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Submitted via: https://cara.fs2c.usda.gov/Public/CommentInput?project=301824.

RE: Roca Honda Mine Comments

Dear U.S. Forest Service and other federal agencies:

Pursuant to the U.S. Forest Service's (USFS) Notice of Intent to prepare an Environmental Impact Statement (EIS) for the proposed Roca Honda Mine Project (Mine/mine or Project/project, proposed by Roca Honda Resources, RHR), 91 Fed. Reg. 58056-059 (Sept. 14, 2026), please accept these comments from the Multicultural Alliance for a Safe Environment (MASE), including from its constituent groups. MASE is a non-profit coalition of organizations from uranium impacted communities working to protect their communities from further damage from uranium mining and milling and to ensure clean-up of legacy uranium waste. MASE is comprised of a core group of organizations (and their members) that include: (1) Bluewater Valley Downstream Alliance (BVDA), a citizens group made up largely of residents and property owners directly affected by groundwater pollution and radiation releases from uranium

mining and milling in northwest New Mexico; (2) Eastern Navajo Diné Against Uranium Mining (ENDAUM), a grassroots group opposing construction of uranium mines in and near the Eastern Navajo Agency due to the significant threats to human health and environmental resources; (3) Laguna-Acoma Coalition for a Safe Environment (LACSE), a group of residents of Laguna and Acoma Pueblos dedicated to assessing community and environmental health from impacts of past uranium development and protecting sacred cultural sites and areas, including Mt. Taylor, a mountain sacred to Indigenous peoples of New Mexico; and (4) Red Water Pond Road Community Association (RWPRCA), an organization of Diné families who have experienced and lived with the impacts of uranium mining and milling in the region since the 1960s. MASE's mission is to restore the land and water contaminated by uranium mining and milling, improve the health of community members, and protect and preserve the natural and cultural environment in which we live.

MASE (and these groups) hereby incorporate into the administrative record for the agencies' consideration of the Project all previous comments and submittals to the USFS, BLM, EPA, and the Corps, including but not limited to previous scoping comments, comments on the previous DEIS and supplemental DEIS, and all related permitting comments.

Further, all USFS, BLM, EPA and Corps documents previously considered by these agencies in their consideration of the previous Project proposals, including all public comments, and communications with/between these federal agencies and New Mexico state agencies, as well as communications/documents submitted by RHR and its associates/contractors/representatives must be included in the administrative record for the federal agencies' review of the current project proposal(s).

The Federal Register Notice commits the agency to prepare a Draft EIS for public review and comment, and MASE and associated groups reserve the right to submit additional comments and documents in response to the new DEIS. We have tailored these comments to address the NEPA scoping and DEIS procedure the Forest Service has announced for this project. At its core, "[t]he scoping process determines what needs the proposed action will target and what alternatives should be considered*." Save the Colo. v. Graham*, 2026 U.S. App. LEXIS 28220, at *10 (10th Cir. Sep. 15, 2026) ("the EIS must evaluate "a reasonable range of alternatives to the proposed agency action . . . that are technically and economically feasible, and meet the purpose and need of the proposal. 42 U.S.C. § 4332(c)(iii)"). We look forward to providing additional comments in response to purpose and need, scope of analysis, development of alternatives, comparison between alternatives, mitigation measures and other considerations that the Forest Service has committed to set out in the Draft EIS.

As noted below, the proposed Project, if approved by the USFS, BLM and/or BLM, would violate numerous other federal laws, regulations, and agency policies. Most importantly, the Project will irreparably and forever damage and in fundamental ways destroy Mt. Taylor. Mt. Taylor is acknowledged by the Forest Service and all experts as an invaluable Sacred Site and Traditional Cultural Property (TCP) held in reverence by all of the Indian Tribes and Pueblos in the region. Members of these federally-recognized Tribes/Pueblos, many of whom are also members of MASE, currently use (as their ancestors have done for centuries) Mt. Taylor and its lands and waters for federally-protected religious worship and other forms of cultural and religious activities. These uses, and Mt. Taylor itself, will be damaged beyond repair – with

unconscionable and devastating impacts to Indian peoples throughout the region. As such, the agencies are required under federal law to deny the proposed Plan of Operations (PoO), any Right-of-Way (ROW) application, and any other proposed permit or approval submitted by RHR for the Roca Honda Mine.

It should be noted that the federal agencies (e.g. USFS and BLM) are not limited in their authorities to protect public resources to just considering the affected public lands themselves. "Congress may regulate conduct occurring on or off federal land which affects federal land. *See, e.g.,* Kleppe v. New Mexico, 426 U.S. 529, 539 (1976); Minnesota v. Block, 660 F.2d 1240, 1249 (8th Cir.1981)." Duncan Energy Co. v. U.S. Forest Service, 50 F.3d 584, 589 (8th Cir. 1995) (upholding Forest Service authority over private property interests). "It is well established that [the Property Clause of the U.S. Constitution] grants to the United States power to regulate conduct on non-federal land when reasonably necessary to protect adjacent federal property or navigable waters." U.S. v. Lindsey, 595 F.2d 5, 6 (9th Cir. 1979). The Supreme Court has recognized for over a century that Congress may regulate activity on private lands as a means of protecting public property. *See* Camfield v. United States, 167 U.S. 518 (1897); United States v. Alford, 274 U.S. 264, 267 (1927) ("Congress may prohibit the doing of acts upon privately owned lands that imperil the publicly owned forests."). "[T]he power granted by the Property Clause is broad enough to reach beyond territorial limits." Kleppe v. New Mexico, 426 U.S. 529, 538 (1976). The agency's cramped view of its authority in this case undermines its review of the Mine and fatally flaws the DEIS.

The agencies must fully consider and respond to the following comments in its review of the Mine and new DEIS, which will be subject to public review, and in any eventual Final EIS that may be prepared if the agency decides to issue all necessary approvals, which, as noted herein, such approvals would violate federal law.

I. The USFS Must Protect the Mt. Taylor TCP and Sacred Site and Related Native American Resources and Uses.

As the agency has found (e.g., in previous DEIS) the Mine would irreparably damage the integrity of Mt. Taylor as a Sacred Site and TCP as well as preclude the use of the area for religious practices that have been ongoing for centuries. As summarized in the previous DEIS:

• Both action alternatives would cause adverse impacts to tribal cultural resources and practices related to the sacred character of Mt. Taylor for the Acoma, Laguna, Zuni, Hopi, and Navajo in particular.
• Both action alternatives would adversely affect the Mt. Taylor TCP and cause irreparable harm to surrounding tribes and their traditional cultural practices.
• Both action alternatives would have a perceived impact upon the Spirit Beings associated with the TCP.
• Ground disturbance from construction activities of both action alternatives would result in direct physical impacts to four historic properties.
• Due to less development in Section 10 with less ground disturbance, fewer surface facilities, and less activity and traffic, the totality of the impacts to the Mt. Taylor TCP and related resources from Alternative 3 would be less than Alternative 2, which proposes development on all three sections of land at issue.

• Impacts of both action alternatives on cultural resources would be significant, and would result in an adverse effect to historic properties.
• Cumulative effects of both action alternatives in combination with other past, present, and reasonably foreseeable future actions would be adverse and significant, exacerbating loss of integrity of [the] Mt. Taylor TCP.

DEIS at x. *See also* DEIS 296-360 (discussing the religious significance of Mt. Taylor and the severe and permanent impacts to Native American Tribes and individual religious uses at the site).[1] The current Project map shows that portions of the Project will be located in the Mt. Taylor Sacred Site and TCP.
https://usfs-public.app.box.com/s/5qcz0wd24hta6kzl0ekuphhcl86qmgyt/file/2460789474567

The Forest Service acknowledges that:

Mt. Taylor holds considerable traditional cultural significance for the area tribes, including the Navajo Nation, the Hopi Tribe, the western Pueblos of Acoma, Zuni, and Laguna, the Jicarilla Apache, and many of the Rio Grande Pueblos. It has long standing and ongoing historical, cultural, and religious importance for these tribes. All consider the mountain to be sacred, and some acknowledge and have identified specific sites of cultural and religious significance within the larger boundaries of the mountain. The mountain is used by these tribes for a variety of traditional cultural and religious activities such as hunting, plant and mineral gathering, religious pilgrimages, and ceremonial activities (Benedict and Hudson, 2008).

DEIS at 329.

Mt. Taylor has an integral relationship with the beliefs and traditional cultural practices of the involved tribes and it is critical to the maintenance of the cultural identity and transmittal of their beliefs. It is this relationship that contributes to the property's significance. The action alternatives would result in the disruption, alteration, and displacement of traditional cultural activities that are critical to the continuity of cultural beliefs and practices of these tribes. In the view of the involved tribes, changes to the traditional practitioners' ability to conduct their traditional cultural activities would lessen the overall effectiveness of their prayers, medicine, and healing ceremonies, thereby impacting the traditional practices and diminishing their value. These impacts and changes would affect the TCP by diminishing the property's integrity of relationship.

Id. at 352.

[1] Although as noted by MASE's previous comments on the initial/supplemental DEIS, the DEIS failed to meet the requirements of NEPA and other federal laws, portions are cited/quoted in these scoping comments to note the agency's previous findings. Also, although the Project has been somewhat modified since the initial proposal and DEIS/Supplemental DEIS, the significant and unmitigated impacts to important public resources (such as to the Mt. Taylor TCP, water, public lands, etc.) remain.

Despite this, the Forest Service is under the erroneous legal view that, because RHR has filed mining claims under the 1872 Mining Law on Sections 9 and 10, it has no choice but to approve the Mine. DEIS at 355, iii. That is wrong. As such, the USFS violates its duties under the various laws designed to protect Native American Sacred Sites and religious uses and resources on public land. The erroneous legal view also violates NEPA by failing to inform the public and the ultimate decisionmaker that denial is within the reasonable range of alternatives.

A. Violation of Executive Order 13007.

There is no question that Mt. Taylor is a "Sacred Site" pursuant to Executive Order 13007 (61 Fed Reg. 26771). DEIS at 355. Pursuant to the Sacred Sites Executive Order (EO), the USFS must: "(1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites." 61 Fed. Reg. at 26771.

As defined by the EO, the determination of whether a tract of land is a "Sacred Site" is decided by an Indian Tribe, or an appropriate representative of Indian religion – not the federal agency. "Sacred site means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion." Id.

In this case, the numerous Tribal/Pueblo government and individual statements in the record attest to the uncontroverted fact that Mt. Taylor, including those portions that will be directly, indirectly, and cumulatively impacted by the Mine, is a Sacred Site protected by the EO. *See* DEIS 296-360.

See e.g., RESOLUTION ALL PUEBLO COUNCIL OF GOVERNORS, RESOLUTION NO. 2024-12 (attached)

Native American Sacred Sites such as Mt. Taylor are recognized as critical public land resources protected by federal law. The EO clearly recognizes that the federal government's priority is to protect sacred sites on public land. "Because of the unique status of Native American societies in North American history, protecting Native American shrines and other culturally-important sites has historical value for the nation as a whole." Cholla Ready Mix, Inc. v. Civish,382 F.3d 969, 976 (9th Cir. 2004).[2] As held by the federal courts:

[2] Any approval of the Mine would fail to meet the agency's obligations under public land law, Indian law, and the EO as well as violating its trust obligations to the Nations/Tribes/Pueblos. The USFS is charged with:

moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should therefore be judged by the most exacting fiduciary standards. The trust responsibility restrains governmental action that affects Indians and therefore is an important source of protection for Indian rights.

Seminole Nation v. U.S., 316 U.S. 286, 297 (1942).

Executive Order No. 13007 ("EO 13007") [] **imposes an obligation on the Executive Branch to accommodate Tribal access and ceremonial use of sacred sites and to avoid physical damage to them**. See 61 Fed. Reg. 26771 (May 24, 1996). The district court expressly recognized that BLM was required to comply with the Executive Order. South Fork Band, 2009 WL 24911, at *16 n. 9. [now reported at 643 F.Supp.2d 1192, 1211, n. 9].

South Fork Band Council of Western Shoshone v. Dept. of Interior, 588 F.3d 718, 724 (9th Cir. 2009) (emphasis added).

The Tenth Circuit has recognized the need to protect sacred sites under the Executive Order as part of the government's public land management authorities:

Executive Order No. 13007 signed by President Clinton, May 24, 1996, orders Federal agencies to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and avoid adversely affecting the physical integrity of such sacred sites.

Wyoming Sawmills, Inc. v. U.S. Forest Service, 383 F.3d 1241, 1245 (10th Cir. 2004).

