

RECORD OF DECISION

For the Eagle Take Permit Application and Eagle Conservation Plan for the Hycroft Mine Phase II Expansion Project

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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 its decision-making requirements, pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 United States Code [U.S.C.] §§ 4321–4347). The purpose of this ROD is to document the USFWS's decision in response to an application submitted by Hycroft Resources and Development, Inc. (HRDI) (Applicant) under the federal Bald and Golden Eagle Protection Act (16 U.S. Code [U.S.C.] § 668) (Eagle Act) for an eagle incidental take permit for take of golden eagles (*Aquila chrysaetos*) and for golden eagle nest removals. Information contained in this ROD is based on the eagle take permit application and supporting Eagle Conservation Plan (ECP), the Draft Environmental Impact Statement released on May 17, 2019 (DEIS) (84 FR 22514, DOI-BLM-NV-W030-2015-0007-EIS MO) and Final Abbreviated Environmental Impact Statement (FEIS) (84 FR 46965, DOI-BLM-NV-W030-2015-0007) released September 2019, 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.

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 CFR §1505.2).

The USFWS has based its decision on the analysis completed in the DEIS (84 FR 22514-22515). In making our decision, we also incorporated information and analysis contained in our 2016 Programmatic EIS (PEIS) (USFWS 2016) for the Eagle Rule Revision (81 FR 91494 effective January 17, 2017).

2 Background and Project Description

Mining activities in the vicinity of the Hycroft Mine began in 1875 with the discovery of sulfur. Section 2.5.1, page 2-5, of the Plan Amendment provides a detailed description of the history of the Hycroft Mine (HRDI, 2018a).

In the BLM's 2012 Final EIS for the Hycroft Mine Expansion Project (BLM 2012 FEIS) (77 FR 40079, July 6, 2012, DOI-BLM-NV-603 W030-2011-0001-EIS) golden eagles were identified as an impacted resource. To comply with the Eagle Act, the BLM's 2012 FEIS and associated plan of operations included a mitigation measure requiring HRDI to coordinate with the U.S. Fish and Wildlife Service prior to conducting activities that would impact eagles or their nests. Since 2012, the BLM and HRDI have been in consultation with us regarding potential eagle impacts at the previously authorized portions of the mine and under the proposed expansion.

The existing mine is an open pit, heap leach gold and silver mine. Authorized operations at the Hycroft Mine include ore extraction and processing, management of water, engineering, environmental studies, permit compliance, and exploration. HRDI's existing mine operations occur within the May 2013 authorized Plan of Operations boundary that consists of an area measuring approximately 14,753 acres on both public land administered by the BLM and private land controlled by HRDI. Operations on private land within the Authorized Plan Boundary could not proceed unless other actions on public lands were

undertaken taken simultaneously, and operations on private land are interdependent parts of a larger action on public land and dependent on the larger action for their justification.

The BLM received an Amendment to the Plan of Operations (Plan Amendment) for the Hycroft Mine Phase II Expansion Project (Project) from HRDI, a wholly owned subsidiary of Hycroft Mining Corporation, in April 2014 (BLM Case File No. NVN-064641), which was revised in June 2014, January 2017, March 2017, and June 2018. The Project includes the expansion of the existing precious metal mining operations at the existing Hycroft Mine. The Project is located on public land administered by the BLM and private land controlled by HRDI located in Humboldt and Pershing counties, Nevada, approximately 55 miles west of Winnemucca, Nevada.

To address eagle impacts, HRDI submitted an application to the U.S. Fish and Wildlife Service (USFWS) requesting authorization to remove inactive golden eagle nests and for incidental take under the Eagle Act for operational activities associated with both the BLM's currently authorized mining activities and the proposed expansion Project.

The Proposed Phase II Expansion Boundary (Proposed Expansion) comprises an additional 13,082 acres solely on public lands, which combined with the Authorized Plan Boundary, would result in a project area of approximately 27,835 acres. The Authorized Plan Boundary and the Proposed Expansion are referred to as the Project Area in the EIS and this Record of Decision (ROD). The Project Area would be located on approximately 26,082 acres of public lands, and approximately 1,753 acres of private lands. Figures 1.1-1 and 1.1-2 in the DEIS show the general location of the Project and the land status and boundary of the Project Area and can be found in Appendix A of the DEIS.

The BLM Winnemucca District, Black Rock Field Office and the USFWS prepared a joint Environmental Impact Statement (EIS) to analyze and disclose environmental impacts associated with HRDI's proposed expansion Project and request authorization to remove inactive (i.e., outside of the nesting season) golden eagle nests and incidental take under the Eagle Act. The BLM was the lead agency in development of the EIS. The Environmental Impact Statement (EIS) analyzed two separate federal actions: (1) HRDI's Plan Amendment for a proposed mine expansion submitted to the BLM and (2) an eagle take permit application and ECP submitted to the USFWS. Both the BLM and the FWS will issue a ROD for our respective actions.

3 Purpose and Need

The USFWS's purpose of this federal action is to issue or deny an eagle take permit for HRDI. Issuance of an eagle take permit must comply with the Eagle Act and all related regulatory requirements. Denial of the permit must be based on the proposal not meeting issuance criteria under 50 CFR 22.25 (nest removal), 50 CFR 22.26 (incidental take), and 50 CFR 13.21 (general USFWS permit issuance criteria) and/or because the USFWS has determined that the risk to eagles is so low that an eagle take permit is not necessary. The USFWS's need for this action is to respond to HRDI's request for an Eagle Act nest removal and incidental take permit authorization while fulfilling the USFWS's legal obligations.

