WESTERN MINING ACTION PROJECT

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August 4, 2025

Reviewing Official, Regional Forester
USDA Forest Service, Southwest Region,
Southwestern Region
333 Broadway SE
Albuquerque, NM 87102

Portal https://cara.fs2c.usda.gov/Public/CommentInput?Project=48956

RE: **OBJECTION to the**
Resolution Copper Project
Final Environmental Impact Statement ("FEIS") and
Draft Record of Decision ("Draft ROD" or "DROD")

Responsible Official: Neil Bosworth, Forest Supervisor
Tonto National Forest

Pursuant to 36 CFR Part 218, on behalf of the **Inter Tribal Association of Arizona, Inc. ("ITAA" Lead Objector**), Arizona Mining Reform Coalition ("AMRC"), Access Fund, Center for Biological Diversity, Earthworks, and the Sierra Club – Grand Canyon (Arizona) Chapter, ("Objectors"), by and through their undersigned attorneys, file this Objection to the FEIS and Draft ROD for the Resolution Copper Project ("Mine" or "Project") issued by Tonto Forest Supervisor Neil Bosworth on June 16, 2025 (noticed in the Federal Register on June 20, 2025). This includes the proposed Amendments to the Tonto Forest Plan contained in FEIS Appendix T and Section 2.1.4 of the DROD. *See* https://www.resolutionmineeis.us/.

Because the challenged amendments to the Forest Plan are proposed as specific to the Resolution Project, these Objections regarding the proposed amendments are filed under Part 218, not Part 219. "When a plan amendment is approved in a decision document approving a project or activity and the amendment applies only to the project or activity, the administrative review process of 36 CFR part 215 [not applicable] or part 218, subpart A, applies instead of the objection process established in this subpart." 36 C.F.R. § 219.59(b).

A legally compliant FEIS is required for the Forest Service to approve the Land Exchange that would give to multinational mining conglomerate, London-based Rio Tinto Corp. and related companies ("Rio Tinto," "Resolution," or "Resolution Copper") over 2,400 acres of federal land within the Tonto National Forest. The Exchange and related Forest Service approvals would facilitate Rio Tinto's proposed mine known as the Resolution Copper Mine.

Because the DROD is based on the FEIS, these Objections show that both the DROD and FEIS fail to comply with numerous federal laws, including the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq*. ("NEPA"); Section 3003 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015, 16 U.S.C. § 539p ("NDAA" or "Section 3003"); Forest Service Organic Administration Act of 1897, 16 U.S.C. §§ 475, 478, 551 ("Organic Act"); Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701 *et seq.* ("FLPMA"); Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* ("CWA"); National Forest Management Act, 16 U.S.C. §§ 1600-1614 ("NFMA"); the Clean Air Act, 42 U.S.C. §§ 7401 *et seq*. ("CAA"); Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.* ("ESA"); Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712 ("MBTA"); Bald and Golden Eagle Protection Act, 16 U.S.C. §§ 668-668d ("BGEPA"); the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq*. ("APA"), and the implementing regulations, Executive Orders, and policies of these and other laws discussed herein.

The remedy for these violations is for the Forest Service to withdraw the FEIS and DROD and not issue any decision or take any action based on the inadequate FEIS. This includes the proposed Land Exchange with Resolution Copper, the proposed Forest Plan Amendments, as well as any and all Special Use Permits, Road Use Permits, Rights-of-Way, and other authorizations proposed to be issued by the Forest Service to Resolution and the Salt River Project ("SRP").

The Forest Service must not take any action until a revised FEIS and revised DROD demonstrates full compliance with each and every law, regulation, policy, and Executive Order noted herein. The Regional Forester must withdraw the FEIS and DROD with instructions to the Tonto National Forest to correct all errors noted herein before the Agency can consider approving or taking any actions.

All Objectors filed comments on the Draft EIS in November 2019 and submitted additional and supplemental comments to the Forest Service in December of 2020 and April of 2025 (prior to issuance of the FEIS an DROD) and have fully participated in the Forest Service's ("USFS") review of the Project.

Pursuant to 36 C.F.R. § 218.8, the Objectors state that the following content of this Objection demonstrates the connections between the November 2019, October 2020, December 2020, and April 2025 comments ("previous comments"), as well as the Objections filed on January 26, 2021 and February 26, 2021, for all issues raised herein, unless the issue or statement in the FEIS or DROD arose or was made after the opportunity for comment on the Draft EIS closed, as detailed herein. It should be noted that the public was never provided an opportunity to comment after the DEIS was issued, or regarding the changes to the FEIS or DROD since January 2021, so all changes to the FEIS or DROD since then could never have been commented upon. Pursuant to the Administrative Procedure Act, 5 U.S.C. § 553-706, and USFS requirements, the Regional Forester's Office must provide a detailed response to each of the issues/objections raised in this Objection.

All previous comments submitted by the Objectors, as well as the previous Objections submitted on January 26, 2021, and February 26, 2021, including all exhibits and attachments submitted to the Forest Service by the Objectors, are already in the possession of the Reviewing Officer and Regional Office, and are hereby incorporated into this Objection and into the administrative record and hereby submitted to the Reviewing Officer for its review and consideration. The DEIS comments and exhibits/attachments are also included in FEIS Volume

6, Appendix R. *See e.g.*, R-72 to R-74 (listing the issues raised by AMRC and the location of the Agency's response in Appendix R); R-75 to R-76 (listing the issues raised by the ITAA and the location of the Agency's response in Appendix R); R-74-75 (Center for Biological Diversity); R-77 (Sierra Club).

Interests and Description of Objectors

The **Inter Tribal Association of Arizona, Inc. ("ITAA")**, is an intertribal, non-profit organization of 21 federally recognized Tribes with lands located primarily in Arizona, as well as in California, New Mexico, Utah, and Nevada. The ITAA's Member Tribes have worked together since 1952 to provide a united voice for Tribes on matters of common concern, and have stood in united opposition to the Resolution Copper Mine and Land Exchange Project for nearly 20 years. The representatives of ITAA are the highest elected tribal officials from each of the Member Indian Tribes, including tribal chairpersons, presidents, and governors. ITAA's Member Tribes are the Ak-Chin Indian Community, the Cocopah Tribe, the Colorado River Indian Tribes, the Fort McDowell Yavapai Nation, the Fort Mojave Indian Tribe, the Gila River Indian Community, the Havasupai Tribe, the Hopi Tribe, the Hualapai Indian Tribe, the Kaibab Band of Paiute Indians, the Pascua Yaqui Tribe, the Quechan Tribe, the Salt River Pima-Maricopa Indian Community, the San Carlos Apache Tribe, the San Juan Southern Paiute Tribe, the Tohono O'odham Nation, the Tonto Apache Tribe, the White Mountain Apache Tribe, the Yavapai-Apache Nation, the Yavapai-Prescott Indian Tribe, and the Zuni Tribe.

The **Arizona Mining Reform Coalition ("AMRC")** works in Arizona to improve state and federal laws, rules, and regulations governing hard rock mining to protect communities and the environment. AMRC works to hold government agencies and mining operations to the highest environmental and social standards to provide for the long term environmental, cultural, and economic health of Arizona.

The **Access Fund** is the national advocacy organization that works to keep U.S. climbing areas open and conserves the climbing environment. Founded in 1990, the Access Fund works with more than 145 affiliated local climbing organizations around the country in supporting and representing more than 8 million climbers nationwide in all forms of climbing: rock, ice, mountaineering, and bouldering.

The **Center for Biological Diversity ("Center")** is a non-profit public interest organization with headquarters located in Tucson, Arizona, representing more than 90,000 members dedicated to the conservation and recovery of threatened and endangered species and their habitats. The Center works through science, law, and policy to secure a future for all species, great or small, hovering on the brink of extinction. The Center has long-standing interest in projects of ecological significance undertaken in the National Forests of the Southwest, including proposed mining projects.

Earthworks is a nonprofit organization dedicated to protecting communities and the environment from the adverse impacts of mineral and energy development while promoting sustainable solutions. Earthworks stands for clean air, water and land, healthy communities, and corporate accountability. Earthworks supports solutions that protect both the Earth's resources and our communities.

The **Sierra Club** is one of the nation's oldest and most influential grassroots organizations whose mission is "to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate

and enlist humanity to protect and restore the quality of the natural and human environments." Sierra Club has more than 2.4 million members and supporters with 35,000 in Arizona as part of the Grand Canyon (Arizona) Chapter. Its members have long been committed to protecting and enjoying the Tonto National Forest.

Objectors have long-standing interests in the proper and lawful management of the National Forests, especially the Tonto National Forest near and adjacent to the town of Superior, including the lands within the Project and Exchange area. Objectors also have long-standing interests in the proper implementation of NEPA and federal public land management laws. Members, officers, staff, and supporters of Objectors participate in a wide range of aesthetic, scientific research, recreational, commercial, and traditional, religious and cultural activities on the Tonto National Forest and within and adjacent to the lands proposed to be impacted by the Exchange and Project activities reviewed in the FEIS.

Objectors' members, officers, staff, and supporters hike, rock climb, guide commercial clients, picnic, conduct cultural and religious ceremonies, appreciate scenery, solitude, and quiet, engage in scientific research projects, and view and value wildlife, in the lands at the site of the Exchange, Project operations, and related infrastructure, including waters adversely affected by the Exchange and Project (such as Ga'an Canyon, Queen Creek, Mineral Creek, and springs and seeps that will suffer severe loss or elimination of flows). Objectors' members, officers, staff, and supporters have concrete plans to continue pursuing these activities on the specific lands and transportation and infrastructure routes impacted by the Exchange and Project operations. These uses will be immediately and irreparably diminished or eliminated altogether by the Exchange and Project operations. Many of Objectors' members live in the town of Superior and near the Project area that will be adversely affected by the Exchange and the Project, while the Mine and all of its infrastructure would exist within the ancestral lands of ITAA's Member Tribes.

INTRODUCTION

On January 15, 2021, the Forest Service published the initial FEIS and DROD for the Resolution Copper Mine and Land Exchange. Objectors immediately filed suit and moved for a preliminary injunction. On March 1, 2021, the agency rescinded the FEIS and DROD. In the ensuing 4 years, the agency did not provide any opportunity for public comment on the changes to the 2021 FEIS and DROD. On June 16, 2025, the Forest Service released the new Final EIS ("FEIS") and Draft Record of Decision ("DROD") on its website. Notice was posted in the Federal Register on June 20, 2025.

The Mine would pump and dewater groundwater and completely obliterate sacred land, Oak Flat, by creating a roughly two-mile-wide and 1,000 foot deep crater from the "block cave" mine operation. This mining method would involve excavating ore 4,500 to 7,000 feet underground within the exchanged parcel and then collapsing the void areas created by the excavation. The result would be a massive, permanent crater. The Mine would transform Oak Flat, which has since time immemorial, been a place of profound religious, cultural, and historical significance, sacred to indigenous people, including the Western Apache and the Yavapai Peoples, into a rubbleized crater, whose steep and unstable slopes would forever remain unsafe for human use.

The faulty FEIS, DROD, and Project review is deficient in numerous critical areas, and violates multiple federal laws. As just one example, the agency completely changed its regulatory structure for reviewing the Project in late 2020 but never provided any public review of the regulatory switch, despite the critical public land issues the 11th hour reversal raise. The agency did this again in 2025, adding the proposed Amendments to the Forest Plan without any public review, as required by NEPA and the NFMA.

Additional problems with the FEIS include its: legally erroneous "purpose and need" that governed the Forest Service's review of the Project; failure to establish and analyze an appropriate environmental baseline; failure to provide for and analyze a full range of reasonable alternatives; failure to provide a full analysis of the impacts of those alternatives; failure to apply the full scope of federal laws applicable to the Project; improper regulation and review of the Project and its infrastructure under erroneous interpretations of federal law; failure to include any information or opportunity to comment on the appraisals that Congress required to be completed (including the additional Non-Federal lands that may be conveyed to the United States based on the appraisals); failure to adequately analyze connected actions and the direct, indirect, and cumulative impacts from the Exchange and Project; and failure to take the required "hard look" under the National Environmental Policy Act ("NEPA"), as well as otherwise violating federal law as noted herein.

Oak Flat, shown above, is located within the Tonto National Forest east of the town of Superior, Arizona.

The Oak Flat area is a place of profound religious, cultural, and historic significance to the San Carlos Apache Tribe and other Indian tribes, nations, and communities in Arizona, including the White Mountain Apache Tribe, the Tonto Apache Tribe, the Fort McDowell Yavapai Nation and others. *See* Hearing before the Subcommittee on Public Lands and Forests

of the Committee on Energy and Natural Resources, United States Senate on S.409, 111th Cong., S. Hrg. 111-65 (June 17, 2009); *see also* Legislative Hearing Before Subcommittee on National Parks, Forests and Public Lands in the U.S. House Natural Resources Committee regarding H.R. 3301, 110th Cong., Serial No. 110-52 (November 1, 2007).

Oak Flat lies within the ancestral lands of the San Carlos Apache Tribe, just west of the San Carlos Apache Reservation. The San Carlos Apache Reservation is home to more than 17,000 enrolled Tribal members. Apache People call Oak Flat "*Chich'il Bildagoteel,"* or "a Flat with Acorn Trees" and it lies at the heart of *T'iis Tseban* Country, which is associated with at least eight Apache clans, and two Western Apache bands, the Pinal Band and the Aravaipa Band.

Because of its importance to the Apache Tribe and other tribes, nations and communities, Oak Flat is included in the National Register of Historic Places as a Traditional Cultural Property ("TCP") under Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470 *et seq.* ("NHPA"), and it meets the criteria to be identified as a "sacred site" within the meaning of Executive Order 13007, Indian Sacred Sites, May 24, 1996, 61 Fed. Reg. 26771 ("E.O. 13007"), the American Indian Religious Freedom Act, 42 U.S.C. § 1996, *et. seq*. ("AIRFA"), and related laws, regulations and policies.

The religious and cultural importance of the Oak Flat area does not reside in isolated spots, but rather in the area as a whole. For the Apache People, the area of "Oak Flat" is bounded to the west by (and including) the large escarpment known as "*Dibecho Nadil*" or "Apache Leap" and on to the east by (and including) *Gan Bikoh*, which means "Crowndancers Canyon," though it is often referred to by Apache People as "Ga'an Canyon" and by non-Indians and in the FEIS as "Devil's Canyon." Oak Flat is bounded to the north by (and including) *Gan Daszin* or "Crowndancer Standing," which is delineated on most maps as "Queen Creek Canyon."

Ga'an Canyon, as referred to by Apache People, which bounds Oak Flat to the east and would suffer long term loss of water, seeps and springs as a result of Resolution's groundwater pumping. A large mine waste pipeline would span the Canyon, destroying its cultural, religious, and historical uses and values.

