To: Coronado National Forest, District Supervisor
From: Nancy Freeman
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April 2, 2012

**Subject: Problems with the Rosemont mine exploration operations and other connected actions**

During the comment period on the DEIS, I submitted comments on the "Cumulative Actions of the proposed Rosemont mine project: EIS. 40 C.F.R. Sec. 1508.25(a)(2). "Cumulative actions" are defined as actions "which when viewed with other proposed actions have cumulatively significant impacts." See Cumulative Actions .

It has been called to my attention that there is a problem with the local Forest Service abiding by the NEPA and other court rulings of "connected actions" in dealing with their permitting of a mining project in the Coronado National Forest. First, exploration activities have been ruled as a "connected action." The exploration activities by Augusta/Rosemont are connected to the mining project itself; therefore, must be addressed by the DEIS/EIS—*before exploration takes place*. Second, all roadways, electrical lines, and any railroad facilities to be used by a mining operation come under "connected action" and must be addressed before any exploration or mining activities take place.

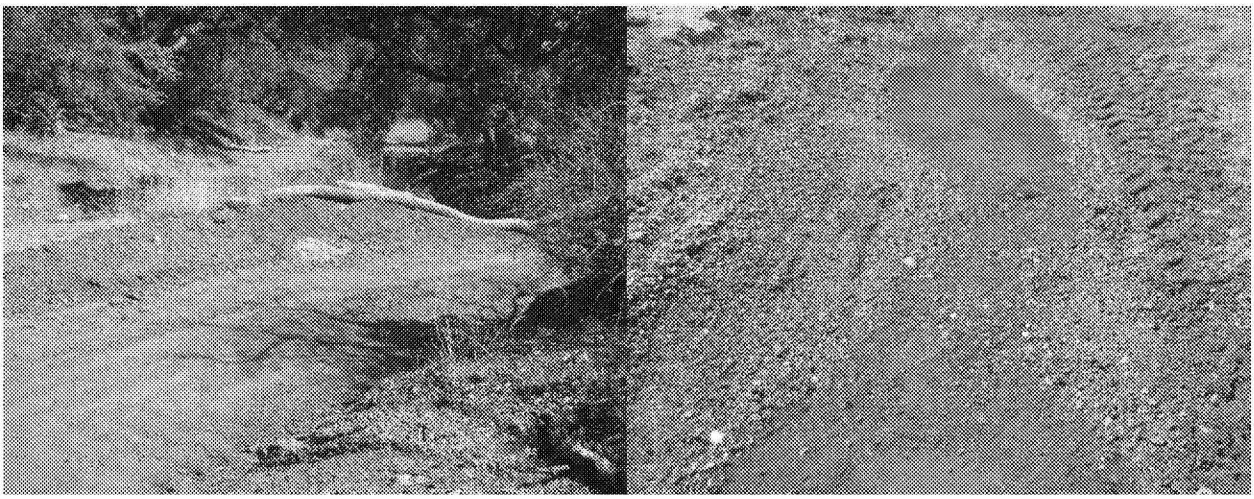
The connected actions at Rosemont include:

I. Current problems with exploration activities

II. Other connected actions, including electrical grid, highways, roadways and railways

## I. Current problems with exploration activities:

At the present, the Forest Service is allowing lowering of the water table, the destruction of FS roadways, and the blocking and rearrangement of washes (using them as roadways) in the Coronado National Forest. The mining company had been warned of this infraction last year when they were using the wash between the water well at the old FS Ranger Station and their Hidden Springs Ranch "industrial site." We, the owners of the public lands, would be fined for such infractions of destroying washes, but Augusta Resource/Rosemont is violating regulations with no consequences.



Blockage of Washes  Using Washes as Roads

I will appreciate hearing from you promptly on these current infractions by the Rosemont mining company. In Pima County, blocking a wash flow is against county regulations. However, I do not know if the Forest Service considers themselves exempt from County regulations.

The exploration work is connected to the mining itself and must be analyzed in the EIS. Here is what NEPA says:

**40 CFR 1508.25** Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (Secs.1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

1. Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.
(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

2. Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

3. Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequencies together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include:

No action alternative.
Other reasonable courses of actions.
Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) Direct; (2) indirect; (3) cumulative.

Source: http://ceq.hss.doe.gov/nepa/regs/ceq/1508.htm#1508.25

**II. Other connected actions, such as electrical grid, roadways and railway use:**

It has been shown that roads do have an environmental impact that must be included in the connected, cumulative effects in the exploration phase and also the actual mining phase. Any road construction necessary to the operation of the mine exploration or the mine operation must be included in the NEPA process.

Also, any "connected action," such as water pipes, electric lines, and railroad operations, must be included in the environmental analysis. National Response Center (NRC) clearly show that railroad yards and exchanges of sulfuric acid (or other chemicals) are regular occurrences by mining companies and must be added to the EIS as a connected action.