Issuance of a permit must comply with the Eagle Act and all related regulatory requirements. The Selected Alternative meets the Service's purpose and need because it responds directly to the Applicants eagle take permit request, described in the Final EIS for this decision (Attachment 1 while also being in conformance with the USFWS's permit issuance regulations and policies. Alternatives Considered

The Draft EIS analyzed a total of six alternatives: (1) the Mine Expansion Proposed Action (Proposed Action); (2) the Mine Expansion Alternative A (Alternative A); (3) the BLM No Action Alternative (No Action Alternative); (4) the Eagle Take Permit Proposed Action (USFWS Eagle Permit Decision) (5) the

Eagle Take Permit Alternative A (USFWS Alternative A Eagle Permit Decision); and (6) the USFWS No Action Alternative.

However only three alternatives analyzed were specific to the USFWS's decision including: (1) the USFWS Eagle Permit Decision; (2) the USFWS Alternative A Eagle Permit Decision; and (3) the USFWS No Action Alternative. These alternatives are described below.

3.1 Alternatives Carried Forward for Detailed Analysis

3.1.1 Measures Common to Action Alternatives

Action alternatives are those under which we consider issuance of an eagle take permit. Below are measures common to both of our action alternatives considered in the EIS and this ROD.

3.1.1.1 Avoidance and Minimization Measures

Section 8.0 of the ECP discusses proposed impact avoidance and minimization measures. (ECP, Appendix B at page 46) Spatial buffers applied to active nests during the nesting season would be one mile for most mining activities and two miles for blasting. If activities are not within line of sight, buffers may be reduced in consultation with USFWS. The listed impact avoidance and minimization measures discussed on page 46 of the ECP are sufficient to reduce impacts to golden eagle populations.

3.1.1.2 Compensatory Mitigation

Under the USFWS Eagle Permit Decision, the applicant would provide the compensatory mitigation at the required 1.2:1 ratio by retrofitting electric utility poles, as discussed in the 2016 PEIS. The intent would be to minimize the potential for eagle electrocutions and ensure that the effects of eagle take caused by HRDI are offset at the population level. Under the USFWS Eagle Permit Decision, the USFWS would require somewhere in the range of 277 to 635 electric utility poles to be retrofitted in order to offset the impacts of three lost golden eagle breeding territories. The exact number of retrofits required would depend on the technology that the poles are retrofitted with, as explained below. Under the USFWS Alternative A Eagle Permit Decision, the USFWS would require a range of 102 to 234 electric utility poles to be retrofitted to offset impacts of one lost golden eagle breeding territory, depending on the type of retrofit undertaken.

The exact number of retrofits depends on the longevity of each pole's retrofit. Simple retrofits are accomplished by placing plastic covers on electric components. As plastic covers are a temporary solution, once retrofitted, the power pole is considered "eagle safe" for 10 years. If a pole is reframed or reconstructed, the pole is made permanently safe for eagles because adequate spacing is provided between electrical components. The USFWS gives a 30-year credit for this type of retrofit (USFWS, 2013).

Compensatory mitigation would be conducted within the Pacific Flyaway Eagle Management Unit (EMU). The USFWS recognizes the value of mitigation implementation at a local scale near to where the impacts would occur, to reduce impacts to the local area population. In cooperation with the BLM and NDOW, the USFWS is in active discussions with Harney Electric and would continue to make efforts to implement the compensatory mitigation locally, if practicable.

The USFWS's goal is to implement all or most of the retrofits on power poles located within the Kings River area. In the Kings River area, many electric utility lines supply energy to water well pumps used to irrigate alfalfa crops. In desert environments, irrigated crops and fields attract many forms of wildlife, including rabbits and other common prey for eagles. Electric power poles are often the only hunting perches available on the landscape, thereby creating a higher than average risk to eagles. Available data indicates that prioritizing retrofits in the Kings Valley, and other similar riverine and/or agricultural areas, would be beneficial to eagles and achieve the required compensatory mitigation obligations for

issuance of an eagle take permit.

3.1.1.3 Nest Removal Mitigation

The USFWS would require nest site enhancement within the Pacific Flyway EMU for nest removal mitigation. The USFWS would request HRDI contribute funds to the National Fish and Wildlife Foundation for assistance in treating golden eagle nests for Mexican chicken bugs or other nest parasites if they 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 (Dudek and Heath 2017).

3.1.1.4 Monitoring

HRDI will continue monitoring during operations within a 10-mile radius of the active Hycroft Mine project area to obtain additional data on golden eagle nests following the removal of nests and to determine whether other impacts to eagles occur. HRDI project area monitoring will inform the applicant and agencies when other golden eagle nests become active/in use in the project area in order to ensure compliance with HRDI's ECP take avoidance and minimization measures including nest protection buffers.

In addition, HRDI has voluntarily committed to track adult golden eagles that may be affected by the disturbance or loss of breeding territories as a result of the proposed mine expansion. Adult eagles were fitted with transmitters during the 2018 breeding season. The eagles will be tracked for multiple years over a period that spans pre- and post-mine expansion. The data collected will help inform HRDI and the regulatory agencies about golden eagle breeding behavior and movements within breeding territories in relation to mining activities.