The agencies must "accommodate access to and ceremonial use of," and "avoid adversely affecting the physical integrity of" the Mt. Taylor Sacred Site and TCP.

According to the USFS's previous (and presumably current) position, this must be allowed due to the fact that RHR has filed mining claims on Mt. Taylor. Yet, as noted in the South Fork Band Council decision, which also involved a large mining project on public land, there is no "Mining Law exemption" from the EO. The only reason the court affirmed BLM's approval of the project (which is currently on appeal), was because the court accepted BLM's view that the subject mine in that case would not be located in the Sacred Site and TCP, nor would it physically damage the Site or preclude access to the Site for religious activities. That is clearly not the case here. The Forest Service admits that the Roca Honda Mine would be located within the Sacred Site and TCP, would result in severe and irreparable physical and spiritual damage to the Site, and preclude access for religious practices.

Thus, due to the undisputed fact that Mt. Taylor (including large portions of the Mine site) is considered a Sacred Site under the EO and due to the adverse impacts to the Mt. Taylor Sacred Site, the agency cannot approve the Plan of Operations. This is also true based on the failure of the agency to comply with other federal laws, regulations, and policies described herein, such as the 1897 Organic Act, NFMA, FLPMA, and RFRA, among others.

B. Violation of the Religious Freedom Restoration Act

The USFS's approval of the Mine will also clearly violate the Religious Freedom Restoration Act (RFRA), 42 U.S.C. §§ 2000bb - 2000bb-4 (as amended by the Religious Land Use and Institutionalized Persons Act of 2000, Pub. Law 106-274, 42 U.S.C. § 2000cc-5). As held by the U.S. Supreme Court:

[RFRA] prohibits the Federal Government from substantially burdening a person's exercise of religion, unless the Government "demonstrates that application of the burden to the person" represents the least restrictive means of advancing a compelling interest. 42 U.S.C. § 2000bb-1(b).

Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal, 546 U.S. 418, 423 (2006).

RFRA provides that the government "shall not substantially burden a person's exercise of religion." 42 U.S.C. § 2000bb-1(a). To establish a prima facie claim under the RFRA, a plaintiff must prove: (1) a substantial burden imposed by the federal government on a (2) sincere (3) exercise of religion. 42 U.S.C. § 2000bb-1(a); Kikumura v. Hurley, 242 F.3d 950, 960 (10th Cir.2001)(citing Werner v. McCotter, 49 F.3d 1476, 1479 n. 1 (10th Cir.), cert. denied 515 U.S. 1166 (1995)). RFRA defines "exercise of religion" as "a religious exercise, as defined in 42 U.S.C. § 2000cc-5." 42 U.S.C. § 2000bb-2(4). Section 2000cc-5 defines "religious exercise" as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A).

"The exercise of Native American traditional religious practices has been recognized as constituting an 'exercise of religion' for purposes of RFRA. *See, e.g.*, United States v. Friday, 525 F.3d 938, 946-47 (10th Cir.2008); United States v. Hardman, 297 F.3d 1116, 1126-27 (10th Cir.2002)." Comanche Nation v. United States, 2008 WL 4426621, *3 (W.D.Okla. 2008). Courts in the Tenth Circuit (the jurisdiction applicable in New Mexico) have found that the federal government's approval of a project on federal land that would prevent access to, or significantly and adversely affect religious uses of land, violates RFRA.

RFRA does not define "substantial burden." The Tenth Circuit has defined the term by stating that a governmental action which substantially burdens a religious exercise **is one which must "significantly inhibit or constrain conduct or expression" or "deny reasonable opportunities to engage in" religious activities.** *Thiry v. Carlson,* 78 F.3d 1491, 1495 (10th Cir.1996) (quoting *Werner,* 49 F.3d at 1480).

Comanche Nation v. United States, 2008 WL 4426621, *3 (W.D.Okla. 2008). That is exactly what the Mine will do **--** "significantly inhibit or constrain [religious] conduct or expression" and "deny reasonable opportunities to engage in religious activities." *See* previous MASE comments, and Tribal/Pueblo comments.

C. Additional Violations of Laws Designed to Protect Native American Resources and Uses

In addition, due to the likely destruction of archeological and grave resources, the failure to protect the Sacred Site and Native American religious and cultural uses at the Site also violates: (1) the American Indian Religious Freedom Act (AIFRA), 42 U.S.C. 1996 et seq.; (2) the Archaeological Resources Protection Act (ARPA), 16 U.S.C. 470aa-mm ; and (3) the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 *et seq*.

As just one example, the DEIS acknowledges that, based on information provided by the Pueblo of Laguna, "Permanent impacts include the destruction of archaeological sites, the

removal of earth and water beneath Mt. Taylor, disturbance of ancestral human remains, and the disrespect shown to the spirits and beings that make Mt. Taylor of such irreplaceable value to the Laguna people." DEIS at 346. Other Nations/Tribes/Pueblos described similar concerns. *See* DEIS at 296-360.

The presence of federally protected sites and objects, with the details often subject to withholding from the public, proponent, and non-essential agency personnel to protect against cultural plundering, the rich heritage of the targeted lands is well known to the federal agencies, agency specialists, Tribal/Pueblo governments, lineal descendants, and individual members of the commenters. The importance of these federal duties has been recently highlighted.

> To put an end to the centuries-long scourge of "looting and plundering of Native American burial grounds," [NAGPRA] protected those burial grounds — along with the remains and items buried there pursuant to tribal tradition — from excavation." Thorpe v. Borough of Thorpe, 770 F.3d 255, 260 (3d Cir. 2014). [NAGPRA] also sought to remedy a history of federal exploitation of Native American remains and artifacts. See id. (describing "cultural plundering" of "breathtaking" scope).

Winnebago Tribe of Neb. v. United States Dep't of the Army, 175 F.4th 529, 532 (4th Cir. 2026).

NAGPRA duties are mandatory for all federal agencies when NAGPRA-covered items are discovered on federal lands. 43 C.F.R. § 10.2-10.4. In many foreseeable scenarios involving this site, NAGPRA requires federal agencies to approve and sign a NAGRPA "plan of action" to ensure human remains or cultural items that are identified on federal lands being targeted for resource development. Id. Without revealing protected information, these comments confirm that NAGPRA-protected sites and objects are present within the area affected by the project proposal.

Developing the NAGPRA plan of action for protected areas and objects dovetails with the NEPA scoping duties and DEIS preparation/comments. These scoping comments are meant to ensure the USFS takes the necessary steps during scoping, and before the DEIS is released for comment, to identify project designs and mitigation measures that impact human remains and cultural objects and to propose project changes and mitigation measures that avoid or minimize these impacts. The DEIS must balance protection of information with inclusion of these design changes and mitigation measures in the alternative courses of action based on culturally-informed identification and protection these federally-protected sites, but excess secrecy cannot be improperly used by the USFS to avoid analysis based on input, participation, and consultation from the necessary Tribes/Pueblos, and lineal descendants. 25 U.S.C. § 3002, 43 C.F.R. Part 10.

These statutory duties must be met during the NEPA process, and with the benefit of informed public comment and necessary consultation(s) with Tribes and lineal descendants. The interdisciplinary NEPA process is a necessary part of ensuring protection of these sites, funerary/cultural objects, and the context in which they exist, and must not be left to a closed-door negotiation between the project proponent and the Forest Service. "Looting" and "cultural plundering" must be considered in the DEIS to include federal disregard for human remains and culturally important areas when failing to address these concerns before deciding whether and how to deny/approve/conditionally approve activities on federal public lands. In

short, the Forest Service must use the NEPA process to inform itself and the public and to satisfy numerous "protection, notification, certification and consultation duties" for "funerary objects, sacred objects, or objects of cultural patrimony" and other Native American cultural items. *Yankton Sioux Tribe v. United States Army Corps of Eng'rs*, 209 F. Supp. 2d 1008, 1025-26 (D.S.D. 2002).

It should be noted that any reliance on a future "programmatic agreement" to identify, avoid, or mitigate these impacts and issues until after the USFS decision is made on the Project fundamentally violates these laws, as well as NEPA and the NHPA.

II. The Forest Service Should Deny the Proposed Amendment to the Forest Plan, as the Agency Is Not Required by the Mining Law to Remove Forest Plan Standards Protecting Native American Cultural Resources.

The Federal Register Notice notes that the USFS will amend the provisions of the Forest Plan for the Cibola National Forest in order for the Project to proceed. 91 FR 58057. As the DEIS noted, the current Plan would be violated by approval of the Project. In addition to being a TCP, Mount Talyor is specifically recognized as a Significant cultural or Historic Resource. Plan at 103. The requirements of the Plan that must be met include:

Desired Conditions for Cultural and Historic Resources
FW-DC-CHR
1. Cultural and historic resources (including archeological sites, historic buildings and structures, and traditional cultural properties) are stable and are not significantly impacted by natural processes and human activity.
2. Cultural and historic resources retain their visual and aesthetic integrity and physical association with culturally significant landscapes.
3. Ecosystem conditions are consistent with the long-term stability of cultural and historic resources and afford them protection from destructive natural forces.
4. Recreation and subsistence uses are harmonious with the long-term stability of cultural and historic resources and do not result in vandalism, looting, or other human impacts.
5. Knowledge about cultural and historic resources contributes to the appreciation of our Nation's past and is available to the public. Knowledge regarding the past occupation and use of landscapes contributes to the understanding of contemporary natural ecosystems and cultural landscapes.
6. The public has opportunities for learning about and appreciating cultural and historic resources; knowledge about the past is available to the public. The public participates in the identification, protection, and preservation of cultural and historic resources, and public understanding about cultural resources and historic preservation issues contribute to their protection.
7. Historic buildings and infrastructure maintain their historic integrity while also serving as administrative and recreational facilities, and other infrastructure functions.
8. Public users of historic recreation facilities and historic infrastructure learn about and enjoy
their historic qualities.
9. Historic recreation residences and residence tracts maintain their historic integrity.

Standards for Cultural and Historic Resources
FW-STD-CHR
1. Cultural and historic resources will be protected during projects through mitigation measures and design criteria. In cases where the protection of cultural and historic resources is not possible or when the benefits of a project are deemed by administrative decision to be greater than the adverse effects to the cultural and historic resources, adverse effects to those resources will be resolved or mitigated.
2. Cultural and historic resources that may be affected will be considered during the early stages of project planning and design, employing current available knowledge of the types and existing conditions of resources within the project area. Management (including protection) of cultural and historic resources should be included in all resource management decisions.
3. For historic recreation residences, the operation and maintenance plan for the special use authorization shall stipulate that the maintenance and upkeep must maintain historic characteristics of the residence lot.
4. Contracts, permits, or leases that have the potential to affect cultural and historic resources shall include appropriate clauses specifying site protection responsibilities and liabilities for damage.

Guidelines for Cultural and Historic Resources
FW-GDL-CHR
1. Opportunities for promoting the sustainability of cultural and historic resources should be sought during project planning and, if identified, should be incorporated into project design.
2. The collection of artifacts is discouraged, except where necessary to prevent their imminent loss. Collected artifacts should be curated as soon as practicable after collection.
3. Historic documents, including photographs and maps, should be properly preserved and made available for research and interpretation by the Forest Service, contractors, other agencies, universities, American Indian Tribes, rural historic communities, and the public.

Cibola Forest Plan, at 103-104. *See also* **Management Approaches for Cultural and Historic Resources FW-MGAP-CHR** (Plan at 104-105).

Under the National Forest Management Act (NFMA), the agency cannot approve a mining PoO that would violate any provision of the Forest Plan, including standards, guidelines, and desired conditions. Once a Forest Plan is adopted, all resource plans, permits, contracts, and other instruments for use of the lands must be consistent with it. 16 U.S.C. § 1604(i). The NFMA requires all site-specific actions authorized by the Forest Service to be consistent with Forest Plan standards and guidelines. "Such projects must be consistent with the applicable forest plan. Utah Envtl. Cong. v. Bosworth (UEC III), 443 F.3d 732, 737 (10th Cir. 2006)(citing the NFMA "consistency clause," 16 U.S.C. § 1604(i))." Forest Guardians v. United States Forest Serv., 641 F.3d 423, 427 (10th Cir. 2011).

Forest Service authorization of mining and mineral exploration must comply with all Forest Plan and NFMA requirements. *See* Hells Canyon Preservation Council v. Haines, 2006 WL 2252554, *7-*10 (D. Oregon 2006) (finding ROD and PoO approval for mining violated Forest Plan and other standards); Rock Creek Alliance v. U.S. Forest Service, 703 F.Supp.2d

1152, 1187, n. 23 (D. Mont. 2010)(same); Save Our Cabinets v. U.S. Dept of Agriculture, 254 F. Supp. 3d 1241, 1258–59, 1258 (D. Mont. 2017)(mine approval violated Forest Plan by failing to meet "desired conditions" for water quality).

