

November 7, 2019

Re: Comments to Draft EIS for Resolution Copper Proposal

Dear Forest Service:

We are law students and staff at the University of Arizona associated with a Natural Resource Use & Management law clinic, although we write in our individual capacities and not on behalf of the University. We have an interest in the management of projects on public and private lands in Arizona, particularly those that require governmental approval and would have a significant and lasting impact on our regional environment and economy for decades to come. We appreciate the opportunity to comment on this proposed action and seek to raise questions that ensure all impacts are considered before the project is approved. These questions include the certainty of the water sources for the proposed mine and its impacts on nearby communities, the disturbance of lands and artifacts with cultural and religious significance to indigenous peoples, and others.

The actions and analyses the Forest Service now conducts related to this project are of utmost importance due to the land exchange and title transfer authorized by statute that would take place no later than 60 days after the Forest Service publishes the Final Environmental Impact Statement (EIS).¹ After the Final EIS is published and the land exchange occurs, there will no longer be federal land impacted by this project, and the Forest Service may no longer have authority to approve, deny, or modify the proposed copper mine, or require mitigation of its impacts. Therefore, because this next step of reviewing comments on the Draft EIS and publishing the Final EIS may be the last chance for federal expertise and input to bear on the proposed project, we urge the Forest Service to proceed deliberately and fully analyze all potential impacts to humans and the environment before issuing the Final EIS.

Concerns about Mine Groundwater Demands and Water Scarcity in Eastern Phoenix Metro Area

We are concerned that the water needs of local communities in the Eastern Phoenix metro area, even without the addition of the mine project, are already strained, and will only be more so with a large mining operation. Resolution Copper essentially gave up on modeling the impacts on groundwater resources from the Desert Wellfield withdrawals claiming it is too difficult to

¹ See, e.g., the Draft EIS Executive Summary, <https://www.resolutionmineeis.us/sites/default/files/deis/resolution-deis-executive-summary.pdf>, at ES-1, and the National Defense Authorization Act for FY2015, section 3003(c)(10).

foresee.² Yet they acknowledge that, even without any mine withdrawals, the existing groundwater demands on that area exceed physically available water by millions of acre-feet over the next 100 years.³ The mine's groundwater withdrawals would constitute an additional demand in the amount of 2-7% of the existing physical groundwater resource.⁴

Given that the existing resource is already overcommitted over the 100 year planning horizons envisioned by Arizona's Groundwater Management Act, we recommend that the Forest Service should not approve a Final EIS without a better understanding of the impacts on existing water users who relied on the availability of this groundwater supply when they developed the area. The existing developments were based on Certificates of Assured Water Supply that were developed without knowledge of Resolution Copper's demands. The mine should only be developed, and a Final EIS should only issue, after a complete understanding of its water impacts on developments that are reliant on the same water resource.

The Resolution Copper Mine estimates of water usage vary widely. In the company's General Plan of Operations, the estimate is 500,000 acre feet of water over the lifetime of the mine.⁵ This is considerably lower than an estimated 640-900,000 acre feet over the forty to fifty year lifetime of the mine if operations consume 16- 18,000 acre feet of water per year as is typical for mines of similar size in Arizona.⁶ So far the project has only acquired 349,000 acre feet of stored Central Arizona Project (CAP) water, leaving a potential water shortfall of 150 - 550,000 acre ft.⁷ The company states that it still needs to acquire 170,000 acre feet of water, and will look to the CAP or vicinity groundwater for that supply.

Climate change and population growth continue to place stress on the Colorado River system, which is already overallocated. Three early signals of the system include the Salton Sea, the Great Salt Lake and Lake Mead. The Salton Sea has declined 7 meters in the past 18 years prompting the declaration of a local state of emergency in October 2019. The Great Salt Lake in Utah is at 40% of its historical capacity.⁸ Lake Mead, though actively managed by the recently passed Drought Contingency Plan (DCP) is over 100 ft lower than its' maximum capacity and faces shortages.

² <https://www.resolutionmineeis.us/files/deis/resolution-deis-section-3.7.pdf>, at p.342.

³ *Id.*

⁴ *Id.*

⁵ <https://www.resolutionmineeis.us/sites/default/files/references/rietz-swca-water-rights-cap-allocations-2016.pdf>

⁶ <http://repository.azgs.az.gov/sites/default/files/dlio/files/nid1295/sr29waterconsumptioncoppermines.pdf>

⁷ <https://www.resolutionmineeis.us/sites/default/files/references/rietz-swca-water-rights-cap-allocations-2016.pdf>

⁸ https://www.fs.fed.us/rm/pubs_journals/2017/rmrs_2017_wurtsbaugh_w001.pdf

In contrast to the bleak picture from these three large lakes, the Phoenix Water Resources Plan indicates that water for future developments is probably available until 2060, despite 44% of the cities' water being supplied from the Colorado River System via the Central Arizona Project.⁹ The CAP was recently forced to take a cut in its supply pursuant to the DCP, and it will likely have continued reductions in its allocation. As this occurs, the CAP will look to acquire new sources of Colorado River water rather than pass the shortage on to Phoenix Water users.¹⁰ Increasing demand for water in the Phoenix area by constructing the Resolution Mine will externalize damages to third parties in the rest of the Colorado River system via the CAP.

