

PASCUA YAQUI TRIBE

OFFICE OF THE CHAIRMAN



February 14, 2014

Reviewing Officer
Southwest Region 333 Broadway SE,
Albuquerque, NM 87102

Via Facsimile at (520) 842-3173, and

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

Re: Rosemont Copper Project Objection

To Whom It May Concern,

The Pascua Yaqui Tribe (the "Tribe") hereby submits this objection to the Final Environmental Impact Statement (FEIS) and Draft Record of Decision (ROD) regarding the proposed Rosemont Copper Mine Project. The Responsible Official is Mr. Jim Upchurch, Forest Supervisor of the Coronado National Forest. This objection should be accepted, considered, and responded to because the Tribe is not just a member of the public. The Tribe is not simply a stakeholder, or any other party or person with any type of interest in the proposed Rosemont Copper Mine. The Tribe is a sovereign nation with a unique legal and political relationship with the Federal Government and its agencies including the United States Forest Service. As such, the Tribe is entitled to a true government-to-government consultation. What has transpired thus far under the designation of a consultation falls short of true consultation. For this reason as well as the following issues discussed below, the Tribe objects to the proposed Rosemont Copper mine because of the proposed mine's overall impact to the natural world, including but not limited to the land, the water, springs, the cultural landscape, sacred sites, wildlife, and vegetation.

Introduction:

The Pascua Yaqui Tribe is a federally recognized historic Indian tribe, recognized by act of Congress on September 18, 1978. The Pascua Yaqui Tribe's Reservation is located in southern Arizona. The proposed location of the Rosemont Copper Project is on the ancestral lands of the Pascua Yaqui Tribe. The proposed Rosemont Copper Mine would significantly impact, destroy, or alter cultural and archeological sites containing numerous tribal burial sites, funerary objects, sacred objects, and other archeological and cultural items, as well as permanently alter the Cultural and Natural Landscapes of the area.

Objections/Comments:

These objections and comments refer to the sections and issues as they appear in the ROD, however they also necessarily should be viewed as objections and comments to the corresponding sections in the FEIS.

Background of the Problem (ROD, Page 1)

General Comment:

The United States Forest Service (“USFS”) describes the history of copper prospecting in this section. It seems as though the prior mining activity is being used as a justification for allowing the proposed Rosemont Copper Mine to go forward. In actuality, the fact that the Santa Rita Mountains have already been impacted only demonstrates the additional cumulative impact that the proposed Rosemont Copper Mine will likely have on the local and regional water supply, animals, plants, and the environment as a whole.

Purpose of and Need for Action (ROD, Page 2)

General Comment:

USFS states that Coronado National Forest’s (“Coronado”) overall purpose and need is to process the Mine Plan of Operations (MPO) of Rosemont Copper (“Rosemont”) and that Rosemont is entitled to conduct operations that are reasonably incidental to exploration and development of mineral deposits.

While this may be the perspective of the USFS, the USFS can still, while ensuring that the selected alternative would comply with other applicable federal and state laws and regulations, require Rosemont to avoid, minimize, and mitigate impacts to the area according to the religious, traditional and cultural values of the Tribes. The question for the USFS, how is the USFS requiring Rosemont to avoid, minimize and mitigate all of the impacts from the proposed mine?

See also, the Tohono O’odham Nation’s “Comments on the Draft Environmental Impact Statement for the Proposed Rosemont Copper Project, 76 FR 64893 (October 19, 2011)”, (“T.O.N. DEIS Comments”), which were submitted on January 18, 2012, and are hereby incorporated in their entirety into the comments of the Pascua Yaqui Tribe. (“T.O.N. DEIS Comments, Page 5, Section IV. A.)

The Pascua Yaqui Tribe also incorporates by reference the Tohono O’odham Nation’s Objection to the Final Environmental Impact Statement and Proposed Record of Decision to be filed today, February 14, 2014, in its’ entirety to the objection of the Pascua Yaqui Tribe.