In addition, and overall, the Forest Service cannot amend the Forest Plan as proposed in order to accommodate the project. As noted above, the project proposal, if approved, would violate a number of current Plan requirements. The Standards and Guidelines in the Plan were implemented to protect the invaluable cultural/religious resources that will be either destroyed or severely degraded if the Forest Service allows the Mine and related activities to go forward as proposed and described for the scoping comments.

In the previous DEIS, and presumably still, the Forest Service incorrectly assumed the 1872 Mining Law requires it to amend the Plan to allow the proposed project to proceed. That is wrong as a matter of law. Federal courts have required the Forest Service to comply with all Forest Plan Standards and Guidelines in reviewing and approving mining Plans of Operations submitted pursuant to claims filed under the 1872 Mining Law. *See* Hells Canyon Preservation Council v. Haines, 2006 WL 2252554, at *6-10 (D. Oregon 2006)(Forest Service approval of mining PoO violated the National Forest Management Act, NFMA, when approval violated Forest Plan Standards and Guidelines). In that case, the court held that the Forest Service's PoO approvals violated the road density and riparian and fisheries requirements, among other requirements.

Under the NFMA, all activities authorized by the USFS must be consistent with and comply with the Forest Plan. There is no exemption for mining projects under NFMA. Thus, the agencies are under no obligation to amend, eliminate, or otherwise weaken the Plan prescriptions or Standards and Guidelines.

Indeed, the USFS **cannot** weaken or eliminate the standards contained in the Plan since that would, as the DEIS admits, be incompatible with the agency's duties to protect Mt. Taylor and Native American uses of the site, as well as the affected environmental resources. As noted above, these standards were enacted and implemented for a reason – to protect the important public resources covered by the Standards.

Further, although the USFS may argue that it must amend the Forest Plan to accommodate the project, such a weakening of these protections would violate another of the agency's primary statutes governing uses of the National Forests (including mining) – the Organic Act of 1897. Under the Organic Act, and the 36 CFR Part 228 regulations, the agency cannot approve a mining PoO unless it can be demonstrated that all feasible measures have been taken to "minimize adverse impacts" on National Forest resources. *See* Rock Creek Alliance v. Forest Service, 703 F.Supp.2d 1152, 1170 (D. Montana 2010) (Forest Service PoO approval violated Organic Act and 228 regulations by failing to protect water quality and fisheries).

Changing the Plan standards and other protections that were established to protect these resources would violate these protective standards and the agency's statutory and regulatory duties noted herein, especially the requirements to protect Mt. Taylor's unique values and uses. In other words, even if the agency had the discretion to eliminate/weaken the Plan's protective requirements, doing so would violate the protective requirements of the Organic Act, 228

regulations, and the laws, regulations, and policies noted herein aimed at protecting Native American cultural and religious uses and sites. As a result, neither of the proposed action alternatives can be approved.

III. The Forest Service and BLM Must Deny the Proposed Special Use Permits/Right-of-Ways.

In addition to considering whether to approve the Mine's PoO and whether to amend the Forest Plan to eliminate Standards to protect cultural resources, the BLM and USFS must determine whether to grant Special Use Permits (SUPs) and Right-of-Ways (ROWs) for the discharge pipeline, access roads, and utility infrastructure. 91 FR 58057 ("BLM must decide whether to issue a right-of-way (ROW) grant to RHR.").

Importantly, none of the required SUPs/ROWs are protected by any asserted "rights" under the 1872 Mining Law. "[T]he Secretary of Agriculture has long had the authority to restrict motorized access to specified areas of national forests, including to mining claims. *See* Clouser [v. Espy], 42 F.3d 1522, 1530 (9th Cir. 1994)." Public Lands for the People v. U.S. Dept. of Agriculture, 697, F.3d 1192, 1198 (9th Cir. 2012).

BLM's and USFS's review and approval of SUPs/ROWs is governed by the Federal Land Policy and Management Act (FLPMA), USFS special use regulations (36 CFR Part 251), and BLM's regulations at 43 CFR Part 2900/2920. As such, it is entirely within the agencies' discretion to deny each of the SUP/ROWs based on the site-specific analysis of the project Proposal. As shown herein, due to the law governing these SUP/ROWs, and particularly due to the impacts to nationally recognized cultural/religious uses and resources, Sacred Sites and the TCP, the BLM/USFS must deny the SUP/ROWs.

Water pipelines, transmission lines, access roads, and other conveyances are not authorized by the 36 CFR Part 228, or 43 CFR Part 3809, plan of operations approval process, or any rights under the Mining Law. Instead, on its lands (like BLM proposes to do on its lands), the USFS must require the company to submit right-of-way or other special use permit authorizations and require that all mandates of FLPMA Title V and its implementing regulations are adhered to (e.g., no permit can be issued unless it can be shown that the issuance of the permits is in the best interests of the public, payment of fair market value, etc.). This is required because the approval of transmission lines, pipelines, roads, etc., is not a right covered by the 1872 Mining Law – even if the company could show that its claims were valid, which it has not done. Further, even if the USFS/BLM could ignore their duties under its multiple use and other mandates and assume that the company had a right under the Mining Law (which as noted herein it does not), such rights do not attach to the SUP/ROWs and other FLPMA approvals needed for the pipelines, transmission lines, etc. The proponents' purported need for each SUP/ROW application must be disclosed in detail, with alternatives and impacts analyzed in the DEIS to ensure informed public comment and a robust interdisciplinary analysis of a range of alternative courses of action, including denial.

Under FLPMA Title V, Section 504, the USFS/BLM may grant a SUP/ROW only if it "(4) will do no unnecessary damage to the environment." 43 U.S.C. § 1764(a). Rights of way "shall be granted, issued or renewed … consistent with … any other applicable laws." Id. §

1764(c). A right-of-way that "may have significant impact on the environment" requires submission of a plan of construction, operation, and rehabilitation of the right-of-way. Id. § 1764(d).

A Title V SUP/ROW "shall contain terms and conditions which will … (ii) minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment." Id. § 1765(a). In addition, the SUP/ROW can only be issued if activities resulting from the SUP/ROW:

> (i) protect Federal property and economic interests; (ii) manage efficiently the lands which are subject to the right-of-way or adjacent thereto and protect the other lawful users of the lands adjacent to or traversed by such right-of-way; (iii) protect lives and property; (iv) protect the interests of individuals living in the general area traversed by the right-of-way who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes; (v) require location of the right-of-way along a route that will cause least damage to the environment, taking into consideration feasibility and other relevant factors; and (vi) otherwise protect the public interest in the lands traversed by the right-of-way or adjacent thereto.

FLPMA, § 1765(b).

At least three important potential substantive requirements flow from the FLPMA's SUP/ROW provisions. First, USFS/BLM have a mandatory duty under Section 505(a) to impose conditions that "**will** minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment." Id. §1765(a) (emphasis added). The terms of this section do not limit "damage" specifically to the land within the ROW corridor. Rather, the repeated use of the expansive term "the environment" indicates that the overall effects of the SUP/ROW on cultural, environmental, scenic and aesthetic values must be evaluated and these resources protected. In addition, the obligation to impose terms and conditions that "protect Federal property and economic interests" in Section 505(b) requires that the USFS must impose conditions that protect not only the land crossed by the right-of-way, but **all** federal land affected by the approval of the SUP/ROW.

Second, the requirements in Section 505(b) mandate a USFS/BLM determination as to what conditions are "necessary" to protect federal property and economic interests, as well as "otherwise **protect[ing] the public interest in the lands traversed by the right-of-way or adjacent thereto**." (emphasis added). This means that the agency can only approve the SUP/ROW if it "protects the public interest in lands" not only upon which the pipeline/roads/transmission lines would traverse but also lands and resources adjacent to and associated with the SUP/ROW. Thus, in this case, the USFS/BLM can only approve the SUP/ROWs if the Mine itself "protects the public interest." As shown herein, that clearly is not the case.

Third, the requirement that the right-of-way grant "do no unnecessary damage to the environment" and be "consistent with … any other applicable laws," *id*. §§ 1764(a)-(c), means that a grant of a SUP/ROW leading to the Mine must satisfy all applicable laws, regulations and policies. Here, because the Mine would violate many of these requirements, the agency cannot

issue the SUP/ROW. It should be noted that, even if the USFS/BLM can legally assert that it must approve the Mine's PoO due to RHR's mining claims on Sections 9 and 10 (which as shown herein is not legally correct), this subservience to the Mining Law is inapplicable to the SUP/ROWs.

The federal courts have repeatedly held that the federal agencies not only have the authority to consider the adverse impacts on lands and waters outside the immediate ROW corridor, it has an obligation to protect these resources under FLPMA. In County of Okanogan v. National Marine Fisheries Service, 347 F.3d 1081 (9th Cir. 2003), the court affirmed the Forest Service's imposition of mandatory minimum stream flows as a condition of granting a ROW for a water pipeline across USFS land. This was true even when the condition/requirement restricted or denied vested property rights (in that case, water rights). Id. at 1085-86.

USFS/BLM cannot issue a SUP/ROW that fails to "protect the environment" as required by FLPMA, including the environmental resource values not within the ROW corridor. "FLPMA itself does not authorize the Supervisor's consideration of the interests of private facility owners as weighed against environmental interests such as protection of fish and wildlife habitat. FLPMA *requires* all land-use authorizations to contain terms and conditions which will protect resources and the environment." Colorado Trout Unlimited v. U.S. Dept. of Agriculture, 320 F.Supp.2d 1090, 1108 (D. Colo. 2004)(emphasis in original) appeal dismissed as moot, 441 F.3d 1214 (10th Cir. 2006).

Thus, in this case, the DEIS must inform the public and the ultimate decisionmaker that FLPMA requires the USFS/BLM to deny the proposed SUPs/ROWs because, as a result of the granting of the permits, the Mine will be allowed to proceed (in addition to the direct adverse impacts from the SUP/ROW facilities) – with devastating damage to the environment (including cultural/religious uses and resources) that cannot be mitigated on Mt. Taylor and its environs.

The Forest Service regulations implementing FLPMA Title V further require the agency to deny the proposed SUP/ROWs in this case. In 1998, the Forest Service revised its special use authorization rules and set up a two-stage screening process to review land use authorization applications. 36 C.F.R. § 251.54(a). "The purpose of the screening is to eliminate those proposed uses which are obviously unsuitable on National Forest System (NFS) lands." 63 Fed. Reg. 65,954 (Nov. 30, 1998). In the first step of the screening process, the Forest Service ensures that a proposed use meets certain minimum criteria. For those that pass this hurdle, the agency then conducts a full-scale review. 36 C.F.R. § 251.54(e)(5).

The first hurdle, what the agency loosely refers to as the "suitability" test, is a critical one for proposed mining-related uses. Under the suitability test, the agency cannot authorize any use that represents a permanent or exclusive use of federal lands. In the preamble to the revised regulations, the Forest Service stated: "Longstanding Congressional and Executive Branch policy dictates that authorizations to use NFS lands cannot grant a permit holder an exclusive or perpetual right of occupancy in lands owned by the public." 63 Fed. Reg. 65,955 (Nov. 30, 1998); 36 C.F.R. § 251.54(e)(1)(iv).

These rules further require that a proposed use will fail the first hurdle if it "involve[s] disposal of solid waste or disposal of radioactive or other hazardous substances." 36 C.F.R. §

251.54(e)(1)(ix). For the Roca Honda uranium mine, this prohibition is particularly applicable, as it is undisputed that "radioactive or other hazardous substances" will be excavated, dumped – both long and short term – on public lands, and transported over public lands via the access route and pipeline.

Similar to FLPMA's provisions noted above, for even those operations that pass the "suitability test," the regulations prohibit the agency from approving any SUP/ROW that is not "in the public interest." **"An authorized officer shall reject any proposal … if … (ii) the proposed use would not be in the public interest."** 36 C.F.R. § 251.54(e)(5)(ii).

