



THE STATE OF ARIZONA
GAME AND FISH DEPARTMENT

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January 18, 2012

Mr. Jim Upchurch
Forest Supervisor
Coronado National Forest
300 W. Congress
Tucson, Arizona 85701

Dear Mr. Upchurch:

The Arizona Game and Fish Department (Department) has reviewed the Draft Environmental Impact Statement (DEIS) for the Rosemont Copper Project and provides the following general comments on the DEIS here, with page specific comments in the attached table.

Hunter Opportunity

The Department appreciates that the Forest responded substantially to our comments on the Preliminary DEIS regarding impacts to hunting and hunters. Our previous estimates of impacts to hunting was based on a 20 year mine life, we have recalculated our estimates of hunter opportunity lost based on the revised mine life of 25 years and provide as an attachment to these comments the printed spreadsheet used to calculate permits lost for white-tailed deer, javelina, and Mearn's quail. What we have not calculated is the total losses of all huntable species, losses due to lost opportunities for trophy animals, or losses of an intangible nature.

For the Barrel alternative, the Department expects a loss of 11980 hunter days for white-tail, 2720 hunter days for javelina, and 2850 hunter days for Mearn's quail. Given these numbers, and given such facts such as that current world records for Coues' white-tailed deer for both rifle and archery came from the Santa Rita Mountains, it is accurate to state that the Department considers the substantial impacts to the range a substantial loss for hunters.

In terms of economic losses this equates to annual \$3,916 revenue lost to the Department which would have funded wildlife conservation, or \$97,907 total loss of revenue to the Department over 25 years (using static dollars) which would have funded wildlife conservation over the mine life. Using figures based on Silberman's 2003 figures (cited in the EIS) for value generated by hunting and fishing, the Department estimates losses to the local economy as a result of lost hunter opportunity to equate to \$1,356,713 over those 25 years (See J. Heffelfinger, Rosemont Game/Hunter effects spreadsheet attached).

Mr. Jim Upchurch

January 18, 2012

2

Failure to Identify Adverse Impacts

Coronado National Forest (CNF) acknowledges its authority to require changes or additions to the MPO deemed necessary to meet the environmental protection standards of 36 CFR 228.8. CNF can prescribe changes to the MPO to minimize environmental impacts to CNF surface resources in accordance with the standards contained in § 228.8. For fisheries and wildlife habitat, CNF can require Rosemont to “take all practicable measures to maintain and protect fisheries and wildlife habitat which may be affected by the operations.” 36 CFR § 228.8.

As is shown in the following comments of the Arizona Game and Fish Department, CNF has failed to articulate and identify all adverse impacts to species and wildlife habitat. Not having identified such impacts, it follows that no alternatives or mitigating measures are prescribed in this DEIS for these impacts, as required by NEPA.

Lack of Coordination with the Department

CNF has not adequately consulted with the Department in the preparation of the DEIS as required by 40 C.F.R. § 1501.6 and 1507.7.

In its letter to CNF dated July 8, 2008, the Department requested cooperating agency status in order to provide expert advice as a member of the Interdisciplinary Team (IDT) “as the EIS is developed and analyzed” concerning impacts to wildlife, habitat, and recreation. The Department was granted cooperating agency status and an MOU between the Department and CNF was executed on July 9, 2009.

However, the Department was never invited to attend an IDT meeting. On July 31, 2009 the Department wrote a letter to CNF which stated in part “[the Department has requested the opportunity to meet with CNF staff . . . [t]hese requests have gone unanswered . . . [t]he Department is concerned that our staff is being kept at arm’s length without the ability to provide meaningful input into the development of alternatives in terms of real-time give and take with CNF staff.” The request went unanswered. On September 22, 2009 in a letter from the Department to SWCA Environmental Consultants, CNF’s prime consultant, the Department again sought greater coordination with the IDT and proposed regular working meetings with SWCA and/or CNF to provide input on wildlife resources, to discuss concerns and possible mitigation strategies, and further requested that all data and reports be shared with the Department. This request also went unanswered.

The Department again requested by email a meeting with the IDT on September 14, 2009, and sent a letter Sept. 22 reiterating its request for “greater coordination with IDT” and proposing regular working meetings to discuss Department concerns and mitigation strategies. This also went unanswered.