Issues:

Issue 2: Impact on Air Quality (ROD, Pages 20- 36)

General Comment:

The Pascua Yaqui Tribe remains concerned about the impact of the proposed Rosemont Copper Mine on the air quality in the area of the Santa Rita Mountains and the larger region surrounding the Santa Rita Mountains.

See the “Save the Scenic Santa Ritas et al, DEIS Comment Letter” (“SSSR DEIS Comments”), which were submitted on January 27, 2012, and are hereby incorporated in their entirety into the comments of the Pascua Yaqui Tribe. (“SSSR DEIS Comments, Pages 20-36, Section III.)

Issue 3: Impact on Water Resources (ROD, Page 4), Issue 3C: Groundwater Quality (ROD, Page 5)

General Comment:

In the description of Issue 3C, the USFS discusses the fact that the mine pit could result in a permanent pit lake, which has the potential to concentrate dissolved metals and toxins. The USFS also states that the disposal of waste material such as tailings, waste rock and leaching operations could potentially contribute to the degradation of the aquifer.

When discussing the mine’s adverse effects to the natural world, including a resource as precious as water, it is crucial for the USFS to consider that to the extent that the proposed mining project impacts water within the regional area and the federal reserved, state, and aboriginal water rights of Tribes, including but not limited to the Pascua Yaqui Tribe, Rosemont has absolutely no right to interfere with those rights.

Issue 4: Impact on Springs, Seeps, and Riparian Vegetation, Issue 5: Impact on Plants and Animals, Issue 5A: Vegetation, Issue 5B: Habitat Loss (ROD, Page 6)

General Comment:

The devastating impact from the mine regarding these issues from springs to plants and animals to vegetation and habitat loss all impact Tribal values. Animals that stand to be affected by the mine include frogs, deer, coyote and the jaguar. Small animals such as the frog are said to represent the closeness to and respect for all of nature in the Yaqui culture. The deer is a sacred animal in Yaqui culture, and the deer dancer remains a central feature of the spiritual lives of Pascua Yaqui Tribal Members. The coyote, prominent in Yaqui Mythology, is also a sacred animal that depends on the Santa Rita Mountains for its habitat. The jaguar, an endangered animal, which has been found in the Santa Rita Mountains is a sacred animal as well. Artifacts that are hundreds of years old have been found in the Smithsonian Collections confirming the connection that Yaqui warriors had with the jaguar. These animals and their habitat must be protected. Again, how is Rosemont being required by the USFS to avoid, minimize or mitigate these impacts which affect Tribal values?

Issue 6: Impact on Cultural Resources (ROD, Page 7)

The FEIS and the ROD Do Not Properly Address the Impacts on Cultural Resources

Under the National Environmental Policy Act (“NEPA”), The USFS is required in the EIS to discuss significant environmental impacts and shall inform decision-makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. (40 C.F.R. § 1502.1) The USFS failed to comply with NEPA because the FEIS and ROD do not adequately address the direct, indirect and cumulative impacts of the project.

See also T.O.N. DEIS Comments, Pages 2-3, Section I. B.)

General Comment:

In this section the USFS describes cultural resources as they relate to Native Americans as well as ranching and mining communities. What the USFS fails to recognize in this section is that the Tribes, unlike the other groups listed, have a special relationship with the Federal Government. Yet, here the Tribe has effectively been merged into a larger group with entities that have no such legal and political relationship with the Federal Government. The problem with this lack of distinction between a Native American Tribe and other types of communities and individuals is that there is not a thorough analysis of the effects on a Sovereign Tribal Nation based on the cultural and religious beliefs of Tribal Members. Furthermore, the USFS fails to recognize or acknowledge the religious importance of the Santa Rita Mountains to Tribes.

See especially SSSR DEIS Comments, Pages 93-103, Cultural and Historic Resources) and T.O.N. DEIS Comments, Pages 5-10, Section IV.)

