

RECORD OF DECISION

For the Eagle Take Permit Applications and Eagle Conservation Plan
for the Juniper Project

July 9, 2024



Prepared by:
U.S. Fish and Wildlife Service
Pacific Southwest Region
Migratory Bird Program
2800 Cottage Way, Suite W-2606
Sacramento, CA 95825

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Record of Decision

1 Introduction

We, the U.S. Fish and Wildlife Service (USFWS), developed this Record of Decision (ROD) in compliance with our decision-making requirements, pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 United States Code [U.S.C.] §§ 4321–4347) and NEPA Implementing Regulations, as revised (87 *Federal Register* [FR] 23453–23470). The purpose of this ROD is to document the USFWS's decision in response to two applications submitted by KG Mining (Bald Mountain) Inc. (KG-BM) (Applicant) under the federal Bald and Golden Eagle Protection Act (16 U.S.C. § 668) (Eagle Act) for removal of nests and an incidental take permit for take of golden eagles (*Aquila chrysaetos*). Information contained in this ROD is based on the nest removal and eagle take permit applications and supporting Eagle Conservation Plan (ECP), the Draft Environmental Impact Statement (EIS) released on August 18, 2023 (88 FR 56652, DOI-BLM-NV-L060-2021-0013-EIS; BLM 2023), Final EIS released on May 24, 2024 (DOI-BLM-NV-L060-2021-0013-EIS; BLM 2024), and all other supporting materials. Collectively, we refer to the draft and final analyses as the EIS throughout this document when not referencing a particular version.

The EIS was developed by the U.S. Department of the Interior, Bureau of Land Management (BLM) as the lead agency as they determined that the Juniper Project required preparation of an EIS for an appropriate level of analysis under the NEPA. The preparation of this EIS was intended to assist the BLM in its decision-making process through the identification, analysis, and public disclosure of potential impacts of the Juniper Project on the environment, including environmental, social, and economic impacts. As the USFWS was already a cooperating agency assisting the BLM with the EIS, and to eliminate the need for the USFWS to develop a separate NEPA analysis (normally an Environmental Assessment for eagle incidental take permits), the USFWS intended the preparation of this EIS to assist the USFWS in its decision-making process and therefore also analyzed effects associated with KG-BM's applications for an eagle take permit. The applications cover the Juniper Project and authorized mining activities in both the North Operations Area (NOA) and the South Operations Area (SOA).

This ROD is designed to: (1) state the USFWS decision and present the rationale for that decision; (2) identify the alternatives considered in the EIS in reaching the decision and discuss the factors considered in making the decision; and (3) state whether all practicable means to avoid or minimize environmental harm from implementation of the Selected Alternative have been adopted, and if not, why they were not (40 Code of Federal Regulations [CFR] §1505.2).

The USFWS has based its decision on the analysis completed in the Draft EIS (88 FR 56652) and Final EIS (89 FR 45915). In making our decision, we also incorporated information and analysis contained in our 2016 Programmatic EIS (USFWS 2016) for the Eagle Rule Revision (81 FR 91494 effective January 17, 2017) as well as comments submitted during public comment periods.

The USFWS published a new Eagle Rule Revision on February 12, 2024 (89 FR 9920), which became effective on April 12, 2024. At the Applicant's request, we continued to process this application and would implement the permit under the 2016 eagle permit regulations.

2 Background and Project Description

KG-BM owns and operates the Bald Mountain Mine (BMM), a large-scale open-pit gold mine primarily on public lands administered by the BLM Bristlecone Field Office. The BMM operates on patented and unpatented Federal mining claims owned, leased, or otherwise controlled by KG-BM. The BMM has been in continuous operation for more than 40 years; therefore, mine areas and facilities are in various stages of development, operation, and reclamation. The BMM is within the Bald Mountain Mining District, which has been subject to mineral exploration and mining continuing on a small scale for more than 140 years. The BMM is subdivided into two plan of operation areas, which consist of the NOA and SOA. KG-BM is proposing to amend its plan of operations for the NOA (NOA Plan) to enable continued mining, processing, exploration, and reclamation of the open-pit mining operations and to reestablish underground mining.

