

Rosemont Copper Mine

Objection Review

Objection # (s): 0025-WBunting; 0034-DPickrell; 0062-DanMeyer; 0084-SSSR; 0098-MWilliams; 0099-KPhaler

Resource Area(s): NFMA – Forest Plan Amendments (NFM-3)

Objection Issue:

- 0062-4: The mine plan did not comply with the existing Coronado Forest Management Plan. He states that the Forest violated NFMA by not scoping the amendment; did not describe the new management area in the DEIS, and does not include the new management area in the DEIS for Forest Plan revision.
- 0084-3: The "Non-Significant" finding for the Forest Plan amendment is illegal and is based on flawed and inadequate analysis. Amending the plan would violate the protective requirements of the Organic Act, 228 regulations, NFMA and the laws, regulations, and policies aimed at protecting the non-mineral resources and uses of the area. While the USFS may have the authority to amend the Forest Plan, however it cannot do so if it will violate other laws.
- 0098-2: The USFS amended its Forest Plan and created a new management area to bring the Rosemont Copper Project into compliance with system-wide management guidelines. They presented a contextual case that sought to minimize impacts of the open-pit mine to the Santa Rita EMA, LCNCA and greater Coronado Forest, and ignored considerations of "intensity" as is required by the NEPA process. This represents a fundamental flaw in the Amended Forest Plan.
- 0025-12: While such an (Forest Plan) amendment may be "allowable" under US Code, nothing in that Code requires such an amendment. This decision (to amend the Forest Plan) and trade-off by the CNF is unacceptable.
- 0034-3: It is beyond belief that the Forest Supervisor argues that the amendment of the Forest Plan to accommodate this project is insignificant, because the affected area is only .61 percent of the total area of Coronado National Forest.
- 0099-11: The finding the Rosemont open-pit operations will require only a "non-significant" modification of the Forest Plan is perhaps the most Orwellian touch of all others in the FEIS and proposed ROD.

Remedy Supplied by Objector (if any):

0084-3: Reconsider the analysis of the significance of the amendment to the forest plan and prepare a separate draft and final EIS on the proposed amendment, including analysis of all the

indirect and cumulative effects the proposed action alternatives will have upon surrounding CNF, LCNCA and other public and private lands.

0098-2: The process should begin again.

Law, Regulation and/or Policy: National Forest Management Act of 1976; National Forest System Land Management Planning Rule 36 CFR 219.14; Forest Service Manual 1926.5; Council on Environmental Quality (CEQ) Regulations at 40 CFR 1500-1508; Organic Act

Review Team Member Response:

The objectors contend that the amendment to the Forest Plan was completed inappropriately by not scoping the amendment, not describing the management area in the DEIS, not explaining the management area in the Forest Plan Revision DEIS, inadequately analyzing the significance of the amendment, and deciding to proceed with an amendment at all. The objectors further contend that the creation of a new management area failed to consider NEPA considerations of “intensity,” and violated requirements of the Organic Act, the 36 CFR 228 regulations, and the policies aimed at protecting non-mineral resources and uses.

Under the National Forest Management Act (NFMA) (16 U.S.C. 1604(f)(4)), forest plans may “be amended whatsoever after final adoption and after public notice.” The National Forest System Land Management Planning Rule (Planning Rule) at 36 CFR 219.14 allows forests to use the provisions of the planning regulations in effect before November 9, 2000, in order to amend forest plans. These regulations state that the responsible official shall: (1) determine whether proposed changes to a land management plan are significant or not significant in accordance with the requirements of sections 1926.51; (2) document the determination of whether the change is significant or not significant in a decision document; and (3) provide appropriate public notification of the decision prior to implementing the changes. This documentation can be included as part of the project or activity decision being made. A separate analysis is not required. The “Forest Service Land and Resource Management Planning Manual” (Forest Service Manual (FSM) 1926.51) provides a framework for determining whether a proposed change to a forest plan is or is not significant.

