

Arizona Mining Reform Coalition ♦ Center for Biological Diversity ♦ Concerned Citizens and Retired Miners Coalition ♦ Patagonia Area Resource Alliance ♦ Save Tonto National Forest ♦ Sierra Club – Grand Canyon Chapter ♦

May 1, 2017

Apache Leap SMA
PO Box 34468
Phoenix, AZ 85067-4468

Sent by email to:
comments@apacheleapsma.us

RE: Scoping Comments for the Apache Leap Special Management Area Proposed Management Plan

Per the U.S. Forest Service's ("USFS") March 17, 2017 Forest User public scoping notice letter, these are our comments to be considered for scoping of the Proposed Management Plan for the Apache Leap Special Management Area.

These comments are submitted on behalf of Arizona Mining Reform Coalition ("AMRC"), Center for Biological Diversity, Concerned Citizens and Retired Miners Coalition, Patagonia Area Resource Alliance, Save Tonto National Forest, and the Sierra Club – Grand Canyon Chapter. Any or all of these organizations may also submit additional comments apart from these comments that are also incorporated into these comments.

Organizations

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. AMRC works 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: Apache – Stronghold, Center for Biological Diversity, Concerned Citizens and Retired Miners Coalition, Concerned Climbers of Arizona, Dragoon Conservation Alliance, EARTHWORKS, Empire Fagan Coalition, Environment Arizona, Groundwater Awareness League, Maricopa Audubon Society, Patagonia Area Resource Alliance, Save the Scenic Santa Ritas, Grand Canyon Chapter of the Sierra Club, Sky Island Alliance, Spirit of the Mountain Runners, Tucson Audubon Society, and the Valley Unitarian Universalist Congregation.

The **Center for Biological Diversity** is a non-profit public interest organization with headquarters located in Tucson, Arizona, representing more than 1 million members and supporters nationwide dedicated to the conservation and recovery of threatened and endangered species and their habitats. The Center has long-standing interest in projects of ecological significance undertaken in the National Forests of the Southwest, including mining projects.

The **Concerned Citizens and Retired Miners Coalition** is a group of citizens who: 1) reside in Superior, Arizona, or do not reside in Superior, Arizona, but are affiliated with relatives who are

residents; 2) are retired hard-rock miners who previously worked in the now non-operational mine in Superior, Arizona, and were displaced due to mine closure or personal disability; or 3) are individuals who are concerned that important U.S. public recreational land will be conveyed to a foreign mining company for private use.

Patagonia Area Resource Alliance is a non-profit community watchdog organization that monitors the activities of mining companies, as well as ensures government agencies' due diligence, to make sure their actions have long-term, sustainable benefits to public lands and water resources in Patagonia and the State of Arizona.

Save Tonto National Forest works to protect our National Forest and promote safe and responsible use by all groups of outdoor enthusiasts. We are based in Queen Valley, Arizona and have around 260 members concerned about the direction the Tonto National Forest is going.

Sierra Club is one of the nation's oldest and most influential grassroots organizations whose mission is "to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments." Sierra Club has more than 2.4 million members and supporters with 50,000 in Arizona as part of the Grand Canyon (Arizona) Chapter. Our members have long been committed to protecting and enjoying the Tonto National Forest and have a significant interest in the proposed Resolution Copper Mine and related activities.

General Comments

The Apache Leap Special Management Area (ALSMA) was mandated by the United States Congress as part of the Oak Flat land exchange which was attached as a midnight rider as Section 3003 of the National Defense Authorization Act in December of 2014. The Act requires the Forest Service to approve the Management Plan by December of 2017.

It is no secret that the only reason that Rio Tinto and the authors of the Oak Flat land exchange added language creating the ALSMA was as an incentive to gain support for passage of the land exchange. As such, the entire exercise of the creation of the ALSMA is an act of "greenwashing" to make Rio Tinto's mine proposal more palatable. On its face, it is hard for us to take seriously the process and the final product of this planning exercise. In our view, the final result will fall short of its stated purpose in the law. Further, it is hard to believe the Forest Service places any more weight on the validity of the ALSMA, especially when the Forest Service waited until more than 18 months after the bill became law (more than one half the time allotted by Congress for the permitting process to take part) before planning began for the ALSMA. We fear that the late start date of the planning process will lead to a rushed and incomplete final product.