In October 2020, KG-BM submitted the NOA (NVN-082888/Reclamation Permit No. 0025) Plan of Operations Amendment #6 and Reclamation Permit Application Juniper Project (KG-BM 2020) describing proposed activities collectively referred to as the Juniper Project. The Juniper Project is summarized briefly here and in greater detail in Final EIS Section 2.1.2, Proposed Action, and Appendix B, Detailed Description of Proposed Action and No-Action Alternative.

In general, the Juniper Project involves:

- Extension of the NOA Plan boundary in five areas (shown on Figure 1.2 of the Final EIS) resulting in an increase of 3,425 acres;
- Expansion, elimination, or creation of mine areas and mine components (shown on Figure 1.2 of the Final EIS) resulting in net surface disturbance increase totaling 3,969 acres;
- New and realigned infrastructure (such as power lines, buildings, fencing, and wells);
- Reestablishment of the Top Pit underground mine;
- Sequencing and a backfill schedule for the authorized Poker Flats Pit;
- Planned concurrent reclamation; and
- Extension of the NOA mine life by 11 years.

The Juniper Project would change total life-of-mine surface disturbance by adding 4,114 acres of new surface disturbance, reclassifying 877 acres of surface disturbance, and eliminating 145 acres of authorized surface disturbance. This would result in a net addition of about 3,969 acres of new surface disturbance. The new total life-of-mine surface disturbance would be 14,752 acres within the extended NOA Plan boundary. As shown in Table 1-2 of the EIS, most of the proposed surface disturbances would result from development or expansion of certain rock disposal areas, pits, and support areas in the NOA. During construction and operation of the Juniper Project, KG-BM would continue to implement the existing applicant-committed environmental protection measures (ACEPMs) and new ACEPMs to prevent unnecessary and undue degradation (see Final EIS Appendix C).

The BMM area contains suitable habitat for golden eagles. To address eagle impacts, KG-BM submitted two applications to the USFWS requesting authorization to remove inactive (i.e., outside of nesting season) golden eagle nests and for incidental take caused by disturbance as allowed under the Eagle Act (16 U.S.C. 668-668c) for activities associated with KG-BM's mining operations at the BMM. The eagle

take permit requests cover the Juniper Project and authorized mining activities in both the NOA and the SOA, herein after referred to as the project. KG-BM's take coverage request included authorization of the removal of three existing inactive golden eagle nests (one at Water Canyon [WC-1] and two at Yankee Pit [YP-1]) representing two separate territories, and up to two additional inactive golden eagle nests that may be constructed in the future, within or proximal to the BMM. An additional permit application was provided requesting authorization for up to 15 instances of disturbance take associated with but not the purpose of an activity at four nests of mating pairs of golden eagles representing two separate territories within a 19-year period.

The BLM Ely District Office, Bristlecone Field Office and the USFWS prepared an EIS to analyze and disclose environmental impacts associated with KG-BM's proposed project and its requested authorization for golden eagle nests removal and incidental take under the Eagle Act. The BLM was the lead agency in development of the EIS. We were a cooperating agency with jurisdiction by law. The EIS analyzed two separate federal actions:

KG-BM's proposal to amend the NOA Plan—referred to as the Juniper Project—submitted to the BLM to continue mining by creating and expanding mine components located within mine areas and conducting activities associated with mining, such as concurrent reclamation and ongoing exploration activities in the NOA and removal of golden eagle nests and incidental take permit applications submitted to the USFWS that would cover the Juniper Project and authorized mining activities in both the NOA and the SOA. BLM issued a ROD on July 8, 2024 (DOI-BLM-NV-L060-2021-0013-EIS), selecting Alternative A. With this document, the USFWS is issuing a separate ROD for our action.

3 Purpose and Need

As a cooperating agency with jurisdiction by law for the EIS, the USFWS's purpose for this Federal action is to evaluate and respond to KG-BM's proposed nest removal and incidental take permit applications in accordance with applicable laws, regulations, and policies. The USFWS's need for this action is established by the USFWS's responsibility under the Eagle Act to respond to KG-BM's request for a nest removal and incidental take permit authorization, while maintaining stable or increasing breeding populations in all Eagle Management Units (EMUs) and the persistence of local populations throughout their geographic range.

4 Alternatives Considered

We analyzed three alternatives in the EIS: (1) the No Action Alternative; (2) the ECP Proposed Action; and (3) the USFWS Preferred Alternative. Both of our action alternatives, the ECP Proposed Action and the USFWS Preferred Alternative, would be compatible with the BLM's No-Action and action alternatives in the EIS. Our action alternatives focus on potential issuance of an eagle take permit for the eagle nests and breeding territories that would be affected by the currently authorized mining operations and exploration activities, and the proposed Juniper Project.