Certainly, project proponent was required by the terms of its MOU with CNF to provide relevant technical and environmental information necessary for an environmental analysis. But so was the Department, in accordance with the terms of its MOU with CNF. As far as the Department can determine, CNF consulted only with Rosemont and its consultants in analyzing injury, developing alternatives and adopting mitigation measures for wildlife and wildlife habitat.

Mr. Jim Upchurch

January 18, 2012

3

The Department did attend “Cooperating Agency” meetings sponsored by CNF, which were always attended by Rosemont representatives. These meetings were, in essence status updates to the DEIS and featured various topics for discussion. These meetings were not a conducive method of raising issues specific to wildlife, as all Cooperating Agencies attended these meetings.

CEQ 40 CFR 1501.6 states the lead agency “shall” meet with a cooperating agency at the latter’s request and allocate responsibilities to such cooperating agencies. CEQ, 40 CFR 1501.7. CNF did not respond to the Department’s requests for IDT meetings. The Department was not afforded a meaningful role in preparing the DEIS, analyzing injuries, alternatives or identifying mitigation measures. CFR 1501.7(a), As a result, CNF is not proceeding with all relevant information on the environmental consequences of its action. USC 4331(a).

The Department was denied an opportunity as a Cooperating Agency to review and comment on technical reports within its area of expertise due to CNF’s failure to make the reports available for review until the Preliminary DEIS (PDEIS) was released to Cooperating Agencies. Where reports were made available, CNF imposed unrealistic and unreasonable time constraints to review such reports.

At the March 18, 2010, Cooperating Agency meeting, CNF distributed a list of 112 technical reports authored by the project proponent and its consultants, and asked each agency to analyze those reports within each agency’s area of “specialized expertise” by April 30. The Department asked for several reports not posted on the CNF website and requested an extension of the deadline. On April 30 the Department submitted its comments on five biological reports, stating that [d]ue to the many reports available, breadth of information reported on, small staff available within the Department to review the reports, and the short timeframe in which to review the reports, [the Department] was unable to review all the reports . . . [w]e have appealed to the CNF to allow us more time to review the reports without relief.”

In April 2010 the Department asked for missing technical reports not found on the CNF website. CNF replied on April 13 that the reports were not available. In its cover letter dated April 30, 2010, providing comments on available technical reports, the Department noted that it has been asking CNF more time to review reports without relief.

In a letter dated September 9, 2010, the Department again raised the issue of report unavailability and raised the topic at the September 16, 2010, Cooperators’ meeting. CNF stated that it would conduct a full audit of technical reports and provide missing reports to the Department. CNF’s September 24, 2010, reply to the Department’s September 9 letter admitted difficulties “keep[ing] up with the volume of technical studies and NEPA process documents for this complex process.” CNF advised that “[a]t this stage in the development of the DEIS, additional comments on technical reports will be considered between the Draft and Final EIS.”

At the November 18, 2010, Cooperator meeting, the Department once again raised concerns about the missing tech reports. The Department’s concerns were now heightened by the fact that over 100 *more* Rosemont-generated technical reports had been uploaded to the Rosemont EIS.us

Mr. Jim Upchurch

January 18, 2012

4

website. At this meeting, CNF announced that, instead of its earlier plan to release the PDEIS on a chapter-by-chapter basis to Cooperating Agencies, CNF would release the entire 700-page document to Cooperators in mid-December for a 30-day review and comment period.

On November 23, 2010, the Department wrote a letter to CNF, repeating the Department's concern over the continued unavailability of technical reports, the lack of access to reports containing sensitive species information, the sheer volume of reports and the limited review times afforded to review them. In the letter, the Department requested more review time for the PDEIS in accordance with the MOU between the Forest Service and the Commission that required CNF to negotiate a reasonable amount of time for the Department's review of the internal DEIS. The Department pointed out that its comments on the PDEIS would be hampered by its inability to access and analyze relevant biological, hydrological and other reports.

On the same day November 23, 2010, the Department sent an email to CNF's biologist asking for two wildlife reports generated by Rosemont. The email reply, dated November 30, 2010, was as follows: "Sorry to not get back to you sooner. At this time none of the biology documents are to be released externally [*i.e.* to the Department] without permission from Reta Laford [Acting CNF Forest Supervisor] . . ."