BLM ROW/Special Use Regulations contain similar requirements and prohibitions. 43 C.F.R. Part 2920. For example,

(b) Each land use authorization shall contain terms and conditions which shall:
(1) Carry out the purposes of applicable law and regulations issued thereunder;
(2) Minimize damage to scenic, cultural and aesthetic values, fish and wildlife habitat and otherwise protect the environment;
(3) Require compliance with air and water quality standards established pursuant to applicable Federal or State law; and
(4) Require compliance with State standards for public health and safety, environmental protection, siting, construction, operation and maintenance of, or for, such use if those standards are more stringent than applicable Federal standards.
(c) Land use authorizations shall also contain such other terms and conditions as the authorized officer considers necessary to:
(1) Protect Federal property and economic interests;
(2) Manage efficiently the public lands which are subject to the use or adjacent to or occupied by such use;
(3) Protect lives and property;
(4) Protect the interests of individuals living in the general area of the use who rely on the fish, wildlife and other biotic resources of the area for subsistence purposes;
(5) Require the use to be located in an area which shall cause least damage to the environment, taking into consideration feasibility and other relevant factors; and
(6) Otherwise protect the public interest.

43 C.F.R. §2920.7. Based on the proposed Project's impacts to critical public resources, as noted herein and in previous comments, BLM cannot approve the proposed ROW/SUP.

The Interior Department, interpreting FLPMA V and its similar right-of-way regulations, has held that: "A right-of-way application may be denied, however, if the authorized officer determines that the grant of the proposed right-of-way would be inconsistent with the purpose for which the public lands are managed or if the grant of the proposed right-of-way would not be in the public interest or would be inconsistent with applicable laws." Clifford Bryden, 139 IBLA 387, 389-90 (1997) 1997 WL 558400 at *3 (affirming denial of right-of-way for water pipeline, where diversion from spring would be inconsistent with BLM wetland protection standards). Notably, in that case, the agency held that denial of the ROW application was appropriate based on the fact that the project would be inconsistent with a Presidential Executive Order – the same situation here as the Project would violate EO 13007 as discussed above.

Similar to the County of Okanogan and Colorado Trout Unlimited federal court decisions noted above, the Interior Department has held that the fact that a ROW applicant has a property right that may be adversely affected by the denial of the ROW does not override the agency's duties to protect the "public interest." In Kenneth Knight, 129 IBLA 182, 185 (1994), the BLM's denial of the ROW was affirmed due not only to the direct impact of the water pipeline, but on the adverse effects of the removal of the water in the first place:

> [T]he granting of the right-of-way and concomitant reduction of that resource, would, in all likelihood, adversely affect public land values, including grazing, wildlife, and riparian vegetation and wildlife habitat. The record is clear that, while construction of the physical improvements associated with the proposed right-of-way would have minimal immediate impact on the public lands, the effect of removal of water from those lands would be environmental degradation. Prevention of that degradation, by itself, justified BLM's rejection of the application.

1994 WL 481924 at *3. That was also the case in Clifford Bryden discussed above, as the adverse impacts from the removal of the water was considered just as important as the adverse impacts from the pipeline that would deliver the water. 139 IBLA at 388-89. *See also* C.B. Slabaugh, 116 IBLA 63 (1990) 1990 WL 308006 (affirming denial of right-of-way for water pipeline, where BLM sought to prevent applicant from establishing a water right in a wilderness study area).

In King's Meadow Ranches, 126 IBLA 339 (1993), 1993 WL 417949, the IBLA affirmed the denial of right-of-way for a water pipeline, where the pipeline would degrade riparian vegetation and reduce bald eagle habitat. The Department specifically noted that under FLPMA Title V: "[A]s BLM has held, **it is not private interests but the public interest that must be served by the issuance of a right-of-way**." 126 IBLA at 342, 1993 WL 417949 at *3 (emphasis added).

Here, it is undisputed that the grant of a SUP/ROW is needed for the Roca Honda Project to proceed as proposed and that the Project will result in significant and irreparable harm to (indeed the elimination of) nationally recognized public land cultural and religious values, uses, and resources. As such, the DEIS must assess the strong likelihood that, due to the site-specific conditions and applicable laws, USFS/BLM must deny the proposed SUP/ROWs. It must be stressed that, as noted above under FLPMA, the "public interest" test applies not only to the lands traversed by the SUP/ROW, but also nearby federal lands that may be affected if the proposed SUP/ROW is granted.

IV. The USFS Must Analyze the Impacts From the Transport and Processing of the Ore.

A. The DEIS Must Evaluate Connected Actions

The Project's proposed Plan of Operations acknowledges that the impacts from off-site "Ore hauling … will be evaluated as a connected action in the environmental analysis prepared pursuant to the National Environmental Policy Act." PoO at 10 (section 2.2.2)

https://usfs-public.app.box.com/s/5qcz0wd24hta6kzl0ekuphhcl86qmgyt/file/2460785308033. This is required under NEPA, as well as other "connected actions" such as the milling/processing of the ore (proposed for the White Mesa Mill in Utah).

Without that transportation and mill, the Mine cannot operate. Thus, the mill and the Mine, like the off-site ore hauling acknowledged by the company's PoO, are clearly "connected actions" under NEPA and must be analyzed as such in the revised DEIS. Under NEPA, 42 U.S.C.S. § 4321 *et seq*., a single NEPA review document is required for actions or projects when the projects are connected, cumulative or similar. Even if the Mine could conceivably occur without the previous or simultaneous occurrence of the mill, which is not the case here, if it could not occur without such actions the mill is a connected action and must be considered within the same NEPA document as the Mine. "[E]ven though an action could conceivably occur without the previous or simultaneous occurrence of another action, if it would not occur without such action it is a 'connected action' and must be considered within the same NEPA document as the underlying action." Dine Citizens Against Ruining Our Env't v. Klein, 747 F. Supp. 2d 1234, 1254 (D. Colo. 2010). Thus, because the Mine is dependent on the mill to operate, they are connected actions, particularly because the mine and mill would be operated by the same company, Energy Fuels.

In short, the project that must be scrutinized extends from the Roca Honda site to the White Mesa Mill, the only mill capable of completing the task of producing yellowcake for shipment to Illinois or Canada. In determining the scope of the DEIS and therefore need for the project, USFS must also confront the fact that the only enrichment facility in the United States has confirmed that "yellowcake received from uranium mines will be made into uranium hexafluoride gas for enrichment at one of the primary enrichment sites around the world." https://converdyn.com/facility/ (last visited 10/6/2026). Despite the overheated rhetoric in various Executive Orders, there are no legal restrictions that would ensure domestic use or otherwise keep the yellowcake produced from Roca Honda ores from being exported into the global uranium marketplace. Any assertion of domestic demand is dispelled by the fact that uranium mined in New Mexico and milled into yellowcake in Utah is part of the global trade in nuclear weapons and electricity production and is not restricted to domestic use within the United States.

B. The DEIS Must Fully Evaluate Cumulative Impacts

At a minimum, even if the agencies erroneously conclude that the mill and the Mine are not "connected actions" (a view not supported by NEPA or the facts), the DEIS must fully review the impacts from all "past, present, and reasonably foreseeable future actions." These are the "cumulative effects/impacts" under NEPA.

In a cumulative impact analysis, an agency must take a "hard look" at all actions.

> [A]nalysis of cumulative impacts must give a sufficiently detailed catalogue of past, present, and future projects, and provide adequate analysis about how these projects, and differences between the projects, are thought to have impacted the environment. … Without such information, neither the courts nor the public ... can be assured that the [agency] provided the hard look that it is required to provide.

Te-Moak Tribe of Western Shoshone, 608 F.3d 592, 603 (9th Cir. 2010) (rejecting NEPA review for mineral operation that had failed to include detailed analysis of impacts from nearby proposed mining operations).

A cumulative impact analysis must provide a "useful analysis" that includes a detailed and quantified evaluation of cumulative impacts to allow for informed decision-making and public disclosure. Kern v. U.S. Bureau of Land Management, 284 F.3d 1062, 1066 (9th Cir. 2002); Ocean Advocates v. U.S. Army Corps of Engineers, 361 F.3d 1108 1118 (9th Cir. 2004). The NEPA requirement to analyze cumulative impacts prevents agencies from undertaking a piecemeal review of environmental impacts. Earth Island Institute v. U.S. Forest Service, 351 F.3d 1291, 1306-07 (9th Cir. 2003).

The NEPA obligation to consider cumulative impacts extends to all "past," "present," and "reasonably foreseeable" future projects. Blue Mountains, 161 F.3d at 1214-15; Kern v. BLM, 284 F.3d at 1076; Hall v. Norton, 266 F.3d 969, 978 (9th Cir. 2001) (finding cumulative analysis on land exchange for one development failed to consider impacts from other developments potentially subject to land exchanges); Great Basin Mine Watch v. Hankins, 456 F.3d 955, 971-974 (9th Cir. 2006)(requiring "mine-specific … cumulative data," a "quantified assessment of their [other projects] combined environmental impacts," and "objective quantification of the impacts" from other existing and proposed mining operations in the region).

Thus, in this case, the agencies must consider the cumulative impacts from all past, present, and reasonably foreseeable future projects in the region on, at a minimum, water and air quality including ground and surface water quantity and quality, recreation, cultural/religious, wildlife, transportation/traffic, scenic and visual resources, etc.

As held by the court decisions noted herein, this means that the impacts from other projects – not just the current Mine under review – must be fully reviewed. This includes, at a minimum, the impacts from the transportation of ore to a mill, as well as the environmental impacts from the mill itself. For example, in considering a challenge to federal approval of mineral leasing and mining, a court required an agency to look at the impacts from the proposed mill that would process ore from mines/leases, despite the fact that the proposed mill would be on private lands and despite the fact that the mill was not directly associated with the mines/leases being proposed and was not included in the lease/mining proposals. The court held:

[The agency's] other two arguments—that the effects of the mill need not be evaluated because (1) it is being built by a company on private land, and (2) approval of the mill is controlled by other governmental entities—lack merit. Regardless of whether an EA or EIS is being prepared, the agency conducting the analysis must consider the "cumulative impacts" of the proposed action. …

Nothing in this regulation suggests that ''cumulative impacts'' are limited to those occurring on [public] land, or that [the agency] need not consider the impacts from related activities that another federal agency is in charge of approving or disapproving.

Colorado Environmental Coalition v. Office of Legacy Management, 819 F.Supp.2d 1193, 1212 (D. Colo. 2011). *See also* Sierra Club v. U.S. Dept. of Energy, 255 F.Supp.2d 1177, 1185 (D.

Colo. 2002) (agency must review impacts from "reasonably foreseeable" mine on private land when preparing NEPA document for federal land easement related to the future mine.).

This review of the impacts must also include an analysis of the baseline conditions at (and impacts from) the other mines in the region that may feed the mill (as well as for the mill itself), as well as the site characteristics and impacts of the mining such as the geochemical aspects of the mineral deposits, waste rock, etc., at the various mine sites. At a minimum, the DEIS should evaluate the current groundwater characteristics in both quality and quantity, at the mill and mine sites (including the Roca Honda site) as well as the potential for the potential mill(s) to generate environmental impacts.

As with any project that may have significant impacts to the environment, the DEIS must identify and analyze all potential impacts from mine and mill operations and transportation (as well as non-mining/milling projects in the region) including, but not limited to, impacts to air quality, noise, water resources, water quality, plants and wildlife, recreation, and religious and cultural resources. The agencies must address all listed, rare or other special status species that may be affected by the operations or transportation associated with the mines and the mill(s) under NEPA, the NFMA, as well as the Endangered Species Act.

Federal courts have rejected the federal agency's attempt to avoid looking at the off-site transportation and other impacts when reviewing a Plan of Operations for a mining/milling project. South Fork Band Council v. Department of the Interior, 588 F.3d 718, 725-726 (9th Cir. 2009). This includes impacts to air quality, traffic, safety, recreation and cultural resources.

Regarding off-site impacts from the milling and transportation, federal courts have rejected the argument that reliance on state-issued permits or analysis satisfied the agency's independent duty under NEPA.

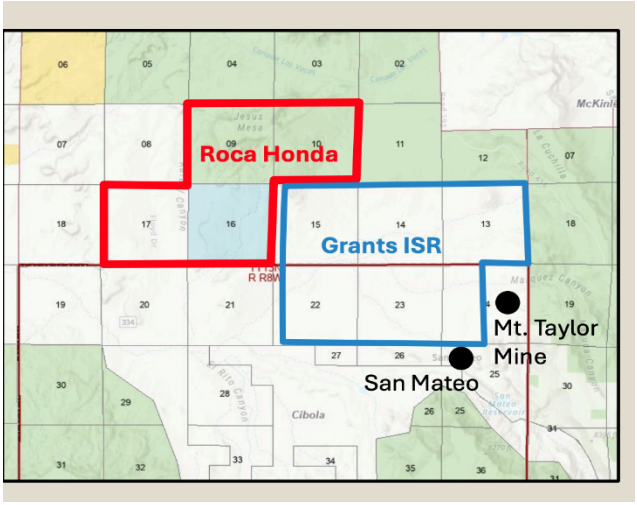
BLM argues that the off-site impacts need not be evaluated because the Goldstrike [mill] facility operates pursuant to a state permit under the Clean Air Act. This argument also is without merit. A non-NEPA document -- let alone one prepared and adopted by a state government -- cannot satisfy a federal agency's obligations under NEPA. Klamath-Siskiyou Wildlands Center v. BLM, 387 F.3d 989, 998 (9th Cir.2004).

