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January 12, 2024

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 Iron Creek 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)** files this Objection to the Environmental Assessment dated November 2023 (EA), and Draft Decision Notice and Finding of No Significant Impact dated November 2023 (Draft DN/FONSI), issued by Salmon-Cobalt District Ranger for the Iron Creek Exploration Drilling Project. The EA and Draft DN/FONSI are available at: <https://www.fs.usda.gov/project/?project=63150>.

Pursuant to Part 218, ICL is the Lead Objector. **Contact person: Josh Johnson, ICL Central Idaho Director**, PO Box 2671, Ketchum, ID 83340, 208.318.5808; jjohnson@idahoconservation.org. Street Address: 110 W 5th St., Ste. 201, Ketchum, ID 83340.

ICL has fully participated in the NEPA process for this project. ICL submitted scoping comments in December 2022 that highlighted our initial 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 formally engage in the NEPA process for this project. We have reviewed the Final EA and the accompanying specialist reports to inform this objection.

We are also intimately familiar with other mineral exploration projects on the Salmon-Challis National Forest. ICL has filed similar objections in the past on other mineral exploration projects based on the same two primary issues - lack of water quality baseline data and lack of ongoing water quality monitoring. In an ideal world, we wish to come to a broader solution on these key issues with the Forest Service rather than need to object to almost every mineral exploration project on the SCNF. However, we will continue to pursue the avenues we need to in order to address what we consider to be major deficiencies in these mineral exploration projects from a water quality standpoint. We note that we have successfully resolved several previous objections when the Forest Service added what we consider to be standard requirements for water quality monitoring.

Pursuant to 36 CFR 218.8, the Objector states that the following content of this Objection demonstrates the connections between the Objector's 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 Objector's previous comments dated December 8, 2022 are hereby incorporated by reference.

II. OBJECTIONS

A. Insufficient baseline water quality data

ICL raised this issue in our scoping comments on pages 5-7.

Although this project proposes a total of 91 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 baseline data for surface water or groundwater 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.*

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 also be conducted.

Suggested remedies:

- Collect baseline water quality data 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. Although site specific conditions may vary, we generally recommend collecting three years of baseline water quality data and note that other operators have been able to do this before advancing proposals for their drilling operations.

B. Lack of water quality monitoring

ICL raised this issue in our scoping comments on page 4.

Although this project proposes a total of 91 drill sites, the project does not include any water quality monitoring for surface water or groundwater, 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 surface water or groundwater monitoring proposed 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 regular water quality monitoring locations. Potential sample sites include surface waters (especially North Fork Iron Creek), 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.

To not include a water quality monitoring plan whatsoever for a mineral exploration project of this size is of significant concern for ICL, both in relation to this specific project and as a broader precedent for future projects.

Suggested remedies:

- Develop a comprehensive surface water/groundwater monitoring plan as a condition of this project approval. The plan should include a sufficient number and geographic spread of monitoring sites to encompass the local waters potentially impacted by mineral exploration activities.

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 decision document must be amended to include 1) a requirement for baseline data collection and 2) a robust water quality monitoring plan for the project going forward.

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,

A handwritten signature in black ink, appearing to read 'Josh Johnson', is positioned above the typed name and contact information.

Josh Johnson
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