting, sale, or removal of timber in IRAs except when the responsible official determines certain exceptions apply. The prohibitions on road construction and reconstruction or timber harvesting under the rule do not apply when one of the following circumstances exists:

- (1) A road is needed to protect public health and safety in cases of an imminent threat of flood, fire, or other catastrophic event that, without intervention, would cause the loss of life or property;
- (2) A road is needed to conduct a response action under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or to conduct a natural resource restoration action under CERCLA, Section 311 of the Clean Water Act, or the Oil Pollution Act;
- (3) A road is needed pursuant to reserved or outstanding rights, or as provided for by statute or treaty;
- (4) Road realignment is needed to prevent irreparable resource damage that arises from the design, location, use or deterioration of a classified road and that cannot be mitigated by road maintenance. Road realignment may occur under this paragraph only if the road is deemed essential for public or private access, natural resource management, or public health and safety;
- (5) Road reconstruction is needed to implement a road safety improvement project on a classified road determined to be hazardous on the basis of accident experience or accident potential on that road;
- (6) The Secretary of Agriculture determines that a Federal Aid Highway project, authorized pursuant to Title 23 of the United States Code, is in the public interest or is consistent with the purposes for which the land was reserved or acquired and no other reasonable and prudent alternative exists; or
- (7) A road is needed in conjunction with the continuation, extension, or renewal of a mineral lease on lands that are under lease by the Secretary of the Interior as of January 12, 2001 or for a new lease issued immediately upon expiration of an existing lease. Such road construction or reconstruction must be conducted in a manner that minimizes effects on surface resources, prevents unnecessary or unreasonable surface

disturbance, and complies with all applicable lease requirements, land and resource management plan direction, regulations, and laws. Roads constructed or reconstructed pursuant to this paragraph must be obliterated when no longer needed for the purposes of the lease or upon termination or expiration of the lease, whichever is sooner.

Roads may be constructed both inside and outside the lease boundaries within IRAs for access to operations on the Panel F and G leases, which were issued before the Forest Service adopted the 2001 RACR, providing the roads are constructed in a manner that minimizes effects on surface resources, prevents unnecessary or unreasonable disturbance, and complies with applicable lease requirements, land and resource management plans, regulations, and laws. Any roads constructed under this exception to the RACR must be obliterated when no longer needed for purposes of the lease or upon termination or expiration of the lease, whichever occurs first, except for qualifying realignments of existing roads. Once roads are constructed in IRAs under the above exception, there is nothing in the RACR that prohibits use of these roads for access to any mining operations, as long as the roads are needed for ongoing operations on the Panel F and G leases.

The 2001 RACR provides exemptions for road construction for the continuation, renewal, or extension of phosphate leases issued prior to promulgation of the RACR on January 12, 2001. While Simplot has applied for lease modifications for Panel F in the Sage Creek IRA after the implementation of the 2001 RACR, all road construction or reconstruction authorized in IRAs pursuant to this decision will be for the purpose of accessing the leases that pre-dated the RACR. The BLM will be approving a lease modification and an M&RP for operations on the north lease modification, which will utilize roads, constructed outside Federal Phosphate lease I-27512 and within the modification area for access to Panel F. BLM's lease modification and M&RP for operations in the south lease modification is conditioned such that no mining activities, road construction, and/or surface disturbing activities will be allowed pending a proposal to commence operations on-lease in the south lease modification. An evaluation of authorities pertaining to surface uses in IRAs will be made at the time commencement of operations is proposed. Since no additional off-lease road construction is required for access to the south lease modification, the Forest Service decision is not affected by the BLM decision to condition approval of the M&RP for the south lease modification.

Timber removal is not prohibited in IRAs if it is incidental to a management activity not otherwise prohibited by the RACR under 36 CFR 294.13(b)(2). Thus, where timber needs to be removed to conduct mining operations, removal of that timber is not prohibited by the RACR: "Timber may not be cut, sold, or removed in inventoried roadless areas of the National Forest System, except as provided in paragraph (b) of this section... (2) The cutting, sale, or removal of timber is incidental to the implementation of a management activity not otherwise prohibited by this subpart."

3.2.3.1. Panel F Haul/Access Road

The Panel F Haul/Access Road described in the Decision will provide access from the existing mine and mill to the Panel F lease. The road will cross a portion of the Sage Creek IRA that is off lease in providing access to the existing Panel F lease. Construction of this road provides the only available access to the existing mineral lease at an elevation appropriate to fully develop the mineral resources of the existing lease.

An alternative road alignment (Transportation Alternative 1) similar to Alternative 2 lies east of the existing lease I-27512 in the Sage Creek IRA, but does not provide for full ore recovery. If Alternative 1 were selected, approximately 6 percent of the ore in Panel F could not be recovered. I have determined that construction of this road is exempt from the road-building prohibitions of the 2001 Roadless Area Conservation Rule [36 CFR 294.12(b)(7)]. This road is necessary to provide access to a phosphate lease issued prior to the effective date of the rule. Construction will be conducted in a manner that minimizes effects on surface resources and prevents unnecessary or unreasonable surface disturbance (USFS 2007). The haul/access road will be fully obliterated when no longer needed for mining and reclamation activities, or expiration of the lease, whichever is sooner.

3.2.3.2 Panel G West Haul/Access Road

The selected Transportation Alternative to access Panel G is the Proposed Action, Panel G West Haul/Access Road. This is changed from the DEIS where the Agencies identified Alternative 2, the East Haul/Access Road, as the Preferred Alternative. The route proposed in Alternative 2 crosses private land. Simplot has not obtained an easement across the private land. Thus, construction of the East Haul/Access Road is not possible at this time.

The West Haul/Access Road is predicted to have a greater short-term impact on the Deer Creek watershed than Alternative 2. However, the West Haul/Access Road has no direct effect on private property and no anticipated noise or visual impacts on the property owners in the Crow Creek Valley. Compared to the East Haul/Access road, my selection has the second fewest acres of disturbance in IRAs of any transportation alternative. The West Haul/Access road will disturb the fewest intermittent channels, has the fewest culverts in intermittent channels, a lower slope stability hazard compared to the east alignments, will disturb the fewest acres of Sage Brush habitat, and will disturb the second fewest acres of Aspen habitat.

I have determined that construction of the West Haul/Access Road is exempt from the road-building prohibitions of the Roadless Area Conservation Rule under exemptions (3) and (3) and (7). This road provides access to the lease issued prior to the effective date of the rule and construction will be conducted in a manner that minimizes effects on surface resources and prevents unnecessary or unreasonable surface disturbance [36 CFR 294.12(b) (7)] (USFS 2007).

3.2.3.3 Reclamation of the West Haul/Access Road

The haul/access road will be obliterated when no longer needed for mining and reclamation activities, except for a one mile section of the Panel G West Haul/Access Road that will be reclaimed differently than described in the DEIS. Relocation of this section of Forest Road 146 to the haul road prism provides downstream benefits to fisheries and water quality. This section of the upper Wells Canyon road lying in and adjacent to the riparian corridor continues to deteriorate and cannot be improved with maintenance. This Wells Canyon Road (FR 146) is a main transportation corridor deemed essential to public access from the Crow Creek Road (FR 111) to Georgetown Canyon and Diamond Creek to the west. The existing road lies in the bottom of the South Fork of Deer Creek drainage and cannot be adequately maintained to eliminate or prevent sediment production into creek.

Under the 2001 Roadless Area Conservation Rule, the segments of the West Haul Road located in the Sage Creek or Meade Peak IRAs must be obliterated when no longer needed for mining and reclamation of Panels F and G. Under exemption 294.12(b)(4), road realignment is allowed to prevent irreparable resource damage that arises from the design, location, use or deterioration of a classified road that cannot be mitigated by road maintenance. Road realignment may occur under this exemption only if the road is deemed essential for public or private access, natural resource management, or public health and safety.

Forest Service specialists and engineers analyzed several road segments that could be relocated to improve conditions along each of the streams affected by the construction of the West Haul/Access Road. One mile of road parallel to the Wells Canyon road (FR 146) along the upper reaches of the South Fork Deer creek provides an opportunity for road realignment. Simplot is responsible for the obliteration and restoration of the realigned portion of the Wells Canyon Road (FR 146).

3.2.3.4 Locate power lines along the approved road corridors

The location of the new power line from Panel F to Panel G in Simplot's Proposed Action was a direct route through a section of the Sage Creek IRA. Currently, this section of the IRA has no roads or motorized trails. Construction and maintenance of the new power line corridor would require new road construction.

Selection of Mining Alternative E will reduce additional impacts to the Sage Creek IRA by eliminating the need for a separate right-of-way disturbance to provide electric power to Panel F.

3.2.3.5 Topsoil Stockpiles (off lease)

Simplot designed two large topsoil stockpiles for Panels F and G to occupy topographically suitable locations where the topsoil could be temporarily stored in a stable condition and retrieved for reclamation purposes. Portions of the Panel F and G topsoil stockpiles and one associated haul road were proposed to be located off lease in the Sage Creek IRA. I have decided not to authorize the topsoil stockpiles and associated haul road off lease, which will require relocation to suitable locations within the lease boundaries to be authorized by the BLM through the M&RP. The Panel G stockpile will be located southwest along the same ridge as shown in the proposed action in the FEIS except outside of the IRA and have a similar footprint area to the proposed action. The Panel F stockpile will involve a larger footprint than originally proposed but will be contained within the lease boundary. The environmental impacts for these disturbances are similar to those described in the FEIS, except effects to the Sage Creek IRA related to the topsoil stockpiles will be within the lease. Site-specific cultural resource surveys and concurrence with the State Historic Preservation Office and Shoshone-Bannock Tribes will be completed before the stockpiles are constructed.

3.2.3.6 Removal of timber

Approximately 262 acres of forest vegetation will be cut and removed in conjunction with road construction and mining activities for Panel F and G. Most of these trees lie within the Sage Creek and Meade Peak IRAs. Removal of trees is allowed by this decision only to the extent necessary to provide sufficient access for mining operations.

Timber removal is not prohibited in IRAs if it is incidental to a management activity not otherwise prohibited by the RACR under 36 CFR 294.13(b)(2). Thus, where timber needs to be removed to conduct mining operations, removal of that timber is not prohibited by the RACR: “Timber may not be cut, sold, or removed in inventoried roadless areas of the National Forest System, except as provided in paragraph (b) of this section... (2) The cutting, sale, or removal of timber is incidental to the implementation of a management activity not otherwise prohibited by this subpart.”

3.2.4 Implications of the Draft Idaho Roadless Rule

I have also considered the potential for changes to inventoried roadless area management that may result from rule making or legal action. For example, The Forest Service is initiating a public rulemaking process to address the management of roadless areas on National Forest System (NFS) lands within the State of Idaho. This rulemaking is the result of a petition submitted by Governor James Risch on behalf of the State of Idaho pursuant to section 553(e) of the Administrative Procedures Act and Department of Agriculture regulations at 7 CFR1.28.

The petition has been reviewed and recommended by the Department’s Roadless Area Conservation National Advisory Committee, and accepted by the Secretary. The Forest Service has prepared a draft environmental impact statement to analyze and disclose the potential environmental consequences of the rulemaking proposed in the Petition. The proposed rule would govern road construction, timber harvest and mineral activities for the 9.3 million acres of NFS Inventoried Roadless Areas in Idaho.