Continued data collection will allow for evaluation of trends in nest occupancy and success which will lead to a determination of whether the local-area population appears to be stable. In addition, the monitoring methodology and frequency may be adjusted over time in coordination with the other agencies.

3.1.1.5 Adaptive Management

Chapter 8 of the HRDI ECP describes the protection and adaptive management measures they would employ. The following measures from the ECP would inform discussions around adaptive management should they be warranted.

1. Compliance with the Nevada Department of Wildlife (NDOW) Industrial Artificial Pond Permit which contains measures that are intended to prevent wildlife mortality from occurring as a result of exposure to chemicals at the heap leach facility and chemical-laden water impoundments. Specifically, the permit includes specifications for fencing and covering and containment, as well as reporting requirements for mortalities;
2. Monitoring surveys within 10 miles of the project area (project area population) to demonstrate trends and to evaluate impacts from mining operations to the project area eagle populations.
3. Spatial seasonal avoidance buffers will be applied to eagle's nests during breeding season, defined as spanning from the arrival of adults on a territory to post-fledging dependency of young. The buffer size will typically be one to two miles, although it will depend on the nature and duration of the disturbance and whether the nest is within line-of sight of mining activities.
4. Spatial seasonal buffers will be applied to raptor nests during the nesting season. The buffer size will depend on the nature and duration of the disturbance and whether the nest is within line-of sight of mining activities. The buffer size will be decided with input from the NDOW, and/or the BLM;

5. Daily inspections of the heap leach pad for ponding to minimize the chance of cyanide poisoning; and
6. Regular reviews of avoidance and protection measures and application of adaptive management.

3.1.2 Eagle Take Permit Proposed Action Alternative (USFWS Eagle Permit Decision)

Under the USFWS Eagle Permit Decision, HRDI has requested eagle take permit(s) as allowed by regulation under the Eagle Act for the removal of inactive nests (i.e., outside of nesting season) (50 CFR 22.25) and disturbance take associated with nest removals and mining activities (50 CFR 22.26) that may result in the loss of up to three golden eagle breeding territories. Under the USFWS Eagle Permit Decision, the USFWS would issue an eagle take permit to HRDI that aligns with the approval of the BLM amendment to the plan of operation. The permit would be for a 30-year period, which would be re-evaluated every five years, as required by the Eagle Act permit regulations.

Under the USFWS Eagle Permit Proposed Action, we would authorize the following:

- Removal of three inactive golden eagle nests (i.e., outside of nesting season) from the Silver Camel territory located on a rocky outcrop feature that was authorized for mining in the 2012 Final EIS for the Hycroft Mine Expansion;
- Removal of one inactive nest (i.e., outside of nesting season) from the South of Sawtooth territory located within the Northeast Tailings Storage Facility (TSF) footprint; and
- Disturbance take authorization for the loss of the following three golden eagle breeding territories:
 - Silver Camel territory;
 - East Kamma territory; and
 - South of Sawtooth territory.

The avoidance and minimization measures, compensatory mitigation and nest removal mitigation measures that are part of this Action Alternative are described above in ROD Section 4.1.1. As required under 50 CFR 22.26(c)(1)(i), and stated in the 2016 PEIS, 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 Eagle Management Unit (EMU) where the take is authorized (USFWS, 2016a). The compensatory mitigation that is part of this Action Alternative, and described in Section 9.0 of the ECP (pages 47 through 48) and further described in Chapter 4, Section 4.10.3 of the DEIS, would result in no net loss to the golden eagle population (Appendix B) (HRDI, 2018b).

3.1.3 USFWS Alternative A Eagle Permit Decision (Preferred Alternative)

Under the Eagle Take Permit Alternative A (USFWS Alternative A Eagle Permit Decision) we would issue an eagle take permit to HRDI that aligns with the BLM Alternative A, an alternative to the amendment to the plan of operations.

Under the USFWS Alternative A Eagle Permit Decision, we would authorize:

- Removal of three inactive golden eagle nests (i.e., outside of nesting season) from the Silver Camel territory located on a rocky outcrop feature that was authorized for mining in the 2012 Final EIS for the Hycroft Mine Expansion; and
- Disturbance take authorization for the loss of the Silver Camel golden eagle breeding territory.

3.1.4 USFWS No Action Alternative

Under the USFWS No Action Alternative, the USFWS would take no further action on HRDI's permit application. The USFWS must take action on the permit application, determining whether to deny or issue the permit. The USFWS considers this alternative because USFWS policy requires evaluation of a No Action Alternative and it provides a clear comparison of any potential effects to the human environment from the Proposed Action.

Under this alternative, we would deny HRDI's permit request. We could deny the permit because the application failed to meet criteria under 50 CFR 22.25 (nest removal) and/or 50 CFR 22.26 (incidental take) or because we have determined that the risk to eagles is so low that take authorizations are unnecessary. The Eagle Act take permit authorizations are not required in order for HRDI to operate or expand their operations. However, any unpermitted eagle take, if it occurs, would constitute a violation of BGEPA.

The USFWS No Action Alternative in this context analyzes predictable outcomes of the USFWS not issuing a permit. Under the USFWS No Action Alternative, 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 BLM No Action Alternative), as the BLM may still authorize the Proposed Action as outlined in Section 2.1.

