



MEMORANDUM

Date: September 16, 2013

To: The Honorable Chairman and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator 

Re: **Rosemont Mine Environmental Impact Statement – Cooperator Comment Summary**

Attached please find a summary of comments prepared by other Cooperating Agencies regarding the Environmental Impact Statement for the proposed Rosemont Mine.

CHH/mjk

Attachments

c: Linda Mayro, Director, Sustainability and Conservation
Julia Fonseca, Environmental Planning Manager, Sustainability and Conservation
Nicole Fyffe, Executive Assistant to the County Administrator



Memorandum

Office of Sustainability & Conservation

DATE: September 13, 2013

TO: C. H. Huckelberry, County Administrator

FROM: Linda Mayro, Director 
Julia Fonseca, Environmental Planning Manager

Subject: **Cooperator Comment Summary, Rosemont EIS**

The comment period for the Forest Service's latest Environmental Impact Statement (EIS), known as the Preliminary Final Environmental Impact Statement (PAEIS), for the proposed Rosemont Mine, closed on August 15th. Only 13 cooperating agencies (Federal, Tribal, State, and local governments; known as Cooperators) were invited to comment on this draft of the EIS and these comments are listed on the [Forest Service's \(EIS\) website for the project](#). All Cooperators commented, with the exception of the Arizona Department of Transportation, which either did not comment or their comments are missing from the website. This memo provides you with an update and summary of those comments.

Pima County's comments are by far the most numerous and wide-ranging, but other cooperators have raised important issues relating to their expertise and jurisdiction. In some cases, the comments substantively enlarge or document concerns that were raised during previous review of the draft EIS. In their comments, federal Cooperators (BLM, EPA) express a number of conflicting opinions about the mine's effects that differ from the lead federal agency. Their comments, as well as those of Arizona Game and Fish Department, also point to significant inadequacies in quantifying and mitigating adverse effects of the mine.

Below are summaries of each cooperator's comments, with hyperlinks to the complete documents provided in blue. Bold lettering is used to highlight some of the most important comments. While the comments are paraphrased from the original, much of what is printed below uses their wording.

According to project lead Mindy Vogel at the Forest Service, all cooperator comments have been now reviewed. In some cases, the Forest Service has adjusted the language of the EIS, but there will be no direct response to Cooperators about the comments. The Forest is discussing their differences with BLM, and talking with Rosemont about how the mitigation that is related to the Forest's jurisdiction will be adjusted. Corps and the EPA are discussing the Section 404 mitigation. The U. S. Fish and Wildlife Service is waiting to hear from the Forest and Rosemont what conservation measures for species will be definitely be undertaken. The USFWS' biological opinion cannot be finalized without that

understanding, and the Forest Supervisor cannot issue the Record of Decision prior to the final biological opinion becoming available.

The Forest Supervisor previously indicated a desire to publish the Final EIS prior to a federal rule change on October 1, 2013 regarding the Forest appeals process. In the coming days, the Supervisor and U. S. Department of Agriculture official will decide how or even whether to address the substantive issues and unresolved conflicts in light of the timeframe.

Unresolved conflicts can be referred to the Council on Environmental Quality (CEQ), but would have the effect of delaying the timeline between the EIS and the Forest's Record of Decision. The CEQ referral process permits federal agencies to bring to CEQ major disagreements concerning proposed federal actions that might cause unsatisfactory environmental effects. Under CEQ regulations, 40 CFR Part 1504, any federal department or agency may refer a proposed major federal action to CEQ after the final Environmental Impact Statement (EIS) has been made available to the public, commenting agencies, and the Environmental Protection Agency. The Administrator of the Environmental Protection Agency has broader authority, under section 309 of the Clean Air Act, to refer to CEQ any proposed legislation, action, or regulation that he or she deems unsatisfactory from the standpoint of public health or welfare or environmental quality. The referral process was established in the Clean Air Act and the CEQ NEPA regulations. In the forty years since NEPA was enacted, CEQ has accepted only 27 formal referrals.

A federal agency that intends to refer a proposal to CEQ must first notify the lead agency of its intentions at the earliest possible time. EPA has previously provided this notice, and their comments still echo many of the same concerns raised earlier. If the issues are not resolved to EPA's satisfaction, EPA can send a letter and a statement to CEQ and the Forest Service and request that no action be taken to implement the proposal until CEQ acts upon the referral.

The Corps will decide separately whether the Forest Service's Final EIS is sufficient to meet the Corps' obligations under NEPA. If it is not, the Corps could decide to issue a Supplemental EIS in order to render a decision. The Corps' comments did not address the adequacy of the EIS.