The Department's November 23, 2010, letter was made available to Rosemont, which gave it to its counsel for review. Rosemont's lawyer's December 6, 2010, response, submitted to the CNF Forest Supervisor on December 9, 2010, suggested that the Department's expertise was "redundant." that the Department "may lack sufficiently knowledgeable or NEPA-experienced manpower and funding to fulfill its obligations under NEPA" and should withdraw as a cooperating agency, "rather than attempting to cause additional delays."

CNF announced on December 22, 2010, that the federal internal review of the PDEIS was taking longer than anticipated and that the DEIS would not be released to the public by the end of 2010. At the January 2011 Cooperators' meeting, CNF handed out a DVD with over 350 documents and reports, of which at least 150 were new documents and technical reports not previously posted to the website or made available to Cooperators. The biological reports that the Department had been seeking were not on the DVD nor posted to the Rosemont EIS.us website.

In an April 26, 2011, email, the Department asked CNF for the status of several missing biological reports. In response, CNF replied on May 3, 2011, that the reports were not ready for release to cooperating agencies.

CNF delivered the PDEIS to the Department on May 31, 2011, along with a CD-ROM containing all literature cited in the PDEIS, and gave the Department (and all other Cooperators) exactly 30 days to review and comment. This prompted the Director of the Department to write a formal letter to the CNF Forest Supervisor seeking 45 additional days to conduct its review in accordance with Section D.10 of the Memorandum of Understanding between the parties. The letter pointed out that the collaborative process between CNF and the Department contemplated by the MOU "never occurred" and that the Department was viewing the text of the PDEIS for the first time, along with the general public (the internal draft had been released by unknown

Mr. Jim Upchurch

January 18, 2012

5

agents to local media). The Corps of Engineers concurred with the Director's request in a June 29 letter to the Forest Supervisor. The Department's request was denied by CNF in a June 21, 2011, letter to the Director, noting that the Department could also comment, along with the general public, during the public 90-day comment period. No reasons for the denial were provided. In response, the Director replied that the Department could as a result conduct only a limited review of the document.

The Department timely filed comments on June 30. Its cover letter listed over twenty chapters it was unable to review given the unacceptably short time frame. CNF granted 30 days additional review time to Cooperators on June 30, 2011. The Department filed additional PDEIS comments on July 29 with a cover letter stating that the Department was still unable to complete the review even with the extension. As suggested by the Forest Service, the Department is now submitting its comments during the formal public comment period.

The Department can only speculate that the unrealistic deadlines imposed upon Cooperating Agencies were a result of Rosemont pressuring CNF on its original commitment, made in the MOU between CNF and Rosemont, that the draft EIS would be made available for public review by March 2009, with the final EIS published in October 2009 and the ROD in November 2009.

Rosemont's position on DEIS-related delays was clearly articulated in an April 5, 2011, Declaration filed by the Senior Vice President for Corporate Development and Government Affairs for Augusta Resource Corporation, filed in the Arizona federal district court in the *Save the Santa Ritas et al, v. United States Forest Service, et al*, No. CV 11-00094-TUC-FRZ:

"A substantial delay [in the NEPA process] will cause Rosemont to suffer significant injury. We have already invested more than \$30 million in land acquisition and related costs. . . more than \$20 million in connection with preparing the MPO, preparing other technical reports, studies and planning documents. . and spent over \$40 million for the purchase of equipment and related expenses. Moreover, to date we have paid in excess of \$5 million directly to the Forest Service and to their NEPA contractor, in accordance our MOU. . . Rosemont will have no opportunity begin to recover these costs and earn a return on its investment until the MPO has been approved by the Forest Service, and that cannot occur until the NEPA process has been completed."

The purpose of having Cooperating Agencies is to emphasize agency cooperation early in the NEPA process. 40 CFR 1501.6. The unavailability of technical reports to review, and the unrealistic deadlines imposed upon the Department for review and comment, has deprived the Department of a meaningful opportunity to participate as a Cooperating Agency. Rosemont's financial investment in the proposed project, along with its ready access to CNF personnel and SWCA during the DEIS development, may have compromised the objectivity of this DEIS.

Failure to Identify Meaningful Mitigation

The Department draw's the Forest's attention to the lack of identified mitigation for the project. NEPA provides the Forest ample direction to require the amount of mitigation necessary to

Mr. Jim Upchurch

January 18, 2012

6

minimize impacts on the human environment. An EIS must include a discussion of the means to mitigate adverse environmental impacts -CEQ, 40 CFR 1502.16(h).

