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TO: Reviewing Officer  
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RE: Rosemont Copper Project FEIS Objections (6 pages)

I hereby submit a formal objection to the proposed Rosemont Copper project in the Coronado National Forest, Nogales Ranger District. The responsible official is Jim Upchurch. This objection concerns DEIS Comment Letter #s 10570, 14190 and 25239.

The Multiple Use Mining Act of 1955 was enacted to “amend the general mining laws to permit more efficient management and administration of the surface resources of the public lands by providing for multiple use of the same tracts of such lands”, and that mining activity would be “compatible with utilization, management, and conservation of surface resources of public lands”.

“Use of the surface of National Forest System lands in connection with operations authorized by the United States mining laws...shall be conducted so as to minimize adverse environmental impacts on National Forest System surface resources”

...(though) the USFS cannot prohibit the discovery and development of locatable minerals, it is charged with the regulation of surface disturbance. The action alternatives to the Rosemont MPO presented by the DEIS simply rearrange the surface disturbance.

“Forest Service Officers should provide bona fide prospectors and miners reasonable alternative(s)” for, among other things, “extraction methods” (**FSM 281.24 Minerals and Geology**). Apparently, Augusta submitted the wrong MPO, and the offering of other extraction methods would have been helpful to the proposed project. Why did the Draft offer no study of other extractive methods?

FEIS General Response to Comments on DEIS:

**The Forest Service considered an alternative of mining the ore using shafts and adits, but dismissed this alternative from detailed study. The nature of the Rosemont Copper Mine oxide and sulfide deposits is such that it is disseminated across a wide area underground, unlike minerals deposited along seams. Mining using shafts would not allow access to the full ore body. Furthermore, the ore is not of sufficient concentration that it is economically feasible to recover the ore using this approach.**

**Objection:** Translation of this response should be unnecessary, but just to clarify; this is a less than viable mineral deposit by any standard foreseen in any mining law described in 1872 or in 1955, or by any historic standard practiced in what is now the Coronado National Forest according to “local customs or rules of miners in the several mining districts” (**General Mining Act 1872**). By accepting the proposed action of a mile-wide open-pit as the only feasible extraction method to the dismissal of all others, the USFS has placed itself in the peculiar position of insuring the applicant some expectation of profitability.

**FEIS p. 100: Reasonable alternatives include those “that are practical or feasible from technical and economic standpoints and using common sense, *rather than simply desirable from the standpoint of the applicant*” *emphasis added***

The preferred alternative has less than a dime’s difference from the proposed action, and both are a far cry from any environmentally preferable alternative, an alternative “that causes the least damage to the biological and physical environment and which best protects, preserves, and enhances historic, cultural, and natural resources”. The USFS developed alternatives to the proposal from the standpoint of an economically feasible sweet spot that only the applicant could truly know.

**Memorandum to Agencies 46 Fed. Reg. 18026 ( March 23, 1981):**

**Section 1504.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on the word “reasonable” rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. *emphasis added***

It appears as though the USFS has taken “practical or feasible from technical and economic standpoints” out of context. If the Agency believes itself compelled to consider the millions that Augusta has spent on acquisition, development, and a massive PR campaign, plus the 1.23 billion that will be required to construct the mine, then it should have also examined alternatives that may have required far less in capital outlay with smaller aggregate yet (possibly) proportionately greater return. This would not have represented some “universe” of conjectural possibilities, any more than it would have “endangered or materially interfered with prospecting, mining or processing reasonably incident thereto”.

DEIS Comment Letter #s 10570 14190:

...the Interior Department of the previous administration simply discarded the “millsite provision” of that (1872) law by bureaucratic edict. Please explain the likely outcome of this tenuous and controversial interpretation of the 1872 Law and its direct bearing on other mineralized lands potentially impacted by the current action alternatives. Please explain how this interpretation accommodates “reasonably compact mining and milling operations” (**DOI 2003**) within the RCP MPO and alternatives.

FEIS Response to Comments on the DEIS: None that I can find. The “millsite provision” still exists in a state of limbo between the House, who have refused to take up the matter, and the Senate, who, while they have not posited what the provision might mean, have determined that it certainly does not mean what it says.

**Objection:** This is another example of the way in which the USFS has chosen the narrow view and refused to respond to a substantive comment on the Draft. The Agency insists that its “legal authority regarding mining proposals is limited” and that there are “constitutional limits to its discretion”, but the Agency merely adopted a position and then looked to relevant law that confirmed that position while discounting relevant law that appeared discordant to that position. This was not inevitable. Laws, Acts, Codes, Mission Statements and Executive Orders only appear to conflict each other in the face of a premise that is flawed from the outset.

