

February 13, 2014

United States Forest Service Southwestern Region
333 Broadway SE
Albuquerque, NM 87102

Email Address: objections-southwestern-regional-office@fs.fed.us

Attention: Reviewing Officer, Objections to the Rosemont Copper Project FEIS

Subject: **FORMAL OBJECTIONS TO THE FINAL ENVIRONMENTAL IMPACT STATEMENT FOR THE PROPOSED ROSEMONT COPPER PROJECT**

Objector: James E. Pepper

Dear Sir/Madam:

Augusta Resource Corporation, the parent company of Rosemont Copper Company, submitted a preliminary Mine Plan of Operations to the Coronado National Forest (CNF) in 2007. The proposed Rosemont Copper Project mine site is located in the CNF on the east side of the Santa Rita Mountains of the Nogales Ranger District in Pima County, Arizona. Jim Upchurch, Forest Supervisor of the CNF, is the Responsible Officer for the subject Final Environmental Impact Statement (FEIS).

The formal objections to the FEIS set forth in this document have been prepared and submitted by James E. Pepper P. O. Box 1326, Sonoita, AZ 85637, Ph. 520-455-5106.

On behalf of the Mountain Empire Action Alliance (MEAA) and along with a colleague Dr. Wade Bunting, and on behalf of myself, I submitted extensive Scoping Comments on the proposed project. In addition I have submitted extensive comments on the DEIS, given oral testimony on the DEIS, and engaged in considerable correspondence with the CNF regarding the proposed project. My comments are index-numbered as set forth in the FEIS:

Five substantive, original documents/testimony:

Pepper James 10488

Pepper James 24482

Pepper James 24506

Pepper Jimmy 3383

Pepper Jimmy 189

Ten documents/testimony deemed "duplicate":

Pepper James 7805

Pepper James 7763
Pepper James 10798
Pepper James 12286
Pepper James 24483
Pepper Jimmy 1954
Pepper Jimmy 191
Pepper Jimmy 1956
Pepper Jimmy 104
Pepper Jimmy 1949

In seeking to connect the FEIS index numbers identifying my specific comments to my actual submitted comments/testimony, I discovered that there was no electronic link, indeed no link of any sort between these comments and the text of my comments/testimony. I finally found my comments/testimony in the CNF website devoted to the Draft Environmental Impact Statement. But alas, when I finally located this information the numbers identifying my initial comments did not match the index numbers assigned in the FEIS. As a result of this serious lack of correspondence between my initial comments and the FEIS responses, I was unable to directly connect any of my initial comments/testimony to the responses published in the FEIS. This Objection Process is thus seriously, if not fatally flawed.

As a member of the public whose life savings are invested in my residence (which is located only 3.5 miles from the proposed Rosemont Mine), my wife and I have taken considerable interest in the unfolding of the proposed project as well as the NEPA process. Indeed, we have been attending meeting, reviewing documents, providing tours of the area to CNF officials, etc., for over six years. We have seen three Forest Supervisors since this process began. And we have fought and struggled to maintain our civility and dignity in light of the Rosemont public relations avalanche, and the obvious adverse environmental impacts this monstrous industrial project will have on our property, our community, the quality of our air and water, the very quality of our lives. This explains the extensive level of my involvement in the process.

However, in January 2013 serious blockage in my coronary system led to triple-bypass surgery. Naturally my physician has advised me to “reduce my stress”, which in turn led me to face the prospect of a longer life or a continued stressful engagement with the Rosemont Saga. I have chosen the prior, and after only a few seriously frustrating days of trying to make sense of the “Objection Process” and the FEIS responses (which as you know consist predominately of generic, general non-responses that merely send the reader back to an non-specific point in the body of the text), I flew my white flag and chose to abandon this futile undertaking and take care of my health and longevity. As such, I too have limited my statement of “objections” to more “generic” or “generalized” statements just as CNF choose to do with the vast majority of the public comments on the DEIS, including my own.