4.1 Alternatives Carried Forward for Detailed Analysis

4.1.1 USFWS No-Action Alternative

Under the No-Action Alternative we would not issue an incidental take permit for golden eagles to KG-BM. We could deny the permit if the application fails to meet issuance criteria under 50 CFR 22.75 (nest

take) and 50 CFR 22.80 (incidental take) or if we determine the risk to eagles is so low that take authorizations are unnecessary. The mine would likely continue to operate as previously authorized without an eagle take permit being issued. The USFWS No-Action Alternative is independent of the BLM's decision (e.g., Proposed Action, Alternative A, or No-Action Alternative for the Juniper Project), as the BLM may still authorize the Juniper Project as outlined in Section 2.1 of the EIS. Should take of eagle nest or disturbance take to eagles occur, the applicant would be in violation of the Eagle Act. We assume that KG-BM would implement all measures required by other agencies and jurisdictions to conduct the proposed Juniper Project, but the conservation measures proposed in the eagle incidental take permit application package would not be required. KG-BM may choose to implement some, none, or all of those conservation measures.

4.1.2 Eagle Conservation Plan Proposed Action

Under the ECP Proposed Action, we would issue a permit for nest removal and incidental take under the Eagle Act related to mining and exploration operations within the scope of the project compatible with BLM's Alternative A decisions as analyzed in this EIS. Under the ECP Proposed Action, the applicant is requesting authorization for the removal of up to five golden eagle nests and up to 15 incidents of take resulting from disturbance to two breeding territories (Water Canyon and Yankee Pit territories, see Figure 3.9-1 in the Final EIS) for up to 19 years. Implementation of nest protection buffers and other conservation measures as described in the ECP (KG-BM 2022) and Bird and Bat Conservation Strategy (BBCS; Nexus and KG-BM 2022) would be required to ensure the applicant does not exceed the take authorization of 15 incidents from disturbance. Under the ECP Proposed Action, the applicant would provide the compensatory mitigation as required by regulations to ensure that effects of take caused by the project are offset at the population level. Additional mitigation for nest removals would also be required.

Under the ECP Proposed Action, the applicant would provide the compensatory mitigation at the required 1.2:1 ratio by retrofitting electric utility poles, as analyzed and discussed in our Eagle Rule Revision Programmatic EIS (USFWS 2016). Under the ECP Proposed Action, the USFWS would require a range of 137–315 electric utility poles to be retrofitted to offset impacts of two lost territories (Water Canyon and Yankee Pit) and up to 15 instances of disturbance to other breeding territorial pairs over a 19-year period. The intent would be to minimize the potential for eagle electrocutions and ensure that the effects of eagle take caused by the project are offset at the population level. An additional 10–24 electric utility poles per nest removal, depending on the type and duration of the retrofit implemented, would be required as nest removal mitigation under this alternative, resulting in a net benefit to eagles. The applicant may consider conducting experimental nest creation under this alternative, although it is not required under the ECP Proposed Action. Compensatory mitigation would be conducted within the Pacific Flyway EMU (USFWS 2016).

Ground and aerial monitoring will continue within the 10-mile radius of the NOA and SOA boundaries for the duration of the mine life, including any areas where nest site creation has occurred. KG-BM's monitoring measures are described on page 66 of the ECP (Appendix E of the Final EIS).

Avoidance and minimization measures, monitoring, required compensatory mitigation, and adaptive management measures are part of the ECP Proposed Action alternative. Spatial buffers will be implemented to avoid potential disturbance to other eagles nesting with proximity to the mine and project. As required under 50 CFR 22.80, and stated in our Eagle Rule Revision 2016 Programmatic EIS,

authorized take for golden eagles must be offset by compensatory mitigation that would produce a commensurate decrease in a pre-existing mortality factor, or an increase in carrying capacity, that offsets the permitted mortality (USFWS 2016). The effect of this mitigation must be that no net increase in mortality occurs within the EMU where the take is authorized (USFWS 2016). The compensatory mitigation that is part of this action alternative, and described in Chapter 3, Section 3.9.2.1 of the EIS, would result in no net loss to the golden eagle population (BLM 2024).

