



US Army Corps
Of Engineers
Walla Walla District
201 North Third Avenue
Walla Walla, WA 99362-1876

Public Notice:

Application for Permit

APPLICATION NO.: NWW-2012-279

WATERWAY: Deer Creek

APPLICANT: J.R. Simplot Company

DATE ISSUED: June 7, 2012

END DATE: July 7, 2012

30-Day Notice

Interested parties are hereby notified that this District has received an application for a Department of the Army permit for certain work in waters of the United States, including wetlands, as described below and shown on the attached drawings, entitled Sheets 1 through 12, dated March 2012.

APPLICANT: J.R. Simplot Company, PO Box 1270, Afton, Wyoming 83110; contact Mr. Scott Lusty at 208-873-3766.

USACE PM CONTACT: Idaho Falls Regulatory Office, 900 N Skyline Drive, Suite A, Idaho Falls, Idaho 83402; contact Mr. James Joyner at 208-522-1676.

PURPOSE: BASIC: To mine phosphate. **OVERALL:** To economically develop the phosphate ore reserve at Panel G at the Smoky Canyon Mine.

WATERWAY: Deer Creek, South Fork of Deer Creek, and an Unnamed Tributary to the South Fork of Deer Creek.

LOCATION: The proposed project would be located on Deer Creek, South Fork of Deer Creek, and an Unnamed Tributary to the South Fork of Deer Creek and adjacent wetlands within Section(s) 21, 22, 23, 24, 28, 29, and 32, Township 9 South, Range 45 East and Section(s) 3, 4, 5, and 10, Township 10 South, Range 45 East, near latitude 42.60203° N and longitude - 111.1934° W, in Caribou County, Idaho.

DRIVING DIRECTIONS: The mine is reached from Afton, Wyoming by travelling west on Highway 238 for about 4 miles, the highway will turn and head north. Continue north on Highway 238 for approximately 4.5 miles to the town of Auburn. At Auburn turn left (west). There is a "Simplot" sign and "USFS" sign marking the road. Continue on this road for about 12 miles to the mine.

AUTHORITY: This permit will be issued or denied under the authority of Section 404 of the Clean Water Act (33 U.S.C. 1344). A Department of the Army permit is required for the discharge of dredged or fill material into waters of the United States, including wetlands.

WORK: The discharge of dredged and fill (rock, soil, and mine overburden) material in approximately 2.27 acres of wetlands and 0.21 acres of stream (560 linear feet of perennial streams and 3450 linear feet of intermittent streams) associated with the mining of phosphate in the Smoky Canyon Mine, Panel G and the construction of the West Haul Road. Mining of Panel G would impact 3,450 linear feet of intermittent stream and 0.41 acres of wetlands. Construction of the West Haul Road would impact 560 linear feet of perennial stream and 1.86 acres of wetlands. The general location is shown in the attached drawings. The proposed work was discussed in detail as part of the Final Environmental Impact

Statement (FEIS) entitled Smokey Canyon Mine, Panels F&G, prepared by the U.S. Bureau of Land Management and the U.S. Forest Service. The FEIS containing a complete description of the project configuration, impact, and reclamation plan is available at the following Web address:

http://www.blm.gov/id/st/en/fo/pocatello/planning/smoky_canyon_mine.html.

CONSTRUCTION PERIOD: Applicant proposes to start construction October 2012 and end October 2017. The permit would authorize construction for a period of 5 years.

PROPOSED MITIGATION: The applicant proposes the following mitigation measures to avoid, minimize, and compensate for impacts to waters of the United States from activities involving discharges of dredged or fill material.

A range of project alternatives analyzed under NEPA for the Proposed Action were discussed in Chapter 2 of the Smoky Canyon Mine, Panels F and G FEIS (USFS and BLM 2007). Several alternatives were fully analyzed in the FEIS for mining activities and transportation activities. There were a total of six alternatives analyzed for mining activities and eight analyzed for transportation. These alternatives included avoidance (constructing the haul road in other locations) and minimization.

Project design features, best management practices (BMPs), and the proposed Mine and Reclamation Plan (M&RP) (described in Chapter 2 of the FEIS) are elements of the proposed project that were designed to reduce environmental impacts to wetland resources. Impacts to jurisdictional waters, including streams and wetlands, will be avoided or minimized. This will be done through design measures, such as reducing haul road widths at stream crossings, stabilizing slopes, and reclaiming all mined areas.