South Fork Band Council, 588 F.3d at 726.

Further, the DEIS must fully analyze other operating or proposed uranium operations in the region – including the actual mining as well as the transportation to any mill. These include the proposed conventional underground La Jara Mesa Mine (https://www.emnrd.nm.gov/mmd/ci008rn-la-jara-mesa-mine-project-regular-new-mining-operation/) (last visited 10/9/2026); the *in situ* recovery (ISR) Crownpoint Uranium Project (https://www.permits.performance.gov/permitting-project/fast-41-covered-projects/crownpoint-church-rock-uranium-project) (last visited 10/9/2026) and the Grants Energy ISR project (https://www.permits.performance.gov/permitting-project/fast-41-covered-projects/grants-precision-isr-project) (last visited 10/9/2026).

Laramide Resources, the La Jara Mesa Mine operator, has indicated that "ore mined from the underground workings at the La Jara Mesa Project site would be transported to an off-site mill for processing." Laramide Resources (USA), LLC, Mine Operations and Reclamation Plan, La Jara Mesa Project, Cibola County, New Mexico at 21, § 2.4.6 (Dec. 2025). While Laramide does not specifically name the White Mesa Mill as the mill where ore would be transported, since White Mesa is the only operating uranium mill in the country, it is fair to assume ore would be transported there.

Because the Crownpoint Uranium Project and the Grants Energy project are ISR mines, neither would require a conventional mill. However, both would use significant water resources. In particular, the Grants Energy project, located just to the east of the proposed Roca Honda Mine, is seeking to divert 12,000 acre feet (approximately 3.9 billion gallons) of water for its proposed project. In a state where water is going to become scarcer due to climate change, the Forest Service must consider the cumulative impacts of water use and contamination. *See, e.g*, New Mexico 50-Year Water Action Plan at 3 (https://www.nm.gov/assets/www.nm.gov/wp-content/uploads/2024/01/New-Mexico-50-Year-WaterAction-Plan.pdf) (last visited 10/9/2026).



Courtesy New Mexico Mining and Minerals Division

Regarding the Energy Fuels-owned White Mesa mill, the DEIS must fully review all the impacts from that controversial uranium mill that has expanded into non-yellowcake production. https://deq.utah.gov/dwmrc/energy-fuels-resources ; https://deq.utah.gov/dwmrc/white-mesa-license ; https://www.wise-uranium.org/umopwm.html (last visited 10/6/2026). In light of the expansion into other processing, Energy Fuels has a restricted amount of disposal capacity, and as uranium ore continues to be mined and processed, it will be necessary for that mill to construct additional 40-acre tailings impoundments and decommission existing impoundments. The construction of new tailings impoundments will result in the destruction of unique and
significant cultural resources on White Mesa and impacts to the White Mesa Ute Community.

The impacts from both Energy Fuels' facilitates (White Mesa and Roca Honda) may affect cultural resources involving common ancestry. Although no longer on the Utah website, it

is well established that the original mill construction and the recent construction of Cell 4-B also resulted in the destruction of pit houses and other cultural resources that have been found eligible for inclusion in the National Register of Historic Places. *See* http://www.radiationcontrol.utah.gov/Uranium_Mills/IUC/cell4b/cultural_resources4b.htm (adopted and incorporated into the administrative record for this case, last viewed June 4, 2013). Studies and documentation are available publicly, and more are likely available via protected sources. https://canyonechojournal.com/1997/12/01/ancient-basketmaker-pit-houses-excavated-on-white-mesa-1997/ ; https://core.tdar.org/document/30021/additional-archeological-test-excavations-and-inventory-on-white-mesa-san-juan-county-southeastern-utah (last visited 10/6/2026), The likelihood that additional cells will be required to handle the mill tailings confirms that the NHPA undertaking and NEPA action must include all Energy Fuels activities required to remove uranium from its place in nature for shipment to White Mesa where it will be processed into yellowcake, and cannot be limited to Roca Honda.

In order to inform the public and the decisionmakers of the full impact of Energy Fuel's proposal, all of the documents on these Utah government webpages must be reviewed as part of the USFS's review of the direct, indirect, and cumulative impacts of the pending proposal to remove uranium from its place in nature for the purpose of manufacturing yellowcake. Related proposals to mill monazite ore confirm that additional disposal cells will be required for that project. Although there may exist four processing circuits, Energy Fuels uses a common disposal system for these circuits. https://www.energyfuels.com/white-mesa-mill/ (last visited 10/6/2026). The DEIS must assess the amount of Energy Fuels disposal capacity that is currently licensed, reserved for, and needed to process the Roca Honda materials into yellowcake. https://www.energyfuels.com/wp-content/uploads/2026/01/Engineering-Summary-Report_REE_P2_Bankable-Feasibility-REDACTED-v1.pdf (last visited 10/06/2026).

Further, regarding transportation, the Forest Service must evaluate the cumulative impacts related to the movement of ore shipments through the towns on the route(s) to any mill. https://dailyutahchronicle.com/2017/07/27/ute-tribe-in-southern-utah-struggles-against-americas-last-uranium-mill/ at (last visited 10/6/2026). The Nuclear Regulatory Commission and other regulators do not levy fines for most violations, concluding instead that non-enforcement would "encourage prompt identification and comprehensive correction of violations." Id. In light of the non-enforcement policies, the DEIS must rely on media reports and reports from regulatory agencies to confirm the extent of crashes and spills involving radioactive materials transport. The Forest Service should also evaluate other transportation and other issues/impacts that may occur on these route(s), particularly since any transportation route from the Mine to the White Mesa Mill will go through numerous environmental justice communities

The DEIS must also evaluate the cumulative impacts of past uranium mining and milling in the region.

VI. Additional NEPA Requirements.

In addition to the above noted requirements, the agencies must take the required "hard look" at all the direct and indirect impacts from the project. At a minimum, the DEIS must fully analyze the direct, indirect, and cumulative impacts related to the following resources/issues.

Surface Water Impacts

The DEIS must fully analyze all the surface water impacts and baseline conditions, both on-site as well as downstream at the pipeline discharge facility. This includes from stormwater and all project operations (both on and off site).

As the previous DEIS admits, significant pollution may occur from stormwater contacting and related to mine operations. "Table 9 shows the potential contaminants that could affect storm water quality at the site during the construction and operation phases of the mine. Table 10 shows excavated materials that would be stockpiled for some length of time at the mine surface that could potentially pollute surface water or groundwater (through infiltration), if not properly controlled and managed." DEIS at 148.

The agency must require RHR to submit, and the DEIS must analyze, any plan to control and manage any pollution/discharge related to the Project, and cannot defer to future state review/permitting.

The fact that New Mexico may issue permits for these activities does not eliminate the USFS's independent duties under NEPA. "A non-NEPA document – let alone one prepared and adopted by a state government-cannot satisfy a federal agency's obligations under NEPA. *Klamath-Siskiyou Wildlands Center v. BLM,* 387 F.3d 989, 998 (9th Cir.2004)." South Fork Band Council v. Dept. of Interior, 588 F.3d 718, 726 (9th Cir. 2009). The same NEPA violation was found in Klamath-Siskiyou, 387 F.3d at 998, where the Ninth Circuit rejected as "without merit" identical arguments that an agency may excuse itself from its NEPA hard look duty where a "facility operates pursuant to a state permit under the Clean Air Act."

Groundwater Impacts

The agencies must take a hard look at groundwater impacts (and baseline conditions), from both a quantity/flow and quality, due at a minimum, from the significant dewatering proposed, as well as the industrial operations proposed underground. MASE's previous scoping/DEIS comments (incorporated herein) highlight the inadequacies of the company's and agency's review/documents.

Relatedly, the DEIS must analyze the environmental impacts associated with waste disposal from the Mine. According to the PoO, the Mine will have a water treatment plant designed to treat mine water for discharge. Water treatment will generate a waste stream containing highly concentrated levels of uranium, radium, and other radioactive and hazardous wastes. There is no clarification of the regulatory regime for handling and shipping wastes where, among other possibilities, these wastes may qualify as source materials, 11(e)(2) byproduct materials under 42 U.S.C. §2014(e)(2), or low-level radioactive waste. Although details are limited, it appears that the water treatment wastes would concentrate radioactive and hazardous wastes in a manner requiring transportation to appropriately licensed facilities.

For both surface and subsurface resources, the DEIS must provide a detailed analysis of the impacts and permitting requirements associated with solid, semi-solid, or liquid waste transportation (and any additional processing and disposal), including any likely requirements under the applicable radiological/uranium/waste/disposal/treatment and related requirements under the NRC, state, and federal requirements.

C. The DEIS must take a hard look at public health impacts.

As noted in MASE's and other previous comments, the DEIS must analyze the physical and psychological impacts (and baseline conditions) from the Project. At a minimum, the DEIS must disclose and evaluate baseline epidemiological conditions and the resulting baseline psychological conditions of the affected community. In other words, without first knowing and evaluating the baseline health conditions in the communities that have already been substantially impacted by uranium mining and milling, the Forest Service cannot meaningfully disclose and evaluate the psychological impacts the proposed Project may have.

Likewise, the DEIS must disclose and analyze the cumulative psychological impacts of the proposed Project with psychological trauma inflicted from past uranium mining and milling. The DEIS must take the required hard look at the psychological impacts of the proposed project on local indigenous communities. For indigenous people in the region, the proposed Mine will not only inflict the psychological trauma of having another uranium mining operation in the community when the health and environmental effects of past mining and milling have not been addressed, it will also inflict a particular kind of psychological trauma related to desecrating Mt. Taylor. Indigenous people conceive of Mt. Taylor as an integral part of their everyday existence. When the proposed Mine threatens to destroy parts of the sacred mountain, the psychological trauma affects tribal people not only on an individual level, but also on a collective level.

D. The DEIS Must Fully Evaluate Mitigation Measures and Their Effectiveness

Regarding mitigation, the DEIS's analysis of the Mine, mill, and other activities in the region, and related transportation, must also fully review mitigation of the impacts from these activities, including a full analysis of the effectiveness of each mitigation measure, for each potentially affected resource. "[O]mission of a reasonably complete discussion of possible mitigation measures would undermine the 'action-forcing' function of NEPA. Without such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects." Robertson, 490 U.S. at 353.

The need for a detailed analysis of mitigation and its effectiveness is required under NEPA.

> [T]he Court holds that the Corps' reliance on mitigation measures that were unsupported by any evidence in the record cannot be given deference under NEPA. The Court remands to the Corps for further findings on cumulative impacts, impacts to ranchlands, **and the efficacy of mitigation measures.**

Wyoming Outdoor Council v. U.S. Army Corps of Eng'rs, 351 F. Supp. 2d 1232, 1238 (D. Wyo. 2005) (emphasis added).

[NEPA] does require that an EIS discuss mitigation measures, with "sufficient detail to ensure that environmental consequences have been fairly evaluated." Methow Valley, 490 U.S. at 352, 109 S.Ct. 1835.

An essential component of a reasonably complete mitigation discussion is an assessment of whether the proposed mitigation measures can be effective. *Compare* Neighbors of Cuddy Mountain v. U.S. Forest Service, 137 F.3d 1372, 1381 (9th Cir.1998) (disapproving an EIS that lacked such an assessment) *with* Okanogan Highlands Alliance v. Williams, 236 F.3d 468, 477 (9th Cir.2000) (upholding an EIS where "[e]ach mitigating process was evaluated separately and given an effectiveness rating"). The Supreme Court has required a mitigation discussion precisely for the purpose of evaluating whether anticipated environmental impacts can be avoided. Methow Valley, 490 U.S. at 351–52, 109 S.Ct. 1835(citing 42 U.S.C. § 4332(C)(ii)). A mitigation discussion without at least *some* evaluation of effectiveness is useless in making that determination.