The Notice of Availability for the Draft Environmental Impact Statement was published in the Federal Register on December 21, 2007. The proposed rule published on January 7, 2008. Public meetings were held in Idaho Falls and Pocatello on February 21 and 22, 2008. The Final Environmental Impact Statement is expected in August or September, 2008.

One potential outcome of this rule-making process is implementation of a rule that adopts Alternative 3 of the Idaho Roadless Rule (Proposed Action). As proposed in the Draft, management of the Sage Creek and Meade Peak IRA in the vicinity of Panels F and G of the Smoky Canyon mine would be managed as General Forest and Backcountry Restoration as outlined in the State Petition process. According to the Draft Rule, road construction or reconstruction may be authorized in association with phosphate leasing in either Theme (36 CFR 294.24(d) and [USDA 2007, page 134]). In areas assigned to Backcountry Restoration Theme, the cutting, sale or removal of timber is permissible because it is incidental to the implementation of a management activity not otherwise prohibited. In the General Forest Theme, there are no prohibitions on timber cutting except as addressed in existing Forest plans.

If Alternative 2 of the Idaho Roadless Rule (Existing Forest Plan Direction) is selected, the management of IRAs would reflect direction in the Caribou National Forest Revised Forest Plan (2003). The Plan includes six management prescriptions:

- Prescription 2.7.2(d) Elk and Deer Winter Range (Backcountry restoration theme);
- Prescription 2.8.3 Aquatic Influence Zones (Backcountry restoration theme);
- Prescription 5.2(b) Forest Vegetation Management (General forest theme);

- Prescription 6.2(b) Rangeland Vegetation Management;
- Prescription 8.2.1 Inactive Phosphate Leases;
- Prescription 8.2.2(g) Phosphate Mine Areas.

Almost all of the Project Area is within the 8.2.1 management prescription. This management prescription is shown on Map 11 of the Caribou Plan. Once a M&RP for phosphate lease is approved, direction found in Prescription 8.2.2 applies. In the case of Panels F & G, Prescription 8.2.2 provides management direction for all on-lease and off-lease activities approved by the BLM and USFS.

3.3 Principal Reason 3 – Economics and strategic need for phosphate

Southeast Idaho and the Caribou National Forest lie at the heart of the largest phosphate reserves identified in the U.S. west of the Mississippi River. The 2001 FEIS for the RACR acknowledged that phosphate production from the Caribou is an important activity. Potential exists to develop an estimated 873.3 million tons of phosphate rock from about 8,000 acres identified in Known Phosphate Lease Areas within inventoried roadless areas. Over 50 million tons of phosphate ore reserves were projected to exist at the Smoky Canyon site before mining began (USFS 1981). Phosphate production from the Caribou National Forest accounts for about 12-14% of national production and is used to support the regional production of phosphate fertilizer products and elemental phosphorous. In order to develop these ore reserves, use of National Forest land adjacent to the lease is required for access and to provide power. This decision provides sufficient access for the mining operations authorized by the Department of the Interior under the M&RP that is to be approved for the lease area.

According to the Social and Economic analysis in the FEIS (pages 4-241 to 4-250); the Smoky Canyon Mine is a significant employer of residents of Star Valley and provides high paying local jobs. The mine employs 210 persons, while the associated fertilizer plant near Pocatello, Idaho employs 350 persons. Annual wage and salary for these 560 persons is \$52.1 million, or about 2 percent of total nonagricultural payroll for the four counties. Indirect employment supports an additional 1,452 persons. My decision ensures a continuing ore supply to the Pocatello fertilizer plant for an estimated 13 years. Businesses in the 27-county area that supply the mine with equipment, supplies and fuel will retain J.R. Simplot's Smoky Canyon Mine operation as a product consumer for at least another decade.

This decision will provide for continued economic benefits to the economy of Bannock, Caribou, and Power Counties, Idaho and Lincoln County, Wyoming. The primary benefits to the local and state governments are royalties paid for mining on federally owned land, the acquisition of goods and services, sponsorship for local and regional communities and events, employment, support services, and personal property taxes. The Smoky Canyon Mine pays a federal lease royalty of five percent of gross value mined. One half of the royalty is returned to the Idaho State government, which in turn disburses 10 percent of the funds it receives to Caribou County where the current mine resides. The operation also pays property taxes directly to Caribou County and other government entities, such as school districts; these payments continue under the selected alternative. The Smoky Canyon Mine has in the past provided annual royalty payments that range from 1.6 to 2.0 million dollars.

Construction of the West Haul/Access Road to Panel G addresses concerns raised by the residents along the Crow Creek Valley. Some expressed concerns that mine traffic would negatively affect property values, harm the aesthetics of the area and generate noise and dust associated with the East Haul/Access Road alternatives. Environmentally, the East Haul Access alternative had the fewest environmental impacts. However, Simplot and the private land owner have not agreed to the necessary easement across private property. In the event that a Right of Way is provided before construction of the West Haul/Access road, the East Haul/Access Road will again be the preferred alternative.

Although the short-term (mine life) effects from mine traffic are expected to be negative, reclamation requirements would obliterate all but a few roads for monitoring. Eventually, all roads will be obliterated within 14-16 years or when no longer needed for mining, reclamation or monitoring.

No power lines will be visible from Crow Creek Road, but will be visible from portions of the Wells Canyon Road. Power poles and line will be removed at the conclusion of mine operations concurrent with road reclamation.

3.4 Principal Reason 4 – Protection of other surface resources

This decision provides sufficient access and powerline corridors for operations to be conducted within the mineral lease areas under the M&RP to be approved by the Department of the Interior, and provides adequate protection of other surface resources.

The Forest Service and BLM have determined that certain mitigation and monitoring programs are necessary to resolve or quantify potential environmental impacts identified in the FEIS from both off-lease and on-lease operations. Mitigation and monitoring are specifically described in the FEIS within Appendix 2C: Environmental Commitments and BMPs for Haul/Access Roads and Appendix 2E: Monitoring. As a condition of this ROD, Simplot is required to submit environmental and effectiveness monitoring plan to the Forest Service and BLM for review and approval before initiating construction of roads and other facilities that will be authorized pursuant to this decision. Simplot's detailed plan will provide:

1. A sampling and analysis plan;
2. A quality assurance/quality control plan;
3. The purpose of each sampling program;
4. Specific sampling protocols;
5. Monitoring programs for specific environmental resources.
6. Sampling objectives;
7. Compliance thresholds;
8. Monitoring locations and frequency
9. Specific data to be collected
10. Field and laboratory methods
11. Reporting requirements; and
12. Recommendations for responses to changes in trend and apparent non-compliance conditions.

Supervisory mine staff will conduct and keep records of daily inspections of all active mine operations to ensure compliance with approvals, applicable permits, and regulations. Simplot will provide monitoring reports to the Agencies on at least an annual basis, on time intervals consistent with other regulatory agency requirements, or as determined by the Agencies. Simplot will participate as requested by the Agencies in any annual BMP review and evaluation, as required and as consistent with the C-TNF Forest Plan. If monitoring demonstrates that mitigation is ineffective and that measured environmental values fall outside expected ranges, Simplot will develop a plan in coordination with the agencies to identify and resolve the problem.

To maintain compliance with Stormwater Pollution Prevention Plan (SWPPP) and Spill Prevention Control and Countermeasure Plan (SPCC), inspections will be conducted to detect any conditions requiring modification. Maintenance or repair actions will be documented and filed at the mine. Mine staff and contractors will sample storm water, groundwater, soil, sediment, aquatic biota, vegetation, and surface water, as required by permits and conditions of approvals. Simplot's BMPs for erosion, sedimentation, and selenium control are designed to track the effectiveness of mitigation measures. Mine BMPs apply to the design, construction, operation and reclamation of the haul/access roads for Panels F and G. BLM and USFS will inspect operations monthly or more frequently in order to verify compliance with mine plan approvals. Simplot has developed a detailed agency-approved environmental monitoring plan for the Smoky Canyon that will be amended to include specific monitoring requirements for Panels F and G.

The Smoky Canyon Mine has implemented environmental and safety protection measures for their existing mine operations. Construction activities and the operation and maintenance associated with the approved haul/access roads for the new Panels F and G comprise an extension of those measures. Applicable Standards and Guidelines outlined in the Caribou Forest Plan are considered environmental protection measures and are adopted and incorporated by reference for each resource affected by my decision.

Analysis presented in the FEIS indicates few additional resource impacts associated with locating power lines along the road corridors. No impacts to water resources are expected because the power line will span creeks and poles will be placed in upland areas. Poles may provide raptor perch sites, which may increase predation on some wildlife species. Less than one percent (approximately 9 acres) of western toad migration habitat identified in the project area will be disturbed.

These measures are expected to provide adequate protection of other surface resources, while allowing sufficient access for the mining operations to be authorized by the Department of the Interior within the lease area.

Part 4 MONITORING AND MITIGATION

Extensive monitoring and mitigation requirements have been developed for the off-lease activities approved in this Record of Decision. The following documents are hereby incorporated by reference:

1. FEIS Appendix 2C: Environmental Commitments and BMPs for Haul/Access Roads includes design Best Management Practices for drainage crossings, road drainage, channel re-alignment, fill and cut slopes, construction BMPs, road reclamation BMPs and Operational BMPs.
2. Sections titled "Haul Road Run-Off Controls, Construction of Fills for Roads and Facilities and Snow Removal" of the FEIS Appendix 2D: BMPs for Erosion, Sedimentation, and Selenium Control includes additional maintenance and construction BMPs relevant to off-lease activities.
3. FEIS Appendix 2E: Monitoring Plan has been jointly developed by the local BLM and USFS offices and will provide monitoring requirements for Panels F and G that will be added to the existing Smoky Canyon Mine monitoring requirements.
4. Yellowstone Cutthroat Trout Biological Evaluation includes additional details of the monitoring requirements described in FEIS Appendix 2E.
5. Reclamation Requirements for the Potential Bond Release on Panels F and G Smoky Canyon Phosphate Mine outlines guidelines describing the desired condition for reclamation and revegetation to be achieved prior to release of the mineral lease performance bond.
6. The BLM Record of Decision, Appendix II Mitigation and Monitoring includes clarification and/or additional mitigation and monitoring requirements.

To the extent specific mitigation measures relating to the surface protection and reclamation aspects of the M&RP are not addressed in this Record of Decision, they are contained in a letter of recommendation from the USFS to the BLM regarding their decision on this project. Additional resource-specific environmental protection measures that will apply to this Decision include the following:

4.1 Cultural Resources (including Paleontological Resources)

The USFS inventoried the proposed disturbance areas for cultural resources using baseline surveys and submitted reports to the State Historic Preservation Office (SHPO)(see Section 4.13.1.1, FEIS). SHPO provided consultation and concurrence on inventoried disturbance areas (September 28, 2005). If Simplot encounters unanticipated cultural materials, historic sites, or vertebrate macro-fossils (exclusive of disarticulated fish parts) during any surface disturbing operations, it will notify the USFS and the BLM and will halt operations in the vicinity of the discovery until an archaeologist or paleontologist can inspect and develop a mitigation plan. Vertebrate macrofossils will be avoided to the extent possible for a length of time that is reasonable to allow Agency personnel to conduct field surveys.