Along with standard engineering practices, additional design, construction, and maintenance commitments will be made to protect stream, soil, and aquatic resources. These commitments take the form of environmental protection measures and/or BMPs that will be implemented where appropriate. They were described in Appendix 2C of the FEIS, "Haul and Access Roads Environmental Commitments and Best Management Practices to ensure that water quality and fish passage are maintained" (USFS and BLM 2007). Management practices will also follow Simplot's Smoky Canyon Mine Storm Water Pollution Prevention Plan (SWPPP).

Considering the size of Panel G, impacts to wetlands and streams were minimized, because the projects impacts were limited to mostly small wetlands associated with small intermittent streams. Despite the 7.8 mile length of the West Haul Road, primary wetland impacts were limited to the once crossing each of perennial Deer Creek and the South Fork of Deer Creek. At each crossing, the road will be narrowed to a 50-foot running surface as opposed to the standard 100-foot running surface width of the rest of the haul road. This will necessitate one-way traffic over these crossings, but minimizes the impacts to aquatic resources while maintaining necessary safety features of the road.

To mitigate for unavoidable impacts associated with mining of Panel G and construction of the West Haul Road at the Smoky Canyon Mine, Simplot has proposed two compensatory mitigation projects. One project would be located in degraded wetlands near Crow Creek and the other would be located at Sage Creek. The Crow Creek project is being proposed as compensatory mitigation for wetland impacts and the Sage Creek project is being proposed as mitigation for stream impacts.

The proposed wetland compensatory mitigation would occur at a site near Crow Creek. Work at the Crow Creek mitigation site would involve rehabilitating approximately 10-acres of wetland (Sheet 7 of 12). Mitigation will rehabilitate emergent and scrub-shrub wetlands within the Crow Creek floodplain

by reconfiguring draining ditches and creating a varied topography adjacent to existing channels and wetlands. Vegetation structure and diversity will be improved in degraded wetlands within the Crow Creek floodplain by removing livestock grazing, installing fencing, and planting native species.

The proposed wetland mitigation is expected to substantially improve habitat functions at this location. Functional attributes that will be increased or improved at the mitigation site, as compared to the existing area, follow:

- Plant diversity by planting with native species
- Vertical and horizontal habitat structure
- Complexity of wetland and riparian habitat
- Woody vegetation that protects streambanks of Crow Creek from erosion
- Fish and wildlife habitat

The proposed stream compensatory mitigation would occur at and along Sage Creek (sheet 8 of 12) and would enhance approximately 24 acres of habitat. The Sage Creek mitigation site is currently heavily grazed and stream banks are eroded in the middle sections of the site. All sections lack woody vegetation to stabilize banks, cool waters and provide habitat. Overall the riparian habitat along Sage Creek is functioning at risk. Portions of the upper sections may be functioning properly but are clearly less than their potential as evidenced by almost complete lack of woody vegetation. There are a number of diversion ditches along the stream altering riparian function of Sage Creek. The intent of the mitigation project is to improve bank stability, reduce erosion and sedimentation, and increase vegetation diversity and structure throughout the riparian zone.

The goals of stream mitigation are to:

- Rehabilitate perennial stream channels within the Sage Creek floodplain by reconfiguring/blocking existing ditches and connecting them to the braided channel network to mitigate for impacts from construction of Panel G to intermittent streams.
- Improve riparian functions by:
 - Selectively planting stream banks with native vegetation
 - Installing stream bank stabilization measures, where appropriate, to improve channel stability
 - Restoring riparian functions by removing livestock grazing by fenced enclosures
- Remove fish blockages, such as culverts and beaver dams
- Re-establish riparian and channel habitat to mitigate for impacts from two road crossings of perennial streams

OTHER ENVIRONMENTAL DOCUMENTS and DA PERMITS ISSUED TO APPLICANT: An EIS for the project was previously prepared by the US BLM and USFS. See the FEIS at http://www.blm.gov/id/st/en/fo/pocatello/planning/smoky_canyon_mine.html, Table 1.2-1 for a more complete listing. The Corps intends to tier off of this document in making its permit decision to either approve or deny the current proposal.

The U.S. Army Corps of Engineers (Corps) previously verified that Simplot's crossing of the South Fork of Sage Creek to mine the northern portion of Panel F was permitted by Nationwide Permit 14 (Linear Transportation Projects) (NWW-2004-3300059). The South Fork of Sage Creek crossing impacted approximately 190 linear feet of stream or about 0.021 acres of other waters of the United States. The Corps also previously verified that Simplot's mining impacts to wetlands and waters located in the northern portion Panel F were permitted by Nationwide Permit 44 (Mining Activities) (NWW-

2004-3300059). The North Panel F mine action will impact approximately 0.031 acres of wetlands and approximately 0.2 acres of an unnamed ephemeral tributary to the South Fork of Sage Creek. These activities combined would impact approximately 0.252 acres of wetlands and other waters of the United States. These activities were determined to have independent utility from mining that might occur in the South Panel F, Panel F lease modification area, and Panel G. An individual permit was issued by the Corps for mining in South Panel F and Panel F lease modification area on 7 September 2011 (NWW-2010-637).