Still, the law is the law and these comments will help the Forest Service make sure that the ALSMA does what Congress mandated it do.

It is clear in examining the Proposed Management Plan (PMP), that the ALSMA will fall far short of the direction mandated by Congress that the ALSMA will:

- Preserve the natural character of Apache Leap;
- Allow for traditional uses of the area by Native American people; and
- Protect and conserve the cultural and archaeological resources of the area.

The impacts from Rio Tinto's proposed mine just 1,000 feet or less from the proposed boundaries of the ALSMA are so great that if the mine were to be built as proposed, it would be impossible to fulfill the three directions stated above. Yet this is not addressed in the PMP. Further, there is no discussion in the PMP about what measures will be taken when it becomes apparent that operation of the proposed mine makes it impossible for the direction of the US Congress to be fulfilled.

There is no discussion in the PMP about the whether it would even be possible to "allow for traditional uses of the area by Native American people" with a working mine less than 1,000 feet from the ALSMA.

The PMP requires the Forest Service to consider additional protective measures but does not establish a process for further study of additional measures to protect the ALSMA or mention whether closures of a portion of ALSMA was studied, or will be studied in the future. The Plan lacks any mechanism for changes in the future, or any procedures for Indian Tribes, the Town of Superior or other parties to address the need for additional protective measures.

The PMP is silent on baseline data of any kind within or near the ALSMA before mine construction begins. The PMP requires seismic testing to begin two or three year after a mine plan is approved. However, there needs to be a seismic baseline before any mining activity takes place as a starting point for seismic activity.

Specific Comments

PMP 1.2 The Resolution Copper Mining (RCM) General Plan of Operations (GPO), dated May 8, 2016, shows in Exhibit 3.2-2 (or Figure 7 of GPO Appendix E) that subsidence produced by the mining operation is predicted to come within a short distance of the eastern boundary of the Apache Leap SMA. The GPO indicates that numerical simulations were used for this prediction, but the GPO provides little or no information or references on the accuracy of the prediction. This leads to some uncertainty about the lateral extent of the subsidence. A relatively small change in parameters, such as the subsidence angle, or conditions, such as unforeseen geological structures, could result in intrusion of the subsidence into the Apache Leap SMA. Public comments on the Environmental Impact Statement (EIS) covering the GPO have suggested that a more thorough independent and transparent study of subsidence extent be conducted by the Forest Service.

Although the Apache Leap SMA Management Plan is strategic in nature and establishes broad direction, we recommend that PMP Section 1.2, should state that the specific issue of subsidence due to the nearby mine is a uniquely important issue in the management of the SMA. It should point out that because of the close proximity of the predicted subsidence, and because of uncertainties in prediction of its extent, subsidence from the nearby mine is a potentially serious hazard to the values of the SMA.

To aid in visualization, we also recommend that the Apache Leap SMA Management Plan, Figure 2, be modified to show the predicted extent of subsidence associated with the mine, by overlaying contours obtained either from the GPO Exhibit 3.2-2 or from updates as available from further study by the Forest Service.

PMP 1.4 NDAA Section 3003 (note typo in the PMP) Subsection (f) says that Apache Leap and any land acquired from the United States are withdrawn from mining “Subject to valid existing rights...” Yet later in the document (in 3.4.1) the PMP states that “exploration for and development of mineral resources does not occur within the Apache Leap SMA.” These two sections are contradictory. If withdrawal occurs subject to valid existing rights and if Rio Tinto proves a valid existing right, they could mine within the ALSMA. This needs to be clarified. Either there is a possibility of mining within the ALSMA or not.

PMP 1.6 The PMP relies on features to be allowed to be built by Rio Tinto that are identified in Rio Tinto’s “General Plan of Operations.” However, this plan is a moving target and subject to changes made by the Forest Service and/or other agencies (or the company itself). How can this plan be approved by December of 2017 if features allowed to be built by Rio Tinto are not approved until many years later?

PMP 2.4 The listing of wildlife species is short and inaccurate. The Coalition had identified several species at Apache Leap that are not listed including mountain lion, black bear, bobcat, coatimundi, ring tailed cat, raccoon and others. The wildlife listing needs to be more accurate. Further study also needs to be done for all of the physical and biological characteristics.

