



Terry Rambler  
Chairman

## **SAN CARLOS APACHE TRIBE**

P.O. Box 0, San Carlos, Arizona 85550  
Phone (928) 475-1600 ❖ Fax (928) 475-2567

Tao Etpison  
Vice-Chairman

---

September 13, 2022

### **Via E-Mail and U.S. Postal Service**

Neil Bosworth  
Supervisor  
Tonto National Forest  
Forest Service  
U.S. Department of Agriculture  
2324 E. McDowell Road  
Phoenix, Arizona 85006  
E-M: [neil.bosworth@usda.gov](mailto:neil.bosworth@usda.gov)

Dear Supervisor Bosworth:

On behalf of the nearly 17,000 members of the San Carlos Apache Tribe (“Tribe), I provide comments on the Bureau of Land Management Analysis (“BLM Analysis” or “Analysis”) of Water Data, which reveals serious deficiencies in the rescinded Final Environmental Impact Statement (“FEIS”) for the Proposed Resolution Copper Mine (RCM), dated June 13, 2022. The Tribe received this Analysis on August 29, 2022, from the Tonto National Forest (“TNF”).

Although the BLM Analysis does not address the destruction of *Chi’chil Bildagoteel* (known as “Oak Flat”) as a consequence of the RCM and the devastating impact on Apache religion, the Analysis does validate what the Tribe has been saying for years. The mine proposed by Resolution Mining Company, LLC, presents irreversible and devastating consequences on public health, safety, and the environment. Any progress on its construction must be stopped.

The Analysis demonstrates that the FEIS fails to meet requirements under federal law and that a new environmental study must be prepared. The BLM Analysis further indicates that there were impacts on hydrology and geohydrology that the FEIS did not consider. The mine will deplete 775,000 acre-feet of water over its lifetime, leaving the East Valley of Phoenix, Queen Creek, Apache Junction and the Town of Superior without an assured water supply. In light of Arizona’s current mega-drought, to let the RCM move forward is simply irresponsible.

## **TNF Supervisor Bosworth**

*Re: BLM Hydrology Analysis – Resolution Copper Mine*

September 13, 2022

Page 2 of 7

---

I have written Secretary Haaland, Secretary Vilsack and Domestic Policy Council Director Susan Rice to request that CEQ’s NEPA regulations effective May 20, 2022, and the Administration’s tribal policy directives, apply to all federal actions relating to RCM.<sup>1</sup> While Congress considers the Save Oak Flat Act—which would repeal the law mandating the transfer of Oak Flat to Resolution Copper, the Tribe reiterates its original request for a new EIS process on RCM in the interim.

I note that the BLM analysis is only partial, as it addresses only one subject – geohydrology. There are multiple other issues of concern, of course, that are not addressed by the BLM. The following are points of concern from the BLM Analysis that you should consider.

### **The BLM Analysis**

#### **BLM Analysis general comments applicable to the entire FEIS**

The BLM Analysis made multiple recommendations. Some of the more general recommendations are applicable to all sections of the FEIS, beyond those dealing with hydrology and water resources. For example, the BLM Analysis raised concern over the USFS’s failure in summarizing reports or studies that were referenced in the FEIS, as well as omitting any comprehensive explanations for rejecting a process or technique.<sup>2</sup> Further the BLM reviewers note that the FEIS failed to consider a “no-action” alternative, as required by 40 CFR 1502.14(d),<sup>3</sup> and that a no-action alternative should be “a mandatory mitigation if in fact negative impacts are observed,”<sup>4</sup> and that the “uncertainty in occurrence should not preclude the requirement for action should it occur; as such, this should be a required measure,”<sup>5</sup> but the FEIS failed to include it.

The BLM reviewers also noted the USFS’s omission in explaining how public comments received for the DEIS triggered the need for additional studies that were included in the final FEIS conclusion.<sup>6</sup> The BLM reviewers’ general concerns are also applicable to specific concerns raised about air pollution, the Endangered Species Act application, and the

---

<sup>1</sup> Available at:

<https://www.dropbox.com/s/1j5nfqzhnsxtwhv/Secretary%20Vilsack.Haaland.Re.BLM%20Review.TNF%20FEIS%20RCM.090922%20%281%29.pdf?dl=0>.

<sup>2</sup> BLM, 2022, at 3, 4, 6.

<sup>3</sup> BLM, 2022, at 9.

<sup>4</sup> BLM, 2022, at 21-22.

<sup>5</sup> *Id.*

<sup>6</sup> BLM, 2022, at 6.

Environmental Protection Act environmental justice standards but not addressed by the limited scope of the BLM Analysis.