Panels F and G of the Smoky Canyon Mine are located in the Sage Creek Inventoried Roadless Area managed by the National Forest Service. When BLM and the USFS issued their June 2008 Record of Decision concerning Panels F and G, a determination was made by the Forest Service that mining could occur at Panels F and G because they were designated mineral leases that pre-dated the 2001 Roadless Rule. The Panel F lease modification was also subsequently approved by the USFS in 2009.

WATER QUALITY CERTIFICATION: This notice will also serve as public notice that the Idaho Department of Environmental Quality (IDEQ) is evaluating whether to certify that the discharge of dredge and/or fill material proposed for this project will not violate existing water quality standards. A Department of the Army permit will not be issued until water quality certification has been issued or waived by the IDEQ, as required by Section 401 of the Clean Water Act. If water quality certification is not issued, waived or denied within sixty (60)-days of this public notice date, and an extension of this period is not requested by and granted to the IDEQ, certification will be considered waived. Additionally, within thirty (30)-days of this Public Notice, any person may provide written comments to IDEQ and request in writing that IDEQ provide them notice of their preliminary 401 Certification decision. Comments concerning Water Quality Certification for this project should be mailed to: Idaho Department of Environmental Quality, Pocatello Regional Office, 444 Hospital Way, #300, Pocatello, Idaho 83201.

AQUATIC RESOURCE DESCRIPTION: The Smoky Canyon Mine (existing and proposed) is located in several watersheds that drain the east slopes of the Webster Range. These watersheds are part of the Crow Creek watershed (5th Level HUC 17040105) which ultimately drains to the Salt River in Wyoming, which is part of the Snake River's headwaters. Waterbodies within the Crow Creek watershed are driven by snow melt, rainfall, springs, and diffuse groundwater discharge however most runoff is attributable to snow melt. Area streams normally peak in April, May, and June with declining flows in late summer, fall, and winter. Where these streams cross the Wells formation, much if not all of the flow in the stream is lost to infiltration. Thus the streams in this watershed tend to be both temporally and spatially variable. Several surface water features occur within the project area, including Deer Creek, the South Fork of Deer Creek and an unnamed intermittent tributary to the South Fork of Deer Creek. Both Deer Creek and the South Fork of Deer Creek ultimately drain to Crow Creek. Both Deer Creek and the South Fork of Deer Creek are perennial streams. As with the streams in this watershed, wetlands tend to be variable, occurring intermittently adjacent to streams, often as springs/seeps and being wettest in spring and early summer.

A delineation of potentially jurisdictional waters of the United States, including wetlands, was performed at the Smoky Canyon Mine Panels F&G site during 2003 and 2004 by Maxim Technologies, Inc. The wetland survey identified two (2) intermittent streams in the Panel G and West Haul Road project area. Additionally seven (7) perennial streams were identified in the project area including Deer Creek and the South Fork of Deer Creek. The delineation identified six-small wetland areas in the Panel G project area (Wetlands 32-37 – 0.75 acres) and 10 jurisdictional wetland areas in the West Haul Road project corridor (Wetlands 1-7 and 4-6-04 – 3.95 acres). The majority of wetlands were associated with intermittent streams

while wetlands in the West Haul Road corridor are associated with perennial streams. The wetlands were identified as Palustrine Scrub-Shrub (PSS) wetlands or Palustrine Emergent (PEM) wetlands. A functional assessment of wetlands in the Panel F&G site was also conducted using the Montana Wetland Assessment Method. Wetlands that would be impacted as part of Panel G mining have relatively low functional scores. Wetlands that would be impacted as part of the West Haul Road scored much higher 7.5-9.0 out 12.

ANTICIPATED IMPACTS ON AQUATIC ENVIRONMENT: Total impacted waters of the United States associated with the proposed action at the Smoky Canyon Mine Panel G and the West Haul Road would include:

Total impacted waters of the United States associated with the proposed action at the Smoky Canyon Mine Panel G and the West Haul Road would include:

- 0.41 acres of wetland and approximately 3450 linear feet of Unnamed Tributary of the South Fork of Deer Creek (intermittent) from discharges associated with excavating and developing the mine pit.
- 1.86 acres of wetland and approximately 560 linear feet of perennial streams (Deer Creek and the South Fork of Deer Creek) from discharges associated with construction of the West Haul Road.

