



www.idahoconservation.org



March 22, 2023

Sent via email

To: Objection Reviewing Officer
Intermountain Region, U.S. Forest Service
324 25th Street
Ogden, UT 84401
objections-intermttn-regional-office@usda.gov

Re: OBJECTION to the Breccia Beta Exploration Drilling (EA) and Draft Decision Notice and Finding of No Significant Impact (DN/FONSI)

Responsible Official: Bobbi Filbert, Salmon-Cobalt District Ranger, Salmon-Challis National Forest

I. INTRODUCTION

Pursuant to 36 CFR Part 218, the **Idaho Conservation League (ICL)** and **Idaho Rivers United (IRU)** file this Objection to the Environmental Assessment dated February 2023 (EA), and Draft Decision Notice and Finding of No Significant Impact dated February 2023 (Draft DN/FONSI), issued by Salmon-Cobalt District Ranger for the Breccia Beta Exploration Drilling Project. The EA and Draft DN/FONSI are available at: <https://www.fs.usda.gov/project/?project=62641>.

Pursuant to Part 218, ICL is the Lead Objector. **Contact person: Josh Johnson, ICL Senior Conservation Associate,** [REDACTED]

Both ICL and IRU have fully participated in the NEPA process for this project. ICL and IRU submitted (separate) scoping comments in September 2022 that highlighted our organizations' concerns with the project. There was no opportunity to comment on a Draft EA for this project so this objection phase is our only other opportunity since scoping to engage with this project in

the NEPA process. We have reviewed the Final EA and all of the accompanying specialist reports and biological evaluations.

We are also intimately familiar with the portion of Panther Creek adjacent to the project area. ICL, through the Upper Salmon Conservation Action Program, has funded conservation work on this stretch of Panther Creek with the Western Rivers Conservancy. Thus, we have an even greater vested interest than usual in ensuring that this watershed is not adversely impacted by the proposed mineral exploration activities. We also note that those same WRC parcels have not been (or will soon be) conveyed to the Salmon-Challis NF and are slated for fisheries restoration work, yet another reason why the Forest Service should be implementing as strong environmental safeguards as possible for the Breccia Beta project.

Pursuant to 36 CFR 218.8, the Objectors state that the following content of this Objection demonstrates the connections between the Objectors' comments for all issues raised herein unless the issue or statement in the EA or Draft DN/FONSI arose or was made after the opportunity for comments, as detailed herein. Pursuant to 36 CFR 218.8(b), the Objectors' previous comments dated September 21, 2022 (ICL) and September 29, 2022 (IRU), are hereby incorporated by reference.

II. OBJECTIONS

A. Insufficient baseline water quality data

ICL raised this issue in their scoping comments at pages 5-7. IRU raised this issue in their scoping comments at pages 3-4.

Although this project proposes a total of 143 drill sites, the project does not include existing or proposed baseline water quality data (groundwater or surface water), in violation of NEPA. To take the required "hard look" at a proposed project's effects, an agency may not rely on incomplete or incorrect assumptions or data. The fact that there is no existing groundwater baseline data or proposed groundwater monitoring for the entire project area is in clear violation of that NEPA requirement.

To fulfill NEPA requirements, the Forest Service and mining operators must establish baseline surface and groundwater water quality sampling upgradient of, within and downgradient of the project area. Potential sample sites include surface waters, springs, seeps, and adit discharges. Within any NEPA approvals, the Forest Service should describe the monitoring locations, frequency of testing, triggers for additional actions, and protocols if these triggers are tripped. It is important to establish baseline water quality sampling well in advance of drilling operations

and encompass both annual and seasonal variations. We generally recommend collecting three years of water quality and quantity data both upgradient and downgradient of mining projects.

Without baseline data, the impact to groundwater and surface water remains uncertain because there is no information as to the current water quality of the project area. Thus, it is impossible to know if the proposed exploration activities will impact water quality. “Without establishing the baseline conditions which exist ... before [a project] begins, there is simply no way to determine what effect the [project] will have on the environment and, consequently, no way to comply with NEPA.” *Great Basin Resource Watch v. BLM*, 844 F.3d 1095, 1101 (9th Cir. 2016) (quoting *Half Moon Bay Fishermans' Mktg. Ass'n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988)).

Federal courts have repeatedly held that insufficient baseline groundwater and surface water studies for mineral exploration violate NEPA. See *Idaho Conservation League v. U.S. Forest Service*, No. 1:11-cv-00341-EJL, 2012 WL 3758161, *16–*17 (D. Idaho Aug. 29, 2012) (Forest Service violated NEPA by failing to gather baseline groundwater hydrology data necessary to understand potential impacts of drilling and improperly relied on post-approval monitoring in approving 5-year CuMo exploration project); *Gifford Pinchot Task Force v. Perez*, No. 03:13-cv-00810-HZ, 2014 WL 3019165, *25, *31 (D. Or. July 3, 2014). (Forest Service violated NEPA by failing to gather baseline groundwater data and by relying on monitoring during the project that only includes a portion of the exploration project site in approving Goat Mountain exploration); *Idaho Conservation League v. U.S. Forest Service*, No. 1:18-cv-504-BLW, 2019 WL 6896908 (D. Idaho Dec. 18, 2019), *4 (same when the Forest Service approved the 5-year Kilgore exploration project).

In May 2020, a federal court in Idaho vacated the Decision Notice and EA for the Kilgore Exploration Project on the Caribou-Targhee National Forest because--even though the Forest Service conducted thorough baseline groundwater studies and setup ongoing groundwater and surface water monitoring for 85% of the project site--the Forest Service failed to do the same for the other 15% of the project area. *Idaho Conservation League v. U.S. Forest Service*, No. 1:18-cv-504-BLW, 2020 WL 2115436 (D. Idaho May 4, 2020). The Court held that the Forest Service failed to take a hard look at potential impacts to groundwater from drilling in violation of NEPA, and ruled that the Forest Service could not permit any exploration activities until this error was corrected for the entire project area. *Id.*

While we appreciate that a Groundwater Specialist Report was created as part of the analysis for this project, narrative summaries about the potential impacts to groundwater do not obviate the need for groundwater (and surface water) baseline data. Rather, both should be complementary components of any mineral exploration project. The Forest Service should follow the guidance found in their *Working Guide - Evaluating Groundwater Resources for Mineral Exploration*

Drilling (Release 4 - July 2020) when considering how to conduct a groundwater quality baseline. A similar effort to collect baseline surface water quality data should be conducted as well.

Suggested remedies:

- Establish baseline water quality monitoring for local surface waters and groundwater as a condition of the project approval. Sufficient data should be collected to understand the natural variability of the hydrologic system prior to exploration activities commencing in the project area.

III. CONCLUSION

In conclusion, as detailed above and in the previous comments submitted by the Objector, the EA and Draft DN/FONSI fail to fully comply with numerous federal laws, regulations, policies, and other requirements. As such, the Forest Supervisor's Office must remand both documents and correct all errors noted herein. The Forest Service cannot approve any of the action alternatives described in the EA and Draft DN/FONSI, or any other alternative, unless and until all laws, regulations, policies, and other requirements noted herein are satisfied. To specifically address the issues raised in this objection, the baseline water quality data must be significantly bolstered.

We formally request a meeting with the Deciding Official and the Objection Reviewing Officer to discuss these concerns in detail. Although it is not a statutory requirement for the Forest Service, we believe this kind of meeting would be beneficial to potentially resolve our objection and improve the project.

Respectfully submitted,



Josh Johnson
Senior Conservation Associate
Idaho Conservation League



Nick Kunath
Conservation Program Manager
Idaho Rivers United