Prior to disturbance, Trapper's Cabin (CB-222) will be assessed by the Forest Archeologist to determine the potential for direct or indirect effects of improving a public access road (Panel G West Haul/Access Road) near the site.

Additional monitoring will occur during road construction for the unplanned discovery of Native American Graves. If a grave is discovered, processes described at 43 CFR 10

will be implemented according to the **Native American Graves Protection and Repatriation Act**, 25 U.S.C. 3001 et seq. [Nov. 16, 1990]. On discovery, all construction work in the area of the grave(s) will cease immediately and the Forest Supervisor or his representative will be notified.

4.2 Air Quality and Noise

Emission estimates were modeled using typical control practices and BMPs Simplot will employ. Simplot must provide an estimate of their dust and exhaust pipe emissions and other emissions to the State of Idaho as required in their permit issued on July 6, 1983.

4.3 Soil

The USFS will determine soil suitability in accordance with USDA Forest Service Soil Salvage guidelines (USDA 2003a). Baseline surveys have been completed to identify available topsoil resources. Simplot will salvage suitable topsoil and growth medium and transport it directly to areas being reclaimed, or temporarily stockpile in approved locations along the Haul/Access road prism. Temporary stockpiles will be seeded with short-term vegetation cover. Simplot will reduce the loss of soil fertility within the Project area by incorporating slash into the salvaged growth medium to increase the organic matter content, by mixing soil types with appropriate coarse fragment content to maintain proper fragment ratios. Salvage operations will be timed to optimize revegetation. In the reclamation areas and beneath stockpiles, compacted soils will be loosened using appropriate methods to a depth of 12 inches to allow unrestricted root growth.

Roads no longer required for mining and reclamation operations will be reclaimed with soil applied to a minimum thickness of one foot and with no more than two feet with minimal compaction. Long-term protection of reclaimed road and stockpile areas will be achieved with revegetation. Short-term erosion control measures will be applied using Best Management Practices (BMPs) specified in Appendix 2C of the FEIS and in the guide Best Management Practices for Mining in Idaho, Section 1, November 16, 1992. Mine roads not required as access to monitoring wells as determined by the Forest Service, will be reclaimed progressively throughout mine operations. When the Haul/Access roads are no longer needed to transport ore, waste rock, soil, or other bulk materials and equipment necessary to operate or reclaim the mine, obliteration and reclamation will commence.

4.4 Vegetation

The USFS will cruise timber in all proposed disturbance areas both on and off lease to determine the estimated volume and value of the trees. The M&RP and the special use authorization for off-lease activities will contain requirements for Simplot to purchase the timber at the market value appraised at the time of harvest (scaled sale). The following requirements will apply to activities authorized off lease under this decision:

Monitoring is required to assure reclamation (including reforestation) will be conducted to accomplish the goals provided in Reclamation Requirements for Potential Bond Release appended to the letter of Recommendation to the BLM.

At the time of reclamation, all disturbed areas will be planted using approved USFS vegetation species mix in an effort to stabilize reclaimed surfaces and restore post-mining land use for multiple-use management. The seed mixes used will be developed

from the list of appropriate revegetation species in the FEIS, Chapter 2, Table 2.4-4. Most plant species used in reclamation are similar to those now existing in the area, although the exact composition of reclaimed communities will be different as each area follows a unique, site-specific succession process. Shallow-rooting species with low rates of selenium uptake will be used to minimize selenium bioaccumulation in reclamation vegetation and subsequent exposure of wildlife to selenium.

Simplot will use genetically adapted plant material for the reclamation and will collect seeds, transplants and roots on-site to ensure an optimal match between plant material used and local site conditions. The use of local plant material is expected to increase the likelihood of revegetation success. Simplot will keep records of seed source, methods, species, etc. and map planting area boundaries. Revegetation will proceed no later than the first fall after the area is returned to grade and covered with topsoil.

The measurement of selenium and other COPCs (Contaminants of Potential Concern) in forage is required for any decisions on range management and the ultimate return of mined lands to multiple-use. Prior to agency release of reclamation vegetation to multiple-use, Simplot will collect sufficient data such that an analysis could determine that the **criteria** for contaminants in vegetation listed in the Final Area Wide Risk Management Plan, February 2004, or the **criteria** in place at the time of release would not be exceeded. For example, the Final Area Wide Risk Management Plan identifies 5.0 mg/kg dw selenium as the maximum allowable concentration in vegetation.

Simplot will comply with the Forest Service Strategy for Noxious and Nonnative Invasive Plant Management, Idaho's Strategic Plan for Managing Noxious Weeds, and the Revised Caribou National Forest Plan (USFS 2003 a:3-21).

As mitigation, all off-road vehicles will be cleaned prior to entering or re-entering the Project area. Only certified weed-free seed, mulch, straw bales, etc. would be used. Other mitigations may apply as determined to be appropriate by the Forest Service. Simplot will develop and follow a plan for annual noxious weed management.

4.5 Reforestation Requirements

The FEIS reforestation objective is to create "islands of diversity". The individual plants will act as mother plants by producing seed for the gradual increase in diversity of the disturbed areas overtime (FEIS 2-10). The FEIS estimates that 1355 acres of forest cover will be disturbed (FEIS Tables 4.5-1 and 4.5-2). Reforestation success will likely be higher if trees are planted on similar aspect, elevation and slope to those where that species grew prior to mining. Maps that show cover type distribution and elevation can be found in the baseline vegetative technical report (Maxim 2004e). Descriptions of the cover types detail individual species that are present. Trees that grow in shallow soils have less physical support from their root systems and are more likely to blow down (Mitchell, 1998).

Vegetation monitoring to determine reclamation success on reclaimed sites will be conducted annually and reported to the CTNF by Simplot until reclamation is accepted and the reclamation bond is released (FEIS 2-94). FS will periodically monitor reclamation vegetation progress. If progress is not indicative of potential success, recommendations for improvements will be made (FEIS 7-275).

Records need be kept of seed or tree source, tree planting methods, species used, substrate, number of trees planted, date of planting and tree survival. The boundaries of tree planting areas will be mapped in enough detail so they can be easily located again in the future (FEIS 2-94).

Ocular measurements are not accurate enough to meet monitoring requirements for number of live trees per acre. A variety of measurement methods that estimate the number of trees per acre could be used in planted areas. Examples of methods for determining stocking levels with fixed-plots can be found in FSH 2409.17, Silvicultural Practices Handbook, Chapter 2.

Tree survival monitoring will be completed the 1st, 3rd and 5th year following planting.

4.6 Surface Water and Groundwater

Best Management Practices for Mining in Idaho published on November 16, 1992 and mitigations cited in Appendix 2C of the FEIS provide effective mitigation for the protection of surface water. These BMPs and mitigations were developed to protect surface water from erosion products but also soluble and insoluble environmental pollutants like selenium. Measures described in Appendix 2C and the Idaho BMP guide were developed to minimize the contact between water and seleniferous material and reduce the types and severity of impacts to surface water and groundwater.

Where Haul/Access roads are currently designed close to or over springs, roads will be rerouted to avoid direct disturbance. When determined infeasible by the Forest Service, Simplot will install culverts, drains, or other engineered mechanisms in the base of the road fill to ensure that natural spring flows will continue.

Springs currently used for Forest management purposes, disrupted by mining or covered by road building, will be replaced with alternate, permanent, and generally equivalent water sources by Simplot, in accordance with the RFP requirements.

The appropriate Forest Service resource specialists (hydrology, range, wildlife) will determine specific types of water source replacement. Replacement plans for water sources, such as springs, that are disrupted by construction of haul/access roads will consider aquatic and terrestrial organisms other than just large mammals (e.g., insects, amphibians, birds). Simplot will communicate and coordinate design, construction, and operation of such projects with USFS review and approval. Replacement options are fully outlined in the FEIS, chapter four, Environmental Consequences: **4.3.3 Mitigation Measures**.

Roads will be designed, constructed, and operated to prevent any fuel or oil spill from entering nearby streams. Simplot will implement suitable BMPs to contain spills. Overburden used as construction material will be monitored for Contaminants of Potential Concern (COPC) content analysis prior to use, according to an agency-approved geochemical sampling program.

Channel erosion will be controlled by use of erosion control blankets, vegetation and other measures. All culverts will be designed for water flow and fish passage. Snow will be moved to Agency approved locations. Any soil contained in the removed snow must remain within the runoff control area. Road fills will be constructed of chert, designed

with slopes and temporary vegetation to stabilize slopes and reduce generation of sediment in runoff from these areas.

Simplot will ensure that runoff from haul road drainage ditches are not introduced into external seleniferous overburden fills.

Appendix 2E, Monitoring Plan, of the FEIS provides an outline of the extensive surface and ground water monitoring required for this project. Additional clarification on these requirements is included in the BLM ROD.

4.7 Wetlands

Project design features, BMPs, and the proposed Reclamation Plan are elements of the Decision designed to reduce environmental impacts to wetland resources. The U.S. Army Corps of Engineers (USACE) requires monitoring to demonstrate that created or mitigated wetlands have been successfully constructed. If required, Simplot will make wetland mitigation and monitoring part of its permit application to USACE.

4.8 Fisheries and aquatics resources

Construction of haul/access roads across stream channels will take place during low flows. Banks will be stabilized against erosion. Culverts will be designed for passage of migrating fish in stream channels with known fisheries. Bypass pipes will be placed to enable amphibian passage identified as amphibian habitat areas and near Sage Meadows. Most of these mitigations will be provided by J.R. Simplot Co., however, sediment control measures will be provided by the Forest Service on FR 102 because this road will continue to serve the public during mining operations.

There are six mitigation measures (described in more detail in the FEIS, Appendix 4B, YCT Biological Evaluations) designed to mitigate impacts to fisheries from haul/access roads and/or transportation related to mining activities:

1. J.R. Simplot will replace culverts on the South Fork of Deer Creek and Deer Creek that are impassable to fish at the Diamond Creek Road (FR 102) and Crow Creek Road (FR 111) crossings with oversized culverts that accommodate fish passage placed below grade or as a bottomless arch;
2. Decrease the impact of the existing Smoky Canyon Road upon Smoky Canyon Creek by relocating an 8,000 foot segment and decreasing the width of another 2,000 foot section by pulling it out of Smoky Canyon floodplain;
3. Address sediment concerns at the Wells Canyon Road (FR 146) as it parallels South Fork Deer Creek to decrease road-related sedimentation. This includes improving drainage, resurfacing and relocation of road segments.
4. J.R. Simplot will assist the Forest to replace the ford crossing of Wells Canyon Creek 0.1 miles upstream from the Forest boundary with a bridge or oversized culvert to accommodate truck and trailer traffic, and narrow the widened stream channel at the ford to the natural channel width during construction;
5. J.R. Simplot will construct and maintain a barbed wire fence to exclude livestock along a one-mile reach of Crow Creek. J.R. Simplot will repair a 22-acre enclosure along this reach, and construct and maintain a watering system consisting of five troughs fed by Crow Creek; and

6. The Forest Service will secure funding to reduce sedimentation on portions of the Diamond Creek Road (FR 102) by resurfacing, improving drainage, narrowing away from drainages, and/or obliterating or relocating segments of the road away from streams.