Issue 6A: Historic Properties (ROD, Page 7)

General Comment:

In this section, the USFS acknowledges that proposed mine activities would bury, remove or damage historic properties. The Pascua Yaqui Tribe remains concerned about the impact of the proposed Rosemont Copper Mine on the damage to historic properties, including traditional cultural properties, sacred sites, traditional use areas, archeological sites, historical structures, districts, and landscapes as well as areas that were not recorded.

See especially T.O.N. DEIS Comments, Page 8-10, Section IV.c.)

Issue 6B: Disturbance of Human Remains (ROD, Page 7)

General Comment:

Regarding the disturbance of human remains, USFS discusses the Native American Graves and Repatriation Act (NAGPRA) among other laws and policies. However, compliance with NAGPRA does not at all avoid the impact to affected Tribes when ancestral remains are disturbed. USFS needs to address exactly how Rosemont will avoid, minimize, or mitigate direct or indirect impact to Tribes whose ancestral human remains are disturbed.

Issue 6C: Sacred Sites (ROD, Page 7)

General Comment:

The USFS asserts that the proposed mine activities could preclude access to or destroy or degrade these types of resources. USFS also discusses how several federal laws direct Federal land management agencies to accommodate access to and use of Native American sacred sites. However, while Executive Order 13007 does address access accommodations, the USFS fails to address Section 106 of the National Historic Preservation Act (16 U.S.C. 470 *et seq.*) (NHPA), USFS did create a Section 106 Memorandum of Agreement, notably, none of the Tribes signed it.

Issue 6D: Traditional Resource Collecting Areas (ROD, Page 8)

General Comment:

In this section, USFS asserts that Native Americans and the ranching, mining and Mexican American communities use the area to collect resources.

Here again, USFS fails to recognize the Tribes as sovereign Nations. The reason that the legal and political status of Tribes is important here is that a word such as "medicine" takes on a completely different meaning in the context of a Native American Tribe. For the Tribe, ignoring the religious connotation of a word such as "medicine" is offensive and therefore the USFS statements and analysis miss the mark. The Pascua Yaqui Tribe has traditionally used and currently uses the resources in the Santa Rita Mountains for traditional medicine.

My Decision (ROD - Page 9)

General Comment:

In this section, USFS refers to consultation with interested tribes. As mentioned above, the Tribes takes issue with the USFS's assertion that the Tribe was properly consulted.

Executive Order 13175 requires consultation with Indian Tribal governments. A true tribal consultation should be an exchange between governments. Instead, what happened here was that the Tribes were invited to meet at times with the USFS, and comments were given by the Tribes. However, it is unclear how the Tribal input was addressed. Another problem with how the consultations were conducted is that Rosemont was allowed to attend these consultations, although they are clearly not a government. On one occasion there was an explicit request for Rosemont to be excluded from the government to government consultation and the USFS allowed Rosemont to be present anyway. This complete disregard of a Tribe's specific request was not only disrespectful at the very least, but it also runs afoul of Executive Order 13175.

Decision Rationale (ROD - Page 10)

General Comment:

USFS states that although a right to conduct mining activities exists, proposals must comply with applicable Federal and State environmental protection laws, the USFS can require reasonable measures to protect surface resources. It is not clear how the USFS has required reasonable measures to protect surface resources. What are the reasonable measures USFS is requiring from Rosemont to protect surface resources?

Decision Rationale, 1. Decision Space (ROD - Page 11)

General Comment:

USFS states that inherent with a project of this size and magnitude there will be direct and indirect impacts to natural, cultural and social resources on the Coronado National Forest and adjacent lands. Here USFS again merges the interests of all parties together. Tribal Concerns should be separately acknowledged and addressed.

Decision Rationale, 2.I. Cultural Resources (ROD - Page 18)

General Comment:

USFS discusses adverse impact to cultural resources addressing the fact that action alternatives differ in the number of sites impacted. USFS points out that some alternatives have more impact than others. While USFS recognizes that every site is significant, there is a larger issue that is missed. What is important is not just what the impacts are to individual sites. USFS also needs to consider is the impact to the natural world and impact to the area as a whole, including, its water, plants and animals. The water, plants, and animals are what brought and what still bring Tribal people to the Santa Rita Mountains. All of these things contribute the environment of the area as a whole, and are why the Santa Rita Mountains are important as a traditional, religious, and cultural matter.