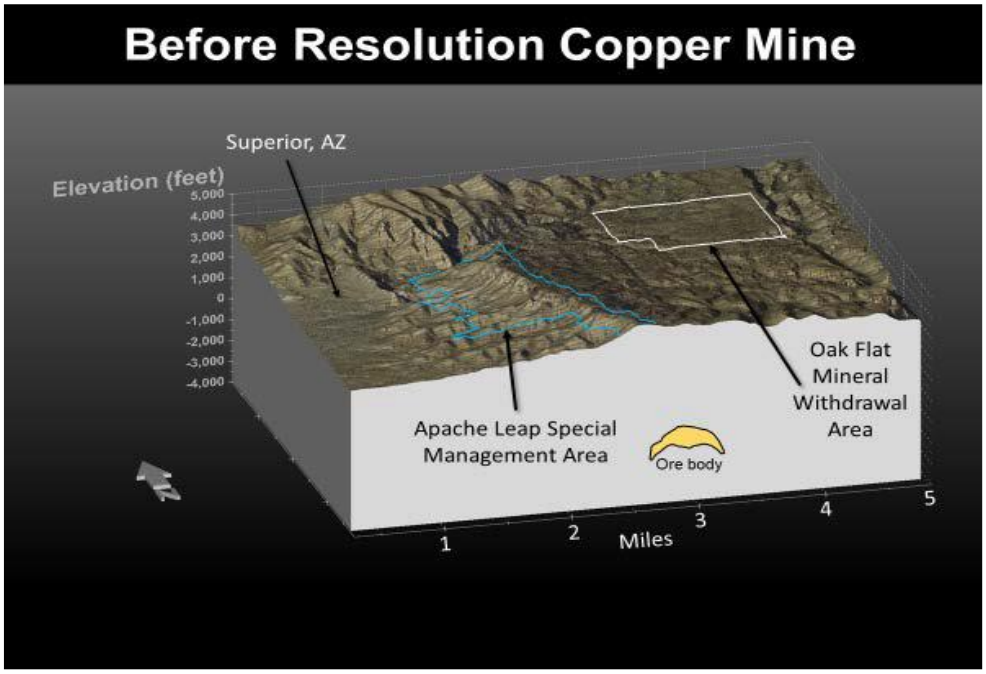
The ancient oak grove at Oak Flat provides an abundant source of acorns that, for many centuries and even today, provides an important traditional food source for the Apache People. There are also hundreds of plants and other living things in the Oak Flat area that are essential elements of the Apache religion and culture. Some of these plants are medicines known to and harvested only by gifted Apache herbalists. Although these plants can be gathered in other areas, Apaches believe that only plants within the Oak Flat area are imbued with the unique power of this area.

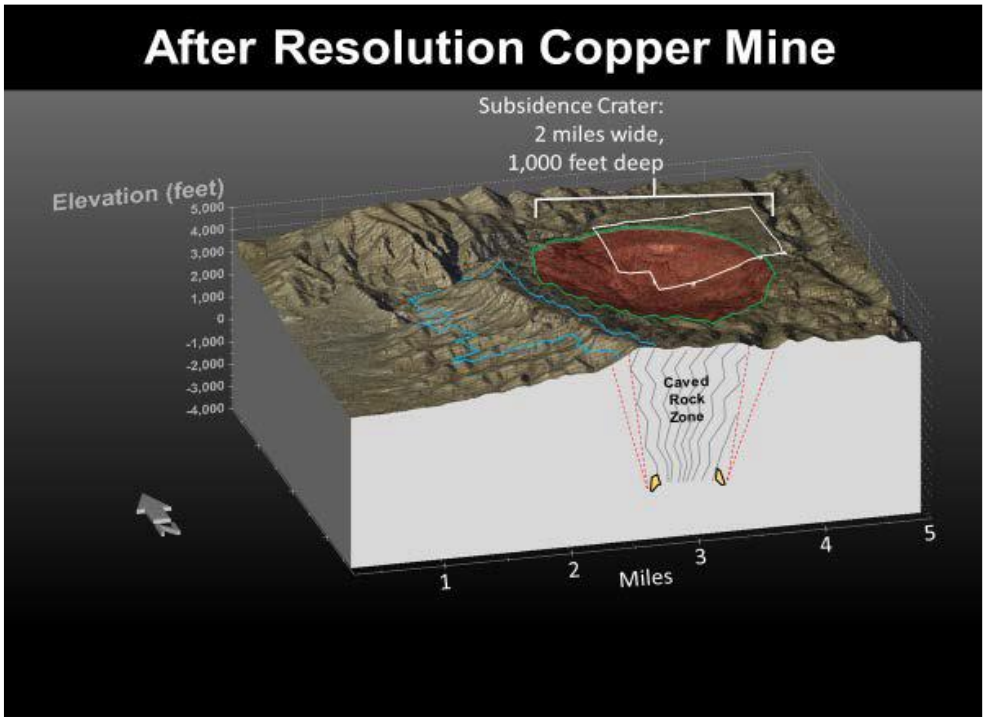
Oak Flat is also recognized for its beauty and importance to outdoor enthusiasts, including members of Objector groups who value it for outdoor recreation and as a place of unique biological diversity. Oak Flat attracts rock-climbers from around the country as it contains numerous large boulders, thousands of developed climbing routes, and spectacular outcroppings. It was the site of the largest outdoor bouldering competition in the world for 15 years In the campground and picnic area, ancient oak trees provide shade for hikers, campers, and picnicking families, and give sanctuary to many important bird species. Sitting at an approximate elevation of 4,200 to 4,600 feet above sea level, Oak Flat is a cool respite for the many travelers and visitors from Phoenix and elsewhere, who often recreate at Oak Flat and in the surrounding Forest Service lands.

Wildlife cameras have documented a wide variety of wildlife at Oak Flat, including mountain lion, bear, and coatimundi. Nearby lands provide important wildlife habitat for Federally listed endangered and threatened species such as the southwestern willow flycatcher,

yellow billed-cuckoo, Gila chub, Arizona hedgehog cactus, and ocelot. Over 170 bird species have been documented at Oak Flat.

The "block-cave" mine method and the resulting crater will forever transform and obliterate Oak Flat:





Before and After Graphics of Resolution Copper Mine.[1]

Graphics From Written Testimony of James Wells, PhD, Environmental Geologist, L. Everett & Associates, Environmental Consultants, Testimony before House Natural Resources Subcommittee on Indigenous Peoples of the United States Hearing on "The Irreparable

In addition to destroying the sacred lands of Oak Flat, thousands of additional acres would become permanent unlined waste dumps, buried under nearly 1.4 billion tons of toxic waste covering six square miles behind a 490-foot-high dam. This toxic sludge would travel through 19 miles of pipeline, traversing desert canyons, including Ga'an Canyon, and washes to reach this permanent dump location that is upstream and upgradient of the Gila River southeast of the mining area. The Project would also include a new 22-mile pipeline to transport the copper ore concentrate west/southwest towards the town of Magma for further processing and shipment. *See generally*, FEIS at ES-7 to ES-8 (Project description).

The Project would use massive amounts of water. The estimated total quantity of water needed for the life of the mine (construction through closure activities) ranges from up to 677,000 acre-feet ("AF") as analyzed in the FEIS to as much as 786,626 AF predicted in Resolution's mine plan.[2] The water would be consumed from various sources, including from mine dewatering and groundwater pumping. Much of the water consumed by the Project would be pumped from the groundwater underlying the heart of the East Salt River Valley.

The Exchange and Project would perpetrate a systematic violation of *Chich'il Bildagoteel* (Oak Flat) through mining, drilling, groundwater pumping (resulting in severe impacts to water resources), grading, construction, road building and expansion, traffic, light and noise pollution, sediment and erosion, and other activities. These activities would result in the physical destruction of Oak Flat (including Ga'an Canyon), forever changing the character of Oak Flat relative to its crucial role in Apache religion and culture, and the introduction of auditory, visual and atmospheric disturbances that would profoundly destroy the integrity of this special place (both as a "Traditional Cultural Property" under the National Historic Preservation Act and as a sacred site) for Tribal members.

The Mine and Exchange have long been opposed by the San Carlos Apache Tribe, whose reservation is located just east of the Exchange area, along with essentially all other Native American Tribes in Arizona, including all of the Member Tribes of Objector, the ITAA, which, through ITAA or its sister organization, the Inter Tribal Council of Arizona, Inc., has testified in Congress against the Exchange and enacted resolutions in opposition to the Exchange and Mine.

The significance of Oak Flat has been long recognized. In 1955, 760-acres of Forest Service managed lands that are included in the Exchange and would be permanently damaged by the Mine, were withdrawn from mining and mineral entry by the Eisenhower Administration as the "Oak Flat Withdrawal Area" in Public Land Order 1229. The withdrawal prevented mining companies, such as Rio Tinto, from conducting mineral exploration or other mining-related activities at or underneath the Withdrawal Area. That withdrawal is still in place today and until the Exchange occurs, no mining on or under these lands can be authorized.

After a decade of lobbying to acquire these sacred lands around the copper deposit that Rio Tinto seeks to mine, a rider was added to a must-pass appropriations bill for the Defense Department leading to Congressional authorization of the Exchange. But Congress expressly conditioned the Exchange on the Forest Service issuing the FEIS in full compliance with the

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Environmental and Cultural Impacts of the Proposed Resolution Copper Mining Operation" 12 (Mar. 12, 2020).

[2] An acre-foot of water equals roughly 325,851 gallons.

terms of the Act, and all other applicable laws. *See* 16 U.S.C. § 539p (§3003). And it is only after such a lawful document is issued that the Exchange clock could start, providing 60 days for the Secretary of Agriculture to execute the Exchange. § 3003(c)(10) ("Not later than 60 days after the publication of the final environmental impact statement, the Secretary [of Agriculture] shall convey all right, title, and interest of the United States in and to the Federal land to Resolution Copper.").

The exchange parcel to be conveyed to Resolution Copper includes not only the Oak Flat Withdrawal Area but also Forest Service surface lands that lie above the copper deposit subsurface. This collective 2,422-acre tract of land is known as the "Oak Flat Federal Parcel" in the NDAA.

Although Congress directed the Forest Service to exchange the federal parcels at and around Oak Flat as described in the NDAA, Congress required all federal agencies to otherwise comply with NEPA and all applicable laws, for both the review and approval of the Exchange, as well as for Resolution's plans for facilities related to the Mine, such as tailings impoundments, mine shafts, pipelines, electrical transmission lines and facilities, roads, water use, and other activities.

The Agency specifically stated that the FEIS needed to be completed, and comply with NEPA, before the Exchange could be approved. Fed. Reg., Vol. 81, at 14829 (March 18, 2016). Indeed, in a response to a public letter to Rio Tinto/Resolution, the company reiterated that the Exchange could not be authorized/approved unless the FEIS was fully compliant with NEPA:

> The Resolution land exchange, in contrast to other land exchanges mandated by Congress, is subject to completion of an environmental impact assessment under the National Environmental Policy Act (NEPA) by the US Forest Service. Other land exchanges mandated by Congress occur 60 days after passage without a review under NEPA. **Making the Resolution land exchange contingent on a full NEPA review was one of the requirements that bipartisan leaders included in the legislation prior to its passage in 2014.**

Email response from Jakob Stausholm, CEO of Rio Tinto, to Roger Featherstone, Director of Objector AMRC (emphasis added, and previously submitted with 2021 Objections).

The NDAA also placed significant restrictions on the Forest Service's approval of the Exchange and Resolution's mining infrastructure plans, including that a single FEIS that is fully compliant with all federal laws, including the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 *et seq*., is to be the basis for all decisions under federal law related to the Exchange and the Mine. *See* § 3003(c)(9) ("the Secretary shall carry out the land exchange in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)."

According to the NDAA:

> Prior to conveying Federal land under this section, the Secretary shall prepare a single environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), which shall be used as the basis for all decisions under Federal law related to the proposed mine and the Resolution

> mine plan of operations and any related major Federal actions significantly affecting the quality of the human environment, including the granting of any permits, rights-of-way, or approvals for the construction of associated power, water, transportation, processing, tailings, waste disposal, or other ancillary facilities.

§ 3003(c)(9).

Thus, the agency cannot defer or postpone the review of any aspect of the Exchange or the Project to a future public or agency process, as Congress directed that all aspects be analyzed in "a single environmental impact statement." Id. Yet as shown herein, that is what the Forest Service has done, by deferring and postponing full consideration of the baseline conditions, connected actions, direct, indirect, and cumulative impacts, mitigation measures and analysis, and other aspects of the Exchange and Project.

Notably, the NDAA did not authorize, require, or otherwise direct the Forest Service or any other agency to approve the mine plan of operations ("PoO") (also called the General Plan of Operations ("GPO")), Special Use Permits, Rights-of-Way ("ROWs"), Clean Water Act Section 404 permit, or any other permits or approvals required for the Project's infrastructure and facilities.

Another critical limiting factor for this Exchange is Congress' express requirement that the Forest Service cannot approve the Exchange until the lands to be obtained by Resolution (known as the "Federal Land") and the lands to be obtained by the federal government (known as the "Non-Federal Land") are subject to completed and approved appraisals that comply with federal appraisal regulations (36 CFR Part 254) and standards.

The FEIS' and the Forest Service's review of the Exchange and Project are legally deficient despite § 3003(c)'s requirement that all agencies comply with federal laws including NEPA.

The Forest Service relied on the inadequate FEIS to issue, on June 20, 2025, a Draft Record of Decision ("DROD") for the Project. As shown herein, the FEIS improperly limited its review based on an incorrect analysis of the Agency's authority over the Project and its related facilities and activities that was the basis for the DROD.

The Massive Size, Scale, and Impacts of the Resolution Project

Resolution Copper is proposing to develop one of the largest mining projects in U.S. history. Resolution's Project includes the mine site itself, as well as associated infrastructure, large power transmission lines, dewatering operations, numerous high-capacity groundwater pumping wells and delivery pipelines, waste and ore concentrate delivery pipelines, transportation corridors and roads, and a massive tailings waste storage facility.

According to the Forest Service: "it is expected that one of the largest copper mines in the United States would be established on the exchange parcel, with an estimated surface disturbance of roughly 9,900 acres (approximately 11 square miles). It would also be one of the deepest mines in the United States, with mine workings extending 7,000 feet beneath the surface." FEIS at 3. "The project would progress through three distinct phases: construction

(mine years 1 to 9), operations, also referred to as the production phase (mine years 6 to 46), and reclamation (mine years 46 to 51–56)." FEIS at ES-3.

After closure and reclamation, the large-scale removal of the ore and resulting geological subsidence at the mine would permanently alter local aquifers and the topography and scenic character at Oak Flat (FEIS at 45-46); permanently deposit 1.37 billion tons of toxic tailings (FEIS at 62) that must be permanently maintained through ongoing surface water diversions walls, channels, collection ponds, and other stormwater control elements (FEIS at 132); permanently damage the National Register of Historic Places-listed Chich'il Bildagoteel Historic District Traditional Cultural Property (FEIS at ES-28).

> Resolution would mine:
> 1.4 billion tons of ore and produce[] 40 billion pounds of copper using a mining technique known as panel caving. Using this process, a network of shafts and tunnels is constructed below the ore body. Access to the infrastructure associated with the panel caving would be from vertical shafts in an area known as the East Plant Site, which would be developed adjacent to the Oak Flat Federal Parcel. This area would include mine shafts and a variety of surface facilities to support mining operations. This area currently contains two operating mine shafts, a mine administration building, and other mining infrastructure.

FEIS at ES-3.

"The type of copper deposit that would be mined at the East Plant Site is a porphyry deposit, a lower-grade deposit that requires higher mine production rates to be economically viable. The copper deposit that Resolution Copper proposes to mine averages 1.54 percent copper (i.e., every ton of ore would on average contain 31 pounds of copper)." FEIS at ES-7.

Ore processing would take place outside the town of Superior, in an area known as the "West Plant Site." FEIS at ES-7. "Mined ore would be crushed underground and then transported underground approximately 2.5 miles west to an area known as the West Plant Site, where ore would be processed to produce copper and molybdenum concentrates." Id.

As a result, Oak Flat and the entire area:

> would be permanently altered by large-scale ore removal and geological subsidence. The resulting 7,000-foot-deep area of fractured rock and approximately 1.8-mile-wide subsidence crater at the surface of Oak Flat, together with ongoing mine dewatering, would be likely over time to result in measurable reductions in flows in Devil's Canyon and Queen Creek and the long-term loss of some seeps and springs in the Superior area.

FEIS at 45.