[Arizona Department of Environmental Quality \(ADEQ\)](#)

The ADEQ requests the Forest Service to require replenishment/make-up water to offset the predicted water loss resulting from mining during operations and post-closure. The purpose of this "make-up" water would be to maintain the status of the Outstanding Arizona Waters status of Davidson Canyon and Cienega Creek.

The ADEQ takes issue with the conclusion that there will be no change in the ability to meet regulatory requirement for Cienega Creek or Davidson Canyon (Issue 4.4, Seeps). Instead, ADEQ believes this is premature because ADEQ will not make an effects determination until it first evaluates the project for the activities under the Section 404 permit, and then evaluates the stormwater discharges from the project for issuance of the Multi-Sector General Permit (MSGP).

Arizona Game and Fish Department (AGFD)

The AZGFD submitted 39 pages of comments with substantive legal analysis of relevant case law. The cover letter identifies that their role in ILF mitigation is **contingent on the effects to state trust species being fully addressed in the mitigation and compensation plan; the plan's objectives and conservation outcomes must be achievable and clearly stated; the conservation outcomes must have an anticipated lifetime and expectation for maintenance; and finally, the mitigation and compensation plan must be fully financed to meet the expected conservation outcomes and maintain them for their expected lifetimes.**

The Department is concerned that the PAFEIS does not adequately evaluate impacts to wildlife species from the loss of riparian areas in the project area or from groundwater drawdown in Empire Gulch, Davidson Canyon, and Cienega Creek. Many of the department's comments also identify inadequate mitigation measures and state the Forest's NEPA obligation to identify potential measures that would reduce impacts, including impacts to wildlife connectivity, even if they cannot impose the requirement.

Additionally, AGFD is concerned with water-quality contamination, adverse consequences to Outstanding Arizona Water of Davidson Canyon and Cienega Creek, reduced riparian areas, loss of recreational access, and overall inadequate PAFEIS discussion of cumulative effects.

Many mitigation measures are inadequate to offset impacts, or inadequately funded **and do not meet federal obligations for mitigating adverse effects.** The AZGFD strongly supports a testing program for water quality in stormwater runoff to be included, either in the Storm Water Pollution Prevention Plan (SWPPP) or as a mitigation measure in the EIS.

Other issues raised by AZGFD include: **(1) Any endangered species mitigation to be achieved with the Sonoita Creek Ranch should be separately funded; (2) in-lieu fee (ILF) funding cannot be used by the ILF Sponsor to assure ESA outcomes; and (3) invasive species management (and funding) to eliminate bullfrogs is needed if the project is to benefit Chiricahua Leopard Frogs.**

Arizona State Parks (AZSP)

Dissolution features and cave resources at the site are plausible, especially because the Santa Ritas share a number of geologic and hydrologic attributes with Kartchner Caverns State Park shares. Pre-development surveys could help detect cave resources.

Arizona Geological Survey (AZGS)

The AZGS urged greater consideration of geo-tourism benefits of the mine; the claim of even 1% decrease in recreation activity is purely speculative and contrary to similar situations. (There are no comments about geological, paleontological or soils resources by this agency.)

Bureau of Land Management (BLM)

The BLM's cover letter states that **they would like to provide a dissenting opinion to be included in the PAFEIS because of the nature, scope and intensity of impacts on National Conservation Area (NCA) resources. Impacts of this mine may conflict with other federal land-use plans like the NCA management plan. The Forest Service should follow the established process for resolving potential conflicts among federal agencies.**

Additional comments from the BLM identify the following concerns:

- The mitigation should include actions that will be taken if mine dewatering removes significantly more water from the aquifer than has been analyzed in the FEIS. (BLM does not relinquish their surface water and groundwater rights.);
- A number of Chiricahua leopard frog sites and wetlands in the NCA are overlooked in terms of potential impacts.
- Disagreement with some of the statements about what is ephemeral, intermittent or perennial.
- The Conservation Fund is probably inadequate.
- Additional monitoring is needed to detect changes that may affect NCA wetlands.

