

**Department of the Interior**  
**U.S. Fish and Wildlife Service**  
500 Gold Avenue SW  
Albuquerque, New Mexico 87102

**FINDING OF NO SIGNIFICANT IMPACT**

**Eagle Creek Conservation Benefit Agreement and Fish Barrier Project Eagle Creek,  
Graham and Greenlee Counties, Arizona**

The Bureau of Reclamation (Reclamation), as the lead federal agency, and the U.S. Fish and Wildlife Service (Service) as a cooperating agency, have conducted an environmental analysis in accordance with the National Environmental Policy Act of 1969<sup>1</sup> (NEPA), the final environmental assessment (EA) dated June 2025, for the *Eagle Creek Conservation Benefit Agreement and Fish Barrier Project Eagle Creek, Graham and Greenlee Counties, Arizona*. The EA addresses the potential effects for two proposed actions 1) the Service's proposed issuance of an enhancement of survival permit (EOS permit) to Freeport Minerals Corporation (Applicant) in accordance with Section 10(a)(1)(A) of the Endangered Species Act (ESA) supported by a Conservation Benefit Agreement (CBA) and 2) Reclamation's construction, operation, and maintenance of a fish barrier in Eagle Creek. This Finding of No Significant Impact (FONSI) covers only the Service's proposed action and Reclamation will complete a FONSI separately. Therefore, the remainder of this FONSI addresses only the Service's proposed action, issuance of the EOS permit.

The Service's purpose in considering their proposed action is to fulfill their authority under ESA Section 10(a)(1)(A). The purpose of the Service's federal action is to respond to and process the Applicant's application for an EOS permit and determine whether the application and supporting CBA are consistent with the net conservation benefit standard and all other issuance criteria required for EOS permit approval. The EOS permit would authorize incidental take of spinedace (*Meda fulgida*), loach minnow (*Tiaroga cobitis*), and Gila chub (*Gila intermedia*), which are federally listed as endangered under the ESA, and the narrow-headed gartersnake (*Thamnophis rufipunctatus*), which is federally listed as threatened under the ESA (hereafter collectively referred to as the Covered Species).

The EA, incorporated herein by reference, evaluates two alternatives in detail: The No Action Alternative and the Proposed Action Alternative (i.e., the Preferred Alternative).

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<sup>1</sup> Executive Order 14154, Unleashing American Energy (Jan. 20, 2025), and a Presidential Memorandum, Ending Illegal Discrimination and Restoring Merit-Based Opportunity (Jan. 21, 2025), require the Department to strictly adhere to the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 et seq. Further, such Order and Memorandum repeal Executive Orders 12898 (Feb. 11, 1994) and 14096 (Apr. 21, 2023). Because Executive Orders 12898 and 14096 have been repealed, complying with such Orders is a legal impossibility. The Service verifies that it has complied with the requirements of NEPA, including the Department's regulations and procedures implementing NEPA at 43 C.F.R. Part 46 and Part 516 of the Departmental Manual, consistent with the President's January 2025 Order and Memorandum. The Service has also voluntarily considered the Council on Environmental Quality's rescinded regulations implementing NEPA, previously found at 40 C.F.R. Parts 1500–1508, as guidance to the extent appropriate and consistent with the requirements of NEPA and Executive Order 14154.

### Preferred Alternative

Under the Preferred Alternative the Service would approve the CBA and issue an EOS permit to the Applicant. Under the CBA, the Applicant would undertake and fund several conservation actions to protect and enhance habitat for the Covered Species within the plan area, as set forth in the CBA (Plan Area). Specifically, the Applicant would perform the following actions:

- Assist and collaborate with Reclamation on the investigation, design, construction, and long-term operations and maintenance (O & M) of a fish barrier on the Applicant's property on Eagle Creek that would protect and enhance aquatic habitat for the Covered Species by preventing nonnative species from moving into the upper portions of the creek. The Applicant would contribute \$2,100,000 towards the cost of barrier construction.
- Develop and implement a three-year monitoring program to detect the presence of nonnative, invasive virile crayfish (*Orconectes virilis*) in the upper reach of Eagle Creek and investigate the practicality and cost of actions to suppress populations of this species above the fish barrier site.
- Implement a monitoring program on the Applicant's lands along Eagle Creek, including annual surveys for the Covered Species, as well as other fish species, to inform future conservation and management activities to assist in the recovery of the Covered Species.