A project of this magnitude and complexity requires a solid monitoring program to ensure mining impacts do not exceed established standards and direction. The effectiveness of the protection measures within the mining plan and the project mitigation measures will be monitored through fish population surveys, aquatic habitat surveys, and selenium concentration inventories. These monitoring measures were developed in cooperation with Idaho Department of Fish and Game and are explained in more detail in the Biological Evaluation for Yellowstone Cutthroat Trout for this project (USFS 2007).

1. Fish Populations: J.R. Simplot Company will fund fish population monitoring in key units within the Crow Creek watershed. This population monitoring will generally occur every three years for 50 years. After 21 years, the Agencies will determine if there is a need to change the frequency of monitoring or continue with every three years. Monitoring every three years is helpful at least initially to account for natural fluctuations in trout populations in mountain streams. Less frequent monitoring does not provide enough resolution in population trends to accurately make population effects determinations.
2. Aquatic Habitat: J.R. Simplot Company will fund aquatic habitat surveys that will be conducted once prior to mining, the year after Panel G is opened, and the year after the reclamation release. Any additional physical survey requirements will be event driven. The Agencies can request additional surveys after hydrological events that had the potential to affect monitoring parameters. Physical surveys will occur during low flow periods and include R1/R4 longitudinal surveys and channel cross-sections.
3. Trends in selenium concentrations within sediment, macroinvertebrates, periphyton, and fish will be monitored every 6 years (and as many annual baseline surveys will be conducted as possible, between the project decision and project implementation) by J.R. Simplot Company. Sampling will occur during low flow conditions. Sediment chemistry, benthic macroinvertebrate and periphyton tissue chemistry, and fish tissue will be studied.

Data and reports will be provided to the Agencies for their review. If the Agencies identify concerns or negative trends, the Forest Supervisor and BLM District Manager will be notified. Forest and BLM response to the assessment report will be at the discretion of the Forest Supervisor and BLM District Manager. After 30 years, Fisheries Biologists from FS, BLM, IDFG, and IDEQ will review the selenium monitoring effort and recommend necessary adjustments to the sampling schedule or strategy to the Forest Supervisor and BLM District Manager. These assessments will continue for 50 years, unless the Agencies decide to terminate them due to no detected impacts. After 50 years, the Agencies will decide each decade up to 100 years whether to continue the assessments. Decisions for continuing monitoring must be reviewed and approved by the Forest Supervisor and BLM District Manager.

This monitoring effort is in addition to and does not supplant state water quality standards for selenium, or other metals, in surface water and for support of beneficial uses such as coldwater aquatic life.

4.9 Wildlife

Special Use Authorizations for off-lease operations will require the following:

1. Surveys will be conducted to identify active nests for bird species and avoidance plans will be developed. All vehicle collisions with wildlife will be reported to the Forest Service and Idaho Fish and Game. Mitigation measures will be developed for areas involving high collision rates. Undisturbed habitat and reclaimed areas will provide migration routes around barriers in mining operations, excluding haul road fill material.
2. Ground clearing and timber removal are necessary precursors to road construction and mine operations and are part of this decision. There is potential for the approved action to impact migratory birds. In response to comments on the DEIS, the Forest Service engaged in a process with the U.S. Fish and Wildlife Service to determine the appropriate measures to minimize those impacts and incorporated them as mitigation measures in the FEIS. These measures are described in Section 2.10.1 of the FEIS and in the Mitigation section of this decision. By memorandum dated December 20, 2006, the U.S. Fish and Wildlife Service has concurred with the results of this process.
3. To minimize the possibility of unintentional take of migratory birds, timber will be harvested incrementally with subsequent timber harvest scheduled to minimize impacts to bird species by delaying timber harvest as late in the nesting season as possible. Prior to timber removal, Simplot will perform surveys for raptor nests and other migratory birds before the onset of nesting seasons and remove or fell trees containing nests to prevent nesting. Ground clearing will be conducted incrementally as late in the nesting season as possible and in a manner to minimize impacts to migratory birds. The ground-clearing process across the proposed mine site will be completed incrementally and as late in the nesting season as possible.
4. Reclamation vegetation will include woody species and brush to create islands of vegetative diversity to attract migratory bird species back to the area. In addition, vegetation species and other materials that contribute to wildlife habitat needs (i.e., heterogeneity of understory debris that would provide cover) will be considered a high priority for use in reclamation.
5. At least one year prior to ground disturbance, Simplot will perform a survey, to identify western toad populations in any potential toad habitat that would be disturbed, which has not been surveyed in cooperation with C-TNF wildlife or fisheries biologists. Western toad populations and their potential habitat will be identified. If toads are discovered in the survey, the FS and Simplot will develop mitigation measures. Simplot will survey the area south of the existing western toad breeding site in Sage Meadows to determine whether gradient and topography make migration of toads possible into this area and into the montane habitat south of the Selected Transportation Alternative for the Proposed Action—the Panel G West Haul/Access Road.

4.10 Grazing Management

Simplot will construct trails up and over any haul road fills or cuts where haul road cross existing forest trails. Simplot will establish mitigation protocols for springs that are currently used as water sources for grazing livestock. Mitigated or relocated water sources or will be developed in coordination with C-TNF specialists. Protocols may involve hauling or pumping water from outside sources until construction of new stock ponds or improvements to springs can be made. No Range improvements or water rights would be affected by the selection of the Panel G West Haul/Access road alternative. Livestock movement within the Manning Creek Allotment will be hindered, however, at several locations livestock will be able to move across the road. No fencing is planned to prevent livestock from crossing the Haul/Access road. Simplot is responsible for the fair market value replacement of livestock injured or killed by mine related traffic.

Livestock permitted on the Green Mountain Allotments may experience similar impacts. Livestock losses attributed to mine related traffic would be similarly replaced by Simplot.

4.11 Recreation and Land Use

Simplot will post signs along trails at the margins of mining areas informing the public about mining activities and potential hazards. Signs will also be posted to notify the public where trails are temporarily closed where it is determined travel is unsafe. As soon as practicable, Simplot will re-establish trails and mark locations of trails through mine areas. Where haul/access road cross existing trails, Simplot will build trails for non-motorized access across the haul/access roads to allow for safe crossing. Simplot will post signs warning how to cross the roads safely and will post signs on the haul/access roads warning drivers to exercise caution. During initial mine development of Panel G, Simplot will rebuild Forest Trail 404 connecting the Wells Canyon Road (FR 146) and the Deer Creek Trail 093 a safe distance away from the disturbance limits of Panel G.

4.12 Transportation

Simplot will build turnaround areas where haul/access roads cut off existing Forest Routes (FR179 and FR740), at the temporary termination of those roads to allow safe vehicle turning. Simplot will build trails at these locations to allow non-motorized crossing of the haul/access roads.

On abandonment and in compliance with the Roadless Rule, roads retained as public transportation routes after mining will be reclaimed to a road width standard for most Forest transportation routes. Road cut fills will be replaced to contour with surrounding slopes resulting in a narrowing of the road surface to approximately 20 feet.

Road segments that will not be retained in the transportation system will be fully obliterated by replacing fill cut from side hills to mimic the original contour except where cuts cannot physically or safely be filled. In this situation, cuts will be filled and sloped to a 2 horizontal; 1 vertical ratio slope or approximately 22.5 °. The resulting slope will require the utilization of additional best management practices to protect from sedimentation such as those found in the Idaho Best Management Practices for Mining guide. Slopes at this angle if not carefully managed could suffer erosion. However, road cut fills restored to this slope will have less exposed bedrock remaining. Slopes

reclaimed at this angle will obliterate the road prism preventing over land travel and unauthorized side hill access by most all terrain vehicles.

During mine operations Simplot will provide water or chemical dust abatements on unpaved roads as approved by the agencies to keep fugitive dust within acceptable air quality and safety guidelines.

4.13 Geology, Minerals, and Topography

Reclamation elements of the Proposed Action are designed to reduce environmental impacts to topography are incorporated in project design features, BMPs, and the proposed Reclamation Plan. Erosion will be monitored by the mine company and agency inspectors. Erosion problems will be documented and repaired immediately. Additional mitigation measures are not deemed necessary.

4.14 Inventoried Roadless Area

Project design features, BMPs, and the proposed Reclamation Plan are elements of the Proposed Action designed to reduce environmental impacts from off-lease operations that will be authorized pursuant to this decision that could alter the existing roadless characteristics and/or wilderness attributes. These include mitigation measures for stockpile development; sediment from road construction, operation, and maintenance activities; and, where determined to be applicable, reforestation. Mitigation and reclamation requirements for off-lease operations are included in the attachments to the Record of Decision.

Roadless characteristics will be restored post mining as road and mine reclamation is completed at the close of mining operations. Soil will be salvaged and stockpiled along the road corridor. At the close of mining all road prisms constructed on slopes less than 50% will be fully backfilled and seeded with native plants, **Section 4-198 thru 209, FEIS**. Roads on slopes greater than 50% will be backfilled to 2h: 1v to obliterate the road prism creating a surface impassable to Off Highway vehicles.

4.15 Native American Concerns and Treaty Rights

Mitigation that is protective of resources has been included with the Action Alternatives and is discussed in a letter of consultation from the USFS to the BLM, which addresses surface resource protection relating to the M&RP mining and reclamation activities.

Mitigation measures, elicited during consultation with the Tribes, have been communicated to Simplot. These measures may include, but are not limited to, the following: provide timber from the site to the Tribes in the form of firewood or teepee poles; purchase reclamation seed from the Tribes; incorporate plants of Tribal importance into reclamation seed mixes as determined in previous consultations and reviewed with the Tribes land use staff.

4.16 Social and Economic Resources

No mitigation and monitoring of socioeconomic resources are necessary under the Proposed Action or the Action Alternatives, due to established programs in place such as economic monitoring conducted by state employment and social service agencies, the U.S. Bureau of Census, and the U.S. Bureau of Labor Statistics.

4.17 Environmental Justice

Mitigation measures for environmental justice are not deemed necessary.

Part 5 PUBLIC INVOLVEMENT AND ISSUES

5.1 Public involvement process

The Forest Service and BLM conducted public involvement jointly for this analysis. A preliminary Mine and Reclamation Plan was submitted to the BLM and C-TNF on April 21, 2003. The Notice of Intent (NOI) to prepare the Smoky Canyon Mine EIS was published in the Federal Register on September 15, 2003. A copy of this NOI is included in the Scoping Summary Report, Smoky Canyon Mine Panels F and G Extension EIS (JBR 2004a). A legal notice was published in the Pocatello, Idaho (September 19, 2003) and Afton, Wyoming (September 25, 2003) newspapers. A news release was also published in Pocatello and Boise, Idaho newspapers September 17, 2003 and September 18, 2003, respectively.

A public mailing list was compiled and 115 scoping letters were sent to federal, State, and local government agencies, and members of the interested public. Two public meetings were held. One meeting was held in Afton, Wyoming on October 8, 2003 at Star Valley High School and the other in Pocatello, Idaho on October 7, 2003 at the BLM Pocatello Field Office. The open house meetings provided a Project description, photo displays of the Project Area, and a forum for exchange of information and ideas or concerns related to the Project. Comment forms were available at the meetings and agency, proponent, and consultant representatives were present.