Total proposed impacts to waters of the United States at the project site equal 2.27 acres of wetland impacts and 4,010 linear feet of impacts to other waters of the United States.

OTHER AUTHORIZATIONS: Other authorizations obtained or requested include approval of the Mine and Reclamation Plan and Lease Modification by the U.S. Bureau of Land Management, National Pollutant Discharge and Elimination System (NPDES) Permit from the United States Environmental Protection Agency (EPA), Water Quality Certification by the Idaho Department of Environmental Quality, and a mining permit from the Idaho Department of Lands. Other permits may also be necessary. See the FEIS at http://www.blm.gov/id/st/en/fo/pocatello/planning/smoky_canyon_mine.html, Table 1.2-1 for a more complete listing.

CULTURAL RESOURCES: Coordination is currently being conducted with the office of the Idaho State Historic Preservation Officer to determine if this activity will affect a site that is listed on the National Register of Historic Places, or a site that may be eligible for listing on the Register. We are also coordinating with the appropriate Tribal entity or the Tribal Historic Preservation Offices for the Shoshone-Bannock Tribes, to determine if there are any tribal historic or cultural interests within the project area. Coordination on cultural resource issues was also previously conducted as part of the EIS for the project.

TRIBAL TREATY RIGHTS and INTERESTS: Federal agencies acknowledge the Federal Trust's responsibility arising from treaties, statues, executive orders and the historical relations between the United States and American Indian Tribes. The Federal Government has a unique trust relationship with federally recognized American Indian Tribes, including the Shoshone-Bannock Tribes. The Corps has a responsibility and obligation to consider and consult on potential effects to Tribal rights, uses and interests. The Corps further recognizes there may be a need for additional and on-going consultation.

ENDANGERED SPECIES: A list of federally listed species for the project area includes Canada lynx (*Lynx canadensis*) and Western yellow-billed cuckoo (*Coccyzus americanus*). The Canada lynx is listed

as threatened and the Western yellow-billed cuckoo is listed as a candidate species. No other federally threatened, endangered, or candidate species of animals or plants are known to occur in the vicinity of the project area. Lynx are not known to be resident in the area and are likely transient. Additional information concerning lynx can be found at Chapter 3.7.1 (Threatened, Endangered, Proposed, and Candidate Wildlife Species) of the FEIS. Potential impacts to listed species are discussed at Chapter 4.7 (Wildlife Resources) and Chapter 5.8 (Wildlife) of the FEIS.

ESSENTIAL FISH HABITAT: The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996, requires all Federal agencies to consult with the National Marine Fisheries Service on all actions or proposed actions, permitted, funded or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH). No EFH species are known to use the project area. Preliminarily, we have determined the described activity would have no effect on EFH.

ENVIRONMENTAL IMPACT STATEMENT: The proposed work was discussed in detail as part of the Final Environmental Impact Statement (FEIS) entitled Smokey Canyon Mine, Panels F&G, prepared by the U.S. Bureau of Land Management and the U.S. Forest Service. The FEIS containing a complete description of the project configuration, impact, and reclamation plan is available at the following Web address: http://www.blm.gov/id/st/en/fo/pocatello/planning/smoky_canyon_mine.html. The Corps preliminary review of the current proposal, e.g. mining in the South Panel F and South Panel F Lease Modification Area, indicates the activity will not require preparation of a separate or supplemental EIS given the Corps limited Scope of Authority over the project and/or elements of the project. The Corps does intend to tier off of the existing FEIS prepared by BLM and the USFS in preparing an Environmental Assessment (EA). Comments provided will be considered in preparation of an EA.

EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impacts, of the proposed activity on the public interest. This decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and in general, the needs and welfare of the people. In addition, our evaluation will include application of the EPA Guidelines (40 CFR 230) as required by Section 404(b)(1) of the Clean Water Act.

CONSIDERATION OF PUBLIC COMMENTS: The Corps of Engineers is soliciting comments from the general public; Federal, State and local agencies and officials, Tribal entities and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

PUBLIC HEARING: Any person may request in writing, within the comment period specified in this notice, that a public hearing be held to consider this proposed activity. Requests for a public hearing shall state specific reasons for holding a public hearing.

COMMENT & REVIEW PERIOD: Interested parties are invited to provide comments on the proposed activity, which will become a part of the record and will be considered in the final decision.

Please mail all comments to:

U.S. Army Corps of Engineers
James M. Joyner
Idaho Falls Regulatory Field Office
900 N Skyline Drive, Suite A
Idaho Falls, Idaho 83402

Comments should be received no later than the comment due date of **July 7, 2012**, as indicated on this notice, to receive consideration.

James M. Joyner
Sr. Project Manager
Walla Walla District

Enclosures