It is worth noting that I anticipated that the CNF responses to comments would resemble the manner in which the BLM and SWCA responded in the FEIS on the proposed Dos Pobres/San Juan Project (copper mine) near Safford, AZ in 2003. These Dos Pobres responses were

similarly organized by letter author and number, but instead of sending readers off to various general responses (all in PDF format in the Rosemont FEIS), the Dos Pobres report referred readers to numbered general responses as applicable, but also included under the individual letter, all letter-specific responses to comments. As such, someone like myself could go to their name and letter(s) and read the specific responses to comments in one place, rather than reviewing the 42 separate PDF files containing fragments of my comments, which, incidentally amounted to 158 separate comments.

I did, however, conduct an analysis of the type of FEIS responses to my comments, and must report to my considerable disappointment, that few of my comments were addressed under the category of “additional responses”; most of my comments were simply printed under the “generalized response” at the head of each pdf. category file. Most notably, of my 40 identified comments on socioeconomic issues (file 347) only one warranted an “additional response”. My fifteen comments on economic modeling (file 703) elicited seven responses, all of which were either informing me I could review all non-proprietary data at the CNF Office or “see the new socioeconomic chapter”; I consider these non-substantive responses. Most of my specific comments on property values analyses failed to produce substantive responses; rather I was informed that the analyses were not biased or distorted, wholly failing to refute my stated concerns. This is a most discouraging situation; a member of the public spends hours, indeed days formulating thoughtful, specific comments, only to be dismissed with a glib “we did more work – go find it” or “our assessment is not distorted or biased.” Where’s the beef?

I also reviewed text on several of my most important concerns as addressed in the body of FEIS. This led to more frustration, as I read more biased, partial, distorted, incomplete and wholly unprofessional and unacceptable analyses of impacts on the local and regional economy, property values, impacts of projected reduced flows in the Colorado River Drainage, cumulative effects, “reasonably foreseeable projects”, etc., etc., etc. Only in the area of visual resources did I find truly professional and satisfactory analyses.

In the early 1970s I was among the early pioneering researchers and professionals involved with NEPA, and in my case, also with the California Environmental Quality Act (CEQA – a near-clone of NEPA). Starting in 1970, one year after the passage of NEPA, I spent 25 years as a Professor of Environmental Studies at the University of California, Santa Cruz, where I taught courses focused on NEPA and CEQA (Environmental Law and Policy, and Environmental Impact Assessment). For over thirty years I have led and participated in teams responsible for the preparation of major NEPA and CEQA documents. In brief, then, I believe I am in a position to speak knowledgably regarding professional standards and the quality of the DEIS and FEIS on the proposed Rosemont Mine.

Based on this experience, I offer a few observations on the FEIS and the NEPA process in general.

Apparent Overall Bias

My DEIS comments included statements regarding apparent bias in various analyses, misinterpretation of research results, cherry-picking published research, using inappropriate data, failing to produce key data, etc. These problems appear to be systemic, not simply random, and suggest that both the DEIS and the FEIS have a bias toward presenting analyses and conclusions favorable to getting the proposed project approved.

It is no secret that SWCA, the primary consultant with extensive NEPA experience, and with a major role in the preparation of the Rosemont DEIS and FEIS, appears to be a handmaiden for the mining industry. To wit, on their corporate website SWCA promotes its services to the mining industry as follows:

Mining

Environmental regulation and public scrutiny presents unique challenges to the mining industry. *SWCA's expertise in environmental regulatory compliance and natural and cultural resource management has been a powerful tool in helping mining companies secure approval for their coal, hard rock, sand, and gravel mining efforts* as well as reclamation and restoration operations. We understand the challenges of domestic and international market cycles, water resource supply and protection, and the public's perception of the mining industry. *We also offer one-stop shopping for environmental services, strong relationships with regulatory agencies, and in-depth knowledge of environmental laws and regulations. **Having provided permitting support for some of the nation's largest mining operations,*** we can help both project owners and the public understand the effects of mining operations on environmental resources. (italics added)

Thus it is clear that SWCA has close ties to the mining industry, including services which are clearly advocacy in nature. This is also true of the numerous engineering firms and technical consultants who prepared the numerous and voluminous technical reports supporting the proposed project.

It is my experience that over time professional boundaries get blurred, and it is increasingly hard to maintain objectivity when faced with the constant need to maintain a client-base which itself is filled with advocacy. The old adage regarding "telling time with your clients watch" appears particularly applicable in the immediate case. There are sections of text in both the DEIS and FEIS that simply omit or gloss over important data, qualifications, assumptions, caveats, etc., simply to minimize and obscure impacts. In brief, then, the systematic bias in the document renders it seriously flawed.