Public comments regarding the Project were solicited and then compiled in the Scoping Summary (JBR 2004a) to help determine the issues and alternatives for evaluation in the environmental analysis. By the close of the scoping period on October 20, 2003, 49 comment letters, 3 comment forms, and 130 e-mails had been received for the Smoky Canyon Mine Project. After the end of the scoping period, 47 additional comment e-mails were received for a grand total of 229 comments. The letters included 143 standardized comment letters (about 62 percent) of four general types. Comments were submitted by agencies, Tribal governments, groups, and interested citizens. A complete list and copies of all written comment letters, forms, and e-mails can be found in the Scoping Summary (JBR 2004a).

Identified concerns included potential effects of the Project on IRA's, water quality, wetlands, wildlife and fishery habitats, livestock grazing, soils, air quality, socioeconomics, private property values, forested areas, recreation, development of Best Management Practices (BMPs) for mine operations, and 1868 Fort Bridger Treaty Rights.

A 60-day Draft EIS review period was initiated by publication of the Notice of Availability (NOA) for the Draft EIS in the Federal Register on December 29, 2005 by BLM and December 30, 2005 for the EPA NOA. The NOA was amended January 13, 2006 and a comment period extension was published by the EPA on February 24, 2006. The comment period was extended an additional 15 days and ended March 21, 2006. At the end of the comment period, a total of 38,616 letters, email, and comment forms had been received. Of these, 1,055 were original comment letters. The remaining 37,561 were form response letters or other organized response campaigns. See FEIS, Chapter 7 for the public comments on the Draft EIS and responses.

The Notice of Availability for the Final EIS was published in the Federal Register on October 26, 2007. The BLM issued a notice of extension on the waiting period until December 26, 2007. Forty-seven thousand comments were received during the BLM's public review. While many were similar to comments on the Draft EIS, many represented a disagreement in the scientific methods used in the development of the FEIS or of the interpretation data. From the large volume of comments provided 22 were found to be substantially unique and deserving consideration in the ROD.

5.2 Summary of public comment

Organized response campaigns represented 97 percent of the total responses received during the public comment period for the proposal (37,561 out of 38,616). These response campaigns generally fall into one of two categories: form letters and multi-signature responses (numerous signatures on one response).

A summary of public comments can be found in the FEIS, Chapter 7. Few of the public comments directly related to the Forest Service decision. I will address issues raised in public comments relevant to the Agency-Selected Transportation Alternatives and mining facilities located outside the Panels F and G lease areas. A large number of comments generated by organized campaigns suggested no new road building and mining in the Sage Creek and Meade Peak roadless areas until a decision on the Idaho roadless rule petition has been made.

Individuals who commented also raised concerns that the proposal drastically harms recreational opportunities, particularly non-motorized recreation including hunting, hiking, wildlife viewing, and photography. These concerns are addressed in this Record of Decision in the sections discussing the USDA FS Roadless Area Conservation Rule and in the section outlining mitigation and monitoring for surface resource protection on National Forest System lands.

Commenters often had opposing points of view. Many wanted a halt to mining for environmental reasons, yet many others expressed the need for the products of mining. Others want to preserve the social and economic effects generated by the mine income. Many commenters want a moratorium on phosphate mining until contaminant releases are abated and remediation is proven effective and complete.

Specific comments included:

- Concern for project area springs
- Sediment generation
- Fisheries habitat and populations
- Employment at the Don Plant and direct impacts to the community of Pocatello
- Public risk in the event of the bankruptcy
- Water quality and environmental effects of mining activities
- Failure to identify the direct, induced, and secondary economic impacts
- Industry support for community health care institutions
- Company contributions to civic organizations in the community
- Land Use (E.g. optimum extraction of mineral resources while the lands are under disturbance)

- Reliance on foreign ore production
- Demand for fertilizer

Advocates for the mine expansion supported the environmentally-preferred Transportation Alternative 2—the East Haul/Access Road—because it represents the least amount of disturbance acreage, as well as the fewest acres not reclaimed.

5.3 Consultation with other agencies and Tribes

5.3.1 Consultation with other government agencies

The following state and federal agencies were consulted during preparation of the EIS:

- Idaho Conservation Data Center
- Idaho Department of Environmental Quality
- Idaho Department of Fish and Game
- Idaho Department of Lands
- Idaho Department of Water Resources
- Idaho State Historic Preservation Office
- Wyoming Department of Environmental Quality
- Wyoming Game and Fish Department
- U.S. Army Corps of Engineers
- U.S. Environmental Protection Agency
- U.S. Fish and Wildlife Service
- U.S. Geological Survey

The BLM and USFS requested that the Idaho Department of Environmental Quality (IDEQ) be a cooperating agency for this Project. IDEQ accepted its status as a cooperating agency for this Project. During the preparation of the Draft EIS and in reviewing the information in the document, IDEQ participated in the bi-weekly Project conference calls and Project meetings as needed.

5.3.2 Consultation with the Shoshone-Bannock Tribes

The 1868 Fort Bridger Treaty reserves off reservation treaty rights to Tribal members. Provisions of the Fort Bridger Treaty reserve the Shoshone-Bannock people's rights to hunt, gather, fish, and practice traditional uses on all unoccupied lands of the United States. As these treaty rights are related to surface management, and not the mineral estate, the BLM relies on coordination with the Forest Service and compliance with the C-TNF Revised Forest Plan (USFS 2003a) to ensure sufficient protection of those resources to which the Shoshone-Bannock people have certain rights.

The Agencies consulted with the Shoshone-Bannock Tribes, Fort Hall Business Council (Table 3). Federal agencies acknowledge the federal trust responsibility arising from Indian treaties, statutes, executive orders, and the historical relations between the United States and Indian Tribes. Five Government to Government consultations took place from scoping to release of the FEIS and the Record of Decision. I recognize the need for an open dialog and communication between the Forest Service, BLM, and the Fort Hall Business Council that governs the Shoshone-Bannock Tribes. Concerning the meetings, one provided a project overview prior to release of the DEIS, two consultations were held to discuss the DEIS and Tribal comments. The final two

consultations provided a review of both agencies Preferred Alternatives and notified the Council of the FEIS release. Beyond formal consultation, three site visits, four technical meetings, and several letters were exchanged. Responses to the Council's comments on the DEIS are contained in **Chapter 6** of the FEIS. The Fort Hall Business Council made it clear in consultation with the Forest Service that they oppose the proposed action. Analysis presented in the No Action Alternative section of the FEIS summarizes the consequences of not allowing the mine expansion.

Table 3: Summary of Consultation with the Shoshone-Bannock Tribes

DATE	TYPE OF CONTACT	DESCRIPTION
September 15, 2003	Scoping Letter	Initial contact with Shoshone-Bannock Tribes regarding the Project
October 2, 2003	Meeting	Agencies and Tribal Technical Staff at Fort Hall
October 14, 2003	Field Meeting	Agencies and Tribal Technical Staff
October 17, 2003	Letter	Tribes' response to scoping letter
October 30, 2003	Field Meeting	Agencies and Tribal representatives
July 29, 2004	Field Meeting	Tribal Cultural Committee and BLM
August 26, 2004	Letter	Agency response to Tribes' scoping letter and Project update
April 15, 2005	Meeting	Agencies and Tribal Technical Staff at Fort Hall
June 13, 2005	Letter	Agency request for Gov't to Gov't consultation with Fort Hall Business Council
June 27, 2005	Gov't to Gov't Consultation	Fort Hall Business Council and Agencies
July 18, 2005	Meeting	BLM, Tribal Technical Staff, and 3rd party contractor at Fort Hall
December 23, 2005	DEIS	Distribution of DEIS
March 20, 2006	Letter	Fort Hall Business Council comment letter on DEIS
May 4, 2006	Letter	Agency response to Tribes' DEIS comment letter
June 29, 2006	Gov't to Gov't Consultation	Fort Hall Business Council and Agencies
September 6, 2006	Gov't to Gov't Consultation	Fort Hall Business Council and Agencies
July 12, 2007	Gov't to Gov't Consultation	Fort Hall Business Council and Agencies
November 29, 2007	Meeting	Agencies with Tribal Technical Staff
December 19, 2007	Gov't to Gov't Consultation	Agencies with Fort Hall Business Council
December 26, 2007	Letter	Tribal review response to FEIS

Detailed analysis of the Tribes concerns and responses are located in **Section 6.3 of the FEIS** and in the project record. The primary concerns include the protection of the affected natural resources, their Tribal Treaty rights as reserved in the Fort Bridger Treaty of 1868 and mitigation for loss of access to the disturbed lands.

Safety closures of the mine area during operations are stated in the FEIS. Access will be restricted to the not only tribal members but all members of the public during operations. The Fort Hall Business Council has stated the need for mitigation to replace unoccupied lands temporarily or permanently unavailable to the Shoshone-Bannock Tribal members to exercise rights provided in their treaty. Analysis is provided in **Section 6.3.1** that describes the quantifiable affects of the project on treaty rights.

Forest officers responsible for the lands affected by the transportation proposal under analysis recognize the Tribe's rights. Resource associated with those rights may be temporarily affected by the Forest Service decision to allow the construction of the Haul/Access Road. Mitigations will be required, by the Forest Service for the selected alternatives, to protect and preserve tribal rights as practicable with the decision.

Consultation and communications provided by the Fort Hall Business Council requested additional mitigation measures, some of which included:

- Requirements for Simplot to transfer land to tribal or Federal agencies;
- Requirements for Simplot to provide timber to tribal members;
- Requirements for Simplot to purchase native plants and seeds from the Shoshone-Bannock Tribes;
- Requirements for Simplot to hire tribal members to conduct the federally required monitoring;

If the Tribes could gather or produce the seed and plant stock necessary for reclamation, it may be possible to arrange a contract with Simplot. Likewise, the Forest Service may work with the Tribes and J.R. Simplot Co. to acquire services from qualified tribal members.

No authority exists that would allow the Forest Service to force or demand land transfers to compensate the Tribes for lands temporarily unavailable for traditional uses. Forest Service managers would willingly facilitate discussions between Simplot and the Shoshone-Bannock Tribes in an attempt to mitigate the loss of temporary access to NFS lands during mining.

In response to the FEIS, the Fort Hall Business Council requested additional mitigation such as ethnographic studies, fisheries studies, and funding for tribal monitoring of mining impacts. BLM staff, on behalf of the agencies, approached the project proponent about the potential of replacing the National Forest System lands affected by the mine with the acquisition of other land to be placed in the public domain. BLM also approached Simplot about providing tribal access to the proponent's private land during hunting seasons. Both suggestions were considered and rejected by Simplot.

The Caribou-Targhee National Forest manages according to the Federal Land Policy and Management Act and the principle of multiple use. This decision accommodates Simplot's right to develop mineral leases while at the same time mitigating effects of the project on the environment and Native American trust resources. Selection of the West Access Haul route, providing for temporary soil stock piles and placement of the power line provide the best available alternative to protect natural resources and still provide access for Simplot to exercise their federally granted rights. In addition to the environmental protection measures described in **Section 2.5, Appendix 2C, and Appendix 2D**, mitigation measures as described in this decision have also been added to provide additional environmental protection.

In their comment letter on the FEIS, the Business Council also stated that "The Tribes believe high-elevation locales are spiritual and sacred places." This is a new issue presented by the Tribes. In order for the Forest Service to better consider the Tribes claim, a more precise description or record of this Traditional Cultural Property is necessary. This land use was recognized in **Section 3.14.1** of the FEIS. Haul/Access road construction will change the landscape. As described in **Section 4.14.1.1**, these impacts may affect nearby ceremonial or traditional use sites.

