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May 20, 2021

Neil J. Bosworth, Forest Supervisor  
Attention: Richard D. Adkins, PhD, Tribal Relations Program Manager  
Tonto National Forest  
2324 E. McDowell Rd.  
Phoenix, Arizona 85006

Re: OBJECTION to the Pinto Valley Mine Project  
Final Environmental Impact Statement and Draft Record of Decision

Dear Supervisor Bosworth,

This letter is in further response to your correspondence dated April 8, 2021, regarding a final environmental impact statement and draft record of decision for the proposed expansion of the Pinto Valley Mine by Pinto Valley Mining Corporation, a wholly owned subsidiary of Capstone Mining Corporation, a Canadian copper mining company. The Hopi Cultural Preservation Office appreciates Tonto National Forest's continuing solicitation of our input and your efforts to address our concerns.

The Hopi Tribe claims cultural affiliation to earlier identifiable cultural groups on Tonto National Forest. The Hopi Cultural Preservation Office supports the identification and avoidance of our ancestral sites, and we consider the prehistoric archaeological sites of our ancestors to be "footprints" and Traditional Cultural Properties.

Our initial response was to provide you with our previous letters on this proposal dated January 27 and 31, 2020, June 5 and 13, 2019, May 21, 2018, April 7 and June 12, 2017, August 15, 2011, and September 1, 2010. To summarize, in 2017, we stated we understood Pinto Valley Mining Corp. has submitted a Plan of Operations that would authorize surface disturbance on National Forest lands and the Forest Service intended to develop an Environmental Impact Statement and amendment to the 1985 Tonto National Forest Land and Resource Management Plan that was then being revised.

We reviewed the cultural resources survey report covering 5,324.86 acres that identifies 66 National Register eligible prehistoric sites including 26 multi-room cobble masonry structures, 25 small habitation sites with masonry architecture and 15 resource procurement and

processing sites and determined that this proposal would adversely affect cultural resources significant to the Hopi Tribe. In a letter dated June 12, 2017, we stated we would support the No Action Alternative in the draft Environmental Impact Statement, we do not support a specific Forest Plan amendment for cultural resources for this proposal, and we do not support a mitigation plan for potentially affected sites.

In a letter dated May 21, 2018, we reviewed a report that reflects consolidation of previous surveys, reassessment of previously recorded sites and new survey and noted "Fourteen previously recorded sites were not relocated or have been overtaken by current operations." The report identifies 64 sites, 51 of which are prehistoric including numerous multi-room cobble masonry structures, small habitation sites with masonry architecture and resource procurement and processing sites. In a letter dated June 5, 2019, we reviewed the draft Treatment Plan and draft Memorandum of Agreement and stated we understand 14 sites are proposed for data recovery, 13 are proposed for protection and 18 sites will not be affected.

In letters dated January 27 and 31, 2020, we reviewed the draft Environmental Impact Statement, which states, "Some facilities were inadvertently placed or expanded onto National Forest system lands without modification to existing authorizations by Pinto Valley Mining Corp.'s predecessors." After encroaching on Forest Service lands the proponent is now proposing expanding onto Forest Service lands and extending the mine life from 2027 to 2039. The Purpose and Need for Action, Project Overview section cites the preliminary mining plan of operations submitted in 2016. We reiterated that we do not support the 1872 Federal Mining Law, but we do support the Forest Service acting on the Native American Sacred Sites report to protect Oak Flat and other Sacred Sites on the Forest.

The draft Environmental Impact Statement includes a No Action Alternative and the mining plan of operations as submitted. Alternatives were considered but eliminated from detailed study. The Executive Summary, ES-3.0 Decision to Be Made cites "or another alternative," and "a hybrid of various components of the alternatives considered," but the only other alternative is the No Action Alternative.

We asked, is previous encroachment followed by this proposed expansion consistent with the 1872 Mining Law and that the "Forest Service cannot categorically prohibit mining operations that are reasonably incident to mining locatable minerals on National Forest System lands in the area of the proposed action?"

The Executive Summary, ES-4.0 Consistency with the Forest Plan, cites cultural resources as a resource area in the Forest-Wide Cultural Resource Standard Guideline #4 in the forest plan prior to July 31, 2017, "Sites listed in, nominated to, eligible for, or potentially eligible for the National Register will be managed during the conduct of undertakings to achieve a "No Effect" finding..." This language was included based in part at least on tribal consultation and removed at least in part because it conflicted with the this proposal and the omnipotence of

the 1872 Mining Law. We reiterated we support the No Action Alternative in the draft Environmental Impact Statement, we do not support a specific Forest Plan amendment for cultural resources for this proposal, and we do not support a mitigation plan for potentially affected sites.

As understated in Issue 4: Cultural Resource Impacts Resulting from Project-Related Activity, Facilities, and Surface Disturbance: “Disturbance of known and unknown cultural resources is an impact that is important to many tribes, regardless of whether data recover or additional mitigation measures are undertaken.” As cited in the Affected Environment section, 37 Native American sites will be adversely affected by this proposal, and there are 122 identified cultural resources in and around the area of potential effect. 14 sites in the area of potential effect were not relocated or overtaken by mining operations.

In the Comparison of Alternatives, the Cultural Resources section states “Tribes oppose the disturbance and destructive impacts of mining and do not support it in any way,” for both Alternative 1, the No-Action Alternative and Alternative 1, Proposed Action. We supported Alternative 1, the No-Action Alternative in the draft Environmental Impact Statement.

