

To: Cal Joyner, Southwestern Regional Forester
USFS Southwestern Region
333 Broadway SE
Albuquerque, NM 87102

Date: February 14, 2014

Re: Formal Objection to Final Impact Statement and Draft Record of Decision for the Rosemont Copper Project: A Proposed Mining Operation, Coronado National Forest

Objector: Richard A. Calabro, 3055 S. Placita Del Avestruz, Green Valley, AZ 85622-3200
Home Phone 520 648-0624, E-mail gvdovlover@gmail.com

Project Name: Rosemont Copper Project: A Proposed Mining Operation
Responsible Official: Jim Upchurch, Forest Supervisor National Forest
Ranger District: Coronado National Forest, Nogales Ranger District

Statement of objection.

I hereby submit my objection to the response by the United States Forest Service to my public comment dated January 18, 2012. My objection specifically applies to the No Action Alternative.

Concise statement explaining the objection, with supporting reasons, for reviewing officer to consider.

My objection applies to the United States Forest Service taking the position that mining laws prevent it from selecting the No Action Alternative.

My objection applies to the United States Forest Service misinterpreting the National Environmental Policy Act of 1969 where it clearly requires the decision-making agency to rigorously explore and objectively evaluate all reasonable alternatives including the alternative of no action.

My objection is in regard to the response to my public comment by the United States Forest Service as found in the Final Environmental Impact Statement, Volume 6, Appendix G, Page G-10, (PDF Page 432).

Following is my public comment.

----- Original Message -----

From: Richard Calabro<<mailto:gvdovlover@gmail.com>>
To: comments-southwestern-coronado@fs.fed.us
Sent: Wednesday, January 18, 2012 10:41PM
Subject: Comment on DEIS for Proposed Rosemont Mine.

The high degree of severity of the adverse impacts of the various Action Alternatives cited in the Draft Environmental Impact Statement for the proposed Rosemont mine provide the legal basis on which the United States Forest Service may select Alternative 1, the No Action Alternative.

The legal authority to select Alternative 1, the No Action Alternative, is provided by the National Environmental Policy Act of 1969, which requires that the No Action Alternative be considered in the Draft Environmental Impact Statement.

The fact of that requirement to consider the No Action Alternative constitutes in and of itself, ipso facto, a legal authority to select the No Action Alternative in as much as a requirement to consider an action the selection of which there is no legal authority for would render the requirement unnecessary.

To restore a necessity to this requirement to consider the No Action Alternative otherwise removed by their denial of their legal authority to select it, the United States Forest Service has taken a position that to compare the impacts of the various Action Alternatives to the impacts of the No Action Alternative is the extent to which they may legally meet the requirement to consider the No Action Alternative.

This position taken by the United States Forest Service grants to themselves the legal authority for behaving in a manner that defeats the intent of the National Environmental Policy Act passed by Congress in 1969 to protect the public lands, including the National Forests.

Following is from the Final Environmental Impact Statement, Volume 6, Appendix G, Page G-10, (PDF Page 432), Summary of Response to Comments on the DEIS, Chapter2, Alternatives Considered in Detail, Alternative 1 - No Action.

Public Concern Statement	Response
The Coronado National Forest should give true consideration to selection of the No Action Alternative, because it is required by the National Environmental Policy Act, and is the only way to consider public comment in any meaningful way.	As the lead federal agency, the Forest Service is obligated to comply with all laws and regulations that apply to the Rosemont Copper project, including the National Environmental Policy Act. The National Environmental Policy Act of 1969, as amended requires only that major Federal actions significantly affecting the quality of the human environment include "alternatives to the proposed action" (42USC 4332 Section 102(C)(iii)). CEQ regulations require that agencies "Include the alternative of no action" (40 CFR1502.14(d)). Although the Forest Service may reasonably regulate mining activities to protect surface resources, there are statutory and constitutional limits to its discretion. The Forest Service may reject an unreasonable Mine Plan of Operation but cannot categorically prohibit mining or deny reasonable and legal mineral operations under the mining laws.