At each eagle permit 5-year review, the USFWS will review the eagle monitoring data and other pertinent information, as well as information provided by KG-BM and independent third-party monitors, assessing whether KG-BM is in compliance with the terms and conditions of the permit and has implemented all applicable conditions specified in the permit, and ensuring eagle take has not exceeded the amount authorized under the permit or the expected rate of take within the 5-year review period. The USFWS will update authorized take levels and compensatory mitigation, as needed, for future years of the permit. If authorized take levels for the period of review are exceeded in a manner or to a degree not addressed in the adaptive management conditions of the permit, based on the observed levels of take using approved protocols for monitoring and estimating total take, the USFWS may require additional actions including but not limited to adding, removing, or adjusting avoidance, minimization, or compensatory mitigation measures; modifying adaptive management conditions; modifying monitoring requirements; and suspending or revoking the permit.

4.1.3 USFWS Preferred Alternative

Under the USFWS Preferred Alternative, we would authorize an eagle incidental take permit to KG-BM for the same terms as under the ECP Proposed Action, including authorization for nest removals and loss of two territories, except for the following differences in take permit duration, authorized instances of disturbance take, nest removal mitigation, and the number of power pole retrofits for compensatory mitigation:

- We would extend the life of the permit up to 30 years to account for potential disturbance to eagles during the project's final reclamation processes.
- We would authorize up to 27 instances of incidental take resulting from disturbance within the 19-year period of operation and during subsequent 11 years of reclamation activities that could prevent eagle pairs from successfully nesting.
- We would allow two options for nest removal mitigation:
 - Option 1, Experimental Nest Site Creation: During the 5-year permit review, KG-BM would evaluate experimental nest site creation opportunities with the USFWS as appropriate and, if none are identified, it would pursue an alternative mitigation approach (e.g., contributions to a study specific to enhancing golden eagle populations). Under this option, KG-BM would experimentally create artificial nest ledges where feasible in concurrent reclamation areas where active mining operations are completed. This effort would initially be credited as nest site removal mitigation. Should monitoring indicate the experimental nest ledges are utilized by golden eagles, who then successfully fledge young, those efforts would provide a net benefit to eagle populations, and the USFWS may consider those measures as offsetting compensatory mitigation during the USFWS's 5-year review process. Additional nest ledges would be created where feasible upon mine closure during the final reclamation processes.

- Option 2, Nest Site Enhancement Research: KG-BM would contribute to nest site enhancement within the Pacific Flyway EMU for nest removal mitigation. The USFWS would request KG-BM contribute funds to an ongoing study on treating golden eagle nests for Mexican chicken bugs or other nest parasites that are identified as occupying nest(s). The USFWS considers this a viable option, as recent scientific studies found that treating young eagles for the protozoan parasite (*Trichomonas gallinae*) was effective and increased nest site productivity (Kochert et al. 2018). Current and emerging threats of disease and ectoparasites have the potential to negatively affect golden eagle productivity. This effort would initially be credited as nest site removal mitigation aimed at providing a net benefit to eagle populations. Should the study validate the effectiveness of these measures, the USFWS may consider such measures as offsetting compensatory mitigation in the future or during the USFWS's 5-year review process.
- We would require a range of 246–565 electric utility poles to be retrofitted to offset impacts of two lost territories (Water Canyon and Yankee Pit) and up to 27 instances of disturbance to other breeding territorial pairs over a 30-year period.

As required by regulation, KG-BM would provide compensatory mitigation for authorized take, and additional mitigation for nest removals. Under the USFWS Preferred Alternative, KG-BM would have increased flexibility to implement its mining activities without potentially needing to alter mining operation or exploration plans.

The FWS has identified this as our environmentally preferable alternative as it is more conservative compared to the other alternatives in its assumptions of impacts and the associated required avoidance, minimization, and mitigation measures.

4.2 Alternatives Considered and Dismissed

A complete description of alternatives that were identified for consideration, but eliminated from full analysis in the Draft EIS, are summarized in Chapter 2 of the Juniper Project Final EIS. Those alternatives were relative to BLM's considerations and did not impact our consideration of an incidental eagle take permit.

4.3 Selected Alternative

The Selected Alternative for issuance of an eagle incidental take permit was described under the USFWS Preferred Alternative, as described in the Final EIS. Our Preferred Alternative is also the environmentally preferable alternative.