Inconsistency

The many authors of the FEIS (see section on persons involved in document preparation) apparently failed to communicate regarding the matter of consistency. For example, in the

many subsections on the “no action alternative”, “cumulative effects,” and on the matter of “reasonably foreseeable actions” the report slips and slides over simple matters like settling on a consistent number of years-of-operation, a time-frame for consideration of cumulative effects, what qualifies as “reasonably foreseeable”, or the very meaning of the “no project alternative”. It is thus impossible to discern the fundamental baseline against which both temporal and spatial analyses were conducted in these key sections of the FEIS.

Notable Absence of Quantitative Analyses and Appropriate Scientific Rigor

NEPA envisions appropriate levels of scientific rigor, not mere speculation or conjecture. There are far too many qualitative measures used to obscure conclusions which warrant a quantitative foundation. Absence of available data is often noted as the basis for abandoning quantitative analyses and findings. For example, in the Air Quality section the FEIS claims that quantitative modeling cannot be conducted for the determination of cumulative effects, when in fact, on a daily basis, Regional Air Quality folks do such modeling of the air quality impacts of various scenarios of future/projected growth. This notable and widespread absence of quantitative data and analyses in turn serves to obscure important results such as actual impacts on air quality, a serious public health issue.

Incomplete Document

By its own admission, the CNF acknowledges that the FEIS has been published before it was truly complete. This leaves a serious legal and political cloud over any decision based on the current document. It is also a violation of both the intent and legal requirements of NEPA as a “full disclosure” document. How can “incomplete” justify “full disclosure?”

Overwhelming Body of New Information

The FEIS contains an overwhelming body of “new information”. There are numerous new Technical Reports, complete revisions of sections of the FEIS, new analyses, new graphics, expanded discussions, new data, etc., etc.; none of this data has undergone the scrutiny by public agencies and members of the public set forth under NEPA. As such, a fully revised DEIS should be prepared and re-circulated for an appropriate level of public review and comment.

Naturally there is important relevant new information that does not appear in the FEIS. One such set of “new information” appears in a document prepared in 2012 by the US Forest Service Rocky Mountain Research Station: **Vulnerability of US Water Supply to Shortage; A Technical Document Supporting the Forest Service 2010 RPA Assessment**; authors: Romano Foti (Princeton University), Jorge A. Ramirez (Colorado State University), and Thomas C. Brown (USDA, Forest Service). I have attached a file containing this important new information. I urge you to review it closely, paying special attention to Water Resource Region (WRR) 15, and more particularly 1503 – the subregion within which the proposed project is located. Chapter 6: Vulnerability Assessment (pages 117-131) provides a clear message for residents of our WRR; namely, projections (in 20-year increments from 2020-2080) under a range of socio-economic

scenarios, a range of water demand scenarios, and a range of climate change scenarios, WRR is highly vulnerable – one of the three most vulnerable locations in the continental US.

Is it wise public policy to approve a high-water use, maximum water pollution industrial facility on public lands and posing a long-term threat to a major municipal water supply simply because Ulysses S. Grant and his now-antiquated Mining Law of 1872, “made you do it?” Where is good judgment, sound judgment, informed decision-making? Maintaining a sustainable water supply for the City of Tucson surely must trump this proposed half-baked mine that continues to morph with each passing day.

Please do not simply hand this report off to some engineering firm to summarily dismiss its contents. This is what occurred with my previous comments on a multi-year research study of Projected Upper Colorado River Water Yields prepared by Scripps Institute. I inadvertently discovered a response to my comment in a Technical Report I was perusing (not the FEIS). One of the engineering firms (Montgomery, I recall) had been requested to address the conclusion of this research, which indicated steadily dwindling water yields based in the Upper Colorado. “No problem”, stated the engineers; careful engineering will save us all. Naturally I exaggerate (as did the engineers), but this cavalier, out-of-hand dismissal of a major sustainable water supply issue is simply unacceptable. Note that it also infuriated me to find a serious comment related to a major public policy issue buried in a Technical Report, treated dismissively, and not adequately addressed in the FEIS.