Thus, for purposes of analyzing the No Action Alternative, the USFWS assumes that HRDI would implement all measures required by other agencies and jurisdictions to conduct the activity at the Project, but the conservation measures proposed in the eagle incidental take permit application package would not be required. HRDI may choose to implement some, none, or all of those conservation measures. Under this alternative, the USFWS assumes that HRDI would take some reasonable steps to avoid taking eagles, but HRDI would not be protected from enforcement for violating the Eagle Act should take of an eagle occur.

3.2 Alternatives Considered and Dismissed

A complete description of alternatives that were identified for consideration, but eliminated from full analysis in the DEIS, are provided in the Alternatives Memo for the Proposed Hycroft Mine Phase II Expansion Project (Stantec, 2018). The following three alternatives were considered, but not carried forward.

3.2.1 USFWS Issuance of Golden Eagle Nest Removal Permit Alternative

Under this alternative, the USFWS would issue an Inactive Eagle Nest Removal permit in accordance with 50 CFR 22.25 associated with resource development as initially requested in 2013. In 2015, the Silver Camel golden eagle pair nested on the Silver Camel rocky feature. At this point, it was clear the nests on this rocky outcrop belonged to an active breeding territory. Similarly, breeding eagle surveys indicated that the East Kamma breeding pair, another active territory, would also be impacted by the Proposed Project. As proposed in 2015, the Project would result in the loss of at least two golden eagle breeding territories. We determined that we could not issue a permit to remove inactive/alternate eagle nests if doing so caused take under the Eagle Act. Subsequently, we recommended the Applicant consider an eagle incidental take permit to cover the proposed Project activities under 50 CFR 22.26. Therefore, this alternative did not meet our Purpose and Need and has been eliminated from further consideration.

3.2.2 USFWS Issuance of Eagle Take Permit for Different Duration Alternative

In 2015, HRDI originally submitted an application for a five-year programmatic take permit under the Eagle Act 2009 Eagle Permit Rule regulations. Following the 2016 update to our eagle take permit Rule Revision, applicants that were in the process of obtaining a take permit had the option to proceed under the 2009 Eagle Rule or under revised 2016 Eagle Rule. On May 24, 2017, HRDI requested we process

their permit under the updated regulations for a 30-year permit duration. Therefore, this alternative was no longer applicable and we eliminated it from further analysis.

3.2.3 USFWS Nest Removal Mitigation

Because HRDI's mining activities would result in the permanent loss of the Silver Camel rocky outcrop which supports multiple golden eagle nests, the USFWS considered experimental mitigation through rehabilitation of existing nest sites or creating replacement nest sites at up to five locations if ultimately determined to be practicable as a possible alternative.

Our experimental mitigation investigations for nest site rehabilitation and/or creation was focused on locations within the mine's project area population (10 miles) and local area population (109 miles). The USFWS worked cooperatively with BLM, NDOW and HRDI to locate sites suitable for golden eagle nest rehabilitation and nest or territory creation. Through coordination with the BLM, the USFWS determined that creating nest ledges on inactive mine sites would not be advisable as active and/or future mining claims could occur at any inactive mine site. The creation of an experimental nest site would not be protected should an active or future mining claim occur where the nest site would be created, therefore this alternative was dismissed from further analysis.

3.3 Selected Alternative

The Selected Alternative for issuance of an eagle take permit is the USFWS Alternative A Eagle Permit Decision, which was identified as our Preferred Alternative in the Final EIS. Our Selected Alternative aligns with BLM's Alternative A, also identified as BLM's Preferred Alternative, as described in the FEIS and BLM's ROD.

Under our Selected Alternative, HRDI will deposit compensatory mitigation funds to the USFWS Pacific Southwest Region Bald and Golden Eagle Mitigation Account with the National Fish and Wildlife Foundation (Eagle NFWF) to compensate for the loss of one golden eagle breeding territory. The contributions will be applied to retrofit the required high-risk power poles within the same EMU (Pacific Flyway), although efforts will be made to implement mitigation within the natal dispersal range (109 mile-radius), if practicable. Under our Selected Alternative, as nest removal mitigation, HRDI will either contribute additional funds to a NFWF account, or directly to researchers in coordination with USFWS, as required for the nest removals and loss of a nesting habitat.

This decision is based on the review of the alternatives and their environmental consequences described in the Draft EIS and Final EIS, indicating the following:

1. Issuing a permit for the HRDI's operation and expansion Project is consistent with the Eagle Act regulatory standards, currently defined as consistent with the goal of maintaining stable or increasing breeding populations in all eagle management units, and the persistence of local populations throughout the geographic range of each species.
2. Our permit would authorize the removal of three inactive golden eagle nests from the Silver Camel territory (DEIS Figure 2.3-3) located on a rocky outcrop feature that was authorized for mining in the BLM's 2012 FEIS, and as allowed by 50 CFR 22.25.
3. The permit would authorize incidental take in the form of disturbance that we determined will result in the loss of one golden eagle breeding territory.
4. Compensatory mitigation for the take of golden eagles under the incidental take authorization will be required. Retrofitting power poles with a high risk of avian electrocution in accordance with Avian Power Line Interaction Committee (APLIC) 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

- 4.1.1.2 in this document, high risk poles will be retrofitted within the eagle management unit and within the golden eagle local area population to the extent practicable.
5. Additional nest site mitigation will be provided to mitigate the impacts of permanent destruction of an eagle nest site as described in Section 4.1.1.3 of this document.
 6. Annual monitoring of eagles nests within the project area will ensure the mine locates active/in-use eagle nests so that the appropriate disturbance avoidance and minimization buffers are implemented.
 7. Nest monitoring and facilities monitoring will inform and potentially trigger adaptive management.