South Fork Band Council v. Dept. of Interior, 588 F.3d 718, 727 (9th Cir. 2009)(rejecting EIS for failure to conduct adequate review of mitigation and mitigation effectiveness in mine EIS). "The comments submitted by [plaintiff] also call into question the efficacy of the mitigation measures and rely on several scientific studies. In the face of such concerns, it is difficult for this Court to see how the [agency's] reliance on mitigation is supported by substantial evidence in the record." Wyoming Outdoor Council, 351 F. Supp. 2d at 1251, n. 8.

E. The DEIS Must Review All Reasonable Alternatives

NEPA requires the agency to analyze "a reasonable range of alternatives to the proposed agency action." 42 U.S.C. § 4332(2)(C)(iii). It must "rigorously explore and objectively evaluate all reasonable alternatives" to the proposed action. City of Tenakee Springs v. Clough, 915 F.2d 1308, 1310 (9th Cir. 1990). Indeed, NEPA's implementing regulations recognize that the consideration of alternatives is "the heart of the environmental impact statement." 40 CFR 1502.14, quoted in Alaska Wilderness Recreation and Tourism Ass'n v. Morrison, 67 F.3d 723, 729 (9th Cir. 1995).

"The obligation to consider alternatives to the proposed action is at the heart of the NEPA process, and is 'operative even if the agency finds no significant environmental impact.' Greater Yellowstone Coal. v. Flowers, 359 F.3d 1257, 1277 (10th Cir.2004)." Dine Citizens Against Ruining Our Env't v. Klein, 747 F. Supp. 2d 1234, 1254 (D. Colo. 2010). "The agency may not, however, 'define the project so narrowly that it foreclose[s] a reasonable consideration of alternatives [sic].' Utah Envtl. Cong. v. Bosworth, 439 F.3d 1184, 1195 (10th Cir.2006) (quoting Davis, 302 F.3d at 1119)." Dine Citizens, 747 F. Supp. 2d at 1255.

Here, the DEIS must fully consider a number of reasonable alternatives. These include: (1) denying operations on mining claims that are not supported by the discovery of a valuable mineral deposit on each claim; (2) denying operations that do not comply with the Forest Plan

standards under the National Forest Management Act (NFMA) (i.e., the alternative of not amending the Forest Plan as proposed); (3) denying the Mine PoO until a milling plan is included in the PoO; (4) alternative milling locations and processes; (5) mitigation measures or denial due to water impacts, including re-injecting or otherwise keeping pumped groundwater on/in Mt. Taylor to reduce adverse environmental impacts and the loss of spiritual/religious values in ground and surface waters on Mt. Taylor; (6) alternative project operations that protect, minimize and mitigate against adverse impacts as noted herein; (7) reducing cumulative impacts by required mitigation of contamination left from prior mining operations on area public lands; (8) alternatives to economic development that will not degrade the TCP and degrade the environment and human health.

F. The DEIS Must Fully Ascertain All Baseline Conditions

The DEIS must also contain the required detailed analysis of all baseline conditions. "Without establishing the baseline conditions . . . there is simply no way to determine what effect the [action] will have on the environment, and consequently, no way to comply with NEPA." Half Moon Bay Fisherman's Mktg. Ass'n v. Carlucci, 857 F.2d 505, 510 (9th Cir. 1988). "In analyzing the affected environment, NEPA requires the agency to set forth the baseline conditions." Western Watersheds Project v. BLM, 552 F. Supp. 2d 1113, 1126 (D. Nev. 2008). The lack of current data to establish an adequate baseline analysis fatally flaws an EIS. "[O]nce a project begins, the pre-project environment becomes a thing of the past and evaluation of the project's effect becomes simply impossible." Northern Plains v. Surf. Transp. Brd., 668 F.3d 1067, 1083 (9th Cir. 2011). "[W]ithout [baseline] data, an agency cannot carefully consider information about significant environment impacts. Thus, the agency fail[s] to consider an important aspect of the problem, resulting in an arbitrary and capricious decision." Id. at 1085.

Failure to collect the necessary data and conduct the complex analysis to properly establish baseline in the past is one of the primary reasons why remediating legacy uranium mine and mill waste has proven so difficult in the Grants Mineral Belt. "NEPA requires that the agency provide the data on which it bases its environmental analysis. Such analyses must occur *before the proposed action is approved*, not afterward." Northern Plains, 668 F.3d at 1083 (emphasis added) (internal citations omitted) (concluding that an agency's "plans to conduct surveys and studies as part of its post-approval mitigation measures," in the absence of baseline data, indicate failure to take the requisite "hard look" at environmental impacts).

G. The DEIS must take a hard look at socio-economic impacts

The DEIS must take the requisite hard look at socio-economic impacts. "NEPA requires an EIS to disclose the significant health, socioeconomic, and cumulative consequences of the environmental impact of a proposed action." Balt. Gas & Elec. Co. v. NRDC, 462 U.S. 87, 106-107 (U.S. 1983) citing Metropolitan Edison Co. v. People Against Nuclear Energy, 460 U.S. 766 (1983); Kleppe v. Sierra Club, 427 U.S., at 410. This includes the need to analyze the well-documented social impacts of increased crime, drug abuse, prostitution, infectious diseases, including sexually transmitted diseases, and domestic violence associated with boom and bust extractive economies.

Indeed, the previous DEIS itself acknowledges that the proposed action alternatives would cause these impacts. DEIS at 391 (increase in infectious diseases likely); 392, 420 (mining will likely result in increased incidence of sexually transmitted diseases); 396 (increase in social pathologies commonly experienced in extractive industry economies); 419 (increase in drug use and violence in extractive industry communities). These impacts would certainly impose increased costs on local law enforcement, jails, court systems and medical care facilities.

Further, the DEIS must analyze the costs to state infrastructure and resources, including to the costs of road, bridge and other infrastructure maintenance and repair associated with this increase in truck traffic, including from truck traffic from the Roca Honda mine when combined with traffic from other proposed mines, such as the La Jara Mesa Mine and the Grants Precision ISR Project.

Finally, the DEIS must analyze the costs associated with the destruction of water resources. The Mine alone will result in untold gallons of water being removed from local aquifers. In an arid state where water is likely to become even scarcer due to the effects of global climate change, the economic value of water will increase, both in terms of its value as a commodity and its value as an economic driver. The DEIS must quantify and analyze the costs associated with the Mine's water use and therefore fails to take the requisite hard look at the Mine's socio-economic impacts.

I. The DEIS Must Fully Analyze Radioactive Air Pollution Emissions

Due to the unique health and environmental impacts caused radionuclide emissions from active, past, and inactive uranium mines, the DEIS must fully analyze these impacts, including radon. The Clean Air Act licensing processes provides emissions, impacts, and mitigation information necessary for the DEIS analysis.

At a minimum, the DEIS should inform the public and ultimate government decisionmakers on the impacts of these issues/impacts.

J. The DEIS Must Take a Hard Look at Environmental Justice Impacts.

The previous DEIS correctly indicates that the communities impacted by the proposed Mine are environmental justice communities both by virtue of containing significant minority populations and low-income populations. DEIS at 265-268. That DEIS also correctly notes that properly evaluating the Mine's anticipated impacts in an environmental justice context requires an analysis of whether the Mine will have disproportional impacts on the environmental justice community. DEIS at 270. Despite these accurate observations, the Forest Service must take a hard look at the environmental justice impacts of the proposed Mine.

The DEIS must analyze whether impacts from legacy waste, combined with the impacts of the proposed Mine and other proposed uranium mining projects, impact the local community disproportionally. The federal agencies must examine whether the legacy impacts, combined with the impacts of the proposed Mine and other reasonably foreseeable uranium projects, will disproportionally impact the affected communities.

The DEIS must disclose and analyze whether transporting the Mine's ore to a mill will have disproportionate environmental impacts on environmental justice communities. If ore will be transported to the White Mesa Mill, the DEIS must disclose and analyze the impacts on low income and minority communities along those likely transportation routes. Moreover, as the ore will be transported to the White Mesa Mill, the agencies have an obligation to consult with any tribes and communities who might be on or near the likely transportation routes (and the processing/mill site).

Finally, the DEIS must disclose and analyze whether the loss of water resources will disproportionally affect nearby communities. In an environment of diminishing water supplies due to global climate change, the Forest Service should have taken a hard look at the long term impacts of taking significant amounts of groundwater – a public resource – and giving it to a private rancher at the expense of nearby environmental justice communities. Further, the Forest Service failed to examine whether the massive dewatering project that it concedes will dry up springs will have a disproportionate impact on environmental justice communities.

VII. The Agencies Must Comply with the National Historic Preservation Act.

Related to the numerous violations of NEPA and federal law detailed above, the agencies must fully comply with the consultation and other duties of the NHPA.

[T]he fundamental purpose of the NHPA is to ensure the preservation of historical resources. *See* 16 U.S.C. § 470a(d)(1)(A) (requiring the Secretary to "promulgate regulations to assist Indian tribes in preserving their particular historic properties" and "to encourage coordination ... in historic preservation planning and in the

identification, evaluation, protection, and interpretation of historic properties"); *see also Nat'l Indian Youth Council v. Watt,* 664 F.2d 220, 226 (10th Cir.1981) ("The purpose of the National Historic Preservation Act (NHPA), is the preservation of historic resources."). Early consultation with tribes is encouraged by the regulations "to ensure that all types of historic properties and all public interests in such properties are given due consideration...." 16 U.S.C. § 470a(d)(1)(A).

Te-Moak Tribe of Western Shoshone v. U.S. Department of the Interior, 608 F.3d 592, 609 (9th Cir. 2010).

> Under the NHPA, a federal agency must make a reasonable and good faith effort to identify historic properties, 36 C.F.R. § 800.4(b); determine whether identified properties are eligible for listing on the National Register based on criteria in 36 C.F.R. § 60.4; assess the effects of the undertaking on any eligible historic properties found, 36 C.F.R. §§ 800.4(c), 800.5, 800.9(a); determine whether the effect will be adverse, 36 C.F.R. §§ 800.5(c), 800.9(b); and avoid or mitigate any adverse effects, 36 C.F.R. §§ 800.8[c], 800.9(c)**.** The [federal agency] must confer with the State Historic Preservation Officer ("SHPO") and seek the approval of the Advisory Council on Historic Preservation ("Council").

Muckleshoot Indian Tribe v. U.S. Forest Service, 177 F.3d 800, 805 (9th Cir. 1999). *See also* 36 CFR § 800.8(c)(1)(v)(agency must "[d]evelop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA."). Failure to conduct the NHPA analysis before taking action on the application is often enjoined due to

> irreparable harm to historic and cultural resources, including currently unknown resources likely to be present in the areas affected by [proposal. These] harms will also be compounded by "the risk of uninformed decisionmaking' as [the proposed project] is constructed without the benefit of the Section 106 consultation process.

Or.-California Trails Ass'n v. Hogan, 2026 U.S. Dist. LEXIS 126446, at *33-34 (D. Colo. June 8, 2026) quoting San Luis Valley Ecosystem Council v. U.S. Fish & Wildlife Serv., 657 F. Supp. 2d 1233, 1242 (D. Colo. 2009) (further citation omitted).

> The Advisory Council on Historic Preservation ("ACHP"), the independent federal agency created by Congress to implement and enforce the NHPA, has exclusive authority to determine the methods for compliance with the NHPA's requirements. *See* National Center for Preservation Law v. Landrieu, 496 F. Supp. 716, 742 (D.S.C.), *aff'd per curiam,* 635 F.2d 324 (4th Cir. 1980). The ACHP's regulations "govern the implementation of Section 106," not only for the Council itself, but for all other federal agencies. Id. *See* National Trust for Historic Preservation v. U.S. Army Corps of Eng'rs, 552 F. Supp. 784, 790-91 (S.D. Ohio 1982).

NHPA § 106 ("Section 106") requires federal agencies, prior to approving any "undertaking," such as approval of the Roca Honda mine, to "take into account the effect of the undertaking on any district, site, building, structure or object that is included in or eligible for inclusion in the National Register." 16 U.S.C. § 470(f). Section 106 applies to properties already listed in the National Register, as well as those properties that may be eligible for listing. *See* Pueblo of Sandia v. United States, 50 F.3d 856, 859 (10th Cir. 1995). Section 106 provides a mechanism by which governmental agencies may play an important role in "preserving, restoring, and maintaining the historic and cultural foundations of the nation." 16 U.S.C. § 470.

If an undertaking is the type that "may affect" an eligible site, the agency must make a reasonable and good faith effort to seek information from consulting parties, other members of the public, and Native American tribes to identify historic properties in the area of potential effect. *See* 36 CFR § 800.4(d)(2). *See also* Pueblo of Sandia, 50 F.3d at 859-863 (agency failed to make reasonable and good faith effort to identify historic properties). Consultation "must be 'initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking." Pit River Tribe v. U.S. Forest Service, 469 F.3d 768, 787 (9th Cir. 2006).