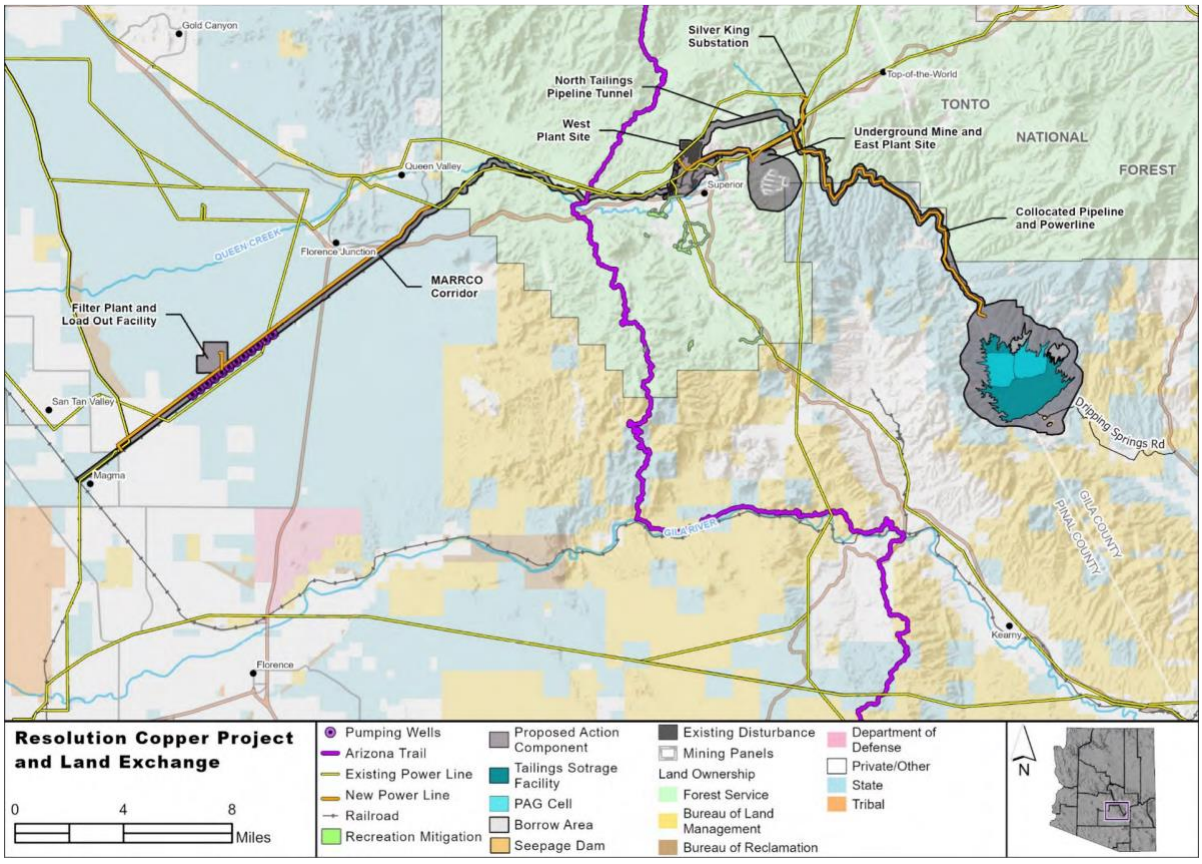
A massive tailings storage facility would contain the waste material left over after processing. Under the Agency's chosen alternative for the tailings waste facility and associated infrastructure in an area known as "Skunk Camp," the tailings dump "with the revised pipeline/power line corridor, would include approximately 14,938 acres of disturbance, of which 2,458 acres is NFS [National Forest Service] land, 8,210 acres is ASLD [Arizona State Land Department] managed, and 4,270 acres is private land." FEIS at 122.

"The tailings storage facility also presents risks to the watershed through the potential for contaminants from metals or chemicals in tailings seepage to escape controls and enter groundwater and/or downstream surface waters, thereby potentially threatening riparian areas and other wildlife habitats, human uses, and waters provided to livestock." FEIS at 45.

Pipelines would be constructed to transport the tailings waste from the ore processing facility in the form of a slurry to the tailings storage facility. Thickened slurry would be pumped in two streams to the tailings storage facility, and a recycled water pipeline would return water to the processing loop at West Plant Site, all within a 19-mile corridor from the West Plant Site to the tailings storage facility. FEIS at 132. These new pipelines would cross Ga'an Canyon, resulting in years of construction, and permanent desecration of, this designated Traditional Cultural Property and sacred site.

On the west side of the Project, the ore concentrate (materials remaining after the tailings waste has been extracted) would be delivered via another large pipeline for further processing. "Once processed, the copper concentrate would be pumped as a slurry through a 22-mile pipeline to a filter plant and loadout facility located near Florence Junction, Arizona, where copper concentrate would be filtered and then sent to off-site smelters via rail cars or trucks. The molybdenum concentrate would be filtered, dried, and sent to market via truck directly from the West Plant Site." FEIS at ES-7.

The FEIS provides an overview map of the Agency's preferred alternative, showing the massive scale of the overall Project.



FEIS at 124, Figure 2.2.8-1.

Notably, although the Forest Service proposes to issue a Special Use Permit for the 19-mile pipeline to carry the tailings waste to the Skunk Camp site (towards the southeast of the Mine site), the agency is not requiring any such Permit for the 22-mile ore concentrate pipeline heading southwest past Florence Junction, a large portion of which crosses Forest Service managed public land. This is despite the fact that the agency required Resolution to obtain a Special Use Permit for the installation of a previous water pipeline in the same corridor in 2008.

The 2008 Special Use Permit in the MARRCO Corridor authorizes the use of a 4-foot right of way on Forest Service lands for this water pipeline. The 2008 Special Use Permit expired in 2018 and Plaintiffs have not been notified whether it was renewed by the Forest Service.

Arizona has been experiencing decades of drought. As of July 2025, 97% of Arizona is under some form of drought, according to the U.S. Drought Monitor, with central and southern Arizona experiencing extreme drought conditions. Making matters worse, the Colorado River, which provides a primary source of water for Maricopa, Pinal, and Pima Counties through the Central Arizona Project, is facing significant shortages due to a structural deficit, ongoing drought, and years of declining snowpack in the Colorado River Basin.

Yet, the estimated total quantity of water needed for the life of the mine (construction through closure) is huge, ranging from up to 677,000 AF as analyzed in the FEIS to as much as 786,626 AF, as shown in Figures 3.6-1a, 3.6-1b, and 3.6-1 of Resolution Copper's original GPO, V-2, though the water demand could easily much greater than this. The water would be consumed from various sources over the life of the Mine, including from mine dewatering and groundwater pumping. Much of the water to be consumed by the Mine (at least 544,858 AF under the Agency's preferred alternative) would be pumped from the groundwater underlying the company's proposed Desert Wellfield located in the heart of the East Salt River Valley.

After mine closure and reclamation, the Mine would continue to deplete Arizona's water resources through, *inter alia*, ongoing losses (draining) from the upper aquifer system into the underground mine workings and the potential pit lake formed from subsidence at the mine site, and from evaporation and other losses from the seepage and runoff collection ponds at the tailings site.

In addition, even if a pit lake is not formed, the "changes wrought to the aquifer by the block caving fundamentally change the hydrologic and geologic framework of the system....and a return to pre-mining hydrological conditions is not anticipated." FEIS at 497. A "persistent cone of depression" at the Mine will therefore continue to deplete local groundwater resources in the area for at least "1,000 years" as modeled. Id.

Overall, the actual amount of water that will continue to be depleted by the Mine Project post closure and reclamation— in some cases in perpetuity— is not disclosed or analyzed in the FEIS or analyzed in the Project's overall water budget.

The FEIS neither discloses nor analyzes the large delta between the amount of water that will be pumped by Resolution from the Desert Wellfield, long term storage credits held by Resolution Copper, shaft dewatering water, and effluent in various groundwater storage or groundwater savings facilities in the Phoenix Active Management Area. Meanwhile the amount

of "wet" water that can actually be physically recovered from the long term storage credits accumulated by Resolution in the New Magma Irrigation Drainage District's groundwater savings facility, appears to be zero, since as ASLD has indicated, the Desert Wellfield is outside of the area of hydrologic impact (AOI) from where the water storage at New Magma occurred.

Nothing in the FEIS—whether through mitigation requirements or otherwise—requires that Resolution Copper utilize any of its long term storage credits to offset the Project's future impacts on local and regional water supplies from pumping at the Desert Wellfield or mine dewatering. Under today's drought conditions, these long-term storage credits are valuable and could easily be sold. Indeed, in the years since the prior FEIS was rescinded, tens of thousands of Resolution's water storage credits have been transferred to others. Furthermore, the new FEIS acknowledges that it does not contain <u>any</u> mitigation for impacts from the Desert Wellfield pumping. Indeed, the direct, indirect, and cumulative impacts of this mine's groundwater pumping in the East Salt River Valley on regional water supplies and infrastructure have not been disclosed or analyzed in the FEIS.

Although all mining would be conducted underground, removing the ore would cause the ground surface to collapse, creating a subsidence area at the Oak Flat Federal Parcel. The crater would start to appear in year six of active mining. The crater ultimately is projected to be between 800 and 1,115 feet deep and roughly 1.8 miles across. FEIS at 67. The "Total Area of Subsidence" would be 1,751 acres. FEIS at 67, 166.

The crater would also likely create a pit lake or lakes, resulting in additional losses to the region's groundwater supplies, as water would continuously migrate into the lake/lakes from the shallow alluvial aquifer and from other sources, and then evaporate over time, being lost forever.

The Exchange and Project would, *inter alia*, significantly and irreversibly impact and adversely affect the recreational, scenic, wildlife habitat, conservation, scientific and other related values of this region for all of those who visit, use, and enjoy the Oak Flat and surrounding area, including the members of the Plaintiffs.

Under the Exchange, the Oak Flat federal lands would leave federal jurisdiction, significantly reducing wildlife and other protections on these lands as the Organic Act, FLPMA, NFMA, Tonto National Forest Land and Resource Management Plan (Forest Plan), critical provisions of the Endangered Species Act, and related federal laws would no longer apply. *See* FEIS at 611.

The initial construction of the Mine would also cause impacts to all wildlife groups found within the analysis area (including amphibians, birds, fish, invertebrates, mammals, and reptiles) through the loss, degradation, and fragmentation of breeding, rearing, foraging, and dispersal habitats; collisions with and crushing by construction vehicles; the loss of burrowing animals where grading would occur; increased invasive and noxious weeds; increased edges of vegetation blocks; and impacts from increased noise and vibration levels. FEIS at 615–16.

The operation of the Mine would cause additional impacts to wildlife including impacts associated with subsidence; the reduction in surface water flows, springs, and groundwater availability all of which is needed to support riparian habitats; habitat changes from noxious and

invasive weed establishment and spread; and the presence of workers, nighttime lighting, and equipment. FEIS at 616–17.

The massive water needs of the Mine would reduce water throughout regional aquifers and reduce surface water and groundwater levels in Ga'an Canyon and Queen Creek. *See, e.g.*, FEIS at 617. Surface water amounts would be reduced, and the timing and persistence of surface water would decrease. Id. This would, among other things, reduce or remove wildlife habitat in areas along Ga'an Canyon and Queen Creek, and around springs. Id.

The Forest Service purports in the FEIS that impacts to wildlife would be mitigated by "replac[ing] water sources for any riparian areas associated with springs or perennial streams (groundwater-dependent ecosystems) impacted by the drawdown from the mine dewatering and block caving." FEIS at 642. Yet, the FEIS only identifies potential actions that could be used to replace certain water sources and makes these potential actions dependent on "monitoring reach[ing] a specified trigger." FEIS at 450: Appendix J, J-19-20. This "trigger" can only be activated after a showing of 2 years of decline data plus additional regional data, and still allows for an exception to implementing mitigation "if a defensible argument could be made" that quantitative triggers have not otherwise been met. *See* id.

Moreover, although the FEIS identifies "[a] variety of potential actions that could be used to replace" such water sources, there is no substantive analysis of the effectiveness of such measures despite NEPA requiring as much. *See* id.

The FEIS fails to fully review the impacts from the Project on wildlife and fails to provide any reasonable mitigation plan to prevent these impacts. For example, the Agency admits that avian species may use the seepage ponds in the Project area. FEIS at 617. But the concentration of pollution in the seepage ponds is expected to be above chronic exposure limits, and some acute exposure limits, which could result in short-and long-term impacts on avian species, with the impacts the most severe if they are exposed over an extended period of time. Id.

Further, the tailings storage facility recycled water ponds represent large areas with persistent water, which would attract wildlife in the desert environment. FEIS at 625. The ponds would likely have some constituents with concentrations above Arizona water quality standards for wildlife, and thereby impact wildlife including birds. Id.

The tailings storage facility seepage collection ponds, near the tailings storage facility, would persist for many years or decades after closure of the mine, FEIS at 625, if not forever, and over time, the water quality in these ponds is expected to worsen, and would be dangerous to wildlife including birds. Id.

Uncovered process ponds at the West Plant Site would also represent potential exposure to poor water quality for wildlife species, including primarily birds. FEIS at 625.

For birds, including migratory species, the noise and vibration associated with construction activities could temporarily change habitat use patterns for some species. FEIS at 619-20. Raptors could be especially susceptible to noise disturbance early in the breeding season, through nest abandonment and reduction in overall success. Id. The Project could cause additional harm, disturbance, and death to birds through potential electrocution and from

striking electrical distribution lines. FEIS at 620. Impacts to migratory birds from artificial light increases at night can also cause injury or death from collisions with structures, reduced energy stores due to delays or altered routes, and delayed arrival at breeding grounds. FEIS at 620. The impacts to migratory birds from the mine construction, mine operation, and maintenance activities would likely impact individual birds and local migratory bird populations. FEIS at 620. Population-level impacts would likely be greater for species that breed in the analysis area. Id. The FEIS does not disclose which of the over 170 avian species that have been documented at Oak Flat or which of the 34 special status avian species that would be potentially impacted could fall into this category. Nor does the FEIS discuss the effectiveness of any proposed mitigation that may be implemented in avoiding or minimizing negative impacts. FEIS at 627–30; id. at 613.

Although the FEIS identifies some potential mitigation measures for avian species, such as rubber balls that could be used to deter or prevent birds from using process water, seepage, and recycled water ponds, there is no substantive analysis as to their effectiveness, instead the FEIS merely asserts, without evidentiary support, their "effectiveness." FEIS at 642–43. The FEIS repeats this same error for lighting, noise, and other impacts from the proposed mine (identifying mitigation measures, not analyzing them, and then pronouncing them "effective"). FEIS at 642, FS-WI-01.

The mine would also cause adverse impacts to fish, including mortality from loss or modification of habitat, due to changes in groundwater elevation and losses to contributing surface flows. FEIS at 620–21. These impacts would have the greatest potential to impact fish species along areas of Ga'an Canyon and Queen Creek that currently have surface flows. Id.

The yellow-billed cuckoo, which is designated as threatened with extinction, may occur within the analysis area along Ga'an Canyon and Mineral Creek. FEIS at 633. The Mine could cause a loss of habitat for the cuckoo along Ga'an Canyon and Mineral Creek through reduced surface flows. Id. Potential habitat changes include the loss of riparian habitat and a conversion of habitat to a drier, xeroriparian habitat (desert washes), which could cause habitat to become unsuitable for nesting by the species. Id.

The removal of vegetation and impacts from workers and equipment also could lead to the avoidance of the disturbed area and vicinity by the yellow-billed cuckoo. FEIS at 633. In addition, the potential impacts on the cuckoo's proposed critical habitat includes the removal of riparian woodlands, including potentially suitable nesting, foraging, and dispersal habitat, and a corresponding reduction in the prey base for the species. Id.

The southwestern willow flycatcher is also designated as endangered with extinction under the federal Endangered Species Act and has designated critical habitat in the analysis area that could be impacted by the Project. FEIS at 636. The Gila chub is also designated as endangered with extinction and has designated critical habitat along Mineral Creek. FEIS at 637. Potential impacts on the Gila chub include habitat modification and potential changes to water quality, and potential impacts on the designated critical habitat includes the reduction of perennial pools. Id.

The predicted acres of wildlife that could be impacted by the Project include: 16,445 acres for the threatened western yellow-billed cuckoo; 47,108 acres for the endangered southwestern willow flycatcher; 115,075 acres for the American peregrine falcon; 100,936 acres

for the bald eagle; 96,367 acres for the golden eagle; 27,292 acres for the western burrowing owl; 431 acres for the endangered Gila chub; 114,892 acres for the Monarch butterfly; and 113,590 acres for the Sonoran desert tortoise. FEIS at 627–31.