3.4 Environmentally Preferable Alternative

NEPA regulations require Federal agencies to specify “the alternative or alternatives which were considered to be ‘environmentally preferable’” (40 CFR 1505.2(b)). Based on the analysis of alternatives presented in the DEIS and FEIS, the USFWS finds that our Selected Alternative and the No Action Alternative are also our Environmentally Preferable Alternatives.

As described in the Final EIS, the USFWS will not authorize any additional take of golden eagles without requiring compensatory mitigation that assures the Service that the net effect of the action on the golden eagle population is zero. Consequently, although different numbers of golden eagles may be taken or impacted under different alternatives, the environmental consequences to the golden eagle population is anticipated to remain the same under each alternative.

Compared to the Proposed Action alternative, and BLM’s corresponding Proposed Action Alternative for the Mine Expansion, our Selected Alternative will result in reduced impacts to eagles and BLM’s corresponding Preferred Alternative will result in less overall eagle habitat and other resource disturbance. This would result in less overall disturbance to habitat, and decreased impacts to other wildlife from BLM’s decision as described in the Chapter 4 of the DEIS.

3.5 Effects of Implementation

Our Selected Alternative is consistent with the purpose and need stated in the EIS. A summary of the impact analysis, mitigation measures, EIS conclusions, and effects on eagles, migratory birds, and species listed under the Endangered Species Act (ESA) follows.

3.5.1 Eagles

BLM’s Preferred Alternative in the FEIS (absent an Eagle Act Permit) would result in major impacts to golden eagles. The BLM determined that if we issue an Eagle Take Permit, impacts to golden eagles would be minor, as discussed in Section 4.10.3 of the DEIS. If we do not issue an Eagle Take Permit, the BLM would require that HRDI continue to coordinate with the USFWS prior to conducting mining activities that would result in nest take or disturbance take to eagles. This is the same measure that BLM required of HRDI in their 2012 and 2014 ROW grants. As a result, the mine would likely be unable to fully implement its otherwise approved Plan of Operations and remove the Silver Camel rocky feature until it obtained an eagle take permit to both remove inactive/alternate nests and for disturbance impacts that would cause take of eagles.

In determining the effects of each of our eagle take permit alternatives on eagles, we screened each alternative against the Eagle Act regulation’s permit issuance criteria using the quantitative tools available in our ECP Guidance (Service 2013). The Service independently evaluated the potential impacts from Project operation and expansion. We developed conservative risk estimates for the Project and our cumulative effects analysis to be protective of the species.

3.5.1.1 *Direct and Indirect Effects*

The implementation of BLM's Preferred Alternative, Alternative A, results in less overall disturbance to habitat than the Proposed Action, with approximately 3,852 acres of habitat being directly removed or disturbed over the life of the mine as a result of implementation of BLM's Alternative A. Our Selected Alternative would authorize the removal of three nests (nests 8A, 8B, and 8C) (DEIS Figure 2.2-1) from the Silver Camel territory. Two of these nests have been documented as active/in-use nests (i.e., nests used to produce young) in the past few years. One of these nests (nest 8C) is smaller and deteriorated. Currently, it is estimated that there are four alternate nests within the Silver Camel territory; however, the nesting material has completely fallen off the fourth nest's (nest 11) ledge (DEIS Figure 2.2-1) and the eagles have not maintained the nest in recent years. BLM's Preferred Alternative and our corresponding Selected Alternative would have a direct impact on the Silver Camel pair and it is anticipated they would be immediately displaced from their breeding territory due to mining operations and habitat loss. The USFWS has determined that removal of three nests used by the Silver Camel pair and incidental disturbance take from mining operations, including permanent removal of the Silver Camel rocky outcrop, would result in the loss of the Silver Camel territory (DEIS Figure 2.2-1). The nesting substrate would be permanently removed from the landscape, and therefore future nesting opportunities for subsequent pairs of eagles would be prohibited. No impacts would occur to the two other eagle breeding territories, East Kamma and South of Sawtooth, as the Northeast Tailings Storage Facility (TSF) would not be constructed. Therefore, the impacts of this alternative are less than that under the USFWS Eagle Permit Decision alternative as only one territory would be impacted. No net loss of golden eagle populations is anticipated.

Loss of an occupied nesting territory results in the recurring loss of annual productivity (i.e., number of young reared) from that territory. Golden eagle generation time is 11 years (i.e., the average interval between the birth of an individual and the birth of its offspring). To offset the loss of annual productivity (0.59 eagles 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).

Compensatory mitigation would be conducted as described in Section 4.1.1.2 of this ROD. Under our Selected Alternative, issuance of an eagle take permit to HRDI would not affect eagles at the population scale, although individual eagles would be impacted. The Silver Camel pair would be immediately displaced from its breeding territory.

Golden eagle territories within the Project Area are limited by amount of available nesting substrate. Therefore, we are uncertain if there is much flexibility for pairs to adjust their boundaries without a territorial pair abandoning or being driven away from their territory by neighboring eagles. We have determined that a territory would be lost due to incidental disturbance and loss of habitat.

We will require nest site enhancement within the Pacific Flyway EMU for nesting habitat and nest removal mitigation. HRDI will contribute funds to the National Fish and Wildlife Foundation for assistance in treating golden eagle nests for nest parasites as described in Section 4.1.1.3 of this ROD.