### **BLM Analysis comments related to hydrology and water resources**

The Analysis expressed considerable concern about the adequacy of the FEIS. These concerns are summarized by the reviewers, as follows:

The RC [Resolution Copper] project has the potential to generate significant tonnage of important ore materials, but as a result will have a significant lasting impact on the landscape that will not be repaired with any level of mitigation. Even after mining and dewatering ceases, and water levels begin to recover, hydrologic features and processes in the project area will be altered forever and, in many cases, destroyed in perpetuity.<sup>7</sup>

The BLM Analysis reveals that the FEIS misrepresented the severity and permanence of the impacts of the RCM. The FEIS also failed to disclose that any mitigation strategy would be insufficient, due to the mine’s sheer immensity. In particular, the Analysis focuses on the FEIS’s deficiencies with respect to: 1) accounting for climate change; 2) addressing indirect effects on groundwater resources in the Cutter Basin; 3) definition of baseline conditions for groundwater; 4) long-term risks from the Skunk Creek tailings storage facility (TSF); and 5) inadequate analysis of impacts to springs and streams.<sup>8</sup> Furthermore, the FEIS did not adequately address the importance of regional pre-mining groundwater conditions and the effects of early watering associated with the [associated] Magma mine, and by including continued dewatering in the analysis of the No Action alternative, the approach to assessing cumulative impacts does not meet the requirements of” 40 CFR 1508.7.<sup>9</sup> Most important, the BLM reviewers note that “analyzing only three predicted outcomes, no action (with continued dewatering), life of mine, and impacts at 200 years, is insufficient to address the true cumulative effects of the action.”<sup>10</sup> These findings mirror the Tribe’s comments on the draft EIS and in past communications.

### **Climate Change**

The BLM reviewers provide a detailed explanation for how scientists’ increasing understanding and certainty of the effects of climate change (i.e., more severe and more frequent storm events) should have been incorporated into the FEIS, which would have significantly affected the analysis of alternative tailing storage faculty (“TSF”) sites, groundwater modeling and regional water availability. From a technical perspective, this is perhaps the most

---

<sup>7</sup> BLM, 2022, at 10.

<sup>8</sup> The BLM review also expresses concerns about the way the FEIS interprets and discusses Arizona Water Law.

<sup>9</sup> BLM, 2022, at 13.

<sup>10</sup> BLM, 2022, at 24.

## **TNF Supervisor Bosworth**

*Re: BLM Hydrology Analysis – Resolution Copper Mine*

September 13, 2022

Page 4 of 7

---

consequential BLM critique. The reviewers summarize their conclusions regarding climate change as follows:

The BLM reviewers do not believe factors known to be associated with climate change, such as higher average temperatures, decreased precipitation, higher evapotranspiration, more frequent and potentially more severe flooding, increase in forest fires due to dry vegetation, increased groundwater pumping due to the reduction of surface flows, and salinity, were thoroughly addressed within the FEIS.<sup>11</sup>

### **Indirect Impacts to Cutter Basin**

This is a topic the Tribe has raised numerous times, but which was also ignored by the FEIS. The BLM reviewers agree with USFS' conclusions that direct impacts to Cutter Basin from the mine project are unlikely; the mine is too far and too geologically isolated for direct groundwater drawdown to extend as far as the Cutter Basin. However, the reviewers agree with the Tribe's concerns that if effects of mining degrade water in the Superior Basin, or other areas that might experience population growth, then users will seek alternative sources for their water supply, which would put pressure on accessing the Tribe's Cutter Basin supplies.<sup>12</sup>

### **Baseline Conditions**

Resolution Copper Mining has been dewatering the deep aquifer under Oak Flat since 2009, resulting in a drop in groundwater levels of more than 1,000 feet. The BLM reviewers note that this pre-mining dewatering (from Shafts 9 and 10) is not considered a project-related impact: only dewatering once mining has begun would be counted as an impact. The Tribe has expressed concern about this decision when it was first raised in the Groundwater Modeling Working Group. The BLM reviewers disagreed with the USFS's decision to exclude pre-mining dewatering from the impact analysis and go a step further, asserting that the decision was improper:

By not adequately addressing the importance of regional pre-mining groundwater conditions and the effects of early dewatering associated with the Magma mine, and by including continued dewatering in the analysis of the No Action alternative, the approach to assessing cumulative impacts does not meet the requirements of the above definition” [of “cumulative impacts” as defined in 40 CFR §1508.7].<sup>13</sup>

---

<sup>11</sup> BLM, 2022, at 15.

<sup>12</sup> BLM, 2022, at 13-14.

<sup>13</sup> BLM, 2022, at 13.

## **TNF Supervisor Bosworth**

*Re: BLM Hydrology Analysis – Resolution Copper Mine*

September 13, 2022

Page 5 of 7

---

### **Impacts to Springs, Streams and Groundwater-Dependent Ecosystems (“GDEs”)**

The BLM Analysis states succinctly that “the characterization of GDEs is inadequate.” In particular, it criticizes USFS’s mitigation scheme as “a flawed approach,” robbing “Peter to pay Paul logic,” and “passing the buck” rather than true mitigation. The Analysis was also critical of USFS’s decision to designate GDE’s as potentially impacted only if the groundwater model predicted 10 feet or more of drawdown at that location; a decision which the Tribe alleges was really Resolution’s decision, sadly rubber-stamped by USFS.