Many additional impacts to wildlife and vegetation from this proposed Mine have not been properly analyzed in this FEIS. This includes thousands of acres of additional proposed powerline rights-of-way which are not listed for approval in the DROD, as well as the impacts on wildlife and vegetation from blasting an 8,800 foot tunnel through Kings Crown Peak, to name a few.

The project's pipelines, roads, and transmission lines (only some of which are listed as proposed to be approved in the DROD), would also cause significant and largely unmitigated adverse effects to important plants, such as the endangered Arizona Hedgehog Cactus. *See* FEIS Appx. P, U.S. FWS Biological Opinion, Dec. 31, 2020 ("BiOp").

DETAILED OBJECTIONS

In addition to the Objections noted above (and in January and February 2021), which were raised in the previous comments, but were not adequately remedied by the FEIS and DROD, the following detailed Objections further highlight the legal and factual errors that warrant the withdrawal of the FEIS and DROD. These issues were either raised by the Objectors' previous comments, or arose after the close of the public comment period on the Draft EIS in November 2019.

Under the Part 218 Objection regulations, as noted above, parties such as the Objectors can raise issues that arose after the public comment period on the Draft EIS closed. Many issues in these Objections deal with that very situation, where the Forest Service not only included new material information but more critically changed its entire review of the Project. The Tonto National Forest never submitted the Special Use Permit Applications for public review as required by NEPA, FLPMA and the Part 251 Regulations.[3]

The Appraisals for the federal parcels fail to comply with the law.

The objectors did not have an opportunity to provide comment on the appraisals for the land exchange and their compliance with the law until now. This is because the Forest Service only posted the Appraisal Report Summary for each appraisal discussed below on its website on April 22, 2025.

The land exchange and mine project cannot proceed without the Agency's compliance with the strict appraisal, "equal value" and other standards regarding the value of the lands and minerals to be traded. "The land exchange is subject to certain conditions," including appraisal and equalization requirements. *Apache Stronghold v. United States*, 101 F.4th at 1046. Section 3003 sets forth mandatory provisions governing the appraisals for the federal and non-federal lands to be exchanged. The land exchange and mine project can occur only after "the final

[3] Thus, due to the 11th Hour submittal of the Special Use Permit applications, Objectors were not able to comment upon the Special Use Permit applications in comments on the DEIS. However, Objectors did raise issues regarding the proper application of the Part 251/261 regulations, FLPMA, and public land law in AMRC's November 7, 2019, comments at 19-35.

appraised values of the Federal land and non-federal land are determined and approved by the Secretary." 16 U.S.C. § 539p(c)(4)(B)(ii).

As required by § 3003, the appraisals must be conducted in compliance with the Forest Service's appraisal regulations, 36 C.F.R. § 254.9. 16 U.S.C. § 539p(c)(4)(A). The appraisals must also be conducted "in accordance with nationally recognized appraisal standards, including (I) the Uniform Appraisal Standards for Federal Land Acquisitions; and (II) the Uniform Standards of Professional Appraisal Practice." *Id*. § 539p(c)(4)(B). Additionally, the appraisals "shall include a detailed income capitalization approach analysis of the market value of the Federal land which may be utilized, as appropriate, to determine the value of the Federal land." *Id*. § 539p(c)(4)(C).

"The value of the Federal land and non-Federal land to be exchanged under this section shall be equal or shall be equalized in accordance with this paragraph." *Id*. § 539p(c)(5)(A). If the appraised value of the federal lands and minerals exceeds the value of the non-federal lands, Resolution must either convey additional non-federal land within Arizona to the Secretary of Agriculture or Interior, or make a cash payment to the United States that would be used to acquire additional National Forest System lands within the region. *Id.* § 539p(c)(5)(B). But before those considerations may occur, the NDAA's appraisals and equal-value requirements must be legally valid.

The Secretary of Agriculture's Approval of the Appraisals Violates § 3003, Forest Service Appraisal Regulations, and Federal Appraisal Standards.

The Forest Service prepared two appraisals for the federal lands to be exchanged, one covering the 766-acre "Mineral Withdrawal Area" ("MWA") parcel, and the other covering the 1,655-acre MCZ parcel. While the appraisal for the MWA parcel included an estimated value of the 5.33 billion pounds of copper under the surface, the appraisal for the MCZ parcel failed to include any value for the tens of billions of dollars worth of copper, valuing the entire 1,655-acre parcel at less than $2 million.

The Secretary of Agriculture and the Forest Service failed to comply with the mandatory appraisal and equal value requirements in at least five ways. First, the appraisal of the MCZ parcel, which overlies the vast majority of the copper ore body, erroneously assumed that the value of the estimated 35 billion pounds of copper is zero, simply because Resolution has filed paper mining claims on these federal lands—misunderstanding federal mining, appraisal, and public land law. Second, the MCZ appraisal contradicts the Forest Service's appraisal regulations, which require that in calculating market value, all values of the exchanged lands must be factored in, including minerals. In fact, that was exactly what the agency told Congress it must do. Third, the MCZ appraisal erroneously determined that the "highest and best use" of those lands (required by the appraisal rules and standards) was merely for "surface land use in support of a mining operation." This is despite the fact that the intended use of the MCZ is for extracting its copper and other minerals. Fourth, the MCZ appraisal violates the appraisal regulations and standards by failing to treat the Exchange as a private-lands transaction, not as if the lands were still federal (and subject to Resolution's paper mining claims). Fifth, for the both the MWA and MCZ parcels, the Forest Service failed to include any value for the rare earth minerals that the FEIS claims are included in the ore deposit.

1) Resolution's paper mining claims do not render the federal minerals valueless.

At the outset, the MCZ appraisal is based on the erroneous assumption that the value of the 35 billion pounds of copper on these federal lands is zero, simply because Resolution has filed mining claims on these lands. Because of these claims, the appraiser believed that the government did not own its own mineral estate. The appraiser's assumption contradicts longstanding Supreme Court precedent. Although Resolution has filed mining claims on these lands, the United States undisputedly still owns the mineral estate (as well as the surface estate). While owners of unpatented mining claims hold possessory interests in their claims, these interests are a "unique form of property." *U.S. v. Locke*, 471 U.S. 84, 104 (1985). "The United States, as owner of the underlying fee title to the public domain, maintains broad powers over the terms and conditions upon which the public lands can be used, leased, and acquired." *Id*. Accordingly, the mineral values should have been included in the MCZ appraisal.

2) The MCZ appraisal failed to include its mineral values, as the federal rules and standards required.

Even if Resolution has purported rights in some of these claims (as they assert), that does not mean that the appraisal can simply ignore the mineral values. The Forest Service's appraisal regulations require that in estimating market value, all values of the exchanged lands must be factored in, including minerals. 36 C.F.R. § 254.9(b). Market value "means the most probable price in cash, or terms equivalent to cash, which lands or interest in lands should bring in a competitive and open market under all conditions requisite to a fair sale." 36 C.F.R. § 254.2 (definitions).

The appraiser must "consider the contributory value of any interest in land such as water rights, minerals, or timber, to the extent they are consistent with the highest and best use of the property." 36 C.F.R. § 254.9(b)(1)(iv). The current status of the federal lands (whether covered by mining claims or not) is not determinative, because the appraiser must calculate the value of the lands and interests "as if in private ownership and available for sale in the open market." 36 C.F.R. § 254.9(b)(1)(ii). All interests and values must be ascertained:

> An appraisal must include "historic, wildlife, recreation, wilderness, scenic, cultural, or other resource values or amenities as reflected in prices paid for similar properties in the competitive market." 36 C.F.R. § 254.9(b)(1)(iii). The Forest Service thus has a certain amount of discretion to consider environmental factors in its determination that the lands are equal in value as well.

Restore the North Woods v. U.S. Dept. of Agric., 968 F.Supp. 168, 174, n. 4 (D. Vt. 1997).

In the debate over what became § 3003, the Forest Service testified that the appraisals of both the MWA and MCZ parcels *must* include the value of the minerals. "The Bill calls for an equal value exchange in section 4(e). If the value of Federal land (including the ore body) to be conveyed exceeds the value of the parcels to be acquired, the Bill would allow for a cash equalization payment by Resolution…." (Statement of Assoc. Chief U.S. Forest Serv. Wagner).

The Congressional Budget Office ("CBO"), tasked with analyzing the financial aspects of the Exchange, agreed. "Those appraisals would determine the relative values of the properties affected by the exchange, including the value of mineral deposits that underlie the federal land." The CBO highlighted the critical importance of the mineral-value appraisals:

> If the value of the federal land were to exceed the value of the company land, Resolution Copper could pay the government a lump sum equal to the difference in property values in the year or two following enactment. That payment might be significant. … In addition, if the company extracts more mineral resources than assumed in the original appraisal, Resolution Copper would make annual payments to the federal government. Such payments might be significant.

Id. *See also* 16 U.S.C. § 539p(c)(5)(B)(i) ("If the final appraised value of the Federal lands exceeds the value of the non-federal land, Resolution Copper shall – (I) convey additional non-Federal land in the State to the Secretary").

The House Report on the bill that would become § 3003 (subject to the important revision requiring a NEPA-compliant FEIS prior to the Exchange), further stressed the need for the two appraisals of the federal parcels to calculate and include the mineral values on the public's lands. "The bill's effect on offsetting receipts would depend on the outcome of formal appraisals of the federal and private properties that would be conducted after enactment. Those appraisals would determine the relative values of the properties affected by the exchange, including the value of mineral deposits that underlie the federal land." H.R. Rep No. 113-167 (2013), at 22.

This mandate also helps implement subsection (e), which requires that if the mine produces more mineral value than originally calculated in the appraisals "prepared under subsection (c)(4)(C), Resolution Copper shall pay to the United States … a value adjustment payment for the quantity of excess production at the same rate assumed for the income capitalization approach analysis prepared under subsection (c)(4)(C)." § 539p(e)(2). In other words, for the public to be adequately compensated for future mineral production, the mineral values must be appraised/calculated in the first place, in order to gauge whether there was a difference in values after the mine began operations.

Section 3003 directly ties together the future payments in subsection (e) to the mineral values in the initial appraisals: "The appraisal prepared under this paragraph … shall be the basis for calculation of any payment under subsection (e)." § 539p(c)(4)(C). Notably, section (e)'s requirement for production revenue from the two federal parcels did not distinguish between the MWA and MCZ parcels, further showing that the mineral values needed to be ascertained for both. Thus, as Congress knew, the fact that the federal lands in the MCZ are subject to Resolution's paper mining claims did not eliminate the agency's duty to include the mineral values as the appraisal standards required.

3) *The MCZ appraisal arbitrarily assumed that its "highest and best use" was not for mining, when that's exactly its intended use.*

The MCZ appraisal also failed to correctly apply the standards and regulations that require a determination of the "highest and best use" of the two federal parcels. The appraiser's first task in estimating market value is to determine "the highest and best use" of the property, which is defined as "the most probable and legal use of a property." 36 C.F.R. § 254.9(b)(1)(i); *id*. § 254.2. For the MWA parcel, since the purpose of the land exchange is to facilitate the proposed Mine, the appraiser correctly determined that the highest and best use is the exploration and development of a mineral resource as a portion of the Resolution Copper deposit. Yet for the adjacent MCZ parcel, even though it overlies the very same deposit and Resolution is acquiring

it for the very same purpose, the appraiser arbitrarily determined that the "highest and best use" of this parcel is somehow not to develop the massive mineral deposit, but rather merely for surface land use in support of a mining operation.

This fundamental defect was carried forward when the appraisals considered comparable sales in determining the market value of each federal parcel. For the MWA parcel, the appraiser looked to other sales where the highest and best use was the exploration and development of a mineral resource. In stark contrast, for the MCZ parcel, the appraiser only looked for comparable sales where the buyer was motivated by a surface estate that could support mining operations with mineral rights not considered important or necessary. Thus, the focus was on surface lands that could be used for industrial uses such as processing facilities. In other words, general rural lands, in which the underlying mineral estate is irrelevant.

That certainly is not accurate for the MCZ parcel. There is simply no rational, economic comparison between the types of nondescript surface lands that the appraiser considered as comparable sales and the invaluable MCZ parcel, which sits atop nearly 90 percent of the world's third-largest known copper deposit (35 of the estimated 40 billion pounds). Resolution has no intention of using these lands for surface facilities such as tailings storage, as these lands would be mined. Indeed, much of the MCZ parcel will be consumed by the massive crater caused by the extraction of the underground minerals—not used for surface mining facilities as presumed in the appraisal.

4) *The MCZ appraisal failed to treat the exchange of the lands and minerals as a private-lands transaction, as required by the appraisal standards.*

The MCZ appraisal further violates the agency appraisal regulations at 36 C.F.R. § 254.9 and "the Uniform Appraisal Standards for Federal Land Acquisitions ["UASFLA"] and the Uniform Standards of Professional Appraisal Practice ["UAS"]" as mandated by § 539p(c)(4)(B). These rules and standards require that the appraisals treat the lands and minerals as a private-lands transaction on the open market, not as if the lands were still federal or influenced by paper mining claims. "The federal land is appraised as if in private ownership, to its highest and best use." 36 C.F.R. § 254.9(b). "When appraising the federal land portion of the exchange, the regulations require that the appraiser 'estimate the value of the lands and interests as if in private ownership and available for sale in the open market.'" UASFLA at 53 (citations omitted). The appraisal for the MWA parcel correctly found that the "highest and best use" was for mining.

The appraisal of the MCZ parcel incongruously found the "highest best use" to be for simple "surface use." MCZ appraisal summary. It was thus valued at a paltry $1,200/acre. This violated the federal standards, where "the appraiser must avoid estimating a property-specific investment value to a particular owner instead of developing an opinion of the market value of the property if it were placed for sale on the open market." But that is what the MCZ appraisal did—ignoring the fact that, if this was a private transaction between Resolution and another buyer, it would most certainly include the mineral values.

The Agency's full appraisal for the MWA parcel recognizes that appraisals of the currently federal land must be calculated as if in private ownership, without consideration of its current status as federal land. Thus, under the mandated Forest Service appraisal regulations, the land and minerals must be valued as if the exchange were a private-land, market-based

transaction. But here the appraisal of the MCZ parcel assigned a nominal value based only on potential surface uses that will never occur. It defies logic to assume that if Resolution were to offer these same lands for sale on the open market after the Exchange, it would assert that the 35 billion pounds of copper are worthless. Thus, until the appraisals and agency decision-making satisfy the NDAA requirements, the Exchange cannot legally proceed.

5) *The appraisals for the MWA and MCZ parcels failed to include any value for the rare earth minerals.*

Last, for both the MWA and the MCZ parcels, the Forest Service failed to include any value for the rare earth minerals that are included in the ore deposit. According to the FEIS, "strategic and critical minerals such as rhenium, tellurium, indium, arsenic, and bismuth could also be recovered economically." FEIS, p. 10. Moreover, according to Resolution:

> the Resolution project will also be a tremendous source of other strategic and critical minerals. Resolution Copper can be a domestic source of at least seven other strategic and critical minerals that are found in the mine's deposit including indium, tellurium, bismuth and rhenium.[4]

However, even though these rare earth minerals are highly valuable economically, there is no mention of them within either of the appraisals for the two federal parcels, and no consideration of them when determining the value of the parcels. The appraisals therefore significantly undervalued the federal parcels that are being provided to Resolution, and further violated the mandatory requirements governing the appraisals.

The Forest Service's Special Use Requirements and Violations.

In late 2020 and roughly a year after the Forest Service closed-off public comment on the Project, the Agency abruptly shifted its review and permitting of the Project, from one governed by federal mining laws to one controlled by public land "special use" requirements. Up until the issuance of the 2021 FEIS, the public was never informed of this regulatory switch and never had the opportunity to review or comment on the Agency's new permitting regime, or Resolution's special use permit applications.