Section 5.15 of the FEIS recognizes the cumulative changes on lands once utilized by Native Americans to practice their traditional way of life. Land management activities and commodity production on unoccupied federal lands have modified lands in the cumulative effects area. Long-term impacts from the mine expansion add to other modifications to National Forest System lands.

Public and Tribal access will be temporarily restricted along the mine Haul/Access road as a standard safety precaution in the active mine areas. Temporary closures for public safety will not affect the status of lands within the National Forest System. Only a small portion of the Forest will be restricted at any one time. Once the ore reserves have been mined, lands are to be reclaimed and returned to multiple-use. Full public and tribal access will be restored. The **Treaty Rights Access** portion of **Section 4.14.1.1** of the FEIS recognizes the agencies difficulty in quantifying the impact of a temporary loss of access. The FEIS describes the affected area and operational timeframes, but the FEIS also recognizes the Shoshone-Bannock Tribes assertion that this loss will be significant and could affect all tribal members.

In their comments, Tribes stated concern about water quality and fisheries is addressed by the Agency-Selected Mining Alternative D, an engineered cover system designed to reduce selenium release to ground water and surface water to well within acceptable limits. Additional mitigation will include culverts with fish ladders where roads cross fish bearing streams, sediment control measures, and scheduling ground-disturbing activities to minimize impacts to migratory birds.

5.4 Issues related to off-lease activities

Issues associated with phosphate mining and the associated off-lease activities administered under Forest Service authorities were often indistinguishable as public concerns were evaluated throughout the development of the Final EIS. This ROD responds to concerns that pertain to the authorization of off-lease operations by the Forest Service.

Issues derived from public comment, consultation with other agencies and consultation with the Shoshone-Bannock Tribe include the following:

5.4.1 Geology, minerals, and topography

Alterations in the topography, the destruction of marine fossils occasionally found within the Phosphoria Formation could result from road construction activities.

5.4.2 Air Quality

Fugitive dust generated from Haul/Access road traffic along the long transportation corridor between Panels F and G.

5.4.3 Noise

Noise from mine operations, mine traffic on haul roads, and traffic on access roads may affect Project Area residents.

5.4.4 Water resources

Mine operations and related transportation activities may cause changes to the quantity and quality of surface water or groundwater in the Project Area and within the Crow Creek watershed area.

5.4.5 Soils

Mine operations and related transportation activities may affect soil resources in the Project Area.

5.4.6 Vegetation

Mine operations and related transportation activities may affect vegetation patterns and productivity in the Project Area, including Threatened, Endangered, Proposed, Candidate, and Sensitive (TEPCS) plant species habitat.

5.4.7 Wetlands

Construction of mine facilities and other surface disturbances may directly affect wetlands and Waters of the U.S. (WOUS) and could include increased metal and sediment loading in surface waters and/or changes in water quantity/quality in both surface waters and groundwater supporting WOUS.

5.4.8 Wildlife

Mine operations and related transportation facilities may physically affect terrestrial wildlife, including Threatened, Endangered, Proposed, Candidate, and Sensitive (TEPCS) and Management Indicator Species (MIS), through direct disturbance and fragmentation of their habitat.

5.4.9 Fisheries and aquatic resources

Mine related roads may affect cutthroat trout, other native fish, amphibians, or aquatic resources in the Project Area

5.4.10 Grazing management

Mine-related roads may impact permitted livestock grazing within and adjacent to the Project Area.

5.4.11 Recreation and land use

Recreational use and public access to the Project Area may be limited or prevented by mining activities and could impact adjacent private lands.

5.4.12 Inventoried roadless areas

Road Construction associated with the Project may alter Inventoried Roadless Area characteristics and wilderness attributes. Permanent indications of mining may remain after reclamation, permanently affecting IRAs.

5.4.13 Visual and aesthetic resources

Mine related roads may adversely affect visual resources in the area during and after mining.

5.4.14 Cultural resources

Cultural resource sites and heritage values (resources) may be compromised in the Project Area by the mining related roads. The Trapper's cabin near the road alignment for the West Haul/Access road will be protected from disturbance until it has been assessed as a historic building.

5.4.15 Treaty rights

Restricted access, to protect public safety, into the operating mine area affects the ability of Shoshone-Bannock tribal members to exercise their treaty rights and may impact resources of cultural significance to tribal members.

5.4.16 Transportation

Use of public roads in the Project Area for mine access may affect current traffic characteristics of the roads with increased risk of accidents and potential for spills.

5.4.17 Social and economic resources

- Potential closure of mine and effects on the local economy.
- Potential closure of the mine, resulting in decreased domestic phosphate production, effect of reduced fertilizer supply, increased price on national agriculture, and increased foreign natural resource dependence.
- Chemical degradation of water, soil, and vegetation in the Project Area may impact ranch operations and compromise both their agribusiness and tourism potential.
- Nearby property values may change by proximity of mine and transportation activities.

5.4.18 Environmental justice

Reductions and limitations on tribal hunting and/or gathering opportunities (i.e. ability to exercise treaty rights) and/or access to resources affects the Tribes adversely, even if temporarily.

Increased health risks related to Native American subsistence use of traditional plants and animals from the project area.

Part 6 ALTERNATIVES CONSIDERED

6.1 Alternatives considered in detail in the FEIS

In order to provide the BLM and Forest Service decision makers with flexibility in selecting actions out of the many alternatives, the transportation and mining alternatives were developed, and analyzed separately in the FEIS. Some alternatives, specifically Alternative E, are a component of both Agencies' decisions. Transportation alternatives are generally the focus of the Forest Service decision. However, haul/access road alignments considered in my decision originate or terminate on a Federal Phosphate lease. Mine and transportation alternatives and their identification are complicated and are presented here as summaries. Complete details of the alternatives can be found in the FEIS. The alternative of not authorizing off-lease activities was also considered, and the effects of this "no action" alternative compared with the potential effects of the transportation alternatives.

6.1.1 Transportation alternatives considered

An important component of the Proposed Action is transportation of ore over a number of miles from the proposed mine panels to the existing Smoky Canyon Mine mill. The proposed haul/access roads would also be used for transportation of personnel and materials from the current Smoky Canyon Mine south to the proposed mine panels. The environmental effects of the proposed Panel F and Panel G haul/access roads are evaluated separately in the EIS so they can be compared against a total of eight Transportation Alternatives that were also evaluated. Nine other transportation alternatives were also considered and eliminated from further evaluation; they are described in Section 2.7.2 of the FEIS.

The Transportation Alternatives are described in detail in Section 2.6.2 of the FEIS and include:

- Alternative 1 - Alternate Panel F Haul/Access Road,
- Alternative 2 - East Haul/Access Road,
- Alternative 3 - Modified East Haul/Access Road,
- Alternative 4 - Middle Haul/Access Road,
- Alternative 5 - Alternate Panel G West Haul/Access Road,
- Alternative 6 - Conveyor from Panel G to Mill,
- Alternative 7 - Crow Creek/Wells Canyon Access Road, and
- Alternative 8 - Middle Access Road.

Alternative 1 would follow an alignment from Panel E to Panel F that would avoid entering the Sage Creek Inventoried Roadless Area (FEIS Figure 2.6-8a).

Alternative 2 would connect Panel G to the Panel F haul/access road on an alignment down (south) to the mouth of Deer Creek Canyon and then north along the east flank of the Webster Range.

Alternative 3 would be similar to Alternative 2 but would avoid crossing private land near the mouth of Deer Creek Canyon.

Alternative 4 would connect Panels F and G along an alignment on the east slope of Freeman Ridge.

Alternative 5 would be similar to the Proposed Action but would exit the south end of Panel F rather than in the middle of the west side.

Alternative 6 would include a conveyor to transport ore from Panel G to the mill and would also require implementation of either Alternative 7 or 8 for access to Panel G.

Alternative 7 consists of widening and improving the Crow Creek and Wells Canyon roads to serve as all-season personnel and vendor access to Panel G.

Alternative 8 would be an access road only, connecting Panels F and G along the east flank of Freeman Ridge.

Alternatives 1 through 5 would be haul/access roads for movement of ore, personnel, and supplies.

Alternatives 7 and 8 would only be access roads as ore would be transported by a conveyor (Alternative 6) if either of these alternatives were selected.

6.1.2 Mining alternatives considered in detail

A total of seven Mining Alternatives were evaluated in the EIS and are described in Section 2.6.1 of the FEIS. The mining alternatives include:

- Alternative A - No South and/or North Panel F Lease Modifications,
- Alternative B - No External Seleniferous Overburden Fills,
- Alternative C - No External Overburden Fills at All,
- Alternative D - Store and Release Cover on Overburden Fills,
- Alternative E - Power Line from Panel F to Panel G along Haul/Access Roads;
- Alternative F - Electrical Generators at Panel G.

Three more mining alternatives were also considered and eliminated from further evaluation in this EIS (see Section 2.7.1 of the FEIS).

The only mining alternative within the Forest Service decision authority is Alternative E. Alternative E analyzed the environmental effects that would occur if the proposed separate power line corridor would be replaced by routing the power line along the proposed haul/access road corridors. Otherwise, mining alternatives were considered by the Forest Service in this decision to the extent that they control off-lease operations that

would require Forest Service authorization or cause impacts that the Forest Service must consider in making its decision.

6.2 Environmentally Preferred Transportation Alternatives

The Council on Environmental Quality regulations (40 CFR Part 1505.2) require agencies to identify the environmentally preferable alternative. The environmentally preferable alternative is the alternative that will promote the national environmental policy, as expressed in Section 101 of NEPA. It is the alternative that will cause the least damage to the biological and physical environment and best protect, preserve and enhance historic, cultural, and natural resources. The environmentally preferred alternative would be the no action alternative, where no development or surface disturbance is authorized. However, selecting this alternative would not provide sufficient access to the lease area, and would not meet the purpose and need for the proposed Federal action. The environmentally preferred transportation alternative is Alternative 2, the East Haul/Access Road. Alternative 2 has the following advantages: (1) less unreclaimed disturbance; (2) only one culvert crossing of a perennial stream; (3) least effects to the Deer Creek watershed; (4) least potential to release contaminants by disturbing Meade Peak Shale along the road prism; (5) lowest sediment yield; (6) fewest acres of Aquatic Influence Zone disturbance; (7) least linear footage of stream disturbance; (8) second lowest disturbance area of wetlands; (9) least amount of disturbed area in the Sage Creek IRA; and (10) disturbs the fewest acres of grazing allotments. The disadvantages include: (1) noise experienced by residents along Crow Creek; (2) visual presence to Crow Cr. residents; (3) greatest access interference; and (4) largest socioeconomic impact on local residents (effects to private lands).

Access to Panel G will not be required for several years. If during that time, Simplot and private landholders, directly affected by the haul/access road come to a mutual agreement to provide Simplot an easement, the East Haul/Access Road will replace the Panel G West Haul/Access Road. However, once road construction begins on the West Haul/Access road, it becomes less likely that a change would be made.

Both agencies evaluated the effects of installing a power line across the Deer Creek drainage from the southern end of Panel F to facilities located at Panel G. The environmental effects associated with the direct alignment were eliminated by locating the power line within the disturbance footprint of the Haul/Access road that connects the leases.