The NHPA also requires that federal agencies consult with any "Indian tribe ... that attaches religious and cultural significance" to the sites. 16 U.S.C. § 470(a)(d)(6)(B). Consultation must provide the tribe "a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including

those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects." 36 CFR § 800.2(c)(2)(ii). "The agency official **shall ensure that the section 106 process is initiated early in the undertaking's planning**, so that a broad range of alternatives may be considered during the planning process for the undertaking." 36 CFR § 800.1(c) (emphasis added).

The NHPA requires that consultation with Indian tribes "recognize the government-to-government relationship between the Federal Government and Indian tribes." 36 CFR § 800.2(c)(2)(ii)(C). *See also* Presidential Executive Memorandum entitled "Government-to-Government Relations with Native American Tribal Governments" (April 29, 1994), 59 Fed. Reg. 22951, and Presidential Executive Order 13007, "Indian Sacred Sites" (May 24, 1996), 61 Fed. Reg. 26771.

Here, as detailed above, the federal agencies must fully consider and consult on numerous aspects of the Mine, from the milling/processing and transportation to impacts analysis and mitigation.

VIII. The DEIS Is Based on Incorrect and Unsupportable Assumptions and Positions Regarding the Alleged "Entitlement" to Have the Project Approved Under the Mining Law.

The previous DEIS states (which is presumably the agencies' current position) that: "The applicant has the right to exercise their rights under U.S. Mining Laws to develop and remove the mineral resources as set forth by the General Mining Law of 1872 as amended. These laws provide that the public has a statutory right to conduct prospecting, exploration, development, and production activities (1872 Mining Law and 1897 Organic Act), provided they are reasonably incident (1955 Multiple Use Mining Act and case law) to mining and comply with other Federal laws." DEIS at iii. The DEIS was similarly based on the USFS's belief that, due to RHR's filing of mining claims, the USFS cannot categorically prohibit mining or deny reasonable and legal mineral operations under the mining laws. DEIS at 30. Thus, according to the DEIS, Roca Honda Resources has a statutory right to conduct its operations based solely on the fact that the company has blanketed the project lands with mining claims.

According to the agencies, the filing of these lode claims precludes the agencies from choosing the no-action alternative, as well as significantly restricting its approval and review authority over the project. That position is wrong. Such rights, or "entitlement" as stated by the agencies, can only accrue to the company if these claims are valid under the 1872 Mining Law. Here, there is no evidence in the record that these claims are valid.

Accordingly, the agencies must, under the Federal Land Policy and Management Act (FLPMA) require the company to pay Fair Market Value (FMV) for the use of public lands not covered by valid mining claims. Similarly, the agencies' position also violates provisions of FLPMA and the Multiple Use Sustained Yield Act, National Forest Management Act, 1897 Organic Act, and other laws mandating that the agencies manage, or at least consider managing, these lands for non-mineral uses – something which the Forest Service has failed entirely to do or consider in this case.

The agencies' review of the Project cannot be based on the assumption that RHR has statutory rights to use all of the public lands at the site under the 1872 Mining Law. Where Project lands have not been verified to contain, or do not contain, such rights, the agencies' more discretionary multiple use authorities apply. *See Center for Biological Diversity v. U.S. FWS*, 33 F.4th 1202 (9th Cir. 2022)(*Rosemont* Mine decision). "[V]alidity of a mining claim is a necessary prerequisite to post-exploration occupancy of a claim. A claim is valid only if valuable minerals have been found on the claim." *Rosemont*, 33 F.4th at 1217–18. In *Rosemont*, the court affirmed vacatur of the Forest Service's approval of a copper mine because the agency erroneously assumed that the applicant had statutory rights to ancillary infrastructure (in that case, waste dumping) merely because the infrastructure served nearby mineral extraction. *See* 33 F.4th at 1217–19, 1222–23. The agency had relied on its mining regulations at 36 C.F.R. Part 228A to approve these ancillary facilities, which govern operations "authorized by the United States mining laws." 36 C.F.R. §228.1.

But as *Rosemont* held, the agency needs to have a "statutory basis to support the application of the Part 228A regulations." 33 F.4th at 1223. Otherwise, uses not governed by any statutory rights are reviewed under the agency's special use regulations at 36 C.F.R. Part 251. The "Part 251 regulations apply to uses of National Forest land that is not encumbered by mining claims." 33 F. 4th at 1211.

A proper application of USFS's multiple use, public interest, and sustained yield mandates to those areas not covered by valid claims would result in a very different Project review, alternatives, and level of protection for public land resources and values, as well as reducing or eliminating the adverse impacts to the use of these lands by members of the public and commenters.

As stated in the USFS Minerals Manual, "In order to successfully defend rights to occupy and use a claim for prospecting and mining, a claimant must meet the requirements as specified or implied by the mining laws, in addition to the rules and regulations of the Forest Service. These require a claimant to: … 2. Discover a valuable mineral deposit. … (and) 7. Be prepared to show evidence of mineral discovery." FSM 2813.2.

Under the Mining Law, in order to be valid, mining claims must contain the discovery of a "valuable mineral deposit." 30 U.S.C. § 22. According to the USFS Minerals Manual: "A claim unsupported by a discovery of a valuable mineral deposit is invalid from the time of location, and the only rights the claimant has are those belonging to anyone to enter and prospect on National Forest lands." FSM §2811.5.

The term "valid claim" often is used in a loose and incorrect sense to indicate only that the ritualistic requirements of posting of notice, monumentation, discovery work, recording, annual assessment work, payment of taxes, and so forth, have been met. This overlooks the basic requirement that the claimant must discover a valuable mineral deposit. Generally, a valid claim is a claim that may be patented.

FSM §2811.5.

Thus, the agency must analyze whether the claims are valid, including a detailed analysis of all project costs, which is necessary to determine whether each claim contains the requisite discovery of a valuable mineral deposit under the Mining Law. Without such verification, at a minimum, the agency's assumptions of these rights/entitlements cannot stand.

IX. Failure to Comply with Organic Act and Part 228 Regulations' Duty to Minimize All Adverse Environmental Impacts.

Even if the filing of the mining claims, without any evidence that all the claims are valid, limits the USFS's authority (which as shown herein is not legally correct), the agency must still comply with federal laws such as the 1897 Organic Act and its implementing 36 CFR Part 228 regulations. As noted herein, the DEIS must show that the USFS met its duties to "minimize adverse environmental impacts on National Forest surface resources," including water resources, fish and wildlife, and habitat, cultural/religious, and other resources under 36 CFR Part 228. This includes analyzing and choosing the least destructive alternative for each project facility as well as the overall Project itself. This includes all Project activities such as ground water pumping, mining, ore and other dumps/storage, milling, transportation, etc.

Under the Organic Act, the agency "can reject an unreasonable plan and prohibit mining activity until it has evaluated the plan and imposed mitigation measures. …The Forest Service can regulate conduct that is reasonably incident to mining. The Forest Service can prohibit the initiation or continuation of mining operations for failure to abide by applicable environmental requirements." Siskiyou Regional Education Project v. Rose, 87 F. Supp. 2d 1074 (D. Or. 1999). The Forest Service has a judicially enforceable duty to prevent destruction of National Forest System lands and to minimize adverse environmental impacts to National Forest surface resources.

The Organic Act requires that the agency "*must* . . . ensure that its approval of a plan or project does not result in the 'destruction' and 'degradation' of the public forests." Clouser v. Madigan, 1992 WL 694368, at *4 (D. Or. 1992)(emphasis in original), *aff'd sub nom.* Clouser v. Espy, 42 F.3d 1522 (9th Cir. 1994). *See also* Rock Creek Alliance v. Forest Service, 703 F.Supp.2d 1152, 1170 (D. Montana 2010) (Forest Service PoO approval violated Organic Act and 228 regulations by failing to protect water quality and fisheries); Save Our Cabinets v. U.S. Dept of Agriculture, 254 F. Supp. 3d 1241, 1252–55, 1258 (D. Mont. 2017)(same). "This court does not believe the law supports the Forest Service's concession of authority to miners under the General Mining Act in derogation of environmental laws and regulations." Hells Canyon Preservation Council v. Haines, 2006 WL 2252554, *6 (D. Oregon Aug. 4, 2006)(agency approval of mining operations violated Organic Act restrictions).

The DEIS must show how the agency will minimize adverse impacts to all affected resources. For any proposed mitigation measures, the agency must fully analyze the effectiveness of these measures, as some reduction of impacts does not "minimize" the adverse impacts. *See* Trout Unlimited v. U.S. Department of Agriculture, 320 F.Supp.2d 1090, 1108-10 (D. Colo. 2004)(rejecting Forest Service argument that reduction in adverse impacts satisfies duty to minimize adverse impacts).

Additionally, and as noted herein, the DEIS must fully analyze and disclose information on the dewatering and water discharge and other critical aspects of the Mine. Without such information, the agency cannot have "minimized" adverse impacts from impacts it has failed to

fully analyze. For other impacts, such as dewatering, there must be an assurance that impacts to "fisheries and wildlife" have been truly minimized. As noted herein, the dewatering will eliminate or significantly reduce flows in area streams. The agencies must prevent the loss of water that will directly and indirectly impair or eliminate fish habitat, as well as other public resources relying on vibrant riparian and water resources. This is true not only for aquatic species, but also for wildlife and riparian vegetation dependent on the springs, seeps, and waters that will be adversely affected by Mine operations.

X. Water Quality Protection.

The DEIS must ensure that all requirements of the federal Clean Water Act have been met. Under the Clean Water Act (CWA) Section 313, the agencies cannot approve any activity that may result in a violation of a water quality standard or water quality protection requirement.

> Under the Clean Water Act, all federal agencies must comply with state water quality standards, including a state's antidegradation policy. 33 U.S.C. § 1323(a). Judicial review of this requirement is available under the Administrative Procedure Act. Oregon Natural Resources Council v. United States Forest Service, 834 F.2d 842, 852 (9th Cir.1987).

Idaho Sporting Congress v. Thomas, 137 F.3d 1146, 1153 (9th Cir. 1998). *See also* Marble Mountain Audubon Soc'y v. Rice, 914 F.2d 179, 182-83 (9th Cir. 1990); Oregon Natural Resources Council v. Lyng, 882 F.2d 1417, 1424-25 (9th Cir. 1989); Hells Canyon Presv. Council v. Haines, 2006 WL 2252554, *4-5 (D. Or. 2006)(USFS mine approvals must comply with CWA standards). Under the Organic Act, and the 36 CFR Part 228 regulations, the agency cannot approve a mining PoO unless it can be demonstrated that all feasible measures have been taken to "minimize adverse impacts" on National Forest resources, including all measures to protect water quality and habitat. *See* Rock Creek Alliance v. Forest Service, 703 F.Supp.2d 1152, 1170 (D. Montana 2010); (Forest Service PoO approval violated Organic Act and 228 regulations by failing to protect water quality and fisheries).

Under the CWA and EPA regulations, water quality standards include the protection of beneficial uses. "A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses." 40 CFR § 131.2. The minimal designated use for a water body is the "fishable/swimmable" designation which "provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water." 33 U.S.C. § 1251(a)(2).

> The text [of the CWA] makes it plain that water quality standards contain two components. We think the language of § 303 is most naturally read to require that a project be consistent with *both* components, namely, the designated uses *and* the water quality criteria. Accordingly, under the literal terms of the statute, a project that does not comply with a designated use of the water does not comply with the applicable water quality standards.

PUD No. 1 of Jefferson County v. Washington Department of Ecology, 511 U.S. 700, 714-15

(1994) (italics emphasis in original). Thus, the CWA prohibits any activity that will not fully protect all of the designated uses for that waterbody.

The agencies also cannot approve the project before the information and data necessary for NPDES permits have been obtained. *See* Dubois v. U.S. Dept. of Agriculture, 102 F3d 1273 (1st Cir. 1996). The Court in Dubois ruled that under the CWA, "the Forest Service was obligated to assure itself that an NPDES permit was obtained before permitting the [requested activity]." 102 F. 3d at 1300. As discussed herein, the Forest Service cannot meet its duty under 36 CFR 228.8 to ensure that the project will comply with the CWA without an understanding of the specific nature of the discharges.