Records of Hazardous Material Incidents on roadways, railway sites, and minng sites from NRC records from for the five major mining companies in Arizona. NRC records for Arizona mines from 1990-2012

***Following are some quotes on the "connected action" from several court decisions:***

**National Trust For Historic Preservation in The United States v. United States Department of Veterans Affairs In The United States District Court For The District of Columbia, May 1, 2009**

"24. Federal agencies must also analyze the impacts of "connected" actions in a single EA or EIS. 40 C.F.R. § 1508.25(a). Actions are connected if they "automatically trigger other actions which may require [EISs]," "cannot or will not proceed unless other actions are taken previously or simultaneously," or "are interdependent parts of a larger action and depend on the larger action for their justification." 40 C.F.R. § 1508.25(a)(1)." [Paragraph 24]

Source: National Trust for Historic Preservation.pdf

**Roadways:**

**1. Thomas v. Peterson, 753 F.2d 754 (9th Cir. 1985)**

"The construction of the road and the sale of the timber in the Jersey Jack area meet the second and third, as well as perhaps the first, 2 of these criteria. It is clear that the timber sales cannot proceed without the road, and the road would not be built but for the contemplated timber sales. This much is revealed by the Forest Service's characterization of the road as a "logging road," and by the first page of the environmental assessment for the road, which states that "the need for a transportation route in the assessment area is to access the timber lands to be developed over the next twenty years." Moreover, the environmental assessment for the road rejected a "no action" alternative because that alternative would not provide the needed timber access." [A. CEQ Regulations, Para. 24]

"Rather, we believe that if the sales are sufficiently certain to justify construction of the road, then they are sufficiently certain for their environmental impacts to be analyzed along with those of the road. Cf. City of Davis v. Coleman, 521 F.2d 661 , 667-76 (9th Cir.1975) (EIS for a road must analyze the impacts of industrial development that the road is designed to accomodate). Where agency actions are sufficiently related so as to be "connected" within the meaning of the CEQ regulations, the agency may not

escape compliance with the regulations by proceeding with one action while characterizing the others as remote or speculative." [C. Timing of the EIS, Para. 32]

"We therefore reverse the district court on the NEPA issue and hold that, before deciding whether to approve the proposed road, the Forest Service is required to prepare and consider an environmental impact statement that analyzes the combined impacts of the road and the timber sales that the road is designed to facilitate." [C Timing of the EIS, Para. 34]

Source: Open Jurist: Thomas v Peterson

**2. Save the Yaak Committee v. J.R. Block, 840 F.2d 714 (9th Cir. 1988)**

"Thomas teaches that an environmental assessment must include an analysis of these connected actions. This assessment of connected actions is necessary even if the impact of the proposed action is not significant. The impact or significance of a particular project is a separate analysis to be considered in deciding whether to prepare an EIS or only an EA." [C. The EA's Analysis of Connected Actions, Para. 39]

"Both connected actions and unrelated, but reasonably foreseeable, future actions may result in cumulative impacts. As discussed, there is an inextricable nexus between the road reconstruction and the logging operations. Yet, the EA did not evaluate the environmental impacts of either the reconstruction or the ongoing and future accelerated timber harvest. The cumulative impact of these actions raises material issues of fact concerning the project's effect upon the human environment." [C. The EA's Analysis of Connected Actions, Para. 45]

Source: Open Jurist: Save the Yaak Committee v Block

**3. Hells Canyon Preservation Council, Earthworks, and the Northwest Environmental Defense Center v. Richard J. Haines, Steve Ellis, and United States Forest Service, CV. 05-1057-PK (Aug. 4, 2006) in the United States District Court for Oregon**

"As noted above, part of the purpose and need for the Project at issue here is to address the fact that several reaches of the North Fork Burnt River and its tributaries do not meet state water quality standards for temperature and sediment. AR 7936; ROD at 1. The Forest Service may not ignore or defer its

responsibility to remedy existing water pollution in the project area based on a misguided notion that the right to mine trumps federal and state environmental laws. For the foregoing reasons, plaintiffs' motion for summary judgment on claims under the Clean Water Act is granted." [Opinion and Order, Page 11]

Source: Hells Canyon Decision.pdf

**Railways:**

**Colorado Rail Passenger Association v. Federal Transit Administration, Denver Union Station Project Authority and the Regional Transporation District**

"Construction authorization for the area around DUS will not only result in immediate ground-disturbing activities as trenches are dug, pipes laid, a tunnel excavated and foundations poured, but it will also open the door to DUSPA and private real estate developers to begin environmentally destructive construction activities on a project which has not been properly analyzed for its environmental impacts as a "connected action" with respect to areas which are not properly part of the Environmental Impact Statement ("EIS") and in violation of CEQ regulations in 40 CFR § 1508.35 mandating EIS scope. The irreparable harm will include, among other things, degradation of the irreplaceable historic environment of Lower Downtown Denver; harm to the traveling public; mobility impairment for disabled and elderly persons. Further, the harm results from danger signals arising from the failure of FTA to take a "hard look" at serious environmental problems that have been inadequately analyzed and proposed to be mitigated." [Page 6]

Source: Rail Passenger USA Newsletter.pdf

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cc:

USDA Secretary Vilsack
FS Chief Tidwell
FS Deputy Weldon
Army Corp. of Engineers
DOI
EPA
Arizona Corporaton Commission

Arizona Game and Fish
Arizaon Dept. of Environmental Quality
Pima County