Response to objection issue 0025-12

As required by the NFMA and the Planning Rule, all projects and activities authorized by the Forest Service must be consistent with the Land and Resource Management Plan (Forest Plan). When a proposed project or activity is inconsistent with forest plan direction, one of three actions can be taken: the proposal can be modified such that the project or activity will be consistent; the proposal can be rejected; or the plan can be amended contemporaneously with the approval of the projects so that the project or activity is consistent with the plan as amended. As the Coronado addressed in the FEIS Response to Comments, the Forest Service cannot categorically prohibit mining or deny reasonable and legal mineral operations under the mining laws. Therefore, a forest plan amendment is required to proceed with alternatives other than the no-action [PR 047511_7, Appendix G, p. G-14]

Response to objection issue 0062-4

The Coronado National Forest followed the requirements established by Forest Service Policy in the development, analysis and notice of the proposed amendment. Notice that the Rosemont project might include an amendment to the current Coronado Forest Plan was provided in the federal register Notice of Intent in March 2008 at the initiation of the scoping period [PR 011308, pp.1-2]. The DEIS acknowledged that the project would include a Forest Plan Amendment if the preliminary MPO or another action alternative were selected [PR 015781, pp. xix 1, 6, 8, 44]. The DEIS described the proposed Forest Plan Amendment and management area, and identified that the Amendment's effects are those direct, indirect and cumulative effects analyzed in Chapter 3 of the EIS [PR 015781, pp. 89-95]. The FEIS responded to public comments made to the DEIS about the forest plan amendment, addressed why there are not alternatives that would eliminate the need for a forest plan amendment, and analyzed the effects of the amendment for multiple resources under the Chapter 3 subheadings "Effects of Amending the Coronado Forest Plan" [PR 047511_2, pp. xxiii, 3, 8, 10-11, 13, 26, 27, 114-120; PR 047511_3, 4, p. 139-1152].

The objector contends that the new management area is not included in the DEIS for Forest Plan revision. The Record of Decision for the Rosemont Copper project is being issued prior to the completion of the forest plan revision. Therefore, the Rosemont Cooper Project must comply with the existing Forest Plan. The Forest Plan Revision DEIS acknowledges that the Rosemont Copper Mine proposed a plan of operations being analyzed through an ongoing EIS is a reasonably foreseeable large-scale mining operation on the Coronado [Draft Programmatic Environmental Impact Statement for Revision of the Coronado National Forest Land and Resource Management Plan, pp. 436, 443-444]. That DEIS discusses the effects of Rosemont in the context of cumulative effects along with other mineral activities, both ongoing on the NFS and in the greater geographic area. The extent of this discussion is appropriate for analysis of the programmatic forest plan; details about site specific projects such as the proposals for individual plan amendments are more appropriately addressed in the project level analysis, such as the Rosemont Cooper Project EIS. Further, the draft Forest Plan DEIS cannot anticipate the final decision for the Rosemont Cooper Project. It would have been inappropriate to have said more in the Plan DEIS; that analysis cannot assume what this project decision will be before it is finalized.

Response to objection issues 0034-3, 0084-3, 0099-11

Per the Forest Service policy on determining plan amendment significance, FSM 1926.5, an amendment is not significant when it involves:

1. Actions that do not significantly alter the multiple-use goals and objectives for long-term land and resource management.
2. Adjustments of management area boundaries or management prescriptions resulting from further on-site analysis when the adjustments do not cause significant changes in the multiple-use goals and objectives for long-term land and resource management.

3. Minor changes in standards and guidelines.
4. Opportunities for additional projects or activities that will contribute to achievement of the management prescription.

An amendment may be significant when it involves:

1. Changes that would significantly alter the long-term relationship between levels of multiple-use goods and services originally projected (see section 219.10(e) of the planning regulations in effect before November 9, 2000 (see 36 CFR parts 200 to 299, revised as of July 1, 2000)).
2. Changes that may have an important effect on the entire land management plan or affect land and resources throughout a large portion of the planning area during the planning period.

