

# SAN CARLOS APACHE TRIBE

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June 23, 2014

*Via U.S. Mail,  
Facsimile and  
Electronic Mail*

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Neil Bosworth  
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Tonto National Forest  
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**Re: San Carlos Apache Tribe Scoping Comments on Resolution Copper's  
Baseline Hydrological & Geotechnical Data Gathering Activities**

Dear Forest Supervisor Bosworth:

The San Carlos Apache Tribe (the "Tribe") has received the Scoping Notice ("Notice") for Resolution Copper Mining, LLC's ("Resolution") proposed Plan of Operations for the Resolution Baseline Hydrological & Geotechnical Data Gathering Activities ("Proposed Plan"). Resolution proposes to conduct baseline hydrologic, geochemical and geotechnical data gathering activities ("Baseline Activities") on National Forest Lands administered by the Tonto National Forest ("TNF").

The Notice states that Resolution's Proposed Plan will affect approximately 92.98 acres and new construction will disturb approximately 31.74 acres of National Forest Service lands.

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The Notice also states the Proposed Plan will range over nineteen (19) sections of Forest Service lands. The Proposed Plan specifies that Resolution's activities will continue for ten (10) years from approval of the Proposed Plan.

TNF is required to ensure that Resolution's Proposed Plan complies with 36 CFR Part 228 and to analyze the impacts of the proposed activities in accordance with the requirements of the National Environmental Policy Act ("NEPA"). Further, according to the Notice, TNF is required to ensure that Resolution's Proposed Plan is consistent with the Tonto National Forest Land and Resource Management Plan ("LRMP") of 1985.

As stated in the correspondence transmitted to you of June 20, 2014, the Tribe repeats its request for a postponement of the comment period for the reasons set forth in that letter.

Anticipating that no postponement will be forthcoming, the Tribe submits the following comments, and reserves its rights to supplement these comments:

**The Tribe endorses and incorporates by reference the comments by Arizona Mining Reform Coalition, *et al.***

The Tribe fully endorses and incorporates by reference the comments submitted by the Arizona Mining Reform Coalition, *et al.* The Tribe, in the interests of economy and duplicating the same legal and factual arguments, requests that you consider the comments made by the Arizona Mining Reform Coalition, *et al.* as though those comments were the Tribe's separate comments. The Tribe further calls your attention to the fact that the Tribe is a signatory to the comments submitted by the Arizona Mining Reform Coalition, *et al.*

**Violation of the Memorandum of Understanding regarding the Ethnographic/Ethnohistorical Study of the Superior area, Arizona**

In June of 2013, TNF signed a Memorandum of Understanding ("MOU") with the Tribe. Under the MOU, the Tribe and TNF agreed to cooperate in the preparation and completion of an ongoing Ethnographic/Ethnohistorical Study ("Study") of Forest Service managed lands in and around Superior, Arizona. The purpose of the Study is for the Tribe and TNF to work together to collect data for the completion of the Study. The very purpose of the Study was to inform the very scoping that is to be undertaken by the Baseline Activities.

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The entire purpose of the MOU between the Tribe and TNF is to avoid situations such as this. The purpose of the MOU was to establish an informed process to gather information directly applicable to the Proposed Plan. Section VI. A. of the MOU provides, “*The parties shall manage their respective resources and activities in a separate, coordinated, and mutually beneficial manner to meet the purposes of the MOU.*” Jumping to scoping on the Proposed Plan before the Survey is complete violates this provision and disregards the Tribe’s processes and timetables. In the Tribe’s view, this is an egregious violation of TNF’s trust and fiduciary obligations to the Tribe and a breach of the MOU.

The Proposed Plan indicates that a Class III cultural resources survey report was prepared and completed by WestLand Resources for Resolution. Plan of Operations at 67. The Proposed Plan further indicates that this report was submitted to TNF. *Id.* TNF failed to share this report with the Tribe. Failure to provide the Tribe with a copy of this report violated the MOU. *See* MOU, Section III. B. (TNF’s obligation to timely communicate with the Tribe). The Proposed Plan states “some of the proposed activities occur in proximity of existing or eligible sites.” *Id.* Without knowledge of which “existing or eligible sites” are at risk, it is presumptuous and rash to conclude that the “proximity” of Resolution’s “proposed activity” would not impact and degrade an area viewed as sacred by the Tribe and Apaches.