The issuance of the Draft EIS resulted in a public comment period that ended in November 2019. That was the only opportunity for public review and comment on the Agency's review of the Exchange and Project. Since then, the agency never provided for public review under NEPA or any other federal law.

The Agency now proposes, via the 2025 FEIS and the new DROD, to approve a series of "Special Use Permits" for the Project's pipelines, transmission lines, and new and reconstructed roads across federal Forest Service managed lands. This is because, once the Exchange occurs, all of the Company's proposed uses on Forest Service managed lands are no longer related to mining operations on federal land, as the mining would occur on the newly privatized lands.

[4] https://resolutioncopper.com/resolution-copper-welcomes-inclusion-in-federal-transparency-initiative/

These "Special Use Permits" were never subject to public review and comment as NEPA, FLPMA, and the NDAA require, as the applications were submitted by Resolution Copper to the Forest Service long after the Draft EIS was issued and public comment was foreclosed. For example, Resolution only submitted its Special Use Permit application for the tailings pipeline infrastructure on September 7, 2020. The Agency conducted a cursory review and accepted the application just three weeks later. "Resolution Copper submitted an SF-299 Special Use Permit application on September 7, 2020. Tonto National Forest Staff carried out initial and secondary screenings and accepted the application on September 28, 2020." FEIS at Appendix Q-1.

The Forest Service's review of the Salt River Project Special Use Permit for high voltage transmission lines was even faster: "[Salt River Project] submitted an SF-299 Special Use Permit application on November 11, 2020.[5] Tonto National Forest Staff carried out initial and secondary screenings and accepted the application on November 18, 2020." FEIS at Appendix Q-1.

In its September 28, 2020 letter to Resolution, the Forest Service informed the company that it had accepted the company's Special Use Permit application for the tailings pipeline infrastructure. Letter from Neil Bosworth, U.S. Forest Serv., to Resolution (Sept. 28, 2020)(reprinted in Appendix Q). Defendant Forest Service official Neil Bosworth stated:

> I have reviewed your company's proposal to construct, operate, and reclaim a tailings pipeline infrastructure from Resolution Copper's West Plant Site (WPS) near Superior, Arizona across national forest system (NFS) lands administered by the Tonto National Forest, to the proposed Skunk Camp Tailings Storage Facility located on private and State trust lands in Gila County Arizona. Based on the initial documents provided (i.e. cover letter, SF-299, and attachment dated 9/07/2020), the proposal passes the first and second level screening criteria as outlined in FSH 2709.11, Chapter 10. At this time, we are prepared to accept your proposal as a formal application to be fully evaluated pursuant to the National Environmental Policy Act (NEPA), its implementing regulations, and agency NEPA procedures as outlined in FSM 1950 and FSH 1909.15.

Sept. 28, 2020 letter at 1 (reprinted in FEIS Appendix Q).

The Forest Service issued a similar letter to the Salt River Project on November 18, 2020, signed by Defendant Tom Torres. In that letter, the Agency further noted that the Salt River Project electrical facilities and corridor still required additional review and its location had not been confirmed.

> It is understood that this proposal is preliminary and additional design, review, and other regulatory processes are required before an authorization will be issued. It is also understood that the need for this use is reliant on the proposed Resolution Copper Mine

[5] The new FEIS contains a one-page "*Project Description*" which was not included in the prior rescinded FEIS. As it is undated, it is unclear whether this page was inadvertently omitted in the prior draft, or if it is a *post hoc* insertion. Concerningly, it now indicates that "SRP will not be able to finalize the location of the lines until design work and all regulatory requirements are met", meaning the final alignment still remains to be determined. It also notes that "additional environmental analysis may be required", which violates the NDAA's single-EIS requirement.

> and will only be constructed if the need is confirmed. It is assumed that the proposed high voltage transmission line will be located within the 500 foot wide corridor defined and analyzed in the EIS. However, if the design and other regulatory processes have been completed and it is determined that the proposed high voltage transmission line cannot be located within the analyzed corridor, SRP shall submit a revised proposal and a complete review will be required.

Nov. 18, 2020 letter at 1 (also reprinted in Appendix Q of the FEIS).

The Forest Service Special Use Regulations require that: "(ii) Federal, State, and local government agencies and the public shall receive adequate notice and an opportunity to comment upon a special use proposal accepted as a formal application in accordance with Forest Service NEPA procedures." 36 C.F.R. § 251.54(g)((2)(ii).

None of these "Special Use Permit applications" have been submitted for public review and comment, as required by the Part 251 regulations. Neither the 2021 FEIS nor the 2025 FEIS explain why the Agency refused to submit the Special Use Permit applications for public review. In describing the two Special Use Permit applications, the Forest Service stated: "Rather than submittal of a mine plan, authorization of special use or occupancy on [National Forest Service] lands requires submittal of a special use application (SF-299). This application process is designed to ensure that authorization to use and occupy [National Forest Service] lands are in the public interest (36 CFR 251, Subpart B)." FEIS Appendix Q-1. *See also* 36 C.F.R. § 252.56 (listing additional required "terms and conditions").

The Forest Service does not analyze, or show, in the FEIS and DROD how the Project meets the "public interest" test and other requirements under the Part 251 and Part 261 regulations and their governing statutes, such as FLPMA. The Forest Service never reviewed in the FEIS the various Project alternatives under the required "public interest" test. And, as noted, the public was never given an opportunity to review and comment on the Special Use Permit applications prior to release of the FEIS in contravention of federal laws.

These Part 251 regulations also require that:

> [T]he authorized officer shall screen the proposal to ensure that the use meets the following minimum requirements applicable to all special uses:
>
> (i) The proposed use is consistent with the laws, regulations, orders, and policies establishing or governing National Forest System lands, with other applicable Federal law, and with applicable State and local health and sanitation laws.
> (ii) The proposed use is consistent or can be made consistent with standards and guidelines in the applicable forest land and resource management plan prepared under the National Forest Management Act and 36 CFR part 219.
> (iii) The proposed use will not pose a serious or substantial risk to public health or safety.
> (iv) The proposed use will not create an exclusive or perpetual right of use or occupancy.
> (v) The proposed use will not unreasonably conflict or interfere with administrative use by the Forest Service, other scheduled or authorized existing uses of the National Forest System, or use of adjacent non-National Forest System lands.
> …

(ix) The proposed use does not involve disposal of solid waste or disposal of radioactive or other hazardous substances.

36 C.F.R. § 251.54(e)(1). These regulations require a two-phase "screening process," with a proposed use having to pass both levels. The first level requires compliance with the above (e)(1) criteria. If a proposed use satisfies this level, the Agency conducts a "second-level screening of proposed uses."

> (5) Second-level screening of proposed uses. A proposal which passes the initial screening set forth in paragraph (e)(1) and for which the proponent has submitted information as required in paragraph (d)(2)(ii) of this section, proceeds to second-level screening and consideration. In order to complete this screening and consideration, the authorized officer may request such additional information as necessary to obtain a full description of the proposed use and its effects. An authorized officer shall reject any proposal, including a proposal for commercial group uses, if, upon further consideration, the officer determines that:
> (i) The proposed use would be inconsistent or incompatible with the purposes for which the lands are managed, or with other uses; or
> (ii) The proposed use would not be in the public interest; or
> (iii) The proponent is not qualified; or
> (iv) The proponent does not or cannot demonstrate technical or economic feasibility of the proposed use or the financial or technical capability to undertake the use and to fully comply with the terms and conditions of the authorization; or
> (v) There is no person or entity authorized to sign a special use authorization and/or there is no person or entity willing to accept responsibility for adherence to the terms and conditions of the authorization.

36 C.F.R. § 251.54(e)(5).

The FEIS contains, little, if any, analysis as to how the Salt River Project and Resolution Special Use Permit applications comply with each of the many criteria needed to be accepted by the Agency. And, as noted, it is undisputed that the Agency never provided for any of the required public review and comment for these applications.

In addition, the FEIS acknowledges that the Project requires the construction and operation of a 22-mile pipeline to transport the ore concentrate to the processing site past Florence Junction, similar to the 19-mile pipeline (in the other direction) to the tailings waste site in Skunk Camp. "Resolution Copper would then pump the copper concentrate as a slurry through a 22-mile-long pipeline to a filter plant and loadout facility located near Magma Junction near San Tan Valley, Arizona. They would then filter the copper concentrate and send it to off-site smelters via rail cars or trucks." FEIS at 13-14. "During the operations phase, between 6,000 and 7,000 wet tons per day of copper concentrate would be produced and sent out for smelting at an off-site smelter. The final smelter destination is unknown at this time." FEIS at 62. *See also* FEIS at 80, Table 2.2.2-6 "Existing and proposed mine access roads and traffic" ("Final smelter destination is unknown at this time."). The Agency also did not analyze, much less require as it needed to, that Resolution obtain a Special Use Permits for its copper concentrate slurry pipeline that would be located along the Magma Arizona Railroad Company ("MARRCO") corridor.

"The MARRCO corridor would also host other mine infrastructure, including water pipelines, power lines, pump stations, and a number of wells for groundwater pumping and recovery…." FEIS at 14. "New corridor facilities would include additional water pipelines, water pumps and recovery wells, and copper concentrate pipelines to transport ore concentrate to the filter plant and loadout facility." FEIS at 76.

The FEIS does not analyze this pipeline as a Special Use, as the Forest Service is silent about any requirement for Resolution to submit a Special Use Permit application for the approximate 9-mile portion of this pipeline that would cross Forest Service managed public land. In addition to the pipeline crossing Forest Service managed lands, Resolution would build a "Construction Laydown Yard" purportedly within the MARRCO corridor on Forest Service lands. FEIS at 77 (Figure 2.2.2-12, MARRCO Corridor facility layout).

Despite all the new infrastructure and facilities proposed to be constructed and used in the MARRCO corridor, "[t]he corridor generally is 200 feet wide." FEIS at 76. The FEIS does not explain how all of the existing and new infrastructure and construction yard, plus the access and support roads to service the new facilities, would fit within the mere 200-foot-wide corridor.

Because these new facilities would be located in the old MARRCO right-of-way issued to the railroad company in 1914, the Forest Service needed to analyze and require a Special Use Permit application for these facilities. The Part 251 regulations require that "Holders [of existing permits/ROWs] shall file a new or amended application for authorization of any new, changed, or additional uses or area, including any changes that involve any activity that has an impact on the environment, other uses, or the public." 36 C.F.R. § 251.61(a). That did not happen here.

Indeed, the Forest Service has in the past required as much, as it previously required Resolution to obtain a Special Use Permit to install and operate a water pipeline within the same MARRCO corridor in 2008. As the Forest Service stated in 2010:

> The construction and operation of the MARRCO pipeline convey treated water from the No. 9 Shaft to NMIDD [New Magma Irrigation and Drainage District] for irrigation use. In response to RCM's [Resolution Copper's] submitted request for a special use permit application, the Forest Service recently evaluated information provided by RCM regarding the construction of this pipeline within the MARRCO right-of-way and the dewatering of the No. 9 Shaft. … The Forest Service recently granted a special use permit for the construction and operation of the MARRCO pipeline (MES749).

Environmental Assessment ("EA") for the Resolution Copper Mining Pre-Feasibility Activities Plan of Operations signed by Tonto National Forest Supervisor Gene Blankenbaker on May 14, 2010. *See also* www.resolutionmineeis.us/documents/resolution-copper-prefeasibility-activities-2010

In addition, under FLPMA and federal law, the Agency cannot increase the uses in, and impacts from, the new facilities in the 1914 right of way without undertaking the detailed agency and public reviews and permitting requirements under FLPMA Title V. 43 U.S.C. §§ 1761-1771. Yet no such FLPMA analysis and review has been done.

Under the Part 218 Objection regulations, as noted above, parties such as the Objectors can raise issues that arose after the public comment period on the Draft EIS closed. Many issues in these Objections deal with that very situation, where the Forest Service not only included new information but more critically changed its entire review of the Project. The Tonto National Forest never submitted the Special Use Permit Applications for public review as required by NEPA and the Part 251 Regulations.[6]

The Forest Service Special Use Regulations require that: "(ii) Federal, State, and local government agencies and **the public shall receive adequate notice and an opportunity to comment upon a special use proposal accepted as a formal application in accordance with Forest Service NEPA procedures**." 36 C.F.R. § 251.54(g)(2)(ii)(emphasis added).

Apparently, sometime between the Forest Service's issuance of the Draft EIS for public review and the publication of the FEIS in 2021, the Agency changed its consideration of the Project. In the DEIS (and even still in parts of the 2025 FEIS), the Agency stated that the Project would be considered under the GPO submitted under the Agency's mining regulations (36 C.F.R. Part 228A). Now, the FEIS's review of the Project is under the Agency's Part 251 and 261 Special Use regulations.

"The sole remaining uses of NFS lands associated with the Resolution Copper Project are as follows:

-several new or upgraded power lines;

-a pipeline corridor to convey tailings slurry from the West Plant Site to the tailings storage facility; and

-the upgrade. Maintenance, construction, and use of NFS roads.

DROD at 3-4. Accordingly, the Project activities reviewed in the DROD/ FEIS are no longer under the Forest Service's review of a GPO pursuant to the Agency's mining regulations at 36 C.F.R. Part 228A.

The distinction between Forest Service review of a mining GPO and a Special Use Permit is significant. For example, and as discussed further below, the Agency does not consider whether the approval of a GPO is "in the public interest" but is required to do such analysis and issue such a finding under the Part 251 regulations. Additionally, as the Agency alleges (albeit incorrectly with respect to the Mine plan in this case), "there is no discretion or decision to be made with respect to the land exchange or approval of a mine plan," however such discretion **does** exist for Special Use Permit applications as the Forest Service has complete authority to approve or deny such applications. Draft ROD; 36 C.F.R. Parts 251/261.

The mere fact that these facilities and uses of public land were reviewed in the FEIS (albeit inadequately as shown herein and in the previous comments) does not satisfy the strict and mandatory public notice and review requirements in Part 251. At a minimum, the FEIS does not analyze whether the Project meets the "public interest" test and other requirements under the Part 251 Regulations and their governing statutes, such as FLPMA and the Organic

[6] Thus, due to the 11th Hour submittal of the Special Use Permit applications, Objectors were not able to comment upon the Special Use Permit applications in comments on the DEIS. However, Objectors did raise issues regarding the proper application of the Part 251/261 regulations, FLPMA, and public land law in AMRC's November 7, 2019 comments at 19-35.

Act. The FEIS never reviewed the various Project alternatives under the required "public interest" test and other requirements, such as the prohibition against a proposed use that "would be incompatible with the purposes for which the lands are managed, or with other uses." 36 C.F.R. § 251.54(e)(5)(i) and (ii). For example, the Agency has not shown that the construction of tailings waste pipeline is "compatible" with the current and historical uses of the Ga'an Canyon sacred site and TCP. *See also* Executive Order 13007 (Sacred Sites). And, as noted, the public was never given an opportunity to review and comment on the Special Use Permit applications prior to release of the FEIS in contravention of federal laws.

In sum, as noted above, the Forest Service now asserts that the Project (after the Exchange) is solely governed by the agency's regulations governing "Special Uses" of public land. These regulations place strict requirements on the Agency's review of the Project, including mandatory public review requirements, which were not followed in this case. As the Agency stated in the FEIS, it conducted all of this "screening" for both the Salt River Project and Resolution Special Use Permit applications—at both levels—in a matter of days or weeks just before the FEIS was issued. The FEIS contains, little, if any, analysis as to how the Salt River Project and Resolution Special Use Permit applications comply with each of the many criteria needed to be accepted by the Agency. And, as noted, it is undisputed that the Agency never provided for any of the required public review and comment for these applications.

The Forest Service Failed to Require a Special Use Permit for the New Ore Concentrate Pipeline in the Same MARRCO Corridor Where the Agency Previously Required Resolution to Obtain Such a Permit for Its Water Pipeline.