Under our Selected Alternative, KG-BM will contribute to a USFWS-approved fund or an approved in-lieu fee program in the amount to provide for required compensatory mitigation for the authorized level of eagle incidental take for disturbance and territory loss. The contributions will be applied to retrofit the required high-risk power poles within the same EMU (Pacific Flyway). The nest removal mitigation will be implemented as described in Section 4.1.3, USFWS Preferred Alternative.

This decision is based on the review of the alternatives and their environmental consequences described in the Draft EIS and Final EIS, as well as comments received during public comment periods, indicating the following:

1. Issuing a permit for KG-BM's existing BMM and proposed Juniper Project is consistent with the Eagle Act regulatory standards, i.e., is consistent with the goal of maintaining stable or increasing breeding populations in all golden EMUs, and the persistence of local populations throughout the geographic range of the species.
2. The permit would authorize the removal of up to five nests over the life of the mine. Three nests would be removed within the first 2 years of permit issuance when those nests are not in use (nest WC-1 and two nests at YP-1; see Figure 3.9-1 in the Final EIS). Removal of those nests and mining activities would cause the loss of two territories, the Water Canyon and Yankee Pit breeding golden eagle territories, each with nests built upon high walls within the mine, that we determined will result in lost productivity (i.e., prevent the eagles from breeding and rearing young).
3. To offset the loss of annual productivity (0.59 golden eagle young fledged per occupied nesting territory per year [USFWS 2016]) over a golden eagle generation, the USFWS would require compensatory mitigation to offset the take of 6.49 eagles per territory lost (USFWS 2016). KG-BM requests the take of two territories (i.e., Water Canyon and Yankee Pit).
4. Compensatory mitigation for the nest removals and take of golden eagles under the incidental take authorization is required. Retrofitting power poles with a high risk of avian electrocution in accordance with Avian Power Line Interaction Committee (APLIC 2006, 2012) guidelines is the only form of compensatory mitigation for which we are able to quantify the benefits to eagles with reasonable certainty at this time. As described in Section 4.1 in this document, high-risk poles will be retrofitted within the EMU and, to the extent practicable, within the golden eagle local area population (LAP). Using our Resource Equivalency Analysis (USFWS 2013), the applicant would offset the take of golden eagles at the BMM by ensuring the retrofitting of a range of 246–565 electric utility poles to offset impacts of two lost breeding territories (Water Canyon and Yankee Pit) and up to 27 instances of disturbance to other breeding territorial pairs over a 30-year period. The exact number of power pole retrofits depends on the expected longevity of each retrofit.
5. KG-BM would provide additional nest removal mitigation through two options for experimental measures. The applicant may experimentally create artificial nest ledges on high walls within the concurrent mining reclamation areas and monitor to evaluate if eagles utilize the newly created potential nest sites. Alternatively, KG-BM may contribute to research projects aimed at increasing the survivorship of nestling eagles.
6. Annual ground and aerial monitoring will continue within the 10-mile radius of the NOA and SOA boundaries for the duration of the mine life, including any areas where nest site creation has occurred. Monitoring will inform when golden eagle nests are in use, of annual productivity, and of the number of take incidents from disturbance that occur for permit compliance purposes, and potentially trigger adaptive management.
7. We will conduct the eagle permit 5-year review process as described in Section 4.1.2, ECP Proposed Action, for the Selected Alternative.

4.4 Factors considered in Decision Process

We expect no direct mortality of golden eagles to occur as a result of the project, and no such take would be authorized under the permit. However, project activities would affect golden eagle breeding territories through the removal of nests and the presence of drilling and mining activity in close proximity to their nests, thus causing potential negative impacts on golden eagle breeding and nesting activities. Effects from trucking of waste rock and ore, blasting, other surface disturbance associated with mining activities and development and expansion of mine facilities, road construction, and heavy equipment have been considered in the total effects on golden eagles and disturbance from construction, operations, reclamation, and closure.

Project-related disturbances leading to at least temporary reductions in breeding activity and/or productivity are expected to occur at golden eagle breeding territories with nests located within 1 mile for most mining activities and 2 miles for blasting.

