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Carroll Gene McCormick
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Tucson, AZ 85704

Dear Mr. McCormick:

On behalf of the Tonto National Forest, I would like to thank you for your involvement in the Apache Leap Special Management Area (ALSMA) Project. This letter is in response to the objection you filed on the Final Environmental Assessment (EA) and Draft Decision Notice (DN). I have read your objection and reviewed the project record and Final EA, including the environmental effects. My review of your objection was conducted in accordance with the administrative review procedures found at 36 CFR 219, Subpart B.

PROJECT OVERVIEW

The Forest is proposing to revise the current management of the ALSMA on the Globe Ranger District, Tonto National Forest. In December 2014 Congress set forth the establishment of the ALSMA through the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act (NDAA) for Fiscal Year 2015. Section 3003(g)(5)(a) of the NDAA directed the Forest Service to prepare a special management plan for the ALSMA in consultation with affected Native American Tribes, the Town of Superior, Resolution Copper Mining, LLC (Resolution Copper), and interested members of the public.

The Proposed Action is to: (1) prepare and adopt a programmatic management plan for the approximately 839-acre ALSMA; and (2) amend the 1985 Tonto National Forest Land and Resource Management Plan to address the newly designated ALSMA.

ADMINISTRATIVE REVIEW PROCESS

The legal notice for the objection filing period was published on August 25, 2017. Your timely objection 18-03-00-0001-O219 was received on October 8, 2017. The regulations at 36 CFR 219, Subpart B, provide for a pre-decisional administrative review process in which the objector provides sufficient narrative description of the project, specific issues related to the project, and suggested remedies that would resolve the objections (36 CFR 219.54). The regulations also allow for parties to meet in order to resolve issues. You were invited to participate in an objection resolution meeting the week of December 4, 2017. Unfortunately, we were unable to meet. This letter, including instructions to the Responsible Official, is my written response to your objections.



OBJECTION RESPONSES

ISSUE 1: The draft decision should more clearly align with the National Defense Authorization Act of 2014 (NDAA).

Contention 1a: The draft Decision Notice (DN) states “Adjacent mining cannot be limited through management actions in the Apache Leap SMA” (p. 8, paragraph 3). The term “management actions” is undefined at this point. To avoid interpretation in a way that might result in unduly lower protection of the Apache Leap Special Management Area (ALSMA), this paragraph should focus on the contents of the ALSMA Management Plan rather than management actions. [Objection, pp. 1-2]

Response: The objector contends that wording in the draft DN [PR 0001799, p. 8, paragraph 3] could lead to interpretation resulting in lower protection of the ALSMA.

The objector suggests adding additional language requiring the Resolution Copper Mine’s General Plan of Operations include protections for the ALSMA. The ALSMA Management Plan, however, can only provide direction for the ALSMA, itself. These can be found throughout the ALSMA Management Plan through desired conditions, standards, and guidelines within each resource area [PR 0001800]. There is one guideline that directly addresses mining [PR 0001800, p. 19] as it would relate to the activities of the Resolution Copper mine:

Guideline: If seismic monitoring indicates that the natural character or values of the Apache Leap SMA are being negatively impacted, rehabilitation and closures may be used to mitigate impacts.

If Resolution Mine’s operating plan is approved, there is a section of management approaches within ALSMA [PR 0001800, p. 19] that identifies developing a seismic monitoring strategy in consultation with Resolution Copper mining engineers and geologists. This seismic monitoring strategy is intended to provide a means to monitor, estimate, and anticipate the effects of future proposed mining adjacent to the special management area in order to preserve the natural character, cultural, and historic resources of the ALSMA as much as practicable. Management approaches are not plan direction, but are future actions that the Forest intends to take.

Based on objections submitted on this plan and subsequent objection resolution meetings with objectors, the Forest is instructed to further clarify the intent of the seismic monitoring program and to move descriptions of what the program should entail to the Guidelines section, instead of Management Approaches. The changes will be made in the Final ALSMA Management Plan and in errata to the EA.