In addition to accepting, and proposing to approve, the Special Use Permit applications for the tailings waste and electrical transmission lines (without the required public notice and review discussed above), the Agency proposes to allow the construction and operation of a 22-mile slurry pipeline to transport the ore concentrate to the processing site past Florence Junction, similar to the 19-mile pipeline (in the other direction) to the tailings waste site in Skunk Camp. "Resolution Copper would then pump the copper concentrate as a slurry through a 22-mile-long pipeline to a filter plant and loadout facility located near Magma Junction near San Tan Valley, Arizona. They would then filter the copper concentrate and send it to off-site smelters via rail cars or trucks." FEIS at 13-14.[7] The FEIS does not discuss or analyze where the smelting would then occur, or any of the impacts (such as air pollution) from the smelting or rail/truck transport, as required by FLPMA, NEPA, and the NDAA.

> The copper concentrate slurry pipeline corridor would be located along an existing, previously disturbed right-of-way known as the Magma Arizona Railroad Company (MARRCO) corridor. The MARRCO corridor would also host other mine infrastructure, including water pipelines, power lines, pump stations, and a number of wells for groundwater pumping and recovery of banked Central Arizona Project (CAP) water.

[7] As noted above, due to the 11th Hour submittal of the Special Use Permit applications, Objectors were not able to comment upon the Special Use Permit applications in comments on the DEIS. In addition, the failure of the Forest Service to require any Special Use Permit for the ore concentrate pipeline and related facilities in the MARRCO corridor arose long after the public comment period for the DEIS closed in 2019. However, Objectors did raise issues regarding the proper application of the Part 251/261 regulations, FLPMA, and public land law in AMRC's November 7, 2019 comments at 19-35.

FEIS at 14.

Yet the DROD does not discuss granting any authorization for this new pipeline (as it only proposes to approve the Special Use Permits for one SRP transmission line and Resolution's tailings waste pipeline). The Agency also did not analyze, much less require—as it should have - that Resolution obtain a Special Use Permits for its copper concentrate slurry pipeline that would be located along an existing right-of-way known as the Magma Arizona Railroad Company ("MARRCO") corridor.

As noted, Forest Service special use/ROW regulations require that: "Holders [of existing permits/ROWs] shall file a new or amended application for authorization of any new, changed, or additional uses or area, including any changes that involve any activity that has an impact on the environment, other uses, or the public." 36 C.F.R. § 251.61(a). That did not happen here.

The FEIS also does not analyze this pipeline as a Special Use, as the Forest Service never required Resolution to submit a Special Use Permit application for the approximate 9-mile portion of this pipeline that would cross Forest Service managed public land. In addition to the pipeline crossing Forest Service managed lands, Resolution would build a "Construction Laydown Yard" purportedly within the MARRCO corridor on Forest Service lands. FEIS at 77 (Figure 2.2.2-12, MARRCO Corridor facility layout).

As noted above, despite all the new infrastructure and facilities proposed to be constructed and used in the MARRCO corridor, "[t]he corridor generally is 200 feet wide." The FEIS does not explain how all of the existing and new infrastructure, a new construction yard, plus the access and support roads to service these new facilities, would fit within the mere 200-foot-wide corridor.

Because these new facilities would be located in the old MARRCO right-of-way issued to the railroad company in 1914, the Forest Service needed to analyze and require a Special Use Permit application for these facilities. Indeed, the Forest Service has in the past required as much, as it previously required Resolution to obtain a Special Use Permit to install and operate a water pipeline within the same MARRCO corridor in 2008. As the Forest Service stated in 2010:

> The construction and operation of the MARRCO pipeline convey treated water from the No. 9 Shaft to NMIDD [New Magma Irrigation and Drainage District] for irrigation use. In response to RCM's [Resolution Copper's] submitted request for a special use permit application, the Forest Service recently evaluated information provided by RCM regarding the construction of this pipeline within the MARRCO right-of-way and the dewatering of the No. 9 Shaft. … **The Forest Service recently granted a special use permit for the construction and operation of the MARRCO pipeline** (MES749).

Environmental Assessment ("EA") for the Resolution Copper Mining Pre-Feasibility Activities Plan of Operations signed by Tonto National Forest Supervisor Gene Blankenbaker on May 14, 2010 (emphasis added)(in the possession of the Forest Service and incorporated into the administrative record, and cited in the FEIS Chapter 7 "U.S. Forest Service 2010b.").

Like the water pipeline in 2008, the new ore concentrate pipeline is not related to, or incidental to, the railroad right-of-way granted in 1914. The old Magma company trains stopped running decades ago (around 1997) and thus any use not associated with the original railroad grant is governed by FLPMA and the Forest Service's Part 251/261 Special Use requirements.

Prior to approving Resolution's application for the new water pipeline in the MARRCO corridor, the Tonto National Forest inadequately reviewed the baseline conditions, and of the direct, indirect, and cumulative impacts related to the new pipeline to support its Decision Memo ("DM") granting the Special Use Permit for the water pipeline.

> The Decision Memo addresses a proposed special use permit for a pipeline from Resolution Copper Company's water treatment plant in Superior along the MARRCO railroad right of way to the New Magma Irrigation District Canal near Florence Junction. The DM does not identify the origin of the water or the volume of water that would be transported through the pipeline. If the source of the water is ground water that underlies National Forest System lands then it would be appropriate to subject the project proposal to review in term of the direction provided by the Regional Forest Service Manual Supplement (R3 Supplement 2500-2001-1) that was developed specifically for authorizing water developments on NFS lands.
>
> The R3 Supplement identifies that when a project proponent proposes to drill a well on NFS lands and/or transport ground water across NFS lands through a pipeline, it is appropriate to analyze the potential impacts of water removal along with the impacts of well and/or pipeline construction. Special Use authorizations for water developments on NFS lands should be approved only when the longterm protection of NFS streams, springs, seeps, and associated riparian and aquatic ecosystems can be assured. The analysis should also consider impacts upon neighboring landowners and water users. The R3 Supplement provides guidance for screening proposed water development projects on the National Forests.

Resolution Copper Water Pipeline DM, Hydrology Comments, 8/12/2008, at 1 (previously submitted).[8]

In fact, Resolution Copper specifically acknowledged that installation of a water pipeline in the 9.5 miles of Forest Service lands crossed by the old MARRCO railroad ROW required a new Special Use Permit from the Forest Service:

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[8] The FEIS and DROD fail to include any of this analysis, and the Permit itself, for the water pipeline in the MARRCO corridor, in violation of the Agency's public review and analysis requirements under NEPA, the NDAA, and FLPMA. This is despite the fact that these 2008 materials contain analysis of baseline conditions, impacts, and other directly-relevant information to the Exchange and Project. The Forest Service's project record for the 2008 pipeline approval was thus improperly omitted from the administrative record for the FEIS, further rendering the FEIS and DROD arbitrary and capricious.

> According to United States Forest Service (USFS) Manual 2500, Chapter 2540- Water Uses and Development (USFS, 2001), **the construction of a pipeline across Forest Service lands for transmission of groundwater triggers Forest Service authorization via a special use permit.** As indicated in Chapter 2540, a special use permit authorization from the Forest Service requires the proposed "water development" pass two screening steps to evaluate the potential impact of the proposed action on adjacent Forest Service lands or resources, as well as neighboring landowners and water users. The screening and approval process is particularly intended to ensure the protection of USFS streams, springs, seeps, and associated aquatic ecosystems.

Resolution Copper Mining, LLC, Dewatering of Magma Mine Workings with Pipeline Delivery Evaluation of Potential Hydrologic Impacts Special Use Permit (FSM 2540), at 2 (previously submitted)(emphasis added).

Under FLPMA and federal law, the Agency cannot increase the uses in, and impacts from, the new facilities in the 1914 right of way without undertaking the detailed agency and public reviews and permitting requirements under FLPMA Title V. 43 U.S.C. §§ 1761-1771. *See also* 36 C.F.R. 251.61(a). AMRC November 7, 2019, comments at 19-35. Yet no such FLPMA analysis and review has been done.

The Agency Failed to Correctly Apply Federal Public Land Law, In Violation of FLPMA, the Organic Act, and the APA.

For both of the two proposed Special Use Permits, as well as the Permit required for the ore concentrate pipeline and other transmission lines, the DROD and FEIS failed to properly review and regulate these uses—uses that will last for decades at a minimum, and likely forever, as there is no proposal to remove the pipelines from public land after the Mine is closed.[9]

As detailed above, the Part 251 regulations, under authority to approve uses under FLPMA (and the Organic Act) impose detailed and significant review and permitting requirements—requirements violated by the Agency here. These regulations require a two-phase "screening process," with a proposed use having to pass both levels.

According the DROD, the Tonto National Forest conducted all these reviews, and made all these required determinations for the two Special Use Permits, in a manner of days or a few weeks. Yet, the unsupported statement in the DROD that permitting these uses is in the "public interest" and otherwise complies with all the requirements in Part 251 defies reason, based alone on the immense and devastating impacts that would result from authorizing Resolution to conduct the Project.

Here, the Forest Service must regulate the Project under its Part 251/261 special use regulations, as well as FLPMA's Title V Right of Way provisions, and not under the Part 228A regulations under which the agency reviewed the Project under the GPO. The Agency's

[9] As noted above, due to the 11th Hour submittal of the Special Use Permit applications, Objectors were not able to comment upon the Special Use Permit applications in comments on the DEIS. However, Objectors did raise issues regarding the proper application of the Part 251/261 regulations, FLPMA, and public land law in AMRC's November 7, 2019, comments at 19-35.

authority under the Part 251/261 regulations are very different from, and much more environmentally protective, than the Part 228A regulations that the Agency used to review the Project up until its 11th hour switch. For example, the Agency must deny the Project if, "[t]he proposed use would not be in the public interest." 36 C.F.R. § 251.54(e)(5)(ii). The USFS did not show that the Project meets all of the requirements of the Part 251/261 rules. The Forest Service failed to properly apply these requirements to the Resolution Project, in violation of NEPA, the NDAA, FLPMA, the Organic Act, and their implementing regulations.

Under FLPMA Title V, the Forest Service may only grant a right-of-way special use permit if it, "(4) will do no unnecessary damage to the environment." 43 U.S.C. § 1764(a). Rights-of-way "shall be granted, issued or renewed … consistent with … any other applicable laws." Id. § 1764(c). A Title V right-of-way special use permit "shall contain terms and conditions which will … (ii) minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment." Id. § 1765(a). In addition, the right-of-way special use permit can only be issued if activities resulting from the right-of-way special use permit:

> (i) protect Federal property and economic interests; (ii) manage efficiently the lands which are subject to the right-of-way or adjacent thereto and protect the other lawful users of the lands adjacent to or traversed by such right-of-way; (iii) protect lives and property; (iv) protect the interests of individuals living in the general area traversed by the right-of-way who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes; (v) require location of the right-of-way along a route that will cause least damage to the environment, taking into consideration feasibility and other relevant factors; and (vi) otherwise protect the public interest in the lands traversed by the right-of-way or adjacent thereto.

43 U.S.C. § 1765(b). The Forest Service's Part 251 rules implement these requirements.

At least three important substantive requirements flow from the FLPMA's right-of-way and special use permit provisions. First, the Forest Service has a mandatory duty under Section 505(a) to impose conditions that, "will minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment." Id. § 1765(a). The terms of this section do not limit "damage" specifically to the land within the right-of-way corridor. Rather, the repeated use of the expansive term "the environment" indicates that the overall effects of granting the right-of-way special use permit on cultural, environmental, scenic and aesthetic values must be evaluated and these resources protected. In addition, the obligation to impose terms and conditions that "protect Federal property and economic interests" in Section 505(b) shows that the Forest Service must impose conditions that protect not only the land crossed by the right-of-way, but **all** federal lands and waters affected by the approval of the right-of-way special use permit.

Thus, the Agency's substantive duties under FLPMA require it to fully analyze all of these impacts and baseline conditions. This is in addition to NEPA, as review under FLPMA is not constrained by any limitations on NEPA review. Accordingly, inadequacies under NEPA discussed herein are also, at a minimum, violations of the Agency's duties under FLPMA.

The Resolution Project could not operate as approved without the use of the tailings and ore concentrate pipelines, electrical transmission lines, roads, and other infrastructure reviewed

in the FEIS and proposed to be approved by the DROD. "We have concluded that 'but for' the TNF's permits for Resolution Copper Mine roads and pipelines and SRP's transmission lines on Forest Service land, the entire Resolution Copper Mine project would not occur and its consequences are reasonably certain to occur." FEIS Appx. P, Dec. 31, 2020, U.S. FWS Biological Opinion ("BiOp"), at 44.

Second, the discretionary requirements in Section 505(b) require a Forest Service determination as to what conditions are "necessary" to protect federal property and economic interests, as well as "otherwise protect[ing] the public interest in the lands traversed by the right-of-way or adjacent thereto." This means that the Agency can only approve the right-of-way special use permit if it "protects the public interest in lands" not only upon which the pipeline/roads/transmission lines would traverse, but also lands and resources adjacent to and associated with the right-of-way special use permit. Thus, in this case, the Forest Service can only approve the right-of-way special use permits if the operation of the mine itself "protects the public interest." As shown herein, that clearly is not the case.

Third, the requirement that the right-of-way grant "do no unnecessary damage to the environment" and be "consistent with … any other applicable laws," id. §§ 1764(a)-(c), means that a grant of a right-of-way special use permit leading to the Mine must satisfy all applicable laws, regulations and policies. Here, because the Project would violate many of these requirements, the agency cannot issue the right-of-way special use permits.

The federal courts have repeatedly held that the federal land agency not only has the authority to consider the adverse impacts on lands and waters outside the immediate ROW corridor, **it has an obligation to protect these resources** under FLPMA. In County of Okanogan v. National Marine Fisheries Service, 347 F.3d 1081 (9th Cir. 2003), the court affirmed the Forest Service's imposition of mandatory minimum stream flows as a condition of granting a ROW for a water pipeline across USFS land. This was true even when the condition/requirement restricted or denied vested property rights (in that case, water rights). Id. at 1085-86.

The Forest Service thus cannot issue a Special Use Permit/ROW that fails to "protect the environment" as required by FLPMA, including the environmental resource values in and not within the ROW corridor. "FLPMA itself does not authorize the Supervisor's consideration of the interests of private facility owners as weighed against environmental interests such as protection of fish and wildlife habitat. FLPMA *requires* all land-use authorizations to contain terms and conditions which will protect resources and the environment." Colorado Trout Unlimited v. U.S. Dep't of Agric., 320 F.Supp.2d 1090, 1108 (D. Colo. 2004)(emphasis in original) appeal dismissed as moot, 441 F.3d 1214 (10th Cir. 2006).

The Interior Department, interpreting FLPMA Title V and its right-of-way regulations, has held that: "A right-of-way application may be denied, however, if the authorized officer determines that the grant of the proposed right-of-way would be inconsistent with the purpose for which the public lands are managed or if the grant of the proposed right-of-way would not be in the public interest or would be inconsistent with applicable laws." Clifford Bryden, 139 IBLA 387, 389-90 (1997) 1997 WL 558400 at *3 (affirming denial of right-of-way for water pipeline, where diversion from spring would be inconsistent with BLM wetland protection standards).

Similar to the County of Okanogan and Colorado Trout Unlimited federal court decisions noted above, the Interior Department has held that the fact that a ROW applicant has a property right that may be adversely affected by the denial of the ROW does not override the agency's duties to protect the "public interest." In Kenneth Knight, 129 IBLA 182, 185 (1994), the BLM's denial of the ROW was affirmed due not only to the direct impact of the water pipeline, but on the adverse effects of the removal of the water in the first place:

> [T]he granting of the right-of-way and concomitant reduction of that resource, would, in all likelihood, adversely affect public land values, including grazing, wildlife, and riparian vegetation and wildlife habitat. The record is clear that, while construction of the improvements associated with the proposed right-of-way would have minimal immediate physical impact on the public lands, the effect of removal of water from those lands would be environmental degradation. Prevention of that degradation, by itself, justified BLM's rejection of the application.