We identified another potential impact to eagles from environmental contaminants. Direct and indirect poisoning of golden eagles occurs throughout their entire range and may impact local and regional populations by affecting reproductive success and behavior. Poisoning is estimated to cause 17 percent of golden eagle deaths per year (USFWS, 2016). Mercury, rodenticides, and lead have been a concern in raptor poisoning. Eagle take due to chemical exposure at mines is a rare, uncommon event. Implementation of industry tested BMPs typically avoid and minimize impacts to wildlife, including golden eagles. There was a dead eagle found on the Hycroft Mine's leach pad in 2013; however, the U.S. Fish and Wildlife Service Forensic Laboratory necropsied the eagle and the cause of death was not verified. Cyanide levels in an animal's remains (i.e., blood and tissues) is unstable and degrades quickly.

Methods used by our Forensic Lab have advanced since the eagle incident at the mine, but at the time the results were inconclusive. It is possible the eagle died from direct chemical exposure or secondary poisoning from ingesting the remains of another contaminated animal. HRDI has not requested incidental take of eagles due to accidental poisoning. Implementation of BMPs and monitoring of ponds and HLFs would be required by the NDOW and by us as a condition of any eagle permit issued. The BMPs are expected to avoid and minimize the likelihood of eagle take due to cyanide or other chemical exposure in the future.

We have determined that there will be no net loss of golden eagle populations under our Selected Alternative, although individual golden eagles would be impacted.

A potential residual impact of displaced territorial pairs may be territory disputes resulting in golden eagle mortality. No residual impacts are anticipated from implementation of the compensatory mitigation of retrofitting poles within the Pacific Flyway EMU.

3.5.1.2 Cumulative Effects

A cumulative impact, as defined in 40 CFR 1508.7, is “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time” by federal, state, or local agencies or by individuals. Reasonably foreseeable future actions consist of activities that are generally in the planning stage and can be evaluated with respect to their impacts.

To evaluate cumulative impacts for the local-area population, we followed the guidance provided in Appendix F of the ECP Guidance (USFWS 2013) and as described in the 2016 PEIS. Using this process, we estimated annual golden eagle fatality rates within a 109-mile radius around the Project area (EA Figure 1-2). We incorporated data provided by the Applicant, our own data on permitted take and other documented eagle mortalities in determining cumulative impacts to the local area population.

When released, our ECP Guidance defined golden eagle natal dispersal distance to be 145 miles (USFWS, 2013). In 2014, new data analysis indicated that golden eagles’ natal dispersal distance is smaller and an updated distance at 109 miles was used for our Golden Eagle cumulative effects analysis (Millsap et. al., 2014) (DEIS Figure 4.20-4). Since HRDI had been in coordination with the USFWS for several years, and the natal dispersal distance has changed, some reports and discussions refer to the local area population as being 145 miles, while others incorporate the updated 109-mile natal dispersal distance.

It is the Service’s objective to manage eagles by authorizing take at a level that is less than five percent of the local-area population annually, as well as to assess any available data to determine if there is any indication that unauthorized take in the local area population may exceed ten percent. Eagle management units are defined by the Service and are assigned a take limit specific to each eagle management unit (Service 2016). As golden eagle populations throughout the United States may be declining, the take limit for all eagle management units was set to zero (2016). Therefore, any authorized take of golden eagles must be offset with compensatory mitigation at a mitigation ratio of 1.2 to 1 (81 FR 91494).

The cumulative effects of our Selected Alternative would be similar to but less than those described for the Proposed Action (DEIS Section 4.28.1 for USFWS Eagle Permit Decision) alternative, though less take is proposed under our Selected Alternative.

We estimated the local-area population for the project area to be 825 golden eagles. The five percent benchmark for authorized take of that local-area population is 41.25 eagles, while current authorized

take in the local area population is 0.59 eagles or 0.07% once we issue this permit. We found no indication that unauthorized take may exceed 10% of the local area population; our current analysis estimates total known unauthorized take in the local area is 2.61% eagles per year.

As this take would be below a sustainable benchmark of five percent of the local-area population and below the eagle management take limit, issuance of an incidental disturbance take permit would cause no significant adverse cumulative effects on golden eagle populations.

Under the USFWS Alternative A Eagle Permit Decision, it is estimated that issuance of an eagle take permit would result in a cumulative annual take rate of 2.68 percent in the golden eagle local area population.

Under our Preferred Alternative, we estimate that issuance of an eagle take permit would result in a cumulative annual take rate of 2.68 percent of golden eagles within the local area population. The majority of the human caused take is from known, ongoing, unauthorized impacts. Electrocution of eagles is the highest source (2.08%) of known take reported in the local area population. Other impacts include vehicle collision, poisoning, gun shot, and trauma. Reasonably foreseeable future actions are anticipated to be similar to the past and present disturbances.

While the incremental effect of the project is small it would contribute to local and possibly regional adverse effects 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, nest removal mitigation, retrofitting electric utility poles, monitoring and adaptive management. The applicant would offset take through compensatory mitigation, therefore the cumulative effects contributed to golden eagle populations from our authorizations to allow nest removals and loss of a breeding territory under an eagle take permit would result in no net loss at the population level. The cumulative impacts from our permit to HRDI is within the range of what the Service has determined is compatible with our goal of maintaining stable or increasing breeding populations in all eagle management units, and the persistence of local populations throughout the geographic range of each species.