The project also cannot be approved without the required CWA Section 401 Certification. Hells Canyon Preservation Council v. Haines, 2006 WL 2252554, *4 (D. Or. 2006). Although the previous DEIS mentions that state water quality proceedings will be forthcoming, no information is provided about the 401 Certification, nor evidence that the project will comply with all water quality standards (outside of a vague reference to the state process). No detailed information is provided about the discharge and as noted above, the DEIS admits to a lack of information about this critical issue.

Relatedly, there is no information about the generation and disposal of byproducts from the future water treatment plant. This is especially troubling given that radiological, heavy metals, and other harmful pollutants will be "treated" and supposedly removed from the waste stream. The agency cannot comply with NEPA, and ensure compliance with the CWA and Organic Act, without a full analysis of all aspects of water quality treatment, including the generation and disposal of treatment residue and byproducts. *See* above for discussion on transportation of 11(e)(2) byproduct material.

XI. Bonding and Financial Assurance.

Under 36 CFR Part 228, financial assurance ensures the reclamation would be completed in the event of abandonment of the site or failure to comply with the PoO. As noted by the GAO Report on uranium mining and financial assurance/bonding: "The Forest Service also directs operators to provide a financial assurance for the full cost of reclamation. However, in contrast to BLM, the Forest Service relies on its technical staff at the district, forest, or regional level, not the operator, to calculate the estimated reclamation costs. It uses formal agency guidance issued in 2004 to calculate the estimated reclamation costs and proposes the amount of the financial assurance to cover those costs to the operator." Uranium Mining: Opportunities Exist to Improve Oversight of Financial Assurances, GAO-12-544 (May 2012), at 17 (attached to previous comments). "Forest Service guidance directs its staff to obtain financial assurances to cover the estimated reclamation costs for mining operations on National Forest System lands." GAO Report at 17, n. 26.

However, neither RHR's PoO nor revised Reclamation Plan include an estimate for the cost of site reclamation or any analysis of the most appropriate financial assurance instrument. In exercising its authority under their bonding authorities, the Forest Service/BLM must comply with their NEPA (and FLPMA) mandates by disclosing and analyzing the amount, scope, and

form of financial assurance in a new DEIS to make certain that such a critical issue is subjected to public review and comment.

The GAO Report highlighted the importance of adequate financial assurances/bonds:

> Having adequate financial assurances to pay for reclamation costs for federal land disturbed by uranium operations is critical to ensuring that the land is returned to its original state if operators fail to complete the reclamation as required. BLM, the Forest Service, DOE, and NRC play key roles in establishing and reviewing these financial assurances for uranium operations on federal land.

GAO Report at 39. As stated in the Forest Service's bonding policy: "Bonds should address all FS costs that would be incurred in taking over operations because of Operator default." Training Guide for Reclamation Bond Estimation and Administration For Mineral Plans of Operation Authorized and Administered Under 36 CFR 228A, USDA – Forest Service, April 2004, at p. 7. http://www.fs.fed.us/geology/bond_guide_042004.pdf. (USFS document adopted and included into the administrative record for this case from MASE's previous comments).

Because the reclamation bond is considered a mitigation measure needed to ensure that the Project complies with federal law, the USFS must provide the public with any details of the bond, as required by the Organic Act and NEPA (and BLM by FLPMA and NEPA). Failure to calculate a bond amount is particularly troublesome in context of uranium production where previous agency approvals that did not include a bond "allowed many companies to walk away from their sites when project operations halted mid-production." DEIS at 410. The critical role of bonds is confirmed by the previous DEIS, but is not accompanied by the necessary analysis of an adequate bond.

> Past activities conducted under lax regulations, lack of closure bonds, and limited oversight have left contaminated sites that are being investigated and remediated by State and Federal agencies in New Mexico and elsewhere.

DEIS at 442. The public must be allowed to see the proposed bond, and allowed to comment upon these mitigation measures, including whether they were adequate or would be effective in protecting public resources.

Previous proposals have included *in situ* leaching to be conducted in close coordination with conventional mining by removing "125-acre feet per year of water for the project from the Gallup and Westwater formations." ML13003A041 at 5 (December 6, 2012 Meeting with Roca Honda Resources LLC for Site Visit and Pre-Submission Audit for the Proposed Peña Ranch Conventional Uranium Mill) available at https://www.nrc.gov/docs/ML1300/ML13003A041.pdf (copy available on request). Please confirm in the DEIS that *in situ* leach is not an appropriate technology to deploy at this site. Should USFS determine that in situ leaching is a foreseeable activity, that must be disclosed and the licensing and bonding provisions of the Atomic Energy Act and Uranium Mill Tailings Radiation Control Act must be addressed in the DEIS.

XII. The Proposed Action Does Not Comply with the United States' International Human Rights Obligations.

As the lead agency responsible for evaluating and ultimately approving or rejecting the proposed PoO, the Forest Service has ultimate responsibility for ensuring the United States upholds all its legal obligations, including those embodied in human rights treaties such as the American Declaration of the Rights and Duties of Man ("American Declaration") and the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"). This also includes BLM, the Corps, and other federal agencies reviewing or approving aspects of the Project.

As a member of the Organization of American States that has ratified the American Declaration on the Rights and Duties of Man, the United States is bound by its obligations. Inter-American Commission on Human Rights, Report No. 43/10, Admissibility, Mossville Environmental Action Now v. United States (March 17, 2010).

A. The Project will Violate MASE Members' Right to Culture and Religion

Article 13 of the American Declaration provides, in relevant part, "[e]very person has the right to take part in the cultural life of the community." Article 3 provides, "[e]very person has the right freely to profess a religious faith, and to manifest and practice it both in public and in private." The Inter-American Commission on Human Rights (Commission) has recognized the intimate ties between indigenous cultural and religious practices and land in the context of interpreting indigenous peoples' right to property. The Commission found:

> More particularly, the organs of the Inter-American System of Human Rights have acknowledged that indigenous peoples enjoy a particular relationship with the lands and resources traditionally occupied and used by them, by which those lands and resources are considered to be owned and enjoyed by the community as a whole and according to which *the use and enjoyment of the land and its resources are integral components of the physical and cultural survival of the indigenous communities and the effective realization of their human rights more broadly.*

Mayan Indigenous Communities of the Toledo District v. Belize at ¶ 114 (emphasis added).

Other international instruments also shed light on the State's obligations under Articles 3 and 13 in this case. The International Labor Organization Convention 169, Article 5, provides the following with respect to the right to take part in the cultural and religious life of the community in the context of indigenous communities:

> In applying the provisions of this Convention[,] the social, cultural, religious and spiritual values and practices of these peoples shall be recognized and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;

Further, Article 13.1 provides:

> In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.

The UNDRIP Articles 8.1, 11, and 25 also speak to this issue. Article 8.1 is particularly unequivocal in mandating that, "[i]ndigenous peoples have the right not to be subjected to … destruction of their culture."

Finally, the International Convention on Civil and Political Rights in Article 27 provides:

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

The previous DEIS acknowledges that Tribes and Pueblos in the region have historic and contemporary cultural and religious ties to Mt. Taylor, including the proposed permit area. DEIS at 305-306; 330-337. Further, the DEIS states that the impacts of both Alternatives 2 and 3 on cultural practices and cultural and historic properties would be "significant", "irreparable", and "unavoidable." *Id*. at x, 358,445. Because the action alternatives will unavoidably and irreparably adversely impact the cultural/religious practices of tribal members, including MASE members affiliated with Tribes and Pueblos, if the Forest Service approves either of those alternatives, it will be violating the human rights of those tribal members as guaranteed by treaty. The Forest Service must not, therefore, approve either action alternative.

B. The Proposed Project Will Violate MASE Members' Right to Health

Article 11 of the American Declaration guarantees the right of "every person" to "the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources." The Commission has interpreted an analogous provision in the American Convention to include the following:

> … the essence of the State obligation to comply with legal protection to guarantee the social and economic aspirations of its people, giving priority to their needs for health, food and education. Prioritizing the "right to survive" and "basic needs" is a natural consequence of the right to personal security.

Inter-American Commission on Human Rights, Annual Report *1988*, ¶ 322, OEA/Ser.L/V/II.74, Doc. 10, rev. 1 (Sept. 16, 1988).

Further, the Commission has issued precautionary measures in order to protect the right to health encompassed in the American Convention. In San Mateo de Huanchor Community v. Peru, the Commission issued a precautionary measure based on the petitioners' ongoing

exposure to toxic mine waste sludge, finding "[t]he administrative decisions that were taken were not observed, more than three years have elapsed, and the toxic waste sludge of the Mayoc field continues to cause damage to the health of the population of San Mateo de Huanchor, whose effects are becoming more acute over time." San Mateo de Huachor Community v. Peru at ¶ 59, Report No. 69/04, OEA/Ser.L/V/II.122, Doc. 5, rev. 1 (2004).

Finally, the Inter-American Court on Human Rights (Inter-American Court) has likewise recognized the link between a clean environment and the right to health. In Case of the Yakye Axa Indigenous Community v. Paraguay, the Inter-American Court noted:

> Special detriment to the right to health, and closely tied to this, detriment to the right to food and access to clean water, have a major impact on the right to a decent existence and basic conditions to exercise other human rights, such as the right to education or the right to cultural identity. In the case of indigenous peoples, access to their ancestral lands and to the use and enjoyment of natural resources found on them is closely linked to obtaining food and clean water.

Case of the Yakye Axa Indigenous Community v. Paraguay at ¶ 167, Complaint No. 12.313, Judgment (Merits, Reparations and Costs) (June 17, 2005).

Similar language in other international instruments has also been interpreted to include the positive right of a clean and healthy environment. The Committee on Economic, Social and Cultural Rights' (CESCR) General Comment 14 provides the most comprehensive interpretation of this right. General Comment 14 specifically interprets Article 12 of the International Covenant on Economic, Social and Cultural Rights, which guarantees the right of "everyone to enjoyment of the highest attainable standard of physical and mental health." In interpreting this Article, the CESCR concluded:

> [T]he drafting history and the express wording of article 12.2 acknowledge that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and *extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment*.

CESCR, Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment No. 14, The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights) at ¶¶4, 11, E/C.12/2000/4 (Aug. 11, 2000) (emphasis added). In the context of indigenous peoples, the CESCR further determined that:

> [T]he Committee considers that development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health.

Id. ¶ 27.

The previous DEIS concedes that the proposed Roca Honda mine will have similar impacts on members of the community where the mine will be located, particularly on indigenous populations.

> The Native concept of health does not separate environmental and human experiences; essentially all people and all living things are connected. This means that any impact to the environment is perceived to impact the health of the Native peoples. Water contamination was the primary concern of all of the tribal groups when it came to health impacts (Bonne et al., 2012; Luarkie et al., 2012; Juanico et al., 2012). Water is not only important for farming practice and daily living; water is also a very important component of spiritual health in these communities.
> …
>
> This health belief likely means that any impacts to the environment resulting from the proposed action would result in human health impacts to tribal members. These impacts would be comprised of mainly mental and spiritual health impacts, both of which are key components of overall well-being (WHO, 1946).

DEIS at 414. Moreover, neither the Forest Service nor the applicant proposes any meaningful measures to address the violation of community members' human rights as guaranteed by treaty. Instead, the previous DEIS offered nothing more than vague and bland assurances that Tribes will be involved in conversations about impact mitigation at some undisclosed future time and that health impacts will be minimized to the "greatest extent possible." Id. at 414-415.

Non-indigenous community members' health will also be adversely impacted by the proposed mine, particularly given that many community members, both indigenous and non-indigenous struggle under the burden of contamination from past uranium mining and milling. The previous DEIS states:

> Stress and mental health are key components of overall health and well-being. Unmanaged stress has physical health consequences that include weakened immune systems, weakened functioning of the circulatory and metabolic systems, and increased incidence of cardiovascular disease and Type 2 diabetes (Brunner and Marmot, 2006). Assigning a quantitative estimate on expected stress response is not possible given the data available; however, it could be estimated that stress will increase with perceived contamination.
> ….
>
> It was expressed several times by these community members that the idea of adding another mine to an area that has many unresolved issues with legacy contamination is unreasonable and possibly inhumane.

DEIS at 413. Both the action alternatives in the previous DEIS, then, will lead to health impacts on the community surrounding the proposed mine. The agencies, nor RHR, offer

proposals to address the anticipated human rights violations, other than the no action alternative. Thus, approval of the PoO will lead to the United States breaching its human rights obligations under the American Declaration.

Conclusion.

Thank you for your consideration of these comments. We look forward to reviewing and commenting on the new DEIS when it is released. Please provide direct notice to the undersigned, via email, when the new DEIS is released for public comment.

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