Given these reasons, the management plan provides protections for the ALSMA where mining is a concern and provides clear interpretation of “management actions” through the various plan components and management approaches described above.

Contention 1b: The ALSMA Management Plan, Section 3.1.4 begins with “If Resolution Copper’s proposed “General Plan of Operations” is approved, develop a seismic monitoring strategy in consultation with Resolution Copper mining engineers and geologists to provide a means to monitor, estimate, and anticipate the effects of future proposed mining adjacent to the special management area in order to preserve the natural character, cultural, and historic resources of the Apache Leap SMA as much as practicable.” Section 3.1.4 should clearly account for the implications of Section 3003(g)(6) of the NDAA that “the provisions of this subsection shall not impose additional restrictions on mining activities carried out by Resolution Copper adjacent to, or outside of, the Apache Leap area...” This means that the ALSMA Management Plan should define functional requirements, but not methods of procedural implementation. The following points should be adjusted:

1. The word “strategy” should not be used in this context. One purpose of the ALSMA Management Plan is to present a strategy. This wording implies that the strategy is to develop a strategy. It would be better to use the phrase “functional requirements for a seismic monitoring system.” 2. The development of requirements for the seismic monitoring system should not depend on prior approval of the “General Plan of Operations” (GPO). The approved GPO should include a definition of the seismic monitoring system. Furthermore the GPO should undergo continuous modification as part of the NEPA process associated with development of the draft and final Environmental Impact Statements. 3. The term “consultation” does not adequately describe the relation of the Forest Service and Resolution Copper in defining the seismic monitoring system; 4. The phrase “as much as practicable” allows too much breadth of interpretation; and 5. Section 3.1.4 should clearly account for the implications of Section 3003(g)(6) of the NDAA that “the provisions of this subsection shall not impose additional restrictions on mining activities carried out by Resolution Copper adjacent to, or outside of, the Apache Leap area - - - - .” This means that the ALSMA Management Plan should define functional requirements, but not methods of procedural implementation. [Objection, pp. 3-4]

Response:

The following are responses to these points:

1) On the contention that the management approach found in the ALSMA Management Plan [PR 0001800, p. 19] uses the word “strategy” incorrectly: the word “strategy” is correctly used in this case for the reasons discussed here. The management plan is programmatic in nature and provides the overall management direction for the ALSMA; “strategy” is appropriate for this level of planning. A description of the functional requirements for the seismic monitoring system cannot yet be fully described, except in the broadest sense, as directed in the NDAA: “(4)(B) AUTHORIZED ACTIVITIES...(in the) special management area are: (i) installation of seismic monitoring equipment on the surface and subsurface to protect the resources located within the special management area.” The plan is accurate in directing that there is an initial need for coordination and strategy prior to identifying specific functional requirements of the seismic monitoring system.

2) On the contention that the development of requirements for the seismic monitoring system should not be contingent on the approval of the Resolution Copper Mine’s General Plan of

Operations (GPO); that the GPO should include a definition of the seismic monitoring system; and that the GPO should undergo continuous modification under NEPA associated with the development of the draft and final Environmental Impact Statements (EIS), the seismic monitoring identified in the ALSMA Management Plan [PR 0001800, p. 19] is contingent upon the mining activities of Resolution Copper mine. The Mine cannot operate without a GPO, therefore, the GPO for Resolution Copper must be approved before activities subject to monitoring can begin. Without the GPO, there would be no mining activities to monitor for effects on the ALSMA.

In regards to the GPO including a definition of the seismic monitoring system, and that the GPO should undergo continuous modification under NEPA associated with the development of the draft and final EISs, both are outside the scope of this project. This project develops a management plan and amends the forest plan for the ALSMA only, and does not include specifications for mining and minerals outside of the ALSMA. These types of comments would be more appropriate for the Resolution Copper Mine EIS analysis.

A seismic monitoring system can be placed before the general mine plan of operation is approved, because the system is not an activity involving the land exchange or the extraction of commercial quantities of minerals by Resolution Copper. The GPO is not final and will undergo continual modification until it is signed.