1994 WL 481924 at *3.

That was also the case in Clifford Bryden, as the adverse impacts from the removal of the water was considered just as important as the adverse impacts from the pipeline that would deliver the water. 139 IBLA at 388-89. *See also* C.B. Slabaugh, 116 IBLA 63 (1990) 1990 WL 308006 (affirming denial of right-of-way for water pipeline, where BLM sought to prevent applicant from establishing a water right in a wilderness study area).

In King's Meadow Ranches, 126 IBLA 339 (1993), 1993 WL 417949, the IBLA affirmed the denial of right-of-way for a water pipeline, where the pipeline would degrade riparian vegetation and reduce bald eagle habitat. The Department specifically noted that under FLPMA Title V: "[A]s BLM has held, **it is not private interests but the public interest that must be served by the issuance of a right-of-way**." 126 IBLA at 342, 1993 WL 417949 at *3 (emphasis added). As the IBLA held:

> The public interest determination is more than a finding that no laws will be violated by granting the ROW. Even if UUD [Unnecessary or Undue Degradation] can be avoided, degradation to public resources posed by a requested ROW may factor into BLM's determination of whether that ROW would be in the public interest. For example, in *Sun Studs,* we upheld BLM's rejection of a logging road ROW permit based on environmental considerations without any suggestion that the environmental harm rose to the level of unlawful degradation.

Klamath-Siskiyou Wildlands Center, IBLA 2019-75, at 9 (April 29, 2019), citing Sun Studs, 27 IBLA at 282-83.

As noted herein and in the previous comments, in addition to the immeasurable destruction of cultural and religious values, the massive water consumption by the Project which all could not occur but for the issuance of the Special Use Permits mandates rejection of the applications.

Lastly, the DROD and FEIS failed to comply with the financial requirements of the FLPMA regarding ROW applications and approvals. At a minimum, the Forest Service must

obtain "Fair Market Value" (FMV) for the use of federal land and resources. FLPMA requires that "the United States receive fair market value of the use of the public lands and their resources." 43 U.S.C. § 1701(a)(9). "The holder of a right-of-way shall pay in advance the fair market value thereof, as determined by the Secretary granting, issuing, or renewing such right-of-way." 43 U.S.C. § 1764(g). In addition, Resolution and SRP must fully "reimburse the United States for all reasonable administrative and other costs incurred in processing an application for such right-of-way and in inspection and monitoring of such construction, operation, and termination of the facility pursuant to such right-of-way." Id. *See* 36 C.F.R. § 251.57 (rental fees) and 36 C.F.R. § 251.56 (reclamation and performance bond). The FEIS never discusses these statutory and regulatory requirements and the Forest Service did not review the Project under these constraints as it was required to do.

The Forest Service's authority to regulate activities on national forest lands is also governed in part by the Organic Administration Act of 1897 ("Organic Act"), 16 U.S.C. §§ 475, 551, which authorizes the agency to promulgate rules for the national forests, "to regulate their occupancy and use and to preserve the forests thereon from destruction." 16 U.S.C. § 551. One of the Act's guiding principles is for the agency to "improve and protect" the national forests. 16 U.S.C. § 475. It further requires the Secretary of Agriculture (through the Forest Service) to, "make provisions for the protection [of the lands] against destruction by fire and depredations." 16 U.S.C. § 551. The Service, "will insure the objects of such [forest] reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction." Id. The Forest Service regulations implementing these Organic Act mandates are found, in relevant part, at 36 C.F.R. Parts 251 and 261, which govern uses on the national forests.

Accordingly, the Agency's failure to properly apply FLPMA, the Organic Act, and the Agency's Right-of-Way/Special Use Permit regulations violates federal law and is arbitrary and capricious.

The FEIS and DROD Violate the Public and Environmental Review Requirements of NEPA, NDAA, FLPMA, and Applicable Law.

As shown by the Objectors' previous Objections and comments (pp. 15-300 of AMRC's November 7, 2019 comments, pp. 3-65 of the ITAA's November 7, 2019 comments, and the Objectors' comments on water quality submitted to the USFS on October 30, 2020), the Draft EIS failed to comply with the Forest Service's mandatory public and environmental requirements under NEPA, the NDAA, FLPMA, the CWA and other applicable laws. These comments, and the FEIS' inadequate response, are contained in Volume 6 of the FEIS. *See also* Objectors supplemental comments submitted in October and December of 2020, and on April 11, 2025. Acting Supervisor Torres responded (albeit inadequately) to the Objectors' December 2020 comments in a January 12, 2021 letter to AMRC and ITAA, which are in the administrative record for these Objections.

The Forest Service Failed to Meaningfully Consider Comments from Cooperating Agencies

Bureau of Land Management

The Bureau of Land Management ("BLM") is a listed as a cooperating agency in the FEIS, FEIS at ES-5, and it has special expertise with respect to, *inter alia*, the water related

impacts of the Project. In June 2022, after the initial FEIS was rescinded, the BLM provided a 26-page "targeted technical review" of the 2021 FEIS to the Forest Service – "[a]t the request of the Department of Agriculture – U.S. Forest Service." These extensive comments were prepared by a "team of [BLM] hydrology specialists" who reviewed a wide range of topics related to "the hydrology and water resources aspects of the project and assessed whether the FEIS adequately addressed comments received during the FEIS development." (Bureau of Land Management Review of Hydrology Aspects of the Resolution Copper Project, June 13, 2022)("BLM Hydrology Review"). A copy of the BLM Hydrology Review was also provided to the Forest Service by Plaintiffs via a supplemental submission in April 2025.

In the BLM Hydrology Review, BLM hydrologists raised numerous concerns with the FEIS as it relates to water-related impacts. The FEIS fails to respond to the BLM Hydrology Review, despite the fact that the Forest Service requested the Review. The BLM Hydrology Review was not even included in the FEIS' Literature Cited/Documents Cited and only appears in two small documents in the project record addressing one mitigation measure, and the stormwater design for the tailings facility. None of the other extensive and detailed water related recommendations or concerns raised in the BLM Hydrology Review were even acknowledged. The Forest Service cannot disregard or fail to meaningfully consider the comments of a NEPA cooperating agency—which were prepared "at the request" of the Forest Service.

Arizona State Land Department

The Arizona State Land Department ("ASLD") – also a cooperating agency – warned the Forest Service during the NEPA process: "[T]he extraction and transportation of groundwater out of the [Superstition Vista Planning Area] greatly compromises the ability to develop these lands to their full planned potential, and as a result, reduces the income and value of the Trust." FEIS at R-44. Despite ASLD's protests and the trove of available information about the Superstition Vistas development, the Forest Service erroneously concluded that most of the Superstition Vistas is "speculative," (FEIS 987), and refused to analyze it in the FEIS.

Arizona Department of Water Resources

As discussed further herein, the Forest Service failed to acknowledge a major determination and public announcements by the Arizona Department of Water Resources, (also a NEPA cooperating agency per FEIS at 1002-1003) regarding the overallocation of groundwater resources and shortage/unmet demand in the Phoenix Active Management Area ("AMA"), as part of its updates to the 2024 Phoenix AMA model.

The Forest Service failed to acknowledge or cite this major conclusion of Arizona Department of Water Resources' 2024 update to the Phoenix AMA model, despite the state agency being a cooperating agency to this project. Instead, the Forest Service asserted in direct contradiction to Arizona Department of Water Resources' extensive work on the subject that "The outcome of the cumulative effects modeling indicates there is still groundwater available for use after 100 years, even after all committed demands are accounted for." FEIS at 987.

The Agency Reviewed the Project Under an Incorrect Legal Regime and Statement of the "Purpose and Need" for Its Review.

NEPA requires all EISs to contain a statement that specifies the underlying "purpose and need" for which the agency is responding to when reviewing the proposed action(s). The statement of purpose and need is crucially important because it dictates the scope of the agency review and the range of reasonable alternatives to the proposed action. City of Carmel-By-The-Sea v. U.S. Dep't of Transp., 123 F.3d 1142, 1155 (9th Cir. 1997). The purpose and need statement cannot be so narrow as to limit the range of reasonable alternatives. Id. at 1155 ("The stated goal of a project necessarily dictates the range of reasonable alternatives and an agency cannot define its objectives in unreasonably narrow terms."); *see also* Nat'l Parks & Conservation Ass'n v. Bureau of Land Mgmt., 606 F.3d 1058, 1070 (9th Cir. 2010).

Agencies cannot avoid NEPA's requirements by unreasonably restricting the statement of purpose and need. Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190, 196 (D.C. Cir. 1991)("an agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency's power would accomplish the goals of the agency's action"). "[A]n applicant cannot define a project in order to preclude the existence of any alternative sites and thus make what is practicable appear impracticable." Sylvester v. U.S. Army Corps of Eng'rs, 882 F.2d 407, 409 (9th Cir. 1989). Although the Forest Service is permitted to take the applicant's purposes into consideration, it cannot draft a narrow purpose statement that restricts the consideration of alternatives to one motivated by private interests. Nat'l Parks & Conservation Ass'n, 606 F.3d at 1072.

Regarding the FEIS' view of the "purpose and need" governing its review of the Exchange and Project, the Agency states that "the purpose and need for this project is twofold: 1. To consider approval of a proposed GPO [General Plan of Operations] governing surface disturbance on NFS lands—outside of the exchange parcels—from mining operations that are reasonably incident to extraction, transportation, and processing of copper and molybdenum. [and] 2. To consider the effects of the exchange of lands between Resolution Copper and the United States as directed by Section 3003 of PL 1113-291 [the NDAA]." FEIS at ES-6.

The FEIS then states the agency's interpretation of the applicable law that it believed governed its review of the Project:

> The role of the Forest Service under its primary authorities in the Organic Administration Act, Locatable Minerals Regulations (36 Code of Federal Regulations (CFR) 228 Subpart A), and the Multiple-Use Mining Act is to ensure that mining activities minimize adverse environmental effects on NFS surface resources and comply with all applicable environmental laws. The Forest Service may also impose reasonable conditions to protect surface resources.
>
> Through the Mining and Mineral Policy Act, Congress has stated that it is the continuing policy of the Federal Government, on behalf of national interests, to foster and encourage private enterprise in – the development of economically sound and stable domestic mining, minerals, and metal and mineral reclamation industries; and orderly and economic development of domestic

> mineral resources, reserves, and reclamation of metals and minerals to help ensure satisfaction of industrial, security, and environmental needs.
>
> Secretary of Agriculture regulations that govern use of surface resources in conjunction with mining operations on NFS lands are set forth under 36 CFR 228 Subpart A.

FEIS ES-6.

The Agency's view of its authority over the Project misinterprets federal public land, mining, and environmental law. Throughout the multi-year NEPA process, public involvement, and preparation of the EIS, the Forest Service was under the mistaken belief that its review and approval of Resolution's proposed uses of federal land, and all of the proposed activities, are solely under the company's General Plan of Operations and the Agency's hardrock mining regulations at 36 C.F.R. Part 228A. *See* FEIS at 12 (Purpose and Need, section 1.3).

In its "Purpose and Need" section, the FEIS never mentions, as it now acknowledges in the DROD, that all of the Project facilities on Forest Service managed lands after the Exchange would be governed by the Agency's 36 C.F.R. Part 251 and 261 regulations, not the Agency's Part 228A mining regulations. FEIS at 12.

In addition, the Agency's focus on the need to support mineral development under the 1970 Mining and Mineral Policy Act is misplaced. That Act, which merely notes general principles, creates no controlling statutory mandate on the Agency. Instead, the Forest Service's primary mandate is to protect the forest from destruction and depredations under the 1897 Organic Act and the NFMA. The Agency's guiding congressional mandate regarding the national forests is "to regulate their occupancy and use and to preserve the forests thereon from destruction." 16 U.S.C. § 551 (Organic Act).

In addition, the FEIS does not fully analyze and ensure the protection of public resources for special uses and rights-of-ways under FLPMA Title V, 43 U.S.C. §§ 1761–1771, as well as 36 C.F.R. Parts 251 and 261.

Overall, the Agency's legally incorrect view of the "purpose and need" for its review of the Project fatally undermines the entire FEIS. "No amount of alternatives or depth of discussion could 'foster[ ] informed decision-making and informed public participation' when the Forest Service bases its choice of alternatives on an erroneous view of the law. *See* Westlands Water Dist. v. U.S. Dep't of Interior, 376 F.3d 853, 868 (9th Cir. 2004)." Ctr. for Biological Diversity v. U.S. Fish and Wildlife Serv., 409 F.Supp.3d 738, 766 (D. Ariz. 2019). If an Agency misconstrues its statutory and regulatory authority, it fails to take "a hard look at all reasonable options before it," and violates NEPA. N.M. ex rel Richardson v. U.S. Bureau of Land Mgmt., 565 F.3d 683, 711 (10th Cir. 2009).

For example, the agency based the FEIS on the erroneous view that it could not deny Resolution's proposed pipelines, transmission lines, roads, and other Project facilities: "The no action alternative cannot be selected in this Draft ROD because the land exchange was mandated by Congress." DROD at 35. The agency ignores its own statement that the DROD just deals with these uses of public land after the Exchange. DROD at v-vi.

But, the Agency's authority over the pipelines, transmission lines, roads, and other facilities that remain on federal land after the Exchange are completely discretionary under FLPMA and the Agency's Special Use regulations.

Failure to Consider and Properly Review All Reasonable Alternatives, Including the No-Action Alternative.

NEPA requires that an agency provide an objective evaluation of a range of reasonable alternatives to the proposed action. 42 U.S.C. § 4332(C)(iii) & (F). As the Ninth Circuit has held:

> NEPA requires that federal agencies consider alternatives to recommended actions whenever those actions "involve[ ] unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E) (1982). The goal of the statute is to ensure "that federal agencies infuse in project planning a thorough consideration of environmental values." The consideration of alternatives requirement furthers that goal by guaranteeing that agency decisionmakers "[have] before [them] and take [ ] into proper account all possible approaches to a particular project (including total abandonment of the project) which would alter the environmental impact and the cost-benefit balance." NEPA's requirement that alternatives be studied, developed, and described both guides the substance of environmental decisionmaking and provides evidence that the mandated decisionmaking process has actually taken place. Informed and meaningful consideration of alternatives--including the no action alternative--is thus an integral part of the statutory scheme.

Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228 (9th Cir. 1988)(citations omitted).

This includes a duty to fully review the No-Action Alternative. Id. The requirement for the No-Action Alternative exists as a mechanism for comparing the environmental and related social and economic effects of the affected environment in the absence of the proposed action as compared to all of the proposed action alternatives. 42 U.S.C. §§ 4332(C)(iii), (F).

> The FEIS described its view of the No-Action Alternative:
>
> The no action alternative includes the following:
> · The final GPO would not be approved, thus, none of the activities in the final GPO would be implemented, and the mineral deposit would not be developed;
> · The land exchange would not take place;
> · Certain ongoing activities on Resolution Copper private land, such as reclamation of the historic Magma Mine, exploration, monitoring of historic mining facilities such as tailings under existing State programs and permits, maintenance of existing shaft infrastructure, including dewatering, and water treatment and piping of treated water along the MARRCO corridor to farmers for beneficial use, would continue regardless of GPO approval;
> · Ongoing trends not related to the proposed project would continue, such as population growth, ongoing impacts on air quality from fugitive dust and vehicle emissions, human-caused fires from recreation, ranching, and a corresponding increase in use of public lands; and

- No agency land and resource management plans would be amended for this project.

FEIS at 91–92. This was reiterated by the Fish and Wildlife Service: "We have concluded that 'but for' the TNF's permits for Resolution Copper Mine roads and pipelines and SRP's transmission lines on Forest Service land, the entire Resolution Copper Mine project would not occur and its consequences are reasonably certain to occur." FEIS Appx. P, Dec. 31, 2020, U.S. FWS Biological Opinion ("BiOp"), at 44.