The EOS permit would authorize incidental take of the Covered Species within the Plan Area that results from: ongoing and future activities on the Applicant's enrolled property, as fully described in the Covered Activities section of the CBA, during the permit term; take associated with conservation and management activities integral to meeting the CBA net conservation benefit standard; and take resulting from a return to baseline condition.

### No Action Alternative

Under the No Action Alternative, the Service would not approve the CBA and would not issue the EOS permit to the Applicant for incidental take of the Covered Species. The Applicant would continue the existing activities on their property.

### Other Alternatives Considered

Alternatives related to approval of the CBA and issuance of the EOS permit were limited to the Proposed Action and No Action Alternative, as no other feasible alternatives were available.

### Public Participation

A Notice of Availability of the draft EA, CBA, and EOS permit application published in the Federal Register on January 3, 2025, for a 30-day public comment period. We received six comment letters. The comments did not identify any significant new environmental impacts not addressed in the EA.

Four letters did not provide substantive comments, rather they included statements acknowledging the project with no further information. The remaining two letters provided overall support for the project, but both also provided comments or recommendations for minor edits to the final EA. We have responded to all comments and in some cases made minor edits to the final EA to improve clarity and accuracy of information. Full responses to all comments are in Appendix A of the final EA.

### Determination

Significance, as used in NEPA, requires considerations of both context and intensity. Context means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. The Plan Area is along Eagle Creek in Graham and Greenlee counties, Arizona. Eagle Creek is approximately 58 miles long; however, the Plan Area (i.e., area subjected to effects resulting from the proposed action) is limited to the Applicant's properties which make up a small proportion of the total length. Therefore, the context of the impacts (both negative and beneficial) is not considered significant.

Intensity refers to the severity of the impacts. We have considered the following regulatory factors in evaluating intensity.

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

The EA has indicated that the CBA is expected to have long-term benefits to fish and aquatic communities, including the Covered Species, by preventing upstream invasions of nonnative fishes and other aquatic species into upper Eagle Creek.

No significant adverse or beneficial impacts to water resources; geology and soils; vegetation; terrestrial wildlife; migratory birds and/or bald or golden eagles; and cultural resources are expected to result from the proposed action.

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

No effects to public health or safety are expected to result from the proposed action.

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

No adverse long-term impacts to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas are expected to result from the proposed action.

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

We have no evidence to suggest that the effects on the quality of the human environment are likely to be highly controversial.

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

None of the effects of the CBA are highly uncertain because we know the effects of the covered activities on the human environment. None of the effects of the CBA involve unique or unknown risks. None of the conservation actions in the CBA are utilizing practices that are not already common.

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

Future actions would be reviewed on their own merits. Thus, the proposed CBA would not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.

- (7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

The proposed CBA is not directly related to any other action.

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

The EA has indicated that no adverse impacts to districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places; or, significant scientific, cultural, or historical resources are expected to result from the proposed action.

- (9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

As described in the EA and CBA, the proposed conservation actions in the CBA will result in a net conservation benefit to the Covered Species. Yellow-billed cuckoo is the only other listed species with potential to occur within or adjacent to the CBA area. As described in the EA, no new adverse effects are expected from the proposed

action. Therefore, no adverse impacts to federally listed or proposed species are expected to result from the proposed action.

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

As written in the CBA, the purpose of the proposed action is to meet the statutory requirements of a Section 10(a)(1)(A) EOS permit including providing a net conservation benefit to the Covered Species. Implementation of this CBA would not violate applicable Federal, State, or local law or requirements imposed for the protection of the environment.

Based upon information contained in the EA and CBA and supporting data in Service files, we have determined that issuance of this permit is not a major federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the NEPA. Accordingly, the preparation of an environmental impact statement on the Proposed Action is not warranted.

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DATE

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Acting Deputy Regional Director  
U.S. Fish and Wildlife Service, Southwest Region