W. Scott Donaldson
Attorney-at-Law

6868 North 7th Avenue, Suite 204
Phoenix, Arizona 85013-1150

Telephone: (602) 242-9762
E-Mail: scottdonaldson@wsdlaw.net
Website: www.wsdlaw.net

23 February 2021

Reviewing Official, Regional Forester
Southwestern Region, Forest Service
United States Department of Agriculture
333 Broadway Boulevard SE
Albuquerque, New Mexico 87102

Re: Resolution Copper Project and Land Exchange
Final Environmental Impact Statement – Castleberry Campground & Trails System

Reviewing Official:

I represent Imerys Perlite USA, Inc. (Imerys). Pursuant to 36 C.F.R. § 218, et seq., Imerys submits the following objection to the Resolution Copper Project and Land Exchange Final Environmental Impact Statement (FEIS) in its current form. Specifically, Imerys objects to Appendix J, Sections FS-RC-04 (Establish an alternative campground site ((Castleberry)) to mitigate the loss of Oak Flat Campground) and FS-RC-03 (Mitigation for adverse impacts to recreational trails ((Forest multi-use trail plan))).

Procedural History and Standing

Although Imerys did not participate in the pertinent public comment period, it did submit written protests to the Tonto National Forest (TNF) in this matter on 26 August 2020 and 21 September 2020. Imerys did not receive a response from TNF. Copies of those protests are attached hereto and incorporated herein as Appendices A and B.

The Reviewing Office should consider this objection despite the lack of comments for the same reasons Imerys urged TNF to consider its protests in August and September of 2020. First, commenters need not point out an environmental assessment's flaw if the flaw is obvious. Second, a commenter does not waive an issue if it is otherwise brought to TNF's attention. Or, as stated in *A Citizen's Guide to the NEPA:*

> *And the Supreme Court has held in two NEPA cases that if a person or organization expects courts to address an issue, such as evaluating a particular alternative, the issue must have been raised to the agency at a point in the administrative process when it can be meaningfully considered unless the issue involves a flaw in the*

agency's analysis that is so obvious that there is no need for a commentator to point it out specifically.

The FEIS flaws, described in greater detail below, were and are undeniably obvious. TNF and the Recreation User's Group of the Community Working Group (RUG) were both aware of the flaw through other means prior to expiration of the original comment period.

Imerys Operations

Imerys is the owner of 410.66 acres of patented lands and 2,839.11 acres of unpatented mining claims located in Township 2 South, Range 12 East, G.&S.R.B.&M., Pinal County, State of Arizona. The holdings lie both north and south of State Highway 60.

Imerys produces perlite at its Superior site (Superior Mine). Perlite is a non-metalliferous mineral product at this time mainly used for filtration purposes. Operations include removal of overburden, blasting of ore, loading and hauling of ore, blending of ore types, crushing and plant processing. Operations on the unpatented mining claims or roadway parts are regulated by Plan of Operations 2013-031202-019 (Imerys POO).

Castleberry Campground

Attached hereto and incorporated herein as Attachment 1 is a plat depicting the Imerys holdings. At the northern end of the plat can be seen the Castleberry Campground as proposed in FS-RC-04. Attached hereto and incorporated herein as Attachment 2 is the Castleberry Ranch Campground Site Design (Site Design), drafted by Westland Resources on behalf of Resolution Copper Mining, LLC (Resolution). The Site Design is included in the FEIS record and forms a major part of contemplated mitigation efforts.

Please note the Site Design date of March 7, 2019. The Active Mine designation on the Site Design is Imerys' main quarry. The distance between the proposed Castleberry Campground and the quarry high wall is approximately 850 feet, less than a fifth of a mile.

That proximity endangers both Imerys' operations and the health and safety of people using the proposed campground. Placement of a Resolution mitigation campsite at the Castleberry site is a glaringly obvious flaw in the FEIS. The idea was ill-conceived at its conception and remains so today.

Problems that would develop as part of the Castleberry Campground emplacement include:

- The active mining operation is extremely close to the proposed campground.
- Superior is a hard rock mine and the ore is blasted with explosives.
- The Superior Mine already contends with frequent trespassers. The proximity of the proposed campground would drastically increase this frequency.
- The Superior Mine has numerous high walls and deep water posing a serious risk to the safety of anyone who might wander onto the site.

- The target audiences for the proposed campground are the off-road UTV crowd and hikers. Both represent trespass risks whether intentional or inadvertent.
- Imerys' access to and from the Superior Mine is via unpaved FS 989. This is the same road that the public would use to access the proposed campground.
- The Superior Mine operation hauls ore from the various quarries to the plant approximately 24 days per year. During these times, the public would be sharing the same unpaved road with 40-ton haul trucks.

Indeed, the blasting aspect of the conflicts issue was aptly described by Adam Bromley, District Ranger, Globe Ranger District, TNF, at the September 9, 2020 RUG meeting:

> *The Forest Service offered that 850 feet is well within the fallout area for blasting (up to 2000 feet for some mines), representing a valid public safety concern. Consequently, this sort of comment has been upheld in the past. Adam Bromley guessed that the Imerys letter will be sent to the Forest Service Office of General Counsel for review.*

The minutes of that meeting are attached hereto and incorporated herein as Attachment 3.