The BLM Analysis points out the seemingly obvious fact that even a 1-foot decline in the water table could cause a spring to completely dry out, thus the 10-foot threshold appears to be arbitrary and unscientific. The Analysis goes on to provide a detailed critique of the groundwater modeling effort, including the finding that the Tribe’s concerns (and those of other commenters) were completely ignored:

Remarkably, many of the same concerns expressed in past assessments of the model were identified by the BLM reviewers, indicating the concerns had never been incorporated into the groundwater model by the time the FEIS was released.<sup>14</sup>

This statement by BLM is a complete vindication of the Tribe’s perspective that critiques and dissenting opinions<sup>15</sup> regarding groundwater modeling and water resource impacts, were not properly addressed in the FEIS.

The BLM reviewers also found fault in the FEIS for not clearly describing that groundwater conditions will never return to “normal” because the collapse crater will alter the regional hydrogeology forever.

### **Long-Term Risk of Tailing Site Facility (“TSF”) Failure**

The BLM Analysis points out that USFS did not conduct a failure or “breach analysis” in accordance with guidelines and standards of the Global Industry Standard on Tailings Management. To be fair, these global standards were only published in August 2020; however, the reviewers are correct that there is now an opportunity to provide such an analysis in a revised FEIS. Most glaring is the questions that,

With the potential for extreme stormwater events on the rise and flows that would be catastrophic to downstream resources if the proposed Skunk Camp impoundment failed, what would be the extent of the damage? Has this potential

---

<sup>14</sup> BLM, 2022, at 24.

<sup>15</sup> Wells, James (on behalf of San Carlos Apache Tribe), August 7, 2020, letter to USFS, Dissenting Comments to the Water Resources Working Group Draft Environmental Impact Statement for the Resolution Copper Project and Land Exchange.

**TNF Supervisor Bosworth**

*Re: BLM Hydrology Analysis – Resolution Copper Mine*

September 13, 2022

Page 6 of 7

---

stress on the TSF been considered in the design and placement of materials? What would the extent of the damage be for all the alternatives (not just for Skunk Camp)?<sup>16</sup>

Of course, the FEIS does not answer these most important questions. The reviewers further point out an issue Dr. Emerman and Dr. James Wells raised in Congressional testimony: the TSF will remain as a vestige of this project for not decades, not centuries, but into perpetuity, and therefore will experience—and must be capable of withstanding very rare events – such as a 10,000 year storm event.

**Conclusion**

The BLM Analysis indicates that there must be a completely reconsidered Environmental Impact Statement by an independent, unbiased consultant other than those behind the FEIS – namely, SWCA and Montgomery & Associates. The adequacy of the USFS’s analyses of other areas and issues of major concern and how those were addressed in the FEIS were not topics addressed in the BLM Analysis, but must be, also.

The Tribe raised numerous concerns in response to the Draft Environmental Impact Statement, including risks to public health and safety, risks to water quality and supplies, risks to air quality, risks to cultural resources from a massive TSF at Skunk Camp, highly destructive mining techniques, risks to wildlife and vegetation, and non-compliance with permitting processes for massive pipeline, road, and electrical corridors throughout TNF.

These matters require and deserve a new, serious, critical review. I look forward to continuation of consultation initiated by the Forest Service’s Associate Deputy Chief Gyant. It is my hope that the consultation process begins in depth, and that it will be meaningful and thoroughly inclusive of and responsive to the Tribe’s positions this time around.

As we say in our Apache language, Ahi’yi’é (thank you) in advance for your review and consideration of our request for the Resolution Mine EIS to be completely redone.

Sincerely,

SAN CARLOS APACHE TRIBE



Terry Rambler  
Chairman

---

<sup>16</sup> BLM, 2022, at 16.

## **TNF Supervisor Bosworth**

*Re: BLM Hydrology Analysis – Resolution Copper Mine*

September 13, 2022

Page 7 of 7

---

Cc: Honorable Fawn R. Sharpe, President, NCAI  
Honorable Arizona Tribal Leaders  
c/o Maria Dadgar, Exec. Dir., ITAA, [maria.dadgar@itcaonline.com](mailto:maria.dadgar@itcaonline.com)

The Honorable Senator Kirsten Sinema, [chris\\_phalen@sinema.senate.gov](mailto:chris_phalen@sinema.senate.gov)

The Honorable Mark Kelly, [nick\\_matiella@kelly.senate.gov](mailto:nick_matiella@kelly.senate.gov)

The Honorable Tom O'Halleran  
[Adam.finkel@mail.house.gov](mailto:Adam.finkel@mail.house.gov)

The Honorable Raul Grijalva  
[Glenn.miller@mail.house.gov](mailto:Glenn.miller@mail.house.gov)

The Honorable Ruben Gallego, [Chris.kaumo@mail.house.gov](mailto:Chris.kaumo@mail.house.gov),  
[naomi.miguel@mail.house.gov](mailto:naomi.miguel@mail.house.gov)  
[mariel.jorgensen@mail.house.gov](mailto:mariel.jorgensen@mail.house.gov)

Richard Adkins, Tribal Relations Program Mgr., TNF, [Richard.adkins@usda.gov](mailto:Richard.adkins@usda.gov)

San Carlos Apache Tribe

Tao Etpison, Vice Chairman  
San Carlos Council Members  
Vermelda Grant, THPO  
A.B. Ritchie, AG, DOJ  
Chrono