



Grant Smedley
Director
Water Rights & Contracts
Mail Stop: PAB38W
P.O. Box 52025 | Phoenix, AZ 85072-2025
Grant.Smedley@srpnet.com
(602) 236-2928

May 24, 2021

Via E-Mail

Reviewing Officer, Regional Forester
333 Broadway Boulevard SE
Albuquerque, NM 87102

RE: Objections to Final Environmental Impact Statement and Draft Record of Decision for the Pinto Valley Mine

To whom it may concern:

The Salt River Valley Water Users' Association ("Association") and Salt River Project Agricultural Improvement and Power District ("District"), collectively referred to as "SRP," respectfully submit these objections to the final environmental impact statement ("FEIS") and draft record of decision ("ROD") for the Pinto Valley Mine.

Introduction

The Association is an Arizona territorial corporation formed in 1903 to construct the Salt River Federal Reclamation Project ("Salt River Project"). In 1917, the United States turned over the care, operation, and maintenance of the Salt River Project to the Association. *See* Contract between the United States and the Salt River Valley Water Users' Association (Sept. 6, 1917) ("1917 Contract"). Today, SRP is comprised of seven dams and reservoirs, hundreds of wells, and a system that delivers approximately 800,000 acre-feet of water annually to an area encompassing nearly 350 square miles in metropolitan Phoenix.

The District, formed in 1937, is a political subdivision of the State of Arizona and provides electrical service to more than 1 million residential, commercial, and industrial customers in its 2400-mile service area. The Association and the District, pursuant to agreement, collectively operate SRP.

On January 27, 2020, SRP submitted comments to the Pinto Valley Mine Draft Environmental Impact Statement (DEIS). *See* Comments from Greg Kornrumph, Manager, Water Rights, SRP,

to Tonto National Forest (Jan. 27, 2020). The FEIS and draft ROD for the Pinto Valley Mine fail to adequately address the comments raised by SRP. Therefore, SRP objects to the FEIS and draft ROD for the Pinto Valley Mine for the reasons outlined below:

Objections

1. Impacts on Water Rights

SRP objects to the FEIS and draft ROD's evaluation of the impacts associated with the expansion of the Pinto Valley Mine and extension of the mine life because it would adversely impact SRP and its shareholders' downstream senior water rights. Under the proposed mining plan of operations, water required for the project would be withdrawn from the Peak Well-field in the Pinto Valley watershed. The Pinto Valley watershed is a sub-watershed of the Salt River and Pinto Creek flows into Roosevelt Lake. The FEIS states that "expansion of the Pinto Valley Mine and extension of the mine life under the proposed mining plan of operations would continue to withdraw water from mine water supply wells in the Pinto Creek watershed and... [t]hese activities *could reduce surface water flows in Pinto Creek* and other streams, seeps, and springs and could reduce groundwater quantity available for water rights held by both private and government entities." See FEIS at 1-13 (emphasis added).

The Salt River has been appropriated by SRP, its shareholders, numerous municipalities, and other downstream water users who hold senior water rights not considered in the FEIS or draft ROD. Lands within the Salt River Reservoir District hold decreed rights to the normal flow of the Salt and Verde Rivers and their tributaries with priority dates ranging from 1869-1910 under multiple judicial decrees including:

- Pursuant to the Decision and Decree, and all decrees supplemental thereto, entered by the District Court of the Third Judicial District of the Territory of Arizona, In and For the County of Maricopa, in *Hurley v. Abbott*, No. 4564, March 1, 1910 (Kent Decree), the priority dates set forth in the Kent Decree.
- Pursuant to the Decision and Decree, and all Decrees supplemental thereto, entered by the District Court of the Third Judicial District of the Territory of Arizona, In and For the County of Maricopa, in *United States v. Haggard*, No. 19, June 11, 1903 (Haggard Decree), the priority dates set forth in the Haggard Decree.
- Pursuant to the Decision and Decree, and all Decrees supplemental thereto, entered in *Benson v. Allison*, In the Superior Court of Maricopa County, State of Arizona, No. 7589, November 14, 1917 (Benson-Allison Decree), the priority dates set forth in the Benson-Allison Decree.

Moreover, SRP holds certificates of water rights, pursuant to the 1919 water code, with priority dates of August 30, 1920, October 2, 1920, and December 12, 1921, to store surplus waters from the Salt River and its tributaries, the Verde River and its tributaries, for storage in the Salt and Verde River Reservoirs. See Certificate of Water Right Nos. 33-97001.000; 33-97002.000; 33-



97003.000; 33-97004.000; 33-97005.000; and 33-11.0000. SRP also claims the right to store unappropriated waters of the Salt and Verde rivers and their tributaries under state law prior to the enactment of the 1919 water code. *See, for example*, Notices of Appropriation, Association (February 6, 1906); Notices of Appropriation, Association (March 4, 1914). In addition, SRP also claims water rights under federal law related to its construction as a federal reclamation project authorized in 1903 under the Reclamation Act of 1902 and acts amendatory and supplementary thereto as well as lands withdrawn by the U.S. for the purpose of constructing the federal reclamation project.