3.5.2 Migratory Birds

The Applicant submitted a Bird and Bat Conservation Strategy (BBCS) to us and the BLM to support their applications. The BBCS goals are to reduce the Project's impacts to breeding birds and to reduce any project related mortality to birds and bats. Implementation of environmental protection measures (EPMs) (see DEIS Section 1.9.3 and Table 2.1-5) and the BBCS would minimize project impacts. Project compliance with the NDOW Industrial Artificial Pond Permit includes protection measures and monitoring to minimize impacts to birds and bats from potential contact with contaminants. In addition, as described in Section 4.1.1 of this ROD, the retrofitting of power poles we will require as eagle compensatory mitigation would also prevent the electrocution of other large birds and raptors, resulting in positive effects to large bird and raptors. The effects of authorizing incidental eagle take will result in some minor beneficial effects from the reduction of avian electrocution risk associated with our eagle compensatory mitigation requirements. Issuances of our permit would also contribute to minor local and cumulative adverse effects from the loss of habitat when the Silver Camel rocky feature is removed.

As stated in DEIS Section 4.24.1 and 4.24.2, BLM concluded that impacts to migratory birds under their Action would be the following:

Considering past, present, and RFFAs within the CESA that may affect migratory birds and their habitat, combined with the Proposed Action, cumulative effects would be minor, and EPMs, voluntary mitigation measures, and disturbance reclamation would further help reduce cumulative impacts to migratory birds and raptors from the Proposed Action.

With EPMs, loss of cliff nesting by the Proposed Action would result in minor cumulative impacts to the raptor population in the CESA. Overall, the cumulative impacts to migratory birds would remain minor.

3.5.3 Species Listed Under ESA

As described in DEIS Table 3.1-1, there are no Threatened or Endangered Species within the Project Area. The effects of authorizing incidental eagle take is not expected to have effects to species protected by the ESA.

3.5.4 Cultural Practices

Bald and golden eagles are important symbolic and traditional religious resources for American and Native American cultures. Eagles, particularly golden eagles, have a central role in many tribe's beliefs, traditions, and worldview.

Our 2016 PEIS fully analyzed impacts of our eagle permit program to cultural and religious resources. As stated in Section 1.0 of this ROD, our DEIS and this document incorporated information and analysis contained in our 2016 PEIS, including potential impacts to cultural practices.

Issuance of an eagle permit under our Selected Alternative is not expected to adversely effect 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.

Requirements for offsetting each golden eagle taken would mitigate impacts on tribes that attribute symbolic value to eagles by ensuring that the number of golden eagles remains stable. Even so, this would not eliminate symbolic or cultural impacts attributed to the very fact that the Silver Camel rocky outcrop, an eagle nest site, will be permanently removed from the landscape.

3.6 Rationale for Decision

Under the BLM's Preferred Alternative (see FEIS), their Mine Expansion Alternative A (BLM Alternative Decision), the Northeast Tailings Storage Facility (TSF) would not be constructed as described in the Plan Amendment and instead the alternative Southwest TSF would be constructed and operated to accommodate the tailings material resulting from mining below the groundwater table. The Southwest TSF would be located south of the Authorized Plan Boundary, adjacent to the authorized well field.

Under BLM's Alternative A, all components of the Proposed Action would be the same except the Northeast TSF and all associated infrastructure would not be constructed, and the Southwest TSF would be constructed instead. New surface disturbance under Alternative A would be 3,852 acres. The BLM Preferred Action reduces surface disturbance by approximately 4,800 acres, the Plan boundary would be nearly 7,800 acres less, and the permanent surface disturbance would be 367 acres less than the Proposed Action alternative.

Our decision is to implement the Eagle Take Permit Alternative A (USFWS Alternative A Eagle Permit Decision) as our Selected Alternative. This Alternative is consistent with BLMs Alternative A which they identified as their Preferred Alternative. Under our Selected Alternative, we will issue an eagle take permit to HRDI that aligns with BLM's Alternative A. The USFWS will authorize the removal of three inactive golden eagle nests from the Silver Camel territory located on a rocky outcrop feature that was authorized by the BLM for mining in the 2012 Final EIS (FEIS) for the Expansion Project, and disturbance take from mining activities that would result in the loss of the Silver Camel golden eagle breeding territory, as compared to the loss of three territories under our Proposed Action alternative.

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 HRDI in the ECP and the Bird and Bat Conservation Strategy, coupled with the required compensatory mitigation, and nest site mitigation will address and offset impacts to eagles, resulting in stable or increasing eagle populations at the management unit and within the local area population. To address future uncertainty, we may implement an adaptive management strategy based on monitoring results that reveal nest locations for which different buffers may be appropriate, or should problems be detected at heap leach pads or ponds.

We determined that under the Selected Alternative, HRDI has met the issuance criteria identified in the Eagle Act's permitting regulations under 50 CFR 22.25 (nest removals) and 50 CFR 22.26 (incidental take). In summary, we have chosen Eagle Take Permit Alternative A (USFWS Alternative A Eagle Permit Decision) as our Selected Alternative as it is in alignment with BLM's Preferred Alternative for the HRDI's Proposed Expansion, and because it is the Environmentally Preferable Alternative. The overall disturbance to habitat is less than the under the BLM's Proposed Action, with approximately 3,852 acres of habitat being directly removed or disturbed over the mine life as a result of implementation of BLM's Alternative A. Under our Selected Alternative, one eagle territory (Silver Camel) would be impacted which would result in a reduced impacts in comparison to the Proposed Action.