Two golden eagle breeding territories would be lost from nest removals at Water Canyon and Yankee Pit that would represent a long-term effect on eagle productivity. We anticipate that the project will result in the permanent abandonment and loss of these two golden eagle breeding territories. To offset the loss of annual productivity (0.59 eagle per nest per year [USFWS 2016]) over a golden eagle generation, the USFWS would require compensatory mitigation to offset the take of 6.49 eagles per territory lost (USFWS 2016).

Required avoidance and minimization measures from KG-BM's ECP and BBCS and compensatory mitigation would ensure population-level impacts on golden eagles would be minor, permanent, and regional. These measures will become required commitments under the permit. No net loss of golden eagle populations is anticipated under the Selected Alternative, although individual golden eagles would be affected.

Compensatory mitigation resulting in power pole retrofits of high-risk power poles would reduce electrocutions to golden eagles and other raptors. This will prevent injury and mortality caused by electrocutions with the electric utility infrastructure. A range of 246–565 electric utility poles would be retrofitted to offset impacts of two lost breeding territories (Water Canyon and Yankee Pit) and up to 27 instances of disturbance to other breeding territorial pairs over a 30-year period.

We have determined the power line retrofits and nest removal mitigation will offset population-level impacts to golden eagles for the authorized level of eagle incidental take for disturbance and territory loss and provide a long-term benefit to golden eagles and raptors.

The remaining pit walls after mine reclamation and closure would result in an increase in cliff-nesting habitat potentially increasing eagle productivity. As an example, there is an eagle territory and nests on the highwall at the existing Yankee Pit at BMM.

Additional nest removal mitigation is required for KG-BM to either experimentally create artificial nest ledges on pit high walls within the concurrent mining reclamation areas or alternatively, KG-BM may contribute to research projects aimed at increasing the survivorship of nestling eagles. The artificial nest ledges may attract breeding pairs of eagles and potentially increase productivity. Under the Selected Alternative, KG-BM monitor to evaluate if eagles utilize the newly created potential nest sites. Alternatively, funding for research projects that would seek to improve nestling eagle survival would help increase eagle populations.

We estimated the LAP of golden eagles for the project area to be approximately 868 individuals (USFWS 2022). The 5% benchmark for authorized take of that LAP is 43.4 eagles. The highest level of estimated annual take that could occur of 4.72 golden eagles represents 0.54% of the LAP. There are four other projects permitted for take of golden eagle that overlap with this LAP. The project take combined with the overlapping permitted take of golden eagles could result in a total annual take of 5.74 golden eagles representing 0.66% of the LAP.

The incremental effect of the project would contribute to local and possibly regional impacts on the species. We anticipate that, by issuing a permit, we would ensure that take of eagles would be offset through the implementation of impact avoidance and minimization measures, compensatory mitigation, experimental nest site creation or research, monitoring, and adaptive management. The applicant would offset nest removals and take through compensatory mitigation, therefore the cumulative effects contributed to golden eagle populations from our authorizations to allow up to five nest removals and up to 27 incidences of incidental take over the 30-year permit period under an eagle take permit would result in no net loss at the population level. The cumulative impacts from our permit to KG-BM is within the range of what the USFWS has determined is compatible with our goal of maintaining stable or increasing breeding populations in all EMUs and the persistence of local populations throughout the geographic range of each species.

Effects to eagles and their populations under this Alternative would be the same as under the ECP Proposed Action. The difference between this alternative and ECP Proposed Action is the USFWS would authorize up to 27 incidents of eagle take from disturbance consistent with our independent risk assessment as required under our permit regulations. This increased take authorization could result in reduced implementation of avoidance and minimization measures (i.e., nest protection buffers) and be less protective of individual eagles nesting within the mining areas, although all take would be fully offset through required compensatory mitigation measures. Under this alternative, KG-BM would have maximum flexibility for their operations. Under the USFWS Preferred/Selected Alternative, the USFWS would issue a permit for up to 30 years. The 11 additional years of authorization would allow for the take coverage to extend into the mine's closure and final reclamation processes, which we consider to be more protective of eagles and their populations within the local area and eagle management unit compared to the ECP Proposed Action. Should eagle nests be located within 1 mile of the final reclamation activities, the mine would be authorized to cause take resulting from disturbance during this extended authorization period.

As described in Sections 3.9.2.1.2, Migratory Birds, and 3.9.2.1.3, Federally Listed Threatened and Endangered Species, in the Final EIS, our decision regarding issuance of an eagle take permit authorizing incidental eagle take is not expected to affect migratory birds and species protected by the Endangered Species Act.