Furthermore, the Tribe’s will consider it a breach of the MOU if the Proposed Plan proceeds without honoring Section IV. B. of the MOU. That section provides that “appropriate cultural representatives and other knowledgeable Tribal members [shall] . . . identify issues, locations and areas of special importance to the Tribe that may be located in the Project study area, and work with Forest Tribal Liaison to located these areas on the ground. . . .” The premature issuance of the Notice for Resolution’s Proposed Plan prevents the Tribe from fulfilling this provision of the MOU.

There is undoubtedly a substantial dispute about the size, nature, and impact of the Proposed Plan, particularly with regard to Native American and Apache concerns. These concerns do not reflect mere opposition to well drilling and road improvements, or a simple disagreement over the Proposed Plan itself. Rather, this dispute is substantial, involves the trust responsibility of the United States government as exercised by TNF.

Despite having entered into the MOU, it appears that the Tribe has made little progress with TNF in an area of significant legal and regulatory concern. In a prior round of dispute between the Tribe and TNF on Resolution activities on Forest Service lands, the Forest Service was dismissive of the Tribe’s cultural, historic and sacred concerns in the Environmental Assessment (“EA”) issued for Resolution Copper Mining Pre-Feasibility Activities Plan of Operations (“Prefeasibility Activities”) issued on May 24, 2010. *See e.g.*, EA at 3-66 (“Some

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effect to their subjective religious experience may occur from the proposed action; however, it is not anticipated that this experience would be substantially burdened.”); 3-86. The disregard of the MOU by TNF is troublesome.

It is TNF’s responsibility to identify and analyze how Resolution’s Proposed Plan will impact the religious concerns and practices of Native Americans and Apaches. This is the clear responsibility of the Forest Service. To require otherwise would undermine one of the primary purposes of NEPA; that is “ensuring that the agency will inform the public that it has indeed considered environmental [and cultural] concerns in its decision-making process.” *Balt. Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 97, 103 S.Ct. 2246 (1983).

The Tribe fully endorses and incorporates the comments submitted in Section XII by the Arizona Mining Reform Coalition, *et al.* as it pertains to this section.

The Tribe encourages TNF to honor the MOU and postpone any decision on Resolution’s Proposed Plan until completion of the Ethnographic/Ethnohistorical Study.

**The Tribe again request TNF to examine all direct,  
indirect and cumulative impacts of Resolution’s Proposed Plan**

The Tribe has repeatedly requested that TNF examine all direct, indirect and cumulative impacts of Resolution’s activities. In objecting to the 2010 Prefeasibility Activities, the Tribe requested that TNF examine the cumulative impacts. In providing our comments to Travel Management on the Tonto National Forest, the Tribe questioned TNF’s failure to address the impacts of Resolution’s proposed mining operations on travel in the Forest. As stated in the Tribe’s June 20, 2014 correspondence, the Tribe again requests that TNF fully examine all direct, indirect and cumulative impacts of Resolution’s activities in conjunction with this Proposed Plan. The Tribe fully endorses and incorporates the comments submitted in Sections I, II, and IV by the Arizona Mining Reform Coalition, *et al.* as it pertains to this section.

**The Proposed Plan is incomplete and deficient**

Resolution’s Proposed Plan documents are inadequate to inform the Tribe and the public of what Resolution intends to do. In addition to the objections set forth above regarding the deficiencies with regard to cultural resources and cumulative impacts, the Proposed Plan is inadequate for failing to clearly state the purpose of the Baseline Activities. Accordingly, the Tribe poses the following questions, and requests answers thereto:

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- (1) Is Resolution examining one potential tailings storage site or multiple sites?
- (2) What facilities, structures or other construction is envisioned for such site(s)?
- (3) Are the Baseline Activities intended to provide data for determining foundation conditions beneath the tailings facility, ponds, dams, waste rock storage areas, plant facilities, or other planned mine structures?
- (4) Are the Baseline Activities intended to provide data for determining material and mass properties of the bedrock for foundations, including permeability to support hydrogeologic assessments?
- (5) Are the Baseline Activities intended to provide data for determining any and what groundwater regimes?
- (6) Are the Baseline Activities intended to provide data for estimating quantities and quality of borrow materials for facilities construction, including granular soils and rock materials?
- (7) Are the Baseline Activities intended to provide data for determining seismic probabilities or activities?
- (8) Are the Baseline Activities intended to provide data for providing engineering properties for design of structure foundations?
- (9) Does Resolution have the resources to present a Stormwater Pollution Prevention Plan ("SWPPP") which more readily conforms to the type and topography of Forest Service lands which will be impacted by the Baseline Activities instead of measures for the highway design and construction?
- (10) Independently of any Arizona Department of Environmental Quality analysis, has TNF examined the SWPPP to determine whether it adequately addresses the impaired waters of the Queen Creek watershed?