Here is another example. DEIS Comment Letter #25239:

The Preliminary Finding of Significance indicated a finding of “nonsignificance”. The guidelines for determining proposed changes as either “significant” or “not significant are equally subjective in Section 1926.51 in the Code of Federal Regulations and in the DEIS for the Rosemont Copper Project. An explanation of “significant” (and not) would have been helpful in the DEIS, as well as examples of the criteria used to arrive at the finding of nonsignificance.

FEIS Additional Response to Comments on the DEIS:

**The Preliminary Finding of Significance was limited to determining whether the proposed Forest Plan amendment was a significant or nonsignificant amendment, and had no further bearing on resource impacts. Several of the resource analyses disclosed in Chapter 3 use the term “significant” to describe impacts. In most cases, the threshold of impacts used to make the significance determination are described.**  
*sic*

**ISSUE: FINDING OF NON-SIGNIFICANCE:** Pages 57-59 of the Draft Record of Decision and Finding of Non-significant Forest Plan for the Rosemont Copper Project presents a contextual case for its Finding of Non-significant Amendment as it “**affects only a small portion of the Coronado National Forest**”. Management Area 16, The Rosemont Copper Project (preferred Barrel Alternative), affects some 6,990 acres of the 1,726,514 acres (0.61%) of the Forest and that the standards and guidelines therein “**would not affect activities outside the Rosemont area.**” NEPA requires both context and intensity considerations in a FONSI (CEQ, 40 CFR 1508.27(b)). Leaving “intensity” aside for just a moment, the contextual case does not withstand scrutiny for even a moment.

The Coronado National Forest, at the confluence of the Rocky Mountains and the Sierra Madre Occidental, and the Chihuahuan and Sonoran deserts, is unique upon the continent. It is a fragmented Forest system encompassing separate mountain ranges or “sky islands”. Each of these sky islands is unique in character, in the way in which the individual mountain temperate zones bleed into one another and in the way that some

plant and animal species are actually “captured”, as if stranded on an island. And while each island benefits the health of the other as larger species travel from one range to another, each island is, again, its own special place. The Santa Rita EMA is one such place. The Santa Rita EMA is not 1.7 million acres. It comes in at 148,431 acres. As a percentage of the Santa Rita EMA, MA 16 removes better than 5% (**FEIS p. 862**).

**OBJECTION:** The Forest Supervisor has issued a Finding of Nonsignificant Forest Plan Amendment for the Rosemont Copper Project based entirely on context. The reasoning presented in the Draft ROD is that the proposed MA 16 represents only 0.61% of the CNF and that standards and guidelines as they apply to the new management area would not affect activities outside the Rosemont area, yet the entire Santa Rita EMA north of Box Cyn. Road will be rendered practically useless as a wildlife linkage and movement corridor (**FEIS Table 129**) and as a recreation opportunity asset. This choke effect is evident in the proposed reroutes of The Arizona National Scenic Trail. All re-alignment alternatives described in the FEIS pin the trail along one side of SR 83 or the other. Even the proposed Sycamore Connector road (**Figure 20, FEIS**) exemplifies that the Santa Rita Backcountry Touring Area will become, at best, two separate roaded systems. This is only the beginning of where the limiting principles of context unravel.

The FEIS has done a fair (albeit equivocal; see word count for “may, could” and forms of “potential to”) job of acknowledging adverse affects and negative impacts to all aspects of the recreation and wilderness spectrum in the remaining EMA, while deliberately down-playing the management challenges that will ripple outward from the project site. The document offers only vague, conceptual mitigation possibilities, where it offers any at all, in an apparent attempt to minimize any appearance that actions “**significantly alter the multiple-use goals and objectives for long-term land and resource management.**”

**FEIS p. 873: Establishing the Santa Rita Community Endowment Trust...yet to be established and funded...not possible to determine what projects may result and how they might mitigate impacts to recreation and wilderness.**

**FEIS p. 837: there is little quantitative information available on recreation use levels and trends in the analysis area.**

This is a Final Environmental Impact Statement? The Draft was released two years ago.

OHV use is pushed out of Rosemont valley, **one of the more popular and traveled off-, highway vehicle riding areas, the loss of which would be more intense than the loss of roads in other portions of the Santa Rita Backcountry Touring Area (DEIS p. 52), into areas less suitable for motorized recreation and conflicts arise between user groups (FEIS p. 858), but Management Area 16 “would not affect activities outside the Rosemont area.”**

So much for context applied to recreation and wilderness. Air and water are even more problematic in that neither will remain within the perimeter fence, and a three thousand foot hole in the ground will have negative impacts to seeps, springs, Empire Gulch, Cienega Creek and Barrel and Davidson canyons. Much of what the USFS did not know

two years ago is still unknown or is described as “highly uncertain”, and **Number 5** on the list of intensity considerations is as good a place as any to begin.