Our 2016 Programmatic EIS fully analyzed impacts of our eagle permit program on cultural and religious resources. As stated in Section 1 of this ROD, the EIS and this document incorporated information and analysis contained in our 2016 Programmatic EIS, including potential impacts on cultural practices.

Issuance of an eagle permit under our Selected Alternative is not expected to impact the cultural relationship between eagles and Native Americans. Because we are not authorizing direct take (i.e., lethal take), issuance of the permit will have no effect on Native American access to eagles, feathers, or parts, from the National Eagle Repository.

While eagle and other wildlife populations are affected by climate change in the Great Basin, USFWS issuance of an eagle take permit to KG-BM would not contribute to impacts affecting climate change as summarized in the USFWS Programmatic EIS for the Eagle Rule Revision (USFWS 2016).

In our consideration of issuance of a permit under the Selected Alternative, we and the Applicant have adopted all practicable means to avoid or minimize environmental harm from the alternative selected. Under the permit, the FWS and the Applicant will meet every 5 years to evaluate the monitoring data, reports, whether mitigation is owed or credited to the next 5-year term or if adaptive management is warranted. Permit compliance or enforcement will be maintained through this process.

4.5 Rationale for Decision

Our decision is to implement the eagle incidental take permit components of the USFWS Preferred Alternative as our Selected Alternative. The USFWS will authorize disturbance take on the removal of up to five nests and up to 27 incidents of take resulting from disturbance to breeding territories for up to 30 years.

We recognize our Selected Alternative will result in impacts to eagles; however, we have determined that all practicable means to avoid or minimize environmental harm from the Selected Alternative will be implemented. We anticipate that the commitments from KG-BM in the Final EIS, ECP, and the BBCS, coupled with the required nest removal and compensatory mitigation, including experimental nest creation or nest site enhancement research will address and offset impacts to eagles, resulting in stable or increasing eagle populations at the management unit and within the LAP. To address future uncertainty, KG-BM has committed to annual monitoring and implementation of spatial nest buffers and will implement an adaptive management strategy based on monitoring results as needed to remain in compliance with the authorized level of take.

We determined that under the Selected Alternative, KG-BM has met the issuance criteria identified in the Eagle Act's permitting regulations under 50 CFR 22.75 for take of alternate golden eagle nests and under 50 CFR 22.80 for incidental take of eagles. In summary, we have chosen the USFWS Preferred Alternative as our Selected Alternative for KG-BM's authorized mining activities in both the NOA and the SOA and the proposed Juniper Project.

5 Coordination

5.1 Agency Coordination

In preparing this decision the BLM and USFWS communicated with and received input from federal, state, and local agencies, as well as private organizations and individuals. The following is a list of the agencies and private organizations that provided input:

Federal Government Agencies

- BLM – Bristlecone Field Office
- BLM – Ely District Office
- BLM – Nevada State Office, Reno
- BLM – Washington D.C.

- U.S. Environmental Protection Agency

State Government Agencies

- Nevada Department of Wildlife
- Sagebrush Ecosystem Technical Team
- Nevada State Historical Preservation Office
- Nevada Division of Environmental Protection
- Nevada Division of Water Resources
- Nevada Division of Minerals

Local Governments

- Elko County, Nevada
- Eureka County, Nevada
- White Pine County, Nevada
- City of Ely, Nevada

Private Organizations

- KG-BM

5.2 Tribal Coordination

We engaged in Tribal consultation specific to the issue of eagle take. The USFWS has conducted coordination activities with 17 Federally recognized Tribes that are located within a 109-mile radius (the golden eagle natal dispersal range) from the project area, and farther.

We considered Tribal input throughout the project and received one inquiry to date from a Tribe about the golden eagle take permit applications. We responded to the inquiry and provided information about the golden eagle populations and take limits, enforcement mechanisms and fines, and compensatory mitigation.

6 Public Involvement

6.1 Scoping

The BLM published a Notice of Intent to prepare an EIS (62 FR 06744) on March 31, 2022. The Notice of Intent invited scoping comments to be submitted to the BLM from March 31, 2022, through May 2, 2022.