4 Coordination

4.1 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. In preparing this DEIS, 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

- United States Environmental Protection Agency (Cooperating Agency); and
- National Park Service.
- U.S. Geological Survey.

State Government Agencies

- Nevada Department of Wildlife (Cooperating Agency);
- Nevada Natural Heritage Program;
- Nevada State Historic Preservation Office; and Nevada Division of Environmental Protection, Bureau of Mining Regulation and Reclamation.

Local Governments

- Pershing County; and
- Humboldt County.

Private Organizations

- Hycroft Resources and Development, Inc.; and

4.2 Tribal Coordination

We engaged in tribal consultation specific to the issue of eagle take and nest removals. The USFWS has conducted coordination activities with Federally recognized tribes that are located within a 109-mile radius (the golden eagle natal dispersal range) from the Project Area. Consultation and coordination

between the USFWS and the tribes is currently ongoing.

Our tribal consultation and coordination is ongoing and will address any Native American religious concerns that would result from the Selected Alternative. We considered tribal input throughout the project, including identification of alternatives, consideration of compensatory mitigation, evaluation of cultural impacts, and selection of the preferred alternative.

5 Public Involvement

The BLM and USFWS jointly held two open house meetings at the Pershing County Community Center on June 5, 2019 and at the Winnemucca Convention Center on June 6, 2019. A total of 16 individual people signed attendance sheets available at the meetings. Attendees at the meeting in Lovelock and Winnemucca, Nevada included representatives from HRDI, the BLM, and the USFWS. In addition, one member of the general public attended the public meeting held in Lovelock, Nevada. No comments were received during the public meetings.

The BLM and USFWS received a total of nine comment letters. Each letter was reviewed and 102 discrete comments were identified. Table 3-1 of the FEIS lists each of the comment letters by assigned comment number, commenter, date of receipt and the number of comments per letter. Table 3-2 summarizes the public comments received, and the BLM and USFWS responses to those comments.

5.1 Scoping

The BLM's Project scoping was initially conducted in 2014 through 2015 for the proposed mine expansion, and in 2017 for the USFWS's scoping on the requested eagle take permit as related to the ECP for the Project. A Preparation Plan document was prepared for the DEIS that outlines the activities conducted during the public scoping process, and addresses the issues and concerns identified by the public during the scoping process (Stantec, 2017). This document lists the key issues identified during the scoping process, and those that the BLM and USFWS determined necessary for analysis in the DEIS. The public comments received during both scoping periods are included as an attachment to the Preparation Plan. This document also outlines the DEIS process and how each resource would be analyzed in the DEIS.

5.2 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 in the Federal Register on May 17, 2019. Letters were sent to potentially interested parties and a news release was also issued by the BLM that stated the Draft EIS was available for comment during a 45-day period, and an additional seven-day comment period extension. In addition, we sent emails about the Notice of Availability to our stakeholders identified in our internal informal communications strategy. Stakeholders included other federal, state and local agencies, industry and environmental groups, and our California-Nevada Golden Eagle Working Group members. Two public meetings were held on June 5, 2019 in Lovelock, Nevada, and June 6, 2019 in Winnemucca, Nevada.

Individuals, public agencies, and nonprofit organizations submitted nine letters with comments on the Final EIS. The comments and responses to them are contained in Table 3-2 of the Final EIS. Based on comments received, the BLM prepared the Final EIS adding information that clarified and improved the EIS analysis, however, it was determined that a supplemental EIS was not necessary because there were no substantial changes in the Proposed Action or alternatives that were relevant to environmental concerns presented in the Draft EIS. Moreover, there were no significant new circumstances or information relevant to environmental concerns and related to the Proposed Action and alternatives or impacts.

5.3 Final EIS

The Notice of Availability for the Final EIS was published by the BLM, in coordination with the USFWS, in the Federal Register on September 6, 2019. The 30-day availability period ended on October 6, 2019. The BLM and our USFWS notification process for the DEIS was as described in Section 5.2 of this document.

The BLM and the USFWS collectively received two comment letter during this 30-day period. Comments were received from the EPA and from a private citizen. These comment were evaluated and considered before approving this ROD for the project.

6 Corrections to Final EIS

Minor edits to the Draft EIS have been made in response to public comments in order to provide clarification or further information (see FEIS Chapter 2). We decreased the number of electric utility pole retrofits based upon a technical question from the EPA in their comment letter, and based on new science and specific resource equivalency models recently developed for loss of productivity and loss of an eagle territory. We also made corrections to DEIS Figure 2.2-1 golden eagle nest symbology.

7 USFWS Decision

The USFWS's decision is to implement the Selected Alternative, and issue an eagle permit authorizing the removal of three inactive/alternate nests and for incidental take of golden eagles from habitat loss and disturbance from HRDI's mining operations that will result in the loss of one breeding territory.

This decision is based on the information contained in the Draft EIS and Final EIS for the Hycroft Mine Phase II Expansion Project DOI-BLM-NV-W030-2015-0007 dated September 06, 2019 (84 FR 46965). This ROD was prepared pursuant to the requirements of the CEQ regulations for implementing NEPA at 42 CFR 1505.2 and the Department of the Interior's implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215).

Signature



Jody Holzworth
Deputy Regional Director
Pacific Southwest Region
U.S. Fish and Wildlife Service

10/23/19

Date

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