The Imerys mining operations and an adjacent campground are incompatible uses, incompatible uses that were obvious and known to Resolution, RUG, and TNF throughout the NEPA process. Those entities received knowledge of the conflict through a variety of means. As mentioned above, the proximity of the mine and campground were referenced in the Site Design adopted by RUG and forming part of the record.

The Castleberry Campground project was discussed in detail at more than one RUG meeting. Present at those meetings were Resolution and TNF representatives. Attached hereto as Attachment 4 is the July 10, 2019 Meeting Summary of RUG. Please note the attendance list and the Castleberry Campground discussion beginning on page 2. Also note the references to RV camping, big family parties, and herds of ATVs.

Attached hereto as Attachment 5 is the June 10, 2020 Meeting Summary of the Community Working Group. Again, note the attendance list and the Castleberry Campground discussion beginning on page 3. Also note references to RV, car, and tent camping.

We are unable to understand how potential conflicts between a mining operation and campground were overlooked through the process leading to the FEIS. The most cursory ground examination should have revealed the incompatibility of the two land uses. Indeed, TNF management of the Imerys POO should have revealed the same problems.

On another note, Imerys was not included in or otherwise directly notified about the RUG process. Nor was the Castleberry Campground brought up in any conversations between Imerys and TNF.

In summary, Imerys requests that TNF reject the Castleberry Campground concept and the placement of any camping facilities at that location as recreational mitigation under the FEIS.

Acceptance of the concept in the FEIS, and codified at FS-RC-04, is a fatal flaw that was obvious and known to all the relevant parties throughout the NEPA process.

Imerys reserves the right to amend or alter this objection as further information is developed.

Trails System

In this case, Imerys takes issue with another part of the FEIS Appendix J, Mitigation and Monitoring Plan. That part is FS-RC-03.

As with the FS-RC-04 flaw described above, the FS-RC-03 flaw was and is undeniably obvious. Tonto National Forest (TNF) and the Recreation User's Group of the Community Working Group (RUG) were both aware of the flaw through other means. Their awareness dates to at least 2019.

The TNF Final Mitigation Effectiveness Evaluation (FMEE), released last month, forms the basis of the trails plan currently under consideration by TNF. It is attached hereto and incorporated herein as Attachment 6.

TNF's final trail mitigation recommendations are found in Table 4 on page 18 of the FMEE. They are described with the following words:

> *Table 4 lists the routes and trail segments that the Forest Service recommends as mitigation to alleviate impacts to recreation resources resultant of the Resolution Copper Project. This network of trails and motorized routes will be carried forward and disclosed as part of the FEIS and included as required mitigation actions (i.e., Resolution Copper to provide funds for design and construction) as part of the Forest Service decision regarding the Resolution Copper Project. Figure 4 illustrates the Final recommended network, along with the revised parking/staging area locations and their relationship to the proposed Castleberry Campground and proposed access road to the Inconceivables climbing area.*

They are mapped on FMEE page 21. Note the concentration of trails and staging areas immediately east of Imerys' active quarry.

Some of the proposed trails basically abut the Imerys quarry. Problems that would develop as part of the proximity of Imerys operations and the motorized and non-motorized routes include:

- Proposed trails will endorse trespassing.
- Superior is a hard rock mine and the ore is blasted with explosives, posing a risk to anyone in the vicinity.
- The Superior Mine already contends with frequent trespassers. The proximity of the proposed trail system could drastically increase this frequency.

- The Superior Mine has numerous high walls and deep water posing serious risk to the safety of anyone who might end up on the site.
- The off-highway vehicle and hiking community are known for making their own route. Both represent trespass risks whether intentional or inadvertent.
- The independent and unmonitored nature of OHVs and hikers would make them extremely difficult to preclude during blasting operations, posing an enormous safety risk.

The Imerys mining operations and recreational routes and paths are incompatible uses, incompatible uses that were obvious and known to Resolution, RUG, and TNF throughout the NEPA process. Those entities received knowledge of the conflict through a variety of means.

As with the Castleberry Campground, the RUG motorized and non-motorized routes were discussed at more than one RUG meeting. Both the July 10, 2019 Meeting Summary of RUG and the June 10, 2020 Meeting Summary of the Community Working Group cited in my 26 August 2020 Castleberry Campground letter contain references to the trails plan. On page 3 of the June 10, 2020 Meeting Summary you will even find a specific reference to problems with the Imerys property. Nonetheless, Imerys was not included in the RUG or FEIS process.

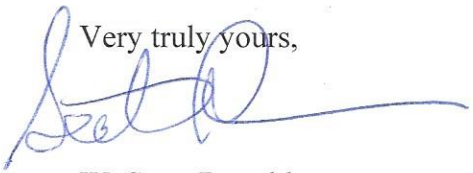
Conclusion

In conclusion, we are unable to understand how potential conflicts between a mining operation, a campground, and recreational trails were overlooked through the process leading to the FEIS. Those conflicts were both obvious and known to the relevant parties throughout the NEPA process.

Therefore, Imerys requests that TNF reject FEIS Appendix J FS-RC-04 and that part of FS-RC-03 referencing motorized or non-motorized routes in the close vicinity of Imerys property. Acceptance of either concept in the FEIS is a fatal flaw that was obvious and known to all the relevant parties throughout the NEPA process.

Imerys reserves the right to amend or alter this protest as further information is developed.

Very truly yours,



W. Scott Donaldson

Attachments