During the scoping period, the BLM hosted two virtual public scoping meetings to provide information and answer questions about the Juniper Project EIS. The scoping meetings were held on April 19, 2022, and April 21, 2022, via the Zoom Webinar software platform. An estimated eight individuals (not including BLM staff, KG-BM staff, or consultants working on the EIS) signed into the virtual meetings: four individuals attended the April 19, 2022, virtual meeting and four individuals attended the April 21, 2022, virtual meeting.

A Scoping Report was prepared for the Draft EIS that outlines the activities conducted during the public scoping process, and addresses the issues and concerns identified by the public during the scoping process (ICF 2022). The BLM received 19 unique comment submittals during the public scoping period. All comments received were considered in the development of the Draft EIS and informed the issues analyzed in detail in the EIS and the alternatives to the Proposed Action.

Section 4.4 of the Scoping Report summarizes the public comments received and groups them into issue categories based on the content and substance of the comment. Effects on golden eagles and their habitat were one of these categories. Appendix C of the Scoping Report lists each discrete comment received by assigned issue category, organization (commenter), and content of the comment per letter. BLM received 13 comments related to golden eagles.

6.2 Draft EIS

To solicit public comments and feedback on the Draft EIS, in coordination with the USFWS, the BLM published the Notice of Availability for the Draft EIS (88 FR 56652) on August 18, 2023. The BLM held two public meetings and sent electronic notifications to interested individuals and organizations that stated the Draft EIS was available for comment during a 45-day period.

An in-person public meeting for the Draft EIS was held on September 19, 2023, at the BLM Ely District Office in Ely, Nevada. There were six attendees excluding agency, KG-BM, and consultant presenters and panelists. A virtual public meeting for the Draft EIS was held on September 21, 2023, via the Zoom Webinar software platform. Attendance for the virtual meeting peaked at approximately 31 people.

The BLM received a total of 376 comment submittals during the public comment period, which included 69 unique submittals, 300 copies of one form letter in support of the Juniper Project, six copies of a second form letter in support of the Juniper Project, and one duplicate comment. All comments received were considered and revisions were made to the EIS as appropriate. Appendix J of the Final EIS contains responses to all substantive comments submitted during the public comment period for the Draft EIS.

Golden eagles were mentioned in 24 comments from a total of four commenters. Comments on golden eagles included comments on impacts to eagles, not killing eagles, nest removal and incidental take permit, ECP, ACEPMs, compensatory mitigation, monitoring, 5-year review process, experimental nest site creation, specific regulations, and tribal consultation related to eagles. Based on comments received, the BLM, in coordination with the USFWS, prepared the Final EIS adding information that clarified and improved the EIS analysis. Moreover, there were no significant new circumstances or information relevant to environmental concerns and related to alternatives or impacts.

6.3 Final EIS

The BLM published the Notice of Availability for the Final EIS in coordination with the USFWS (89 FR 45915) on May 24, 2024. The 30-day availability period ended on June 24, 2024.

The BLM and the USFWS received 23 letters during the 30-day availability window for the FEIS. These letters contained no substantive comments and did not mention golden eagles.

7 Corrections to Final EIS

Minor edits to the Draft EIS have been made in response to public comments to provide clarification or further information. Please see Final EIS Executive Summary (Attachment 1).

8 USFWS Decision

The USFWS's decision is to implement our Selected Alternative and issue an eagle nest removal and incidental take permit authorizing the disturbance from KG-BM's mining operations for the removal of up to five golden eagle nests and up to 27 incidents of take resulting from disturbance to breeding territories for up to 30 years.

This decision is based on the information contained in the Draft EIS and Final EIS for the BMM Juniper Project DOI-BLM-NV-L060-2021-0013-EIS dated May 24, 2024 (89 FR 45915). This ROD was prepared pursuant to the requirements of the CEQ regulations for implementing NEPA at 40 CFR 1505.2 and the Department of the Interior's implementing regulations in part 46 of title 43 of the Code of Federal Regulations.

8.1 Signature

Thomas Leeman
Acting Migratory Bird Program Chief
Pacific Southwest Region
U.S. Fish and Wildlife Service

9 Attachments

Attachment 1: Bald Mountain Mine Plan of Operations Amendment Juniper Project, Final Environmental Impact Statement, U.S. Department of the Interior, Bureau of Land Management, Bristlecone Field Office, Ely, Nevada. May 2024. DOI-BLM-NV-L060-2021-0013-EIS. Available at: <https://eplanning.blm.gov/eplanning-ui/project/2011567/570>

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