

**Re: CalPortland Cement; Application No. SPL-2004-01399-MB**

September 11, 2009

Ms. Marjorie Blaine  
United States Army Corps of Engineers  
ATTENTION: Regulatory Branch (SPL-2004-01399-MB)  
5205 E. Comanche Street  
Tucson, Arizona 85707

Comments submitted via email to: [Marjorie.E.Blaine@usace.army.mil](mailto:Marjorie.E.Blaine@usace.army.mil)

Dear Ms. Blaine:

I am submitting these comments regarding the **CalPortland Cement Application No. SPL-2004-01399-MB** on behalf of the Arizona Mining Reform Coalition. Thank you for the opportunity to comment on this matter that directly effects the health and wellbeing of many residents and visitors of southern Arizona including our non-speaking friends, the flora and fauna of the area.

The Arizona Mining Reform Coalition works in Arizona to improve state and federal laws, rules, and regulations governing hard rock mining to protect communities and the environment. We work to hold mining operations to the highest environmental and social standards to provide for the long term environmental, cultural, and economic health of Arizona. Members of the Coalition include: The Grand Canyon Chapter of the Sierra Club, Earthworks, Save the Scenic Santa Ritas, The Empire-Fagan Coalition, The Dragoon Conservation Alliance, the Groundwater Awareness League, the Concerned Citizens and Retired Miners Coalition, the Center for Biological Diversity, and the Sky Island Alliance.

Pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) we are submitting comments regarding the CalPortland Cement application for a 404 permit for the proposed Empire Mountains Limestone Quarries Project located east of Old Sonoita Highway in Section 19 and 30, T17S, R17E, Pima County, Arizona. In addition to these comments, we would like to incorporate by reference the comments submitted by the Western Mining Action Project on behalf of the Empire-Fagan Coalition, which is one of our member groups.

**Summary**

The US Army Corps of Engineers has the statutory authority to deny the permit in question. Indeed, because CalPortland has failed to show how this proposed project would benefit the general public and the ecosystem, the Army Corps has a moral duty to deny this permit. Because the Army Corps has the authority to deny the permit, there is no need to further exercise the National Environmental Policy Act

(NEPA). However, should the Army Corps feel the need to conduct further review as required by NEPA, a full environmental impact statement should be prepared. This is a significant action, as defined by the NEPA guidelines and there are numerous connected, direct, indirect, and cumulative actions to the proposed project. If NEPA is conducted, the Army Corps should choose the No Action alternative. Finally, and perhaps most importantly, because of the nature of this proposed action and the widespread concern about its effect, a public hearing should be held to explain the Army Corp's proposed process and to gain feedback from the public.

### **Introduction and Background**

Davidson Canyon, an Outstanding Arizona Water in Pima County southeast of Tucson, is a main tributary of Cienega Creek, which is also an Outstanding Arizona Water. Davidson Canyon contains spring-fed perennial water and cottonwood-willow riparian habitat that provides homes and sustenance to numerous species of wildlife, including Gila topminnow (*Poeciliopsis occidentalis*), Gila chub (*Gila intermedia*), and lesser long-nosed bat (*Leptonycteris yerbabuenae*), which are all endangered species, as well as Mexican gartersnake (*Thamnophis eques*), lowland leopard frog (*Rana yavapaiensis*), and many migratory birds.

The Arizona Department of Environmental Quality's Outstanding Arizona Water Designation for Davidson Canyon begins just downstream of the proposed mining operation, but that does not negate the significance of the impact to this lower portion, which is considered ephemeral and thus not eligible for the Outstanding Arizona Water designation.

The California Portland Cement Co. application for a 404 permit relates to open-pit industrial limestone mining operations and associated haul roads in the heart of Davidson Canyon and its rare and valuable riparian habitat. It is clear that this mining operation and the two open-pit mines would have significant impacts on Davidson Canyon.