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- (11) Do Resolution's Baseline Activities comply with the Forest Service's Technical Guide to Managing Groundwater Resources, FS-881 (May 2007) for legal requirements and for ground-water management strategies?

In addition to the questions raised here, the Tribe notes that Freedom of Information Act request submitted by the Arizona Mining Reform Coalition (2014-FS-R3-03883-F) will further bear directly on other questions regarding the completeness of Resolution's Proposed Plan.

**TNF should complete its adoption of its new Land Management Plan before it passes on Resolution Proposed Plan**

TNF is currently in the process of revising its 1985 LMRP pursuant to the National Forest Management Act ("NFMA") of 1976 (P.L. 94-588) and 36 C.F.R. Part 219 ("2012 Management Rule"). TNF must comply with and present a new land management plan pursuant to the 2012 Management Rule within approximately the next three years. The Tribe considers that by proceeding with any examination of Resolution's Proposed Plan, TNF is acting prematurely and is in likely violation of 36 C.F.R. Part 219 and the NFMA.

Under the 2012 Management Rule, Forest Service Management Plans are to be collaboratively developed and science-based. Plans are to provide a framework for integrated resource management and for guiding project future decision-making by TNF. The public is involved in developing the new land management plans and will provide TNF with guidance for the future of the Forest.

Given the anticipated duration of the Proposed Plan (ten years) and the overall duration of Resolution Copper's mining operations (decades into the future), it is disingenuous for TNF to rush this Proposed Plan through at this time. Instead of waiting until a new management plan is adopted, TNF proposes to examine Resolution's Proposed Plan under an almost thirty (30) year old management plan which is admittedly antiquated and severely outdated. Resolution's Proposed Plan seeks an authorization period of at least ten years. To judge and examine Resolution's Proposed Plan under an outmoded land management plan is insincere, a violation of Congressional and agency intent and in contravention of TNF's duties to develop a new land management plan under the 2012 Management Rule.

Deciding Resolution's Proposed Plan under the 1985 LMRP is a breach of faith with the public and a violation of TNF's trust obligations to the Tribe. The Tribe encourages TNF to postpone the current action until after the new land management plan for TNF has been adopted.

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**The Tribe reserves the right to supplement these comments**

The Tribe requests and anticipates that the same extension that was granted to Arizona Mining Reform Coalition, *et al.* in TNF's June 18, 2014 correspondence be extended to the Tribe.

The Tribe anticipates that it will have additional comments based upon its review of the response to the Arizona Mining Reform Coalition FOIA requests and upon completion of the Survey contemplated by the MOU with the Tribe.

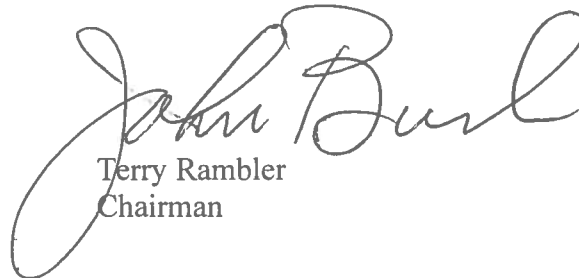
The Tribe appreciates the opportunity to comment on this matter. The Tribe repeats its request that TNF postpone the public comment period on Resolution's Proposed Plan for the reasons set forth above.

The Tribe incorporates by reference all of our prior comments on Resolution activities which have been submitted to TNF. The Tribe also incorporates by reference all of our prior comments which have been submitted to TNF on Forest-wide matters in which the Tribe specifically called TNF's attention to the Tribe's opposition to Resolution Copper's mining related activities.

Thank you for your consideration of the Tribe's comments.

Sincerely,

SAN CARLOS APACHE TRIBE



Terry Rambler  
Chairman

Cc: Nanebah Nez, TNF Archaeologist  
Celeste Kinsey, TNF Minerals NEPA Coordinator  
Patrick McMullen, Acting Exec. Dir., Inter Tribal Council of Arizona  
Roger Featherstone, Arizona Mining Reform Coalition  
John Bush, Vice Chairman  
Tribal Council Members  
Dee Randall, Forest Manager, Tribal Forestry  
Seth Pilsk, Ethnobotanist, Tribal Forestry  
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A.B. Ritchie, Tribal Attorney General