The reduction in surface water flows within Pinto Creek identified in the DEIS and FEIS due to Pinto Valley Mine activities will harm SRP and other downstream water right holders. In its comments on the DEIS, SRP urged the Forest Service to evaluate the impact that the expansion of the Pinto Valley Mine and extension of the mine life will have on the vested water rights of SRP, its shareholders, and other senior water right holders. Any reduction in surface water quantity caused by Pinto Valley Mine's operations, closure, and post-closure plans that harm senior water right holders must be mitigated. The Forest Service failed to consider appropriate alternatives that would address and mitigate these downstream impacts in the FEIS and draft ROD.

2. Mitigation of Impacts on Water Rights

SRP objects to the FEIS and draft ROD's water right mitigation measures because they do not meet the requirement set forth in law. *See* Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 40 CFR Parts § 1500. The draft ROD identifies that "[m]ine-induced drawdown and well field pumping could potentially reduce water levels and affect the active water rights within the projected drawdown areas" and that Pinto Valley Mine "should minimize adverse environmental effects to the extent feasible and implement practicable measures to maintain and protect fisheries and wildlife habitat that may be affected by the operation." However, no specific on-the-ground activities have been identified to mitigate reduction in water levels. The draft ROD simply directs Pinto Valley Mine to monitor "groundwater levels downstream of the mine to ensure surface water rights within the projected mine-related and well field related drawdown area are not affected." *See* Draft ROD at B-35. Monitoring groundwater levels does not address or resolve the impact of reduced baseflows in Pinto Creek as a direct result of pumping in the Peak Well-field.

Modeling results predict that the Pinto Creek baseflow was reduced by 82% from 1,070 gallons per minute ("gpm") at the end of 2012 to 188 gpm at the end of 2018. This reduction in baseflow was caused by Peak Well-field pumping and further reductions are expected through 2039 under the Proposed Action. Moreover, modeling results suggest that baseflows will return to 2012 levels approximately 10 years after mining ceases, however, surface water flow is expected to deteriorate to a steady state level of approximately 400 gpm one hundred years after closure. This represents 62% of the 2012 surface water flow and reduces inflows to Roosevelt Lake. Impacts to surface water flows due to the operation, closure, and post-closure of the Pinto Valley Mine are expected remain in perpetuity. Any reduction in surface water flow within Pinto Creek and in the alluvium underlying Pinto Creek caused by PVMC activities must be appropriately mitigated.



The Mitigation Measures in the FEIS and draft ROD simply require Pinto Valley Mine to “host and facilitate meetings annually, or as deemed necessary, that would include other Pinto Creek stakeholders including basin surface water rights holders and other agencies as deemed appropriate based on vested rights and interests.” *See* Draft ROD at 17. These mitigation measures are insufficient and inadequate for minimizing the harms caused by increased pumping. Mitigation measures should be specifically designed to maintain the historical flow regime of Pinto Creek and the hydrologic characteristics of the supporting aquifer. Moreover, while creek flows in 2011-2012 reflect years without Peak Well-field pumping, they do not reflect historical flows. Average annual flows for the USGS Pinto Creek gauge near Miami, Arizona from 1995-2012, prior to pumping by Pinto Valley Mine, was 12.3 cubic feet per second. Surface water flows in 2011 and 2012 were only 21% and 25% of that average annual flow respectively.

Mitigation Measures should require Pinto Valley Mine to determine the historical flow regime for Pinto Creek and the amount of water necessary to mitigate the impacts of the Proposed Action. There are water exchange mechanisms whereby a water supply can be obtained by Pinto Valley Mine and provided to SRP to offset the upstream impacts on the flows of Pinto Creek. The Forest Service did not consider mitigating the impacts through a water exchange or other physical alternative, that could be incorporated into the mitigation plan. SRP believes that such alternatives should have been considered as a potential remedy to mitigate the impacts of the Proposed Action on downstream water right holders.

Conclusion

The Salt River watershed is critical to sustainable growth and economic development in Arizona. SRP is committed to ensuring that tributaries that feed into the Salt River are protected and that senior water rights holders have adequate water supplies. It is important that the Forest Service consider Pinto Valley Mine’s impact on future water supplies originating from within the Salt River watersheds and protect those supplies from junior appropriators. The FEIS and draft ROD do not adequately evaluate or mitigate the impacts of the Proposed Action. Construction, operation, reclamation, and closure of the Pinto Valley Mine Project could result in a range of impacts on groundwater and surface water in the Pinto Creek watershed. SRP’s primary objections to Proposed Action related to the impacts on surface and groundwater quantity in the Pinto Creek watershed resulting from water use for the Pinto Valley Mine Project and the impacts on existing water rights. These impacts can result in a range of effects including reduction in the quantity and quality of water available for consumption and other human uses; degradation of surface water features such as seeps, springs, and Pinto Creek, degradation of aquatic and riparian habitats, and impacts to fish and wildlife. There are also potential everlasting impacts to surface water quantity from the Proposed Action without appropriate mitigation. These issues extend well beyond the Pinto Creek area. The Proposed Action will reduce inflows downstream at Roosevelt Lake and will impact SRP, its shareholders, other senior water right holders, and impact millions of water users in the Salt River Valley. Thus, SRP objects to the FEIS and Draft ROD for the reasons set forth above.

Please feel free to contact me if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Grant Smedley". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Grant Smedley