PMP 3.1 Sections 3.1.4 and 3.1.5 provide for temporary closings if traditional use areas are impacted by recreation or other permitted uses. The Plan should explicitly authorize permanent closings if necessary. Over time, the greatest threat to traditional use areas will presumably arise from mining in the area of the proposed land exchange. Sections 3.1.4 and 3.1.5 should explicitly identify mining as an activity which may impact or hamper traditional uses.

One wonders how access for traditional cultural uses could be accommodated if Rio Tinto is allowed to build a mine according to its current mining plan. Even if Rio Tinto is accurate that no subsidence would occur closer than 1,000 feet from the boundary of the ALSMA, it would be very difficult to allow access to the ALSMA from the east. Access from the west would be very difficult due to the escarpment itself. How would the Forest Service assure access for traditional cultural activity under the current mining plan? Would the Forest Service have the ability to force Rio Tinto to curtail mining activity to assure for public access from the east?

We recommend that the “Desired Conditions” for the components of the ALSMA Management Plan state that the values of Apache Leap are not degraded by the proposed Resolution Copper Mine. For example, in Sections 3.1.1 and 3.4.1, this statement should be added: “There are no adverse effects caused by nearby mining activities.”, Section 3.2.1 should include: “The landscape is unaltered by nearby mining activities.”, and Section 3.5.1 should include “Habitat characteristics are not adversely affected by nearby mining activities.”.

PMP 3.2 How would the Forest Service be able to maintain the ALSMA in a substantially natural condition for use and enjoyment by the public and assure natural quiet and dark skies while Rio Tinto is operating a huge mine 1,000 feet from the ALSMA?

There needs to be a discussion including measureable goals to assure the desired condition in this section can be achieved for the following:

- Water: Under Rio Tinto's mining plan, the entirety of the ALSMA is likely to be completely dewatered. How would complete lack of water (other than occasional rain, which would quickly be pumped away) allow for natural conditions?
- Noise: Under Rio Tinto's mining plan, the entirety of the ALSMA would be subject to noise and light from a nonstop working mine 1,000 feet from its border. How would natural quiet and dark skies be assured?
- Fog plumes and other weather conditions: Under Rio Tinto's mining plan, the entirety of the ALSMA would be subject to fog plumes rising hundreds of feet in the air from at least 5 production shafts Rio Tinto plans. Rio Tinto's mine plan could cause other unnatural weather conditions. How would these disturbances allow for natural conditions?
- Scenery: Under Rio Tinto's mining plan, there would be a 1,000-foot-deep 2-mile-wide crater 1,000 feet from the border of ALSMA to the east and a mountain of toxic tailings clearly visible to the west of the ALSMA. How would that allow for natural scenic conditions within the ALSMA? For that matter, how scenic would 5 or more steam plumes just to the east of the ALSMA be?

While we agree that all proposed developments inside the ALSMA be designed to blend in with the natural setting and that new communications sites, utility line or transmission lines not occur within the ALSMA, what real difference would that make when there would be a 1,000-foot-deep 2-mile-wide crater 1,000 feet from the border of ALSMA to the east and a mountain of toxic tailings clearly visible to the west of the ALSMA?

PMP 3.2.4 The PMP should present strategy, and the strategy should go beyond addressing the question of whether seismic conditions pose a risk. The Plan should state that because of uncertainties in the prediction of subsidence, there is a significant risk that nearby mining activities could cause adverse impacts to the natural character, cultural, and historic resources of the ALSMA. The PMP should state the objectives for installation and operation of a monitoring system that will prevent such impacts.

The strategy set forth in the PMP must state the need for a monitoring system consisting of both equipment and procedures. The Plan must require that the procedures include corrective actions, such as cessation of mining, in response to evaluation of monitored data. The strategy must also recommend that binding agreements be established between the Forest Service and RCM requiring actions by RCM in response to evaluation of monitored information.

To avoid possible conflict of interest, the strategy stated in the PMP should direct that the monitoring system be specified by the Forest Service or by contractors under direct supervision of the Forest Service. The design of the monitoring system should not rely solely on consultation with RCM, and such consultation should be used only to provide supplemental information or to

insure effective integration of the monitoring performed within the SMA and within the boundaries of the mine.