Environmental Protection Agency (EPA)

The proposed project presents serious environmental issues, and EPA has identified significant information gaps that should be resolved prior to publication of an EIS, as summarized in 30 pages of comments:

- Disagrees with Forest Service that groundwater models can be used to estimate surface water impacts distant in time and space because small changes can have significant impacts. The Forest should deal with limits in groundwater models by assuming there will be impacts to Empire Gulch and other locations.
- The Forest Service should consider PAG and BLM data regarding reductions in wetted stream lengths along Cienega Creek in effects analysis and consider climate change.
- Remove speculative conclusions about no ill effects from natural groundwater variability and clarify that any effects from proposed action are additive.
- **In absence of a full delineation of affected waters, it is not possible to provide adequate compensatory mitigation for indirect effects to Waters of the United States (WUS).** Sonoita Creek Ranch ILF does not provide appropriate compensatory mitigation under Section 404. EPA supports returning surface water to Cienega Creek at the Del Lago site, but ecological enhancement there is uncertain. Preservation on Davidson Canyon, Barrel Canyon and Mulberry Canyon is not appropriate compensation.
- EPA disagrees with conclusions about effects to Outstanding Waters due to errors and the fact that the modeling performed for estimating runoff did not include total dissolved solids. EPA wants revisions in EIS.

- **Compliance with Clean Water Act anti-degradation requirements must be independently assured under 404(b)(1) guidelines and other federal regulations (see page 24).** The EIS cannot presuppose that the mitigation measures under the stormwater pollution prevention plan (SWPPP) that would be submitted to ADEQ would be fully effective because they are not yet available. The SWPPP would be due to ADEQ 60 days before construction.
- **Additional mitigation needed for PM2.5 air pollution because this increment is predicted to be exceeded for all alternatives for the 24-hour averaging time (page 26).** Additional mitigation needed for visibility.
- The NAAQS modeling for the ADEQ regulatory permit process is not the same as the NAAQS modeling for the EIS. The EIS NAAAQ modeling accounts for many more emission sources than what ADEQ regulates under its Class 2 synthetic minor permit for the Rosemont Project.
- Financial assurances are needed for heap leach feature, present in all alternatives except the Barrel Alternative.

The National Park Service (NPS)

The Air Resources Division of the NPS concludes that the mine would degrade air quality (including visibility) at both units of Saguaro National Park. Nitrogen deposition would exceed the ecological critical load threshold, potentially altering vegetation communities in the park. The NPS also asserts that the EIS does not demonstrate that stated reclamation will be successful.

Smithsonian Astrophysical Observatory (SAO)

The SAO highlighted the following:

- The mine will add more than 6 million lumens of light to the dark-sky environment.
- The SAO cannot be certain the mine will operate within the constraints of their proposed lighting plan; they want more certainty, and reporting of the results, should brightness increase 10% above baseline measurements.
- They are requesting a fixed monitoring site on Mt. Hopkins.
- If Mine Safety and Health Administration (MSHA) requires deviations from the lighting plan, then SAO would like to see the lighting plan revised to reduce a similar amount of illumination in non-critical use areas.
- SAO is offering to share their experience with sky brightness monitoring. SAO wants Rosemont to provide their plans for lighting construction including the “as-built” configuration as well as any modifications over the life of the mine to verify light levels do not exceed those described in the current plan.
- SAO requests various amendments to effects analysis and states that the perception of having a mine next to an observatory has already impacted future observatory revenues.

Tohono O'odham Nation

The Tohono O'odham Nation identified the following issues:

- **The EIS fails to address the trust relationship that the Forest Service has with Indian tribes and the United Nations Declaration on the Rights of Indigenous People.**
- **The FEIS needs to analyze whether the rights and benefits under the General Mining Law should apply to a foreign-owned entity.**
- **Change this to a Supplemental EIS. Give proper consideration to the No Action Alternative.**
- **A smaller mine with a footprint that minimizes or eliminates impacts to cultural resources is needed.**
- **Many comments on inadequacy of purpose and need, effects analysis, and mitigation.**

Town of Sahuarita

- **Freeport McMoran modeling for the mitigation order should be used; it included pumping from the Rosemont wells.**
- **Asks confirmation that the mine's proposed activities will not adversely impact the Town's sewage treatment facilities and underground storage facility.**
- **The EIS should reference the Town's License Agreement with Rosemont Copper to protect Town of Sahuarita wells. The Agreement includes Rosemont's commitment to recharge, with Central Arizona Project water and within the drawdown area, a minimum of 105% of the amount of water withdrawn from Rosemont wells.**

U. S. Corps of Engineers (Corps)

The Davidson Canyon and Barrel Canyon parcels will not be included in the Waters of the US compensation package. There has been no scientific determination that the acquisition and protection of the Davidson Canyon/Barrel Canyon/Sonoita Creek Ranch would "effectively mitigate impacts to surface waters". The Corps' concern is that a reduction in flow of close to 40% will impact downstream areas along Davidson Canyon, including parcels that are offered for mitigation.

Furthermore, there is no commitment by any ILF Sponsor to accept Sonoita Creek Ranch [as a mitigation project].