Meaningful mitigation alternatives were not analyzed in detail. For instance, it is our understanding that the proposed Resolution Copper mine near Superior will transport tailings to brownfield sites many miles from the mine to minimize impacts on the Tonto Forest. A similar alternative for Rosemont could potentially mitigate many impacts to public resources. The CNF declined to analyze in detail any similar alternative that transported waste rock and tailings off Forest lands. The Department believes such an alternative should have been studied in detail.

The Department notes an email dated May 7, 2010, from SWCA to CNF and the Senior Vice President for Corporate Development and Government Affairs for Augusta Resource Corporation, Rosemont's corporate parent. The email encloses a table labeled "Accepted Mitigation Measures Compilation" which "only includes mitigation measures that are 1) required by law, regulation or policy, 2) included in the MPO, 3) *Rosemont has reviewed and accepted*, and 4) need further clarification . . ." (emphasis added). The memo also referenced "our upcoming working group meeting."

CNF conducted a meeting with Cooperators on November 19, 2009, to discuss the criteria for compensatory lands for wildlife habitat and recreation. In response, the Department proposed the acquisition of mitigation lands in a December 15, 2009, letter to CNF.

A CNF employee began to map and collect information on possible mitigation land parcels. Her email was forwarded to Rosemont's Director of Environmental and Regulatory Affairs, who replied: "[t]his issue is far too complex and sensitive to 'discuss' on informal emails. . . .it appears predecisional, presumptive at least, and premature at best . . . Applicability of this term [compensatory lands] to mine plan operations review and NEPA is somewhat troubling to me. As of December 15, 2009, we are not there. Please include me on all communications related to impact mitigation and impact 'Compensation.'

On January 12, 2010, CNF conducted a Mitigation Lands working group meeting with Pima County, the Department, and the State Land Department to discuss the criteria for mitigation strategies for the Rosemont Copper project. A Rosemont representative attended. The Department followed the meeting with a letter dated January 13, 2010, with mitigation criteria.

No compensatory lands mitigation concepts appear in the DEIS, although compensatory lands is a recognized mitigation measure. CEQ, 40 CFR 1508.20. It appears that the only "mitigation" described in the DEIS is that which Rosemont was willing to offer to CNF.

CEQ guidance on NEPA reviews (2/18/2011) states:

In developing mitigation, agencies necessarily and appropriately rely upon the expertise and experience of their professional staff to assess mitigation needs, develop mitigation plans, and oversee mitigation implementation. Agencies may also rely on outside resources and experts for information about the ecosystem functions and values to be protected or restored by mitigation, to ensure that

Mr. Jim Upchurch

January 18, 2012

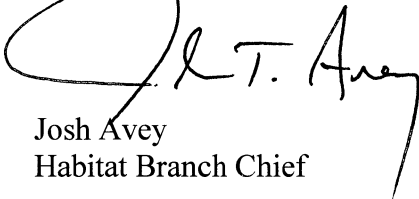
7

mitigation has the desired effects and to develop appropriate monitoring strategies. Any outside parties consulted should be neutral parties without a financial interest in implementing the mitigation and monitoring plans, and should have expert knowledge, training, and experience relevant to the resources potentially affected by the actions and—if possible—the potential effects from similar actions.

CNF should preserve and include all communications, including all emails, among Project Proponent, its consultants, SWCA and CNF staff into the Administrative Record to allow the public to review of CNF's Rosemont Project NEPA decisional process.

Please find additional detailed comments in the attached comment table, which contains three figures and one printed spreadsheet. We appreciate the opportunity to review and comment on the DEIS. If we can provide any additional information, please contact John Windes, Regional Habitat Program Manager, by phone at 520-628-5376, or by email at jwindes@azgfd.gov.

Sincerely,



Josh Avey
Habitat Branch Chief

JTA:jw

cc: Raul Vega, Region V Manager
John Windes, Region V Habitat Program Manager
Linda Pollock, Attorney General's Office
Cooperating Agencies (via email)
Jean Calhoun, Assistant Field Supervisor, USFWS

Enclosure(s)

Comment Table
Figure 1
Figure 2
Spreadsheet