Both Federal agencies recognize the significance of native soils to the success of reclamation and the long-term productivity of mine disturbed lands. Soil stockpiles located in stable sites around the project area provide for the preservation of this valuable resource during the operating life of the project.

6.3 Transportation Alternatives Not Considered in Detail

6.3.1 Tunnel from Panel F to Panel G

This alternative would involve construction of a tunnel from Panel F to Panel G for a conveyor to transport ore. Such a long tunnel would be prohibitively expensive to

construct and would expose mine workers to hazards from underground mining. This action would also have significant groundwater impacts.

6.3.2 Haul/Access Road Down and Back Up Deer Creek

This alternative would require building a haul/access road down the south-facing slope of Deer Creek Canyon from Panel F, crossing lower Deer Creek with a road fill, and then building the haul/access road back up the north slope of Deer Creek Canyon to Panel F. This road would produce extensive road cuts in solid rock much of the length of the extremely steep canyon slopes on both sides of Deer Creek Canyon. It would have major visual impacts, would be practically impossible to reclaim back to topographic and aesthetic values, and would expose much of Deer Creek to sedimentation impacts from erosion of disturbed surfaces. This alternative did not reasonably expand the range of alternatives and had environmental and operational impacts that were obviously worse than the Proposed Action.

6.3.3 1400-Foot Culvert Haul/Access Road from Panel E to Panel F

This alternative would involve building a haul/access road up the north side of South Fork Sage Creek Canyon to the north end of the pit in Panel F. Construction in steep and rocky canyon walls with large cuts and fills would be practically impossible to reclaim close to original contour. It would require placement and removal of a culvert approximately 1,400 feet in South Fork Sage Creek, which would negatively impact stream hydrological functions. The environmental impacts of this alternative were obviously worse than the Proposed Action.

6.3.4 Conveying Ore from Panel F to Mill

This alternative would eliminate the need for a haul road from Panel E to Panel F, but a conveyor corridor and access road would still need to be constructed. The conveyor would increase capital costs for the Project and also eliminate the ability to backfill Panel E with Panel F overburden because overburden cannot be transported on the conveyor. A larger external overburden disposal site would be required for the initial pits in Panel F that is not required if this overburden is hauled back to Panel E for backfilling purposes. The environmental impacts of this alternative were obviously worse than the Proposed Action.

6.3.5 Hauling Ore from Panel G with Commercial Trucks on Public Roads

This alternative requires the use of a contractor to operate highway-legal trucks and trailers to haul ore down a new Wells Canyon haul/access road, out a widened Crow Creek Road to Star Valley, north up Star Valley to the Stump Creek Road, along the existing access road in Tygee Valley, and up the Smoky Canyon Road to the Smoky Canyon Mill. This alternative would be costly, but would not cross the Sage Creek IRA or require building roads across the Forest. However, it would have the greatest transportation impacts (noise, dust, safety, air emissions, road widening and realigning, road maintenance) from longer truck trips on public roads and to the public and residents and the public in Star Valley, along Stump Creek Road, and in Tygee Valley. Ore would be moved with lower efficiency and greater fuel consumption than using 150-ton mining trucks as included in the Proposed Action. It would require construction of the Wells

Canyon haul/access road and a much wider Crow Creek Road. The environmental impacts of this alternative were obviously worse than the Proposed Action.

6.3.6 Haul/Access Road East of Sage Creek IRA from Panel G

This alternative would involve building a haul/access road down Wells Canyon, then north parallel to the Crow Creek Road to approximately Deer Creek where it would join the already proposed East Haul/Access road alignment. It would have less environmental impacts on the Sage Creek IRA than the other action alternatives, and it addresses concerns related to road building within the IRA. It would have greater impacts on the residents and public in the southern portion of Crow Creek Valley than the other East Haul/Access Road alternatives. This road would cross more private land with multiple owners than the other East Haul/Access Road alternatives, and landowner permission would be required. The environmental impacts of this alternative to residents and the public in Crow Creek Valley were obviously worse than the Proposed Action.

6.3.7 Haul/Access Road in Upper North Fork of Deer Creek Canyon from Panel G

This alternative would consist of a road built from the south end of Panel F roughly west into the upper watershed of North Fork Deer Creek and through the unnamed topographic pass across Freeman Ridge to join the West Haul/Access Road. This route would present major disturbance impacts in the upper portion of the North Fork Deer Creek watershed and would require construction of a high-elevation crossing of the south end of Freeman Ridge where no road access currently exists. The environmental impacts of this alternative to the North Fork Deer Creek watershed were obviously worse than the Proposed Action.

6.3.8 Slurry Pipeline from Panel G to the Mill

This alternative would involve transporting ore from Panel G to the existing Smoky Canyon Mill facility with a buried slurry pipeline similar to that currently used to transport phosphate concentrate from the Mill to Pocatello. An access road for mine workers and suppliers would need to be constructed into Panel G for this alternative. This alternative has environmental benefits, as well as economic and environmental problems, which are outlined in Chapter 2 of the EIS. Over the relatively short life of this type of development, Simplot would not recover the initial capital costs of this alternative. After a detailed economic and technical review by Agency engineers, this alternative was eliminated because it was not economically or technically feasible and did not comply with the Purpose and Need.

6.3.9 West Access Road via Timber Creek, Diamond Creek, and SF Deer Creek

This would be an alternative to the Crow Creek/Wells Canyon Access Road or the Middle Access Road for access to Panel G as part of the conveyor ore transportation alternative. It would involve upgrading, widening and straightening existing roads, but would reduce transportation impacts to the Crow Creek and Wells Canyon areas. It would interfere with recreational use with increased public traffic. It would not require construction within the Sage Creek IRA, but would increase public access to the margins of the IRAs along its route. Construction would impact riparian, wetland, and perennial aquatic habitats bordering widened existing Forest Service roads. Increased vehicle use

of the roads would potentially increase sedimentation impacts to the aquatic habitats. This alternative's environmental impacts were obviously worse than other employee/vendor access routes associated with non-haul truck road related transportation alternatives.

Part 7 LEGALLY REQUIRED FINDINGS

7.1 *Caribou National Forest Revised Forest Plan (2003)*

My decision to authorize construction of the Panel F Access/Haul Road, Panel G West Haul/Access Road, power lines along the Haul/Access Roads and off-lease topsoil stockpiles is consistent with the Caribou Revised Forest Plan (Forest Plan). The USFS authorization of these facilities incorporates all applicable Forest Plan standards, guidelines, goals and objectives that apply to the Project area. The environmental impacts are predicted to be in compliance with established requirements of the Forest Plan.

7.2 *National Environmental Policy Act (NEPA)*

The Forest Service decision and the connected authorization of mining operations by the BLM have the potential to result in significant effects to the environment. Therefore, in accordance with the provisions of NEPA the C-TNF and the BLM have worked cooperatively with the Idaho Department of Environmental Quality (IDEQ) in preparation of an environmental impact statement. Public involvement and Agency cooperation in the NEPA process were implemented early to ensure that the Agencies' planning and decisions reflected environmental values.

7.3 *National Forest Management Act (NFMA)*

In accordance with NFMA, the Forest Plan was approved to establish direction for future decisions to include "a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic and other sciences" (16 USC 1604). The proposed Forest Service authorization incorporates all applicable Forest Plan standards and guidelines, management area prescriptions, and goals and objectives; therefore, the Forest Service decision is consistent with the Forest Plan and complies with NFMA.

7.4 *Endangered Species Act*

Under Section 7 of the Endangered Species Act, the Forest Service must consult with the U.S. Fish and Wildlife Service to ensure that its actions are "not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species," which the Secretary determines to be critical (16 USC 35 §1536). The USFS prepared a Biological Assessment (BA) to identify endangered or threatened species likely to be affected by this decision. By memorandum dated April 26, 2007 the USFWS has concurred with the BA in which the C-TNF made determinations regarding the potential effects to threatened and endangered species. Those determinations are listed in the FEIS, Chapter 4, pages 4-144 through 4-149. The Forest Service authorization therefore meets requirements of the Endangered Species Act.

7.5 National Historic Preservation Act

Section 106 of the National Historic Preservation Act requires federal agencies to identify historic properties, assess effects of their undertakings on historic properties, and afford the Advisory Council on Historic Preservation an opportunity to comment. State Historic Preservation Officers (SHPO) administers the national historic preservation program at the State level. Insufficient data regarding the two arborslyph sites (as they pertain to local and regional history) precludes a determination of eligibility for the National Register of Historic Places (NRHP). Further documentation will be necessary since this alternative was chosen as the Agency-Selected Transportation Alternative. The authorization will meet the requirements of the National Historic Preservation Act.

7.6 Migratory Birds (EO 13186)

In January 2001, President Clinton signed Executive Order 13186 that required federal agencies (those taking actions that may negatively impact migratory birds) to develop a MOU with the USFWS to promote the recommendations of various migratory bird programs and conservation considerations. The BLM and USFS developed a draft MOU in 2001 with the USFWS; the final MOU is still in development. The needs of migratory birds have been incorporated into the C-TNF Forest Planning process and mitigation required in this decision related to clearing vegetation prior to mining operations (Section 4.8).

7.7 Invasive Species (EO 13112)

Noxious weed species, as defined in Executive Order 13112 (64 CFR 6183, Invasive Species, February 1999), are those plants of foreign origin, not widely prevalent in the United States, that can injure crops, ecosystems, interests of agriculture, or fish and wildlife resources. The State of Idaho is responsible for listing noxious weeds in the State. The State's current list, created in 2001, lists 36 species of noxious weeds. Six of these species were recorded in the Study Area, which is described in the FEIS (FEIS, Ch. 3, Affected Environment, p. 3-1). In 1996, the C-TNF adopted Integrated Pest Management (IPM) guidelines to treat noxious weeds. The RFP established standards and guidelines to be used for controlling and eliminating noxious weeds and other invasive plant species. The Smoky Canyon Mine's weed control program follows guidelines established by the USFS. The Project will comply with Executive Order 13112.

7.8 Clean Water Act

A Section 401 water quality certification must be obtained as part of the U.S. Army Corps of Engineer permit review process in order to comply with Section 404 of the Clean Water Act (CWA). Permit(s) are required for authorized placement of fill or dredged material in Waters of the U.S (WOUS) or adjacent wetlands. The USACE will render decisions related to that permit and how to mitigate the impacts to affected wetlands and WOUS. Simplot's annually renewable Storm Water Pollution Prevention Plan (SWPPP), which protects the quality of surface waters from storm water discharge under the CWA, will be updated with the Environmental Protection Agency. Streams not meeting beneficial uses are recommended by the states to EPA for listing as impaired under CWA, Section 303(d). The applicability of the latest 303(d) listing to Project impacts is discussed in the FEIS. The projected impacts from land uses authorized by

the Forest Service will comply with State surface water quality regulations, the CWA, and the Idaho Ground Water Quality Rule through application of mitigation measures. Permitted operations are predicted to meet Idaho Water Quality Standards and protect in-stream beneficial uses and comply with the requirements of the CWA (FEIS, Ch. 4, p. 4-84).