### **highly uncertain effects or unique or unknown risks**

From Appendix G: **When the 1986 Forest Plan was prepared, a large mine project was not anticipated and the Forest Plan is virtually silent on management direction regarding hardrock mining proposals.**

This goes back to “local rules and customs of miners in the several mining districts”. Open pit mining is unknown to the Coronado National Forest and the Santa Rita Mountains, and an open pit would be unique to the Helvetia, Rosemont and Greaterville mining districts. As for risk, DROD p. 22: **With respect to Lower Davidson Canyon and Lower Cienega Creek, analysis suggests that several constituents, including sulfate, molybdenum, arsenic, sodium, and mercury may be elevated in stormwater in all action alternatives. Waste rock segregation requirements are likely to reduce this potential.** Whatever difference exists between the words “may” and “likely to” offer little comfort in consideration of **Number 2.**

### **degree to which action affects public health and safety**

Ultimately, the EPA will make that determination. If the mine does not move forward, we will never know the answer to that question, if it does; we will all find out together whether their determination was right or wrong. Either way, the Amended Forest Plan is incomplete without examination of intensity, which takes us back to **Number 1.**

### **impacts may be both beneficial and adverse**

This depends on who you are and where you live. As mentioned in an above paragraph, the FEIS has done a fair job of acknowledging adverse affects. If you live near the crater and consider the drawdown potential of your well, you see the impact as adverse. If you live in China or London or Seoul, you see the impact as beneficial. If you believe that a net 0.08 increase to the local employment economy (**Marlow, 2007/Power, 2010**) and a net 5% increase to the Santa Cruz Aquifer (105% recharge of the water the applicant will draw from Sahuarita wells) is a likely outcome against a loss to the local recreation/tourism spectrum and a tenuous CAP water supply from a rationed Colorado River allocation, then you start to understand why the USFS did not examine intensity. Skip to **Number 3.**

### **unique characteristics of geographic area**

An above paragraph covered that, too. Thus far, the Native American tribes have been the only group that Augusta Resources has been unable to buy. The destruction of cultural resources, historic properties, human remains, sacred sites, archeological sites, paleontological sites and traditional resource collection sites is well documented in the FEIS. This is a good place to discuss **Number 4.**

## **Degree to which effects may be highly controversial**

Beginning with the now legendary Patagonia Riot, a strong Law Enforcement element attended the meetings during the scoping process. Fortunately, this did not inhibit free speech, as Rosemont proponents tried to shout Congressman Ron Barber down from the podium during his statement. The Congressman stood firm. He had already been shot in an unrelated incident a few months prior, and perhaps such an experience gives one a greater perspective in inner strength. Even this is not so chilling as **Number 6**.

## **degree to which action may establish precedent for future actions**

Again, this depends on who you are. If you hold stock in Augusta Resources, then the Broad-top, Peach-Elgin and Copper World deposits are potential assets for development within the Rosemont portfolio. If you are a resident of SE Arizona or a decision-making entity, then they are not. The USFS and BLM propose to approve no fewer than eight Mine Plans of Operation in and near the Coronado National Forest (FEIS p. 141). The Amended Forest Plan should have examined the degree to which approval of the Rosemont Copper Project could open the door to these and other actions.

## **Objections:**

- 1) The USFS offered the same alternatives in the FEIS as it did in the DEIS, same open-pit mine, five different dirt piles. They developed these alternatives with the applicant at their elbow (**FEIS p. 100**) to the exclusion of any other extraction method alternatives. They assumed that the environmentally preferred alternative and the no-action alternative were one and the same, and that the five action alternatives were not the same and then tried to square any conflict in Federal Laws and guidelines to fit their, and Rosemont's, preferred alternative. They presented a case for "this mine" or "no mine" and nothing in between. This is a false choice and a fundamental flaw in the FEIS.
- 2) In similar fashion, the USFS amended its Forest Plan and created a new management area to bring the Rosemont Copper Project into compliance with system-wide management guidelines. They presented a contextual case that sought to minimize impacts of the open-pit mine to the Santa Rita EMA, LCNCA and greater Coronado Forest, and ignored considerations of "intensity" as is required by the NEPA process. This represents a fundamental flaw in the Amended Forest Plan.

## **Remedy:**

The two documents are 16.5 lbs of wasted paper and ink. It is a greater embarrassment than the Draft. The process should begin again.

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