Stipulations, Mitigations, and Monitoring Programs Section (ROD - Page 30)

General Comment:

USFS states that a number of modifications were made to the preliminary Mine Plan of Operations ("MPO") to meet the purposes of the applicable regulations such as the Endangered Species Act ("ESA"). The question for the USFS is, how much of the monitoring is done by Rosemont itself? If the majority of monitoring is done by Rosemont and USFS relies on Rosemont for self-reporting, the system is inherently flawed.

Cultural Resources Section (ROD – Page 42)

General Comment:

Here the USFS lists measures that purport to mitigate the impact of the destruction of the Santa Rita Mountains, none of them actually do mitigate the devastating impacts. Access is mentioned, but if the Tribal members are still going to be allowed to go to areas that have been devastated by the mine, what exactly are they being given access to?

Consultations with Tribes and Government Agencies (ROD – Page 54)

General Comment:

USFS recognizes the requirement to consult on a government-to-government basis under "several regulations." However, it is actually Federal Law (NHPA for example) that requires consultation. It is recognized by USFS that Native American tribes having traditional interests in and or/ties to the lands are required to be consulted. The USFS, however, fails to recognize that the United States Constitution protects religious freedom interests. Other statutes that deal with religious freedom such as the American Indian Religious Freedom Act (Public Law No. 95-341) ("AIRFA"), and The Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, ("RFRA") are not discussed by the USFS.

Consultations with Tribes and Government Agencies (ROD – Page 55)

General Comment:

USFS explains here that the Pascua Yaqui Tribe and other Tribes are recognized as "stakeholders with interest in and association to the Santa Rita Mountains." As mentioned more than once in the comments above, the Tribes should not be categorized together with other groups having any kind of interest in the Santa Rita Mountains. Tribes are not mere stakeholders. Tribes are recognized Tribal Governments and Tribal people have a direct connection as a religious, traditional and cultural matter to the lands at issue here. Also, in many instances these lands are within the aboriginal homeland of the Tribe. Tribal people use the proposed mine site to gather traditional medicine and religious plants, and to perform ceremonies. Ancestral remains are located within the proposed mine site. Stakeholder is not an appropriate term to use when referring to the referring to the Tribes, nor is it a sufficient designation of the position that tribes hold vis-à-vis their relationship with the federal government generally and the USFS specifically.

Conclusion

USFS has a responsibility, as an agency of the Federal Government to protect Tribes and the interests of Tribes. Instead, here, even as the USFS acknowledges the devastating effects the proposed Rosemont Copper Mine will have on the Santa Rita Mountains, the USFS fails to provide any protection against the huge impacts and losses that the proposed mine will likely deliver. Where the USFS was required to consult with the Tribes on a government-to-government basis, it continually brought Rosemont to the table to the point where often, it seemed that USFS was more interested in deferring to Rosemont than acknowledging and addressing the specific concerns of the Tribes. Where the USFS was to avoid, mitigate and minimize, the USFS again failed, deferring to Rosemont, allowing it to monitor and self report.

Though there are options and alternatives, such as the “no action alternative,” which is the most environmentally friendly alternative, the USFS ignored this alternative without giving it full consideration. The United States Forest Service has the power and legal authority in the no-action alternative to prevent the destruction of the Santa Rita Mountains. Because of the inestimable value of the Santa Rita Mountains to the Tribe the USFS must choose this alternative.

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter S. Yucupiera', is written over a horizontal line. The signature is stylized and somewhat cursive.

Peter S. Yucupiera
Tribal Chairman
Pascua Yaqui Tribe

Cc: Jim Upchurch, Forest Supervisor,
Coronado National Forest