Section 3.2.4 of the proposed Plan further states “Implementation of the monitoring strategy should occur within 2 to 3 years of approval of the Resolution Copper Project decision.” We recommend that the Apache Leap SMA Management Plan state that the monitoring system shall be fully operational at or prior to the start of production operations. This is necessary to obtain data that can serve as a baseline for later measurements after subsidence has begun.

Section 3.2.4 also states “Further detail should be provided in the Monitoring and Evaluation Plan for the Resolution Copper Project and Land Exchange Final Environmental Impact Statement”. The only existing documentation on subsidence monitoring is in GPO Appendix E, “Subsidence Management Plan”. The GPO Subsidence Management Plan does describe various types of seismic sensors (but omits precision GPS), but provides little detail on their location or on response procedures. The PMP should require preparation of documentation specifying requirements for the equipment and procedures of the monitoring system. To allow timely public review and comment, the Plan should require this documentation to be available to the public well before the publication of the Final Environmental Impact Statement, and possibly referenced by the Draft Environmental Impact Statement.

PMP 3.3 We agree that non-motorized recreational activities within the ALSMA is a desired condition, but you still need to be able to get to the ALSMA to conduct non-motorized recreation. How does the Forest Service propose to allow access to the ALSMA itself? The only real access to the top of Apache Leap is from the east and Rio Tinto’s proposed mine plan makes that access almost impossible.

PMP 3.5 How would the Forest Service maintain connectivity for wildlife to the east and south? Ga’an Canyon is a natural corridor for wildlife, but most of that area would be cut off according to Rio Tinto’s mine plan. If Rio Tinto were to mine, those wildlife corridors to the North, East, and South would be rendered dry and devoid of life from dewatering. Even if wildlife were physically able to use those corridors, would they if they were dry and devoid of life?

Would mining conditions just outside the ALSMA harass and disturb wildlife to the point that they would abandon the ALSMA?

The PMP needs to consider mining conditions outside the ALSMA as a disturbing condition to the diversity of wildlife.

PMP 3.6.1 The PMP needs to consider mining conditions outside the ALSMA as a disturbing condition to the composition, structure, and growth of vegetation.

PMP 3.8 Grazing would be permitted on the Devil’s Canyon Allotment but prohibited on the Superior Allotment. We believe grazing should be prohibited everywhere in the ALSMA.

PMP 3.9 The PMP needs to state clearly that when it comes to fighting destructive wildfires, that the management guidelines should be that wildfire fighting activities should prioritize habitat within the ALSMA rather than mine property outside the ALSMA. The PMP needs to address possible wildfire conditions created by mine or other activities outside the ALSMA.

Conclusion

Because of conditions imposed by the nearby mine, it's very uncertain whether it's even possible to manage the ALSMA in such a way that would satisfy the requirements mandated by Congress in the NDAA of December 2014. To have any chance of satisfying those mandates, the PMP as a minimum must be significantly modified in accordance with the comments discussed above.

Please include the Arizona Mining Reform Coalition, Center for Biological Diversity, Concerned Citizens and Retired Miners Coalition, Patagonia Area Resource Alliance, Save Tonto National Forest, Sierra Club – Grand Canyon Chapter, as interested parties and direct all future public notices and documents to us at the addresses below.

Sincerely,

Roger Featherstone



Director
Arizona Mining Reform Coalition
PO Box 43565
Tucson, AZ 85733-3565
(520) 777-9500
roger@AZminingreform.org

On behalf of:

Randy Serraglio
Center for Biological Diversity
PO Box 710
Tucson, AZ 85702
(520) 623-5252 x 321
rserraglio@biologicaldiversity.org

Roy Chavez
Concerned Citizens and Retired Miner Coalition
104 Palo Verde Drive
Superior, AZ 85273
(520) 827-9133
Rcchavez53@yahoo.com

Wendy Russell
Patagonia Area Resource Alliance
PO Box 1044
Patagonia, AZ 85624
(520) 477-2308
Info@PatagoniaAlliance.org

John Krieg
Save Tonto National Forest
1073 E. Queen Valley Dr.
Queen Valley AZ 85118
(907) 699-6756
krieg@mosquitonet.com

Sandy Bahr
Chapter Director
Sierra Club – Grand Canyon Chapter
514 W. Roosevelt St.,
Phoenix, AZ 85003
(602) 253-8633
sandy.bahr@sierraclub.org