Failure to Fully and Properly Utilize Expertise of Cooperating Agencies

Presence of Rosemont personnel at Cooperating Agencies meetings was challenged in Court; the Court made no findings related to unlawful activity, but the bench noted that the behavior was questionable, reflected poor judgment, and created the appearance of improper behavior. But it did more than that. Representatives from Cooperating Agencies have expressed reluctance to speak up in front of Rosemont officials, preventing them from fully sharing Agency concerns in the Cooperating Agency meetings.

Moreover, I brought a MEAA consultant (economist Thomas Power, PhD) to attend a CNF ID Team meeting to make a presentation. I excused myself from the meeting so the ID Team could have open access to our consultant. Regrettably, the Cooperating Agency Representative from the AZ Department of Mines and Mineral Resources was clearly present to challenge Dr. Power. Dr. Power was present to discuss impacts on the regional economy, which included a critique of the initial economic modeling of the proposed project. The AZ Department of Mines and Mineral Resources representative, a co-author of the report on the initial modeling, and an unabashed advocate for the Rosemont proposal apparently dominated the meeting with repeated challenges to Dr. Power, prohibiting an open exchange of information between the CNF ID Team and our consultant, the intended purpose of the meeting. This is a form of intimidation just as was the presence of Rosemont personnel at the Cooperating Agency meetings. It essentially prohibited the ID Team from gaining a full understanding of Dr. Power’s presentation. I question whether Cooperating Agency representatives were properly included

in ID Team meetings to defend the proposed project. Note that to this day the modeling issue remains unresolved in spite of months of time spent in an unsuccessful effort to obtain key non-proprietary data used in the initial modeling.

Further, the ID Team member charged with managing the Cooperating Agencies failed to properly contact the Arizona Department of Transportation, resulting in nearly a full-year delay in obtaining an ADOT representative. As such, traffic and transportation was never fully addressed by qualified ADOT personnel. This occurred in spite of repeated requests of the ID Team member to take appropriate action. The matter was finally partially resolved when our State Legislator was called upon to intervene. But to this day, ADOT has not been fully engaged in the NEPA process, and serious traffic and transportation issues, particularly on State Route 83 remain unresolved.

Failure to Draw Upon Unbiased and Professional Expertise of Relevant Federal Agencies

Earlier in this statement of objections, I note that there is an apparent systematic bias throughout the DEIS and FEIS, tending to obscure or understate adverse effects. I propose that this is generally due to the utilization of “industry-friendly” consultants throughout the entire process. It is one thing to have the MPO prepared by industry insiders, but to utilize environmental assessment consultants with “insider” propensities is highly questionable. The CNF should have also drawn upon unbiased and professional expertise in other federal agencies in the preparation and review of the environmental assessments. US Fish and Wildlife Service, USGS, BLM, and other line agencies could have provided important professional and technical assistance that could have increased the scientific “independence” and reduced or eliminated the taint of apparent bias.

Failure to Demonstrably Meet NEPA Declaration of National Environmental Policy concerned with “Responsibility for Future Generations”

The National Environmental Policy Act sets forth specific policy regarding the “... social, economic, and other requirements of present and *future generations of Americans.*” (emphasis added). The FEIS fails to address this important policy directive. Leaving a toxic pit – essentially a “Superfund Site-in-waiting”, in the headwaters of a critical groundwater recharge area for the domestic water supply for the City of Tucson obviously raises serious issues for present residents, but will surely pose critical issues for future generations. This policy and moral question is completely disregarded in the FEIS.

For purposes of ease of reference, relevant portions of NEPA are set forth below:

The National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982)

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969."

Purpose

Sec. 2 [42 USC § 4321].

The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101 [42 USC § 4331].

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --

1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations; (emphasis added).

Conclusion and Remedy

Regrettably, I consider the FEIS to be legally and substantively inadequate. It fails to comply with both the letter and spirit of the National Environmental Policy Act. The sole remedy is to prepare a fully Revised DEIS, utilizing the services of qualified professionals from relevant Federal Agencies to insure that the biased analyses are removed/corrected, and fully engaged Cooperating Agencies. The Revised DEIS should be re-circulated for full review by public agencies and the general public.

Thank you for the opportunity to express these objections. Please, we beseech you, take them all very seriously.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'J. Pepper', with a stylized flourish extending to the right.

James E. Pepper