Like Los Angeles, Phoenix's growth will come at the expense of far away farms and ecosystems. Recently, CAP began purchasing water in Quartzite, AZ, and has available options to divert all remaining water from the Colorado River Delta by operating the YDP and creating a Drop 2 reservoir to catch unused allotment.¹¹¹² These options will likely be exercised in the case of Lake Mead shortages to preserve high priority municipal and industrial uses.

If the mine pursues groundwater development rather than Colorado River water, it will be contributing to the overdraft of the Phoenix AMA.¹³ In that scenario, its operation will be in conflict with urban development needed to meet Phoenix population growth.

Indigenous Values and Concerns

The Resolution Copper Mine Draft EIS acknowledges that several federally recognized Native American tribes have traditional interests and ties to the lands potentially affected by the proposed action.¹⁴ Specifically, tribal concerns center around water issues, plant and animal life, and landscapes, as well as culturally sensitive issues of historical and religious significance, as well as traditional cultural and ceremonial practices. Additionally, tribal communities have mentioned concerns regarding matters of environmental justice and the effects of the proposed action on cultural resources.

The Draft EIS, while listing tribal concerns and recognizing the irreparable damage that will be done to tribal lands¹⁵ as required by the NEPA process, does nothing to address the

⁹ <https://www.phoenix.gov/waterservicesite/Documents/wsd2011wrp.pdf>

¹⁰ <https://www.cap-az.com/documents/departments/finance/CAP-2009-Annual-Report.pdf>

¹¹ <https://watermarkets.us/recent-water-market-activity-in-arizona/>

¹² <https://www.cap-az.com/documents/departments/finance/CAP-2009-Annual-Report.pdf>

¹³ <http://www.azwater.gov/AzDWR/StatewidePlanning/WaterAtlas/ActiveManagementAreas/PlanningAreaOverview/Hydrology.htm>

¹⁴ See Draft EIS Executive Summary at ES-27.

¹⁵ See Draft EIS at 682 ("Disturbance to and loss of access to sacred sites, traditional cultural properties, and traditional resource collecting areas within the proposed mine area would adversely impact members

continued historical injustice imposed on Native American populations. The loss of traditional sites of historical, archeological, cultural, and religious significance should not simply be dismissed as irretrievably lost. We urge the Forest Service to not finalize the EIS for the proposed Resolution Mine project until actions are included by the project applicant to sufficiently preserve irreplaceable patrimony.

The Draft EIS mentions that there is expected to be substantial revenue to the federal government produced from the mine, estimated at over \$200 million per year.¹⁶ Is this estimated revenue expected to result even after the land title is transferred from the federal government to the project applicant? As the Forest Service considers the justice of destroying land and artifacts of irreplaceable significance to native communities while accepting federal royalties for mine development, have there been efforts to put these revenues towards attempting to mitigate and compensate these communities for their losses in a manner that they would find acceptable?¹⁷ These issues should be considered in ongoing and full consultation with the impacted native communities.

Concerns about Neutrality in the Draft EIS Development, and Overall EIS Process

The phrase “We are doing it. LOL.” on page 310 of the DEIS is an interesting textual insertion.¹⁸ We assume this was accidentally inserted during drafting, since it is a grammatically improper insertion in the middle of a sentence. While the meaning of the phrase could be innocent, it could also betray a bias in favor of passing the EIS no matter the concerns raised, or a flippant attitude toward the importance of careful review of concerns. We would recommend an examination of the import of this phrase in regards to the reasonableness of review of materials in this process. Who inserted this language? Does the language in any way represent attitudes regarding the content of the Draft EIS, and particularly a bias toward one of the actionable scenarios rather than the no-action scenario? What is the author’s role in the process? Should they recuse themselves from review of public comments to ensure the neutrality of the process? Should they recuse themselves from decision-making over issuing the Final EIS?

Conclusion

of the consulting tribes. No tribe supports the desecration or destruction of ancestral sites. As this impact would be limited to Native American communities and the permanent loss of these resources is not able to be mitigated, impacts would be disproportionately high and adverse”).

¹⁶ Draft EIS Executive Summary, at ES-27, and Draft EIS Full Copy at 651.

¹⁷ Compensation and mitigation will not likely suffice for the cultural resources lost. See Draft EIS at 683 (“Given the known presence of ancestral villages, human remains, sacred sites, and traditional resource-collecting areas that have the potential to be permanently affected, it is unlikely that compliance and/or mitigation would substantially relieve the disproportionality of the impacts on the consulting tribes”).

¹⁸ <https://www.resolutionmineeis.us/files/deis/resolution-deis-section-3.7.pdf>, at p.310.

Considering the significance of the Forest Service's next step in publishing the Final EIS for this project as likely the last chance for federal involvement and input into the project and because of the statutory title transfer to take place 60 days after its publication, we urge the Forest Service to ensure that all impacts are fully considered, including additional analysis on the long-term sustainability of local water resources, additional consultation with the native communities who will forever lose an area of deep cultural and religious significance, and development of additional mitigation measures by the project applicant.

We strongly recommend the Forest Service take the time and effort necessary to accomplish these tasks to ensure a thorough project evaluation before publishing the Final EIS.

Sincerely,

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