CalPortland erroneously contends that this mine is in the public interest because they say it contains a high quality limestone and is necessary for its business of producing cement. However, the company has stated on numerous occasions that their current Rillito facility has the capacity to produce cement for the next 50 years. They claim to want the limestone in Davidson Canyon to use as an additive. They also have other sources for high quality limestone. Considering the potential danger to the region's ecosystem, the economic and esthetic loss neighbors would suffer, and the importance of Davidson canyon as a wildlife corridor, risking the destruction of a portion of Davidson Canyon may make economic sense for CalPortland, but makes no sense for the rest of us.

The U.S. Army Corps of Engineers should consider the significant harm that issuing these permits would cause this area and how it is contrary to the public interest and thus deny the permit for this operation. The Corps has the authority to do this pursuant to its regulations.

If the Corps, however, decides to move forward with consideration of this permit application, the significance of this project warrants an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA). The only appropriate alternative, to uphold the public interest and protect this canyon, is a no action alternative.

#### **Clean Water Act Section 404.**

The Corps' Clean Water Act responsibilities include the very goal of the act itself, to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). To ensure that we are making substantial progress to achieve this goal, the discharge of dredged or fill materials into waters of the United States must be prohibited or permitted. The Corps' regulations require a public interest review.

The proposed haul road crossing location is an Important Riparian Area under Pima County's Conservation Land System and the overall operation has significant potential to affect these areas. To determine whether or not issuing a permit is in the public's interest, the Corps must evaluate it and weigh the benefits to the public versus the costs, including the environmental costs. Any additional loss of riparian areas in our arid desert lands is both unacceptable and irresponsible. Riparian areas are some of the most threatened and important ecosystems in Arizona.

The Corps must also consider the cumulative impacts of this project. Some estimates indicate that less than 10% of Arizona's original riparian acreage remains intact. These areas are critically important – 60% of Arizona's native wildlife depends on riparian areas and 10-20% use riparian areas for part of their life cycle. The Corps cannot issue this permit without allowing further degradation and loss of this important riparian habitat – clearly the cumulative impact is significant. To permit this operation would clearly be contrary to the public's interest.

#### **National Environmental Policy Act Requirements**

NEPA requires that any federal agencies proposing "major Federal actions" that have the potential to significantly impact the human environment, must prepare a detailed environmental impact statement. This proposed project clearly is a "major Federal action" that will significantly affect the environment and thus, should the Corps decide to proceed, warrants a full, complete, and thorough environmental impact statement (EIS).

#### **Issues to be considered in an EIS**

The Corps must evaluate a full range of reasonable alternatives in an EIS, should it decide to proceed with this action. This possible EIS must include the direct, indirect, and cumulative impacts of the proposed mining operation as well as measures to address significant impacts. It must indicate where the impacts can be mitigated. The Army Corps must conclude, given the significance of the proposed action and the negative cumulative effects that this proposed project to an already critically overburdened ecosystem, that the no action alternative is the only acceptable choice.

In addition to the issues mentioned above, the Corps must ensure that an EIS evaluates impacts to the following:

Water resources and riparian areas -- As mentioned above, no degradation in water quality and the health of riparian habitat is acceptable. With the significant losses already seen in our arid state, we just cannot afford to lose more.

Water quality – This should include the impact of any discharges associated with the mine.

Wildlife, including any endangered species -- Numerous species of wildlife are dependent on this important riparian corridor and utilize it for migration.

Air Quality – These mining operations generate significant amounts of dust, including the dust associated with hauling the materials via trucks.

Noise – Natural quiet is important value for public lands that must be protected. These mining operations have significant amounts of noise associated with them, including the trucks coming and going.

Cultural Resources – The areas in and around Davidson Canyon contain significant historical and culture sites that could be detrimentally affected by this proposed project.

Economic Impacts – Pima County has invested considerable dollars in trying to protect Davidson Canyon. The impacts to the taxpayers relative to the loss of this area must be considered. In addition, there will be serious economic impacts to the value of neighboring homes that must be considered.

Health and Safety – There will be significant traffic problems both on Scenic Highway 83 and Old Sonoita Highway that need to be considered. Local fire and rescue authorities have also expressed concern about a mine at Davidson Canyon.

Thank you for considering our comments.

Sincerely,



Roger Featherstone  
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