7.9 Clean Air Act

Air emissions from the Proposed Action and alternatives are regulated by the Idaho Department of Environmental Quality (IDEQ) and U.S. EPA regulations. Smoky Canyon mine operates under an IDEQ permit issued July 6, 1983 (State of Idaho 1983), which addresses the mill boiler, fugitive dust control measures, haul truck speed limits, blasting and drilling dust suppression, and other air pollution control requirements. There may be further permit needs relating to elements that contribute to air quality issues and release of air pollutants, such as blasting, hauling, or crushing. The operations authorized by the Forest Service will meet the requirements of the Clean Air Act

7.10 Idaho Stream Channel Protection Act

My decision will meet the requirements of the Idaho Stream Channel Protection Act, which is intended to ensure protection of perennial stream channels. Simplot will file application with the Idaho Department of Water Resources for Stream Channel Alteration Required permits will be secured before construction associated with stream crossings begins.

7.11 Environmental Justice (EO 12898) and Equal Employment Opportunity, Effects on Minorities, Women

My decision will not have a discernible effect on minorities, American Indians, or women, or the civil rights of any United States citizen, nor will it have a disproportionate adverse impact on low income individuals (FEIS, p. ES-23; Ch 3, p. 3-249; and Ch. 4, p. 4-251). Minority and low income representation within the nearby communities, such as Afton and Fairview, Wyoming, or ranchers along Crow Creek Road is generally low. Exposure to high and adverse environmental impacts is not anticipated.

Some tribal members may hunt with in the project area. A mine area closure will be implemented that will close the area to motorized travel. Except for the active mine area and regulated Haul/Access roads, surrounding lands will be open to travel in accordance with the Forest Travel plan. This management may affect Tribal members that subsistence hunt for food within the project area.

The physical effects of the mining disturbance itself, hence the physical surface resources affected by the disturbance, would be localized to the disturbance footprint. This represents a very small part of lands available to the Shoshone-Bannock Tribes for Tribal treaty rights. The physical occupation of the Project Area by the proposed mining operations would be for a limited time and then the majority of the disturbance area would be reclaimed; therefore the impacts to Tribal treaty rights would be temporary. Project design, BMPs, and mitigation measures required to reduce uptake of selenium in plants and animals and maintain compliance with applicable water quality standards. Therefore, there would be no disproportionately high or adverse human health or environmental effects to the Shoshone-Bannock Tribes as a result of the Proposed Action or Alternatives.

7.12 Resource Conservation and Recovery Act (RCRA)

Hazardous waste is regulated under the Federal Resource Conservation and Recovery Act (RCRA) regulations (40 CFR Part 260 et. seq.). Generators of hazardous waste must follow strict rules regarding the generation, storage, handling, and disposal of their wastes. The Smoky Canyon Mine is considered a Conditionally Exempt Small Quantity Generator because it generates less than 100 kilograms of hazardous waste per month. Paint-related waste is disposed of at an off-site permitted hazardous waste incinerator. The mine complies with applicable state and federal hazardous waste regulations.

7.13 Safe Drinking Water Act (SDWA)

Surface water downstream of the Proposed Action is not used as a drinking water source for human consumption, however a potable water well will be drilled near Panel G for employee support facilities. Modeling conducted in the preparation of the FEIS indicates that groundwater quality in the Wells formation will comply with the State drinking water standard.

7.14 Idaho State Ground Water Quality Rule

The monitoring plan (Appendix B) provides mechanisms to monitor the effectiveness of the mitigation needed to comply with State water quality standards

7.15 Roadless Area Conservation Rule (36 CFR 294)

Based on my findings as shown in Section 3.2, I have found this project compliant with the 2001 Roadless Area Conservation Rule, (36 CFR 294).

7.16 Multiple-Use Sustained Yield Act (MUSYA)

The MUSYA directs the Secretary of Agriculture to administer renewable surface resources, including the products and services obtained from them, for multiple use and sustained yield. The MUSYA does not directly affect the use of administration of the mineral resources of National Forest lands. The Forest Service and BLM are required to consider Simplot's proposed mine expansion onto the two phosphate leases to comply with the Mineral Leasing Act, regulations, and land use plans. Environmental protection measures and mitigation measures analyzed in the EIS and incorporated into this decision are considered adequately protective of the environment. The Forest Service and BLM believe there is a place for ongoing natural resource production from Federal lands in concert with multiple use management of these lands.

7.17 Organic Administration Act

The Organic Administration Act is the original law governing administration of National Forest System lands. The U.S. Forest Service operates under the collective laws of the Organic Act, Multiple-Use Sustained-Yield Act of 1960 (MUSYA), Federal Land Management Policy Act (FLPMA), and National Forest Management Act of 1976 (NFMA). The Secretary of Agriculture may issue regulations for occupancy, protection, and use of national forests for all lawful purposes, including locating and developing mineral resources.

7.18 Mineral Leasing Act

Phosphate deposits on federal land are managed under the 1920 Mineral Leasing Act, as amended, and associated regulations at 43 CFR, Part 3500. BLM is the designated federal agency with authority to issue or modify federal phosphate leases and/or approve exploration and development activities. Where National Forest land is involved, BLM consults with USFS regarding the potential effects of lease issuance and development proposals, and the USFS issues decisions regarding authorization of off-lease activities.

7.19 36 CFR 251.54 Land Use, Special Uses

The 2003 Caribou National Forest Revised Forest Plan allows special uses that serve the public, promote public health and safety, protect the environment, are legally mandated, and compatible with other resources. Under 36 CFR 251.54, the C-TNF can issue Special Use Authorizations for those portions of exploration and mining operations that lie on C-TNF land outside mineral lease boundaries. However prescreening Special Use applications is required at 36 CFR 251.54(e)(1)(iv)(ix). Applications conflicting with any of the nine pre-screening criteria must be rejected. Special Use Authorizations cannot create an exclusive or perpetual right of use or occupancy, nor can: (ix) the proposed use ... involve disposal of solid waste or disposal of radioactive or other hazardous substances. This decision complies with 36 CFR 251.54. This project meets all of the following level I criteria.

(i) The proposed use is consistent with the laws, regulations, orders, and policies establishing or governing National Forest System lands, with other applicable Federal law, and with applicable State and local health and sanitation laws.

(ii) The proposed use is consistent or can be made consistent with standards and guidelines in the applicable forest land and resource management plan prepared under the National Forest Management Act and 36 CFR part 219.

(iii) The proposed use will not pose a serious or substantial risk to public health or safety.

(iv) The proposed use will not create an exclusive or perpetual right of use or occupancy.

(v) The proposed use will not unreasonably conflict or interfere with administrative use by the Forest Service, other scheduled or authorized existing uses of the National Forest System, or use of adjacent non-National Forest System lands.

(vi) The proponent does not have any delinquent debt owed to the Forest Service under terms and conditions of a prior or existing authorization, unless such debt results from a decision on an administrative appeal or from a fee review and the proponent is current with the payment schedule.

(vii) The proposed use does not involve gambling or providing of sexually oriented commercial services, even if permitted under State law.

(viii) The proposed use does not involve military or paramilitary training or exercises by private organizations or individuals, unless such training or exercises are federally

funded.

(ix) The proposed use does not involve disposal of solid waste or disposal of radioactive or other hazardous substances.

This project also meets second level screening criteria. They are:

- (i) The proposed use would be inconsistent or incompatible with the purposes for which the lands are managed, or with other uses; or*
- (ii) The proposed use would not be in the public interest; or*
- (iii) The proponent is not qualified; or*
- (iv) The proponent does not or cannot demonstrate technical or economic feasibility of the proposed use or the financial or technical capability to undertake the use and to fully comply with the terms and conditions of the authorization; or*
- (v) There is no person or entity authorized to sign a special use authorization and/or there is no person or entity willing to accept responsibility for adherence to the terms and conditions of the authorization.*

7.20 Information Quality Act (Public Law 106-554 § 515)

Following the release of the FEIS, the Forest Service and BLM received a petition from Earthjustice on behalf of the Greater Yellowstone Coalition and the Natural Resources Defense Council submitted under the Information Quality Act. The petition concerns the use of water quality modeling for the prediction of impacts in the FEIS, and asserts that one of the parameters used in a key model simulation presented in the FEIS is not consistent with earlier (pre-DEIS) recommendations of consultants working on the EIS for the Forest Service and BLM. Therefore, the petition asserts that prediction of expected water quality effects in the FEIS is incorrect. The Forest Service and BLM coordinated evaluation of the petition and the development of agency responses.

The Forest Service and BLM do not believe that the model was incorrectly applied to predict expected water quality effects in the FEIS. Information and analyses compiled subsequent to the consultants' recommendation, and comments received in response to the DEIS, supported reconsideration of the consultants' initial recommendation, and corresponding adjustment of the model inputs used to predict water quality effects from the proposed project in the DEIS. The model inputs used in the final EIS reflect the best and most current assessment of predicted chemical attenuation of selenium at the Smoky Canyon site. Furthermore, the modeled prediction of effects to water quality from on-lease waste rock disposal facilities do not directly pertain to the Forest Service decision to authorize off-lease access and utilities. Therefore, BLM has compiled a detailed explanation of why the prediction of water quality effects in the FEIS is not incorrect, and has provided that in their response to the Information Quality Act petition. The Forest Service concurs with the response provided by the BLM.

Accordingly, the FEIS complies with USDA Guidelines implementing the Information Quality Act.

7.21 Best Available Science

My conclusion is based on a review of the record that shows a thorough review of relevant scientific information, a consideration of responsible opposing views, and the

acknowledgement of incomplete or unavailable information, scientific uncertainty and risk. Chapter eight of the FEIS contains a list of published scientific documents referenced in preparation of the EIS. Chapter seven of the EIS contains references specific to issues identified through public comment.

Part 8 ADMINISTRATIVE REVIEW

8.1 Administrative Appeal

8.1.1 Administrative Review or Appeal Opportunity

This decision is subject to appeal pursuant to Forest Service regulations at 36 CFR 215. Appeals must meet the content requirements of 36 CFR 215.14. Only individuals or organizations who submitted comments or otherwise expressed interest in the project during the comment periods may appeal. Appeals must be postmarked or received by the Appeal Deciding Officer within 45 days of the publication of this notice in the *Idaho State Journal*. This date is the exclusive means for calculating the time to file an appeal. Timeframe information from other sources should not be relied on. The Appeal Deciding Officer is Regional Forester, Harv Forsgren. Appeals must be sent to: Appeal Deciding Officer, Intermountain Region USFS, 324 25th Street, Ogden, Utah 84401; or by fax to 801-625-5277; or by email to: appeals-intermtn-regional-office@fs.fed.us. Emailed appeals must be submitted in rich text (rtf) or Word (doc) and must include the project name in the subject line. Appeals may also be hand delivered to the above address, during regular business hours of 8:00 a.m. to 4:30 p.m. Monday through Friday.


8.1.2 Implementation

If no appeals are filed within the 45 day appeal period, implementation of the decision may occur on, but not before, five business days from the close of the appeal filing period. When appeals are filed, implementation may occur on, but not before, the 15th business day following the date of the last appeal disposition.

8.2 Further information and contact person

Jeffrey L. Jones, Phosphate Program Manager
Caribou-Targhee National Forest
4350 Cliffs Drive
Pocatello, Idaho 83204
Phone: (208) 236-7500
Facsimile: (208) 236-7573
Office hours: Monday through Friday, 8:00 am through 4:30 pm

8.3 Responsible official and signature

 6-6-08

LAWRENCE A. TIMCHAK **Date**
Forest Supervisor, Caribou-Targhee National Forest