The Forest Supervisor outlined his rationale for determining that the amendment is not significant in the DROD, using an approach consistent with FSM 1926.5 [PR 047504, pp. 4, 9, 57-59]. To evaluate this amendment's significance, the DROD evaluated the amendment against each of the above characteristics under which an amendment is considered not significant. Evaluation of those four examples alone did not yield a conclusive determination, so the DROD then evaluated the proposed Forest Plan against the two examples that indicate circumstances that may cause a significant change to a land management plan. On the basis of this information, the Responsible Official determined that this Amendment does not constitute a significant amendment to the Coronado Forest Plan.

The objectors contend that the decision of NFMA significance was inappropriate because it failed to consider the "intensity" of the effects under NEPA. However, the test of NFMA significance related to amending a Forest Plan differs from an evaluation of NEPA significance. The evaluation of NFMA significance, described above, is not required to evaluate intensity of the impact using NEPA criteria. Determination of whether an amendment is significant under NFMA differs from considering whether that amendment has significant NEPA effects.

The objectors contend that it is inappropriate to find an amendment as non-significant because "the affected area is only .61 percent of the total area." However, per the explanation above, the DROD rationale is clear that several considerations were evaluated in the significance determination, not exclusively the size of the affected area.

Response to objection issue 0084-3

The objector contends that amending the Forest Plan violates the requirements of the Organic Act, the 36 CFR 228 regulations, and the laws, regulations and policies aimed at protecting the non-mineral resources and uses of the area and propose a remedy to reconsider the significance of the amendment, including an analysis of all the indirect and cumulative effects of the proposed action alternatives.

The Organic Act provides the public with continuing rights to conduct mining activities under general mining laws and in compliance with rules and regulations applicable to National Forest System (NFS) lands. It also recognizes the rights of miners and prospectors to access NFS lands for prospecting, locating, and developing mineral resources. The proposed Forest Plan amendment does not violate the Organic Act.

Forest Service mining regulations under 36 CFR 228.8(a)-(e) address requirements for environmental protection of air and water quality, scenic values, and fish and wildlife habitat, and disposal and treatment of solid waste. Mining operations are to be conducted in a way that minimizes adverse environmental impacts on National Forest surface resources and comply with Federal and State air quality standards, including the Clean Air Act; and applicable Federal and State water quality standards, including the Federal Water Pollution Control Act (Clean Water Act). The FEIS discusses compliance with other regulations under 36 CFR 228.8 (a)-(e) regarding air and water quality, solid waste, scenic values, and fish and wildlife habitat throughout Chapter 3 of the FEIS [PR 047511_3, 4, p. 139-1152]. The proposed Forest Plan amendment does not violate these regulations.

Regarding other laws that protect the non-mineral resources and uses of the area, the environmental consequences of the amendment have been evaluated in the FEIS for multiple resources under the Chapter 3 subheadings “Effects of Amending the Coronado Forest Plan” [PR047511_2, pp. xxiii, 3, 8, 10-11, 13, 26, 27, 114-120 and Vol. 3, Chapter 3]. The analysis and decision comply with NEPA sections 101 and 102 and the CEQ regulations. A systematic, interdisciplinary approach was used to analyze the effects of the proposal and alternatives, as described under section 102 and the CEQ regulations. The operating conditions and mitigation measures would achieve some degree of resource protection while fulfilling other legal requirements.

The remedy proposed by objectors to reconsider the significance of the amendment, including an analysis of all the indirect and cumulative effects of the proposed action alternatives, is not required in the evaluation of NFMA plan amendment significance. As discussed above, the effects of the amendment are described in the FEIS. This kind of effects analysis is not required to be repeated as part of the significance determination.

Recommended Remedy by Review Team Member: Add the Draft Programmatic Environmental Impact Statement for Revision of the Coronado National Forest Land and Resource Management Plan to the record.

The other remedies suggested by the objectors are not warranted.

Review Team Member: Michelle Aldridge, Ecosystem Analysis and Planning