This is the response provided by the United States Forest Service relating to my above comment, and other comments like it. This response acknowledges the legal requirement that the United States Forest Service must consider the No Action Alternative. The CEQ regulations referred to in this response are the Council on Environmental Quality "Regulations For Implementing The Procedural Provisions Of The National Environmental Policy Act of 1969."

In Section 1502.14, which is cited in this response, the CEQ regulations state that "This section is the heart of the environmental impact statement." The regulations charge the decision-making agency with "providing a clear basis for choice among options by the decision-maker and the public. In this section agencies shall: (a) Rigorously explore and objectively evaluate all reasonable alternatives" and "(d) Include the alternative of no action."

Nothing in these CEQ regulations authorizes the United States Forest Service, in its formulation of the Environmental Impact Statement, to maintain the policy that the United States Forest Service may not legally select the No Action Alternative and that the United States Forest Service may limit their consideration of the No Action Alternative to using it solely as the baseline against which to evaluate the impacts of other alternatives.

This response concludes with a reference to "the mining laws" as the reason why the United States Forest Service "cannot categorically prohibit mining." The response fails to provide the specifics of the mining laws which compel the United States Forest Service to abrogate its legal responsibility under the National

Environmental Policy Act of 1969, and the response fails to explain why the United States Forest Service is acting under these mining laws and not under the National Environmental Policy Act of 1969.

How the objector believes the environmental analysis or draft decision specifically violates law, regulation, or policy.

Section 2 of the National Environmental Policy Act of 1969 states:

The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

Section 2 makes very clear the national policy to promote efforts which will prevent or eliminate damage to the environment and biosphere. With regard to the proposed Rosemont open pit mining operation, only a decision to select the No Action Alternative will prevent or eliminate damage to the environment and biosphere. Although a decision to select any other alternative might mitigate or prevent more damage than what is proposed, it does not prevent or eliminate damage. The massive damage to the environment and biosphere associated with this proposed Rosemont open pit mining operation would occur, which is clearly in violation of this stated national policy.

Section 101 of the National Environmental Policy Act of 1969 states:

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

Particular concerns in Section 101 regarding "industrial expansion, resource exploitation, and new and expanding technological advances" clearly are relevant to this proposed Rosemont open pit mining operation. In exercising the policy of the Federal Government stated in Section 101, "to create and maintain conditions under which man and nature can exist in productive harmony," the United States Forest Service has the legal right to select the No Action Alternative.

Having ruled out their authority to select the No Action Alternative from the very start of the process of formulating an Environmental Impact Statement the United States Forest Service is failing to comply with the stated purpose, the legal requirements, and the policy of the National Environmental Policy Act of 1969.

Suggested remedies that would resolve the objection.

The United States Forest Service must not use the reason that it is acting under the mining laws as a way to justify a decision that adversely affects the Coronado National Forest and surrounding environment.

The United States Forest Service must make a decision that prevents or eliminates damage to the Coronado National Forest and surrounding environment by using its legal authority granted under the National Environmental Policy Act of 1969.

The United States Forest Service must make the decision to select the No Action Alternative. No alternative that allows the proposed Rosemont open pit mining operation to use the Coronado National Forest is in legal compliance with the National Environmental Policy Act of 1969.

The No Action Alternative may be selected with the confidence that it is clearly supported by existing law. Little is lost by a decision to select the No Action Alternative. Any legal challenge to this decision may be conceded to the plaintiff should the cost of defending this decision in a court of law become prohibitive.

Should the decision of the United States Forest Service to select the No Action Alternative go unchallenged or be upheld in a court of law, massive damage to the Coronado National Forest and surrounding environment is prevented.

Statement that clearly demonstrates the connection between prior specific written comments on the particular proposed project or activity and the content of the objection.

The Website <https://cara.ecosystem-management.org/Public/Letter/16625?project=24544> is where my public comment, on which this objection is based, is found. The hyperlink OriginalLetter.pdf takes you there as well. Also, for convenience, the public comment is copied in the **Statement of objections**, above, at the beginning of this document.

Please note that my public comment on this particular proposed Rosemont open pit mining activity is clearly connected to the content of this objection.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Richard A. Calabro', with a long horizontal flourish extending to the right.

Richard A. Calabro