3) On the contention that the word “consultation” does not adequately describe the relation of the Forest and Resolution Copper in defining the seismic monitoring system [PR 0001800, p. 19], the word “consultation” is adequately used in this situation. In this case, consultation is a means to work with Resolution Copper in developing the monitoring strategy for the ALSMA. As the monitoring is to be a feedback system, working integrally with Resolution Copper is necessary should any (mitigation) modifications to the mine’s block caving methods be found which would lessen impacts to the ALSMA. Further, Resolution will be operating on private land, once full mining is underway, and good communication will be imperative.

4) On the contention that the phrase “as much as practicable” [PR 0001800, p. 19] allows too much breath of interpretation, this is an appropriate phrase in this context considering it is part of a management approach and not plan direction. The phrase “as much as practicable” is also used in regulations for reclamation requirements (36 CFR 228.8) when a complete limit may not be achievable, pending realities of the specific situation.

5) On the contention that Section 3.1.4 of the ALSMA Management Plan should account for the implications of Section 3003(g)(6) regarding not imposing additional restrictions on mining activities carried out by Resolution Copper adjacent to, or outside of the Apache Leap area and that the ALSMA management plan should define functional requirements (establishing processes for management of the seismic monitoring system), but not methods of procedural implementation, Section 3.1.4 of the ALSMA Management Plan [PR 0001800, p. 19] includes management approaches and not plan direction. Management Approaches describe the actions the Forest intends to take to move toward achieving the desired conditions; Management Approaches, are not suitable for addressing law. The management plan, however, must be

consistent and in compliance with all laws and policy. The legislation referred to by the objector is addressed in Section 1.4 Legislative Direction [PR 0001800, pp. 6-7].

With regard to functional requirements, as stated in Contention 1a above, the management plan is programmatic in nature and provides the overall management direction for the ALSMA. It provides the desired conditions and sideboards on management through its direction. In other words, it provides the direction and guidance for future projects and decision making. Functional requirements, as the objector refers to them, are more appropriate at project level planning and would need to be in compliance with forest plan and management plan direction. The management approaches on page 19 of the management plan [PR 0001800, p. 19], however, do provide some functional approaches as the objector describes them where it states:

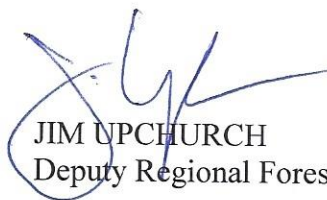
The monitoring strategy should include seismic monitoring equipment on the surface and subsurface, surface monuments (e.g., wooden or concrete post) that would be surveyed for movement, monitoring locations for collecting rock mechanics data, and a baseline survey using state-of-the-art methods, such as LiDAR, to establish pre-mine conditions against which future surveys could be compared. The strategy should identify and explore solutions to remediate and mitigate surface conditions that could threaten the integrity of the Apache Leap SMA as allowed by pertinent laws and regulations.

Based on objections submitted on this plan and subsequent objection resolution meetings with objectors, the Forest is instructed to further clarify the intent of the seismic monitoring program and to move descriptions of what the program should entail to the Guidelines section, instead of Management Approaches. The changes will be made in the Final ALSMA Management Plan and in errata to the EA.

CONCLUSION

My review finds that the project is in compliance with all applicable laws and the Tonto National Forest Plan. The Forest Supervisor, Neil Bosworth, may sign the Decision Notice for this project once instructions based on other objections have been addressed. My review constitutes the final administrative determination of the Department of Agriculture; no further review from any other Forest Service or Department of Agriculture official of my written response to your objection is available [36 CFR 219.57(b)(3)].

Sincerely,



JIM UPCHURCH
Deputy Regional Forester

cc: Neil Bosworth; Tom Torres; Mary Rasmussen; Lee Ann Atkinson; Marianne Thomas; Matt Turner; Cat Luna; Roxanne Turley