In Issue 7: Environmental Justice, the Executive Summary states: “Based on the proximity of the Pinto Valley Mine Project to tribal lands and local communities, it will also be important to determine if the Pinto Valley Mine Project would result in disproportionate adverse effects on minority or low-income populations.”

In the Comparison of Alternatives, we asked if the “existing and operating” mine was the basis for the conclusion for both Environmental Justice alternatives that states: “No anticipated environmental justice impacts.” We asked if there was a 1970s analysis of tribal environmental justice for this project and strongly disagree with the conclusion that “No environmental justice impacts are anticipated to occur.” We stated the impacts to cultural resources and traditional cultural properties are impacts on tribes, not just archaeology.

Footnote 41 states: “As defined for this analysis, cultural resources include historic properties, traditional cultural properties, and sacred sites.” We stated the Environmental Justice section of the draft environmental assessment does not address tribal injustice and we pray for the human remains of our ancestors that will be disturbed as a result of this federal undertaking.

We supported Alternative 1, the No-Action Alternative in the draft Environmental Impact Statement and we stated that it will be and is important to determine if the Pinto Valley Mine Project expansion and extension will result in existing and ongoing disproportionate adverse effects on tribes and tribal members, resulting from additional and ongoing adverse effects to their cultural resources and traditional cultural properties.

The Proposed Action Summary cites: "Expansion of Open Pit and Tailings Storage Facility No. 3 and 4 in Pinto Valley Mining's unpatented claims on National Forest System Lands" and Alternatives, Mining Facilities Open Pit states: "No additional expansion would occur on National Forest System lands." In our letters dated June 5, and 1, 2019, we asked: Has the Forest Service assessed whether the proponent discovered valuable mineral deposits and has a patent specifically on these public Forest Service lands? Your January 17, 2020 response is "To specifically answer your question, there has been no determination made as to whether or not any of the claims contain a valuable mineral deposit."

We have also ask if the Forest Service lands proposed to be used as an expanded tailings storage facility are unpatented, is the Forest Service compelled to approve this proposal pursuant to the 1872 Mining Law? This question is based on current litigation regarding the proposed Rosemont mine on the Coronado National Forest, where the answer no is cited in the District Court Judge Soto opinion. Therefore, in light of this decision, we recommended the Forest Service undertake a legal review of this draft environmental impact statement to address this question.

In Alternatives, Mining Facilities Open Pit also states that a recent occurrence within the Open Pit on private Pinto Valley Mining Corp. property affected adjacent National Forest System lands, and a remediation plan was prepared that consists of the planned removal of 415,000 tons of material from the unpatented Pinto Valley Mining Corp. claims on National Forest System lands. We asked if this undertaking consistent with the Forest Management Plan?

The draft environmental impact statement acknowledges that "tribal concerns may expand as consultation takes place." We asked, what will be the water quality in the open pit lake and will the pit lake and surrounding area be reclaimed and open to the public or closed as a hazardous superfund site? If this mine is so valuable, why was it sold and closed intermittently?

The comment period for this draft environmental impact statement included not only the solstice and the ceremonies of December but the pandemic of "this difficult time" In support of water, wildlife and the environment, and pursuant to your January 13, 2020 e-mail response to our June 5 and 13, 2019 letters and January 13, 2020 e-mail, we requested an extension of the comment period to enable us to specifically address impacts from issues involving water and further address issues from impacts involving land ownership.

This Project is a historic, existing and ongoing testament to the overriding authority of the 1872 Mining Law, legalizing trespass on Forest Service lands and minimizing the theft of tribal lands and destruction of our archaeological cultural resources and living traditional cultural properties. This proposal pursuant to the 1872 Mining Law demonstrates that Manifest Destiny still rules in the 21<sup>st</sup> Century. Arizona became the Copper State in 1912 and it appears that Arizona will remain the Copper State through the 21<sup>st</sup> Century.

Reclamation doesn't reclaim Native American land, cultural resources, traditional cultural properties and sacred sites. It mitigates them through documentation, like the name Tonto National Forest. As we have stated previously, if Americans are to live together in America in the 21st Century, we must call together for another way of living. The laws of the past that are now being used against all American people must be consigned to the past, and replaced with laws that support life, and not destruction and death. We again ask, can we believe that our valuable tribal ancestral Arizona lands will be protected from foreign companies?

We supported the No Action Alternative in the draft environmental impact statement. And so, based on our previously submitted comments, we hereby object to the Final Environmental Impact Statement and Draft Record of Decision for the Pinto Valley Mine Project.

Your April 8, 2021 correspondence thanks us for the Hopi Cultural Preservation Office's engagement on this project, from the proponent's trespass through the pandemic to this decision, which incorporates and expands this application of the 1872 Mining Law. To acknowledge our effort we hereby request you review your decision in light of the Sacred Sites review under the previous Vilsack term and apply the discretion identified in that review.

We request continuing consultation on the monitoring and mitigation measures developed to minimize the adverse impacts on National Forest System lands, on identified and unidentified cultural resources and traditional cultural properties, on environmental justice, and on the other issues identified and unidentified in this environmental impact statement.

Respectfully,

A handwritten signature in dark ink, appearing to read "Stewart B. Koyiyumptewa", followed by a horizontal line.

Stewart B. Koyiyumptewa, Program Manager/THPO  
Hopi Cultural Preservation Office

References: Court Decision; January 27 and 31, 2020, June 5 and 13, 2019, May 21, 2018, April 7 and June 12, 2017, August 15, 2011, September 1, 2010 letters

xc: EarthJustice  
Center for Biological Diversity  
Arizona State Historic Preservation Office