Regarding the No-Action Alternative, the Agency states that: "The no action alternative cannot be selected … because the land exchange was mandated by Congress and the Forest Service does not regulate mining operations on private land." DROD at 35. But that erroneously links the review and approval of the proposed uses on the remaining federal lands with the approval of the Exchange. Nothing in the NDAA, or any other federal law, requires the Forest Service (or any other agency such as the Corps of Engineers) to approve anything beyond the Exchange (and that approval is subject to significant constraints as noted herein).

A proper No-Action Alternative, then, must be focused on the company's proposed uses of federal land (and its related impacts) as if all of the proposed uses on the remaining (non-exchanged) federal lands are denied by the Forest Service or Army Corps of Engineers. Indeed, as detailed herein, when the Forest Service reviews these proposed uses under the proper regulatory structure, the proposed uses cannot be approved, due to irreparable and devastating impacts that would result from approval of the uses (such as the construction and use of the pipelines bisecting Ga'an Canyon).

Yet, nothing in the NDAA or any other law requires the Agency to approve these uses. Overall, the Agency cannot base its NEPA and FLPMA review, including consideration of the No-Action Alternative, on an incorrect view of the law, or on any presumption that it must approve the proposed uses.

A legitimate and proper No-Action Alternative must, then, consider the conditions that will exist if the Forest Service denies the proposed uses of federal land. For example, because Resolution would have no need to continue to pump and dewater groundwater if it was denied its proposed uses (even after the Exchange was completed), because it would not have the support facilities necessary to mine the ore body, the baseline and related conditions that would then exist must be considered as the true No-Action Alternative condition.

The Forest Service incorrectly believes that the dewatering will continue (FEIS at 91–94) even if the proposed uses were not approved. *See also* FEIS at 417 ("Under the no action alternative, which includes continued dewatering pumping of the deep groundwater system…."). But the fact that Resolution would obtain the ore body and surrounding lands via the Exchange does not mean that it would continue groundwater pumping if or when it could not conduct the proposed uses on the remaining federal lands. Indeed, the previous operator shut down the pumps for approximately ten years in or around 1997.

The FEIS lists several major ongoing actions of Resolution Copper, the effects of which the Forest Service improperly included as the environmental baseline, which results in these effects not being analyzed at any point in the NEPA process (as they should have). This includes, but is not limited to, the adverse impacts to local springs and seeps (and related groundwater-

dependent ecosystems), surface water sources (surface flows in Queen Creek, Ga'an ("Devils") Canyon, and elsewhere), underlying groundwater levels, and local wells in and around Oak Flat resulting from the ongoing and "continued dewatering" of the mine shafts, including shafts No. 9 and No. 10, among other shafts and tunnels, since at least 2009.

The Forest Service admits that the "dewatering of the deep groundwater system has taken place since 2009 to allow construction and maintenance of mine infrastructure" and that it will be continued "throughout the mine life." FEIS at 390. The Forest Service nevertheless states in the FEIS that the No Action Alternative (baseline) "includes continued dewatering pumping of the deep groundwater system" at Oak Flat. FEIS at 417.

Groundwater levels in the deep groundwater system below Oak Flat (close to the pumping that has been dewatering Shafts 9 and 10) have dropped over 2,000 feet since 2009. FEIS at 410. Further away, near Superior, Arizona water levels associated with these units have declined roughly 20 to 90 feet since 2009. Id.

The Forest Service's decision to include the adverse impacts from the 16 years of ongoing dewatering from Shafts 9/10 and other dewatering activities as part of the environmental baseline and as a result, all of the corresponding adverse impacts to the springs, seeps, surface water features, groundwater dependent ecosystems, and wells in the area, does not represent true baseline environmental conditions, as it grossly underestimates the magnitude and extent of mine's impacts on the affected environment on the low side. The Forest Service had sufficient information to reasonably develop a true environmental baseline for the Project—one that did not include the ongoing dewatering—but it instead improperly included this information into the environmental baseline, significantly skewing the dewatering impacts between action and No-Action alternatives.

In 2008, as part of the Forest Service's decision to issue a Special Use Permit to Resolution Copper for construction of a water pipeline within the MARRCO corridor, the Forest Service obtained detailed information pertaining to existing surface water features (including observed discharges from springs, seeps, and surface water sources) with corresponding maps of these then existing surface water features. These materials also included detailed hydrographs of groundwater elevation levels, as well a robust table of registered groundwater wells in the Superior and Oak Flat Areas.

In the FEIS, the Forest Service did not consider this information or make a comparison between springs, seeps, groundwater-dependent ecosystems, surface waters, or local wells, or other documented resources that existed at the time of the MARRCO special use permit—which was immediately prior to Resolution Copper's dewatering of Shafts 9 and 10 (2008/09)—and those that remain in existence today when it established the environmental baseline for the FEIS. Instead, the Forest Service concluded, without explanation or support, that, "this was the appropriate approach under NEPA," FEIS at 391, because, "selecting a past point in time as a baseline does not reflect the environment as it exists today." Id.

Many of the springs and various other surface water featured in the Oak Flat area were also subsequently surveyed by Plaintiffs (including GPS locations), yet this information was also not considered in the USFS' baseline analysis under NEPA.

The BLM, in its role as a cooperating agency, also raised concerns related to the dewatering effects on these springs, noting that GIS layering they had obtained "shows a lot more springs in the area of interest than are shown in the FEIS." The BLM went on to ask, "Are the rest of these springs/seeps already dry? Why are they not mentioned?" BLM Hydrology Review at 8. Later in its review, the BLM observed: "After significant study of the FEIS and supplemental studies the BLM reviewers believe the characterization of GDEs is inadequate. On the United States Department of Agriculture RC Project and Land Exchange Environmental Impact Statement web page under 'Baseline Reports' there are inventories of springs, but only a few of those springs were included in the FEIS. The BLM reviewers did not see a discussion in the FEIS about why only a few of these [groundwater-dependent ecosystems] were included within the study." BLM Hydrology Review at 18.

The BLM also stated it shared concerns with prior commentators about the impact of ongoing mine dewatering on baseline conditions:

> Concern was expressed in the comments that while dewatering of the Resolution graben has been occurring since 2009, the baseline condition for analysis would be set to the start of mining. The BLM reviewers share this concern because baseline monitoring occurred from 2003 to 2017, but dewatering started in 2009. The short time-period between the start of dewatering and the end of monitoring did not take into consideration a delay in response between deep dewatering and a near-surface expression of the dewatering. The BLM reviewers believe it may be more appropriate to analyze available groundwater level information from wells, between where dewatering is occurring and the four springs in Devils Canyon and the 14 sites on Oak Flat. A study of historical groundwater level information could identify if pre-mining dewatering appears to be expanding towards the locations being monitored, or if impacts are already being realized.

BLM Hydrology Review at 13. The BLM's recommendations were never discussed or responded to in the FEIS.

In sum, none of the adverse impacts from the 16 years of ongoing dewatering of Shafts 9 and 10 were included in the environmental baseline in the FEIS despite the fact that the Forest Service had very detailed information about the existence and health of springs, seeps, surface waters, groundwater conditions, and wells dating back to 2008. This information was easily available to the Forest Service was utilized in the FEIS to determine the ongoing impacts from mine dewatering since 2009, since all of these impacts were simply baked into the baseline, including (among other things) the condition of numerous springs and seeps that have been decimated and lost during the last approximately 16 years of mine dewatering.

The Forest Service also failed to fully analyze the baseline with regard to the tailings alternatives. Remarkably, baseline water quality data in the area underlying the Agency's preferred Alternative 6 Skunk Camp tailings site is still unknown. Baseline groundwater and surface water quality are based on single samples collected on November 9, 2018. *See* FEIS at 547-548, Table 3.7.2-26. (Columns titled "Baseline Groundwater Quality (Skunk Camp Well)" and "Baseline Surface Water Quality (Gila River below Dripping Spring Wash)" contain the following asterisk endnote: "* Assumed concentrations are based on single sample collected on November 9, 2018, and are therefore approximate."

This is repeated elsewhere in the FEIS. "Background groundwater quality is derived from a single sample in November 2018 from a well located adjacent to Dripping Spring Wash. Background surface water quality is derived from a single sample in November 2018 from the Gila River at the confluence with Dripping Spring Wash." FEIS at 468.

The Forest Service must consider the full range of impacts from the entire scope of this Mine Project (including Resolution's ongoing dewatering of Shafts 9/10 since at least 2009 and the current groundwater conditions at the tailings site) under NEPA, FLPMA, the NDAA, and other applicable law. Its failure to do so violates these laws.

Other actions and impacts that have been ignored by the Forest Service in the FEIS include "reclamation of the historic Magma Mine; exploration; monitoring of historic mining facilities such as tailings under existing State programs and permits; maintenance of existing shaft infrastructure, including dewatering; and water treatment and piping of treated water along the MARRCO corridor to farmers for beneficial use." FEIS at 91–92.

Regarding this last point, the FEIS unfairly considers Resolution Copper's water savings and/or recharge efforts, which include delivery of Shaft 9/10 dewatered water to New Magma Irrigation and Drainage District, as an applicant-committed environmental protection measure while failing to analyze the actual environmental impacts of that same dewatering that would occur at the Mine and throughout the well corridor.

In addition, the FEIS failed to consider the reasonable alternative where the Exchange takes place per the NDAA, but the agency denies some or all of the Special Use Permits for the tailings and water pipelines and electrical facilities, and/or the Special Use Permit that should have been required for the ore concentrate pipeline and construction laydown yard in and near the MARRCO corridor.

The Agency refused to consider this reasonable alternative because it erroneously believed that "the Forest Service is unable to refuse approval of the [General Plan of Operations] within their regulations and guidance." FEIS at 92. But this is internally contradicted by the FEIS and DROD, where the agency says that since it does not have discretion to deny the Exchange, all Project facilities on Forest Service managed lands are regulated under discretionary Special Use Permits, not the General Plan of Operations.

The Forest Service **does** have the authority and discretion to deny Special Use Permit applications under FLPMA and the Agency's 36 C.F.R. Part 251 and Part 261 regulations. Indeed, as shown herein, and by the massive destruction to Oak Flat/Ga'an Canyon and the surrounding lands and waters that would result from the issuance of the Special Use Permits (*i.e.*, if these Permits are not issued, then the Mine Project could not occur regardless of whether the Exchange takes place), this alternative is the only legally-defensible choice for the Agency, and yet it was not even considered.

Failure to Adequately Consider All Direct, Indirect, and Cumulative Impacts from the Project.

The Forest Service failed to adequately analyze in the FEIS the direct, indirect, and cumulative impacts from the Exchange and Project on all potentially affected resources, including

air quality, water quality and quantity, wildlife, cultural/religious resources, recreation, and economics. As shown by the Objectors' previous Objections and comments (pp. 15-300 of AMRC's November 7, 2019 comments, pp. 3-65 of the ITAA's November 7, 2019 comments, and the Objectors' comments on water quality submitted to the USFS on October 30, 2020), the Draft EIS failed to comply with the Forest Service's mandatory public and environmental requirements under NEPA, the NDAA, FLPMA, the CWA and other applicable laws. These comments, and the FEIS' inadequate response, are contained in Volume 6 of the FEIS. *See also* Objectors supplemental comments submitted in October and December of 2020, and on April 11, 2025. Acting Supervisor Torres responded (albeit inadequately) to the Objectors' December 2020 comments in a January 12, 2021 letter to AMRC and ITAA, which are in the administrative record for these Objections.

Water Resources and Project Water Use

Some of the most glaring inadequacies in the FEIS involve water. Although the Arizona Department of Water Resources has been a cooperating agency in the NEPA process, the FEIS failed to adequately analyze key environmental baseline information and the physical availability of Arizona's water resources to be consumed by the Mine—or the direct, indirect, and cumulative impacts that the consumption of such a large volume of water (at least 677,000 AF–786,626 AF) would have on Arizona's water supplies on a local, regional, or state-wide basis.

The massive water footprint of the Project can be generally attributed to Resolution Copper's plans to (a) pump raw groundwater from the Desert Wellfield located along or MARRCO Corridor in the East Salt River Valley (544,858 AF, *see, e.g.*, FEIS at 443, Figure 3.7.1-7), which will be used throughout the Mine Project, including for processing ore at the West Plant Site, delivering copper concentrate in the form of a slurry to the filter plant and load out facility in the San Tan Valley, and to transport tailings as a slurry from the West Plant Site to the tailings facility at Skunk Camp under preferred Alternative 6; (b) continue massive mine dewatering activities at the Mine itself at Oak Flat and the East Plant Site to keep its tunnels, adits, shafts, and other underground infrastructure free of water—water that will then be fully consumed in the mining operations (at least 87,000 AF according to the FEIS); and (c) maintain a massive tailings facility that will eventually total 4,900 acres in size and will require the continued capture and diversion of precipitation and stormwater which, over time, will be lost via evaporation and seepage, potentially in perpetuity.

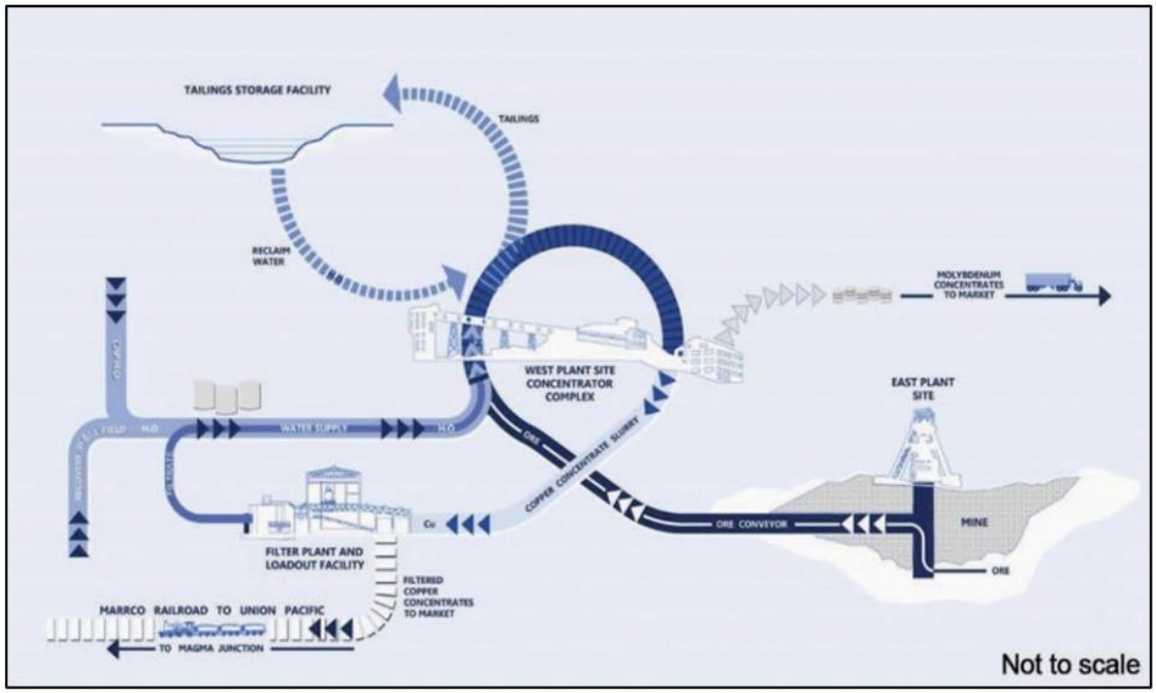

Figure 2.2.2-4. Overview of the mining process at full operation

FEIS at 62.

The Desert Wellfield

A massive portion of the water demand from the Project will be met through the development and use of at least 30 groundwater wells to be constructed at the Desert Wellfield. As noted above, when combined, pumping from the Desert Wellfield and mine dewatering at the Mine Site are predicted in the FEIS to consume (deplete) 677,000 AF of water from Arizona's limited water sources over the life of the Mine. But this is just a prediction, and the Forest Service acknowledges in the FEIS that the water balance numbers used in the FEIS to analyze the impacts to local, regional, and state water supplies from the Project are subject to "inherent uncertainties" and that the water balance could be higher (or lower) "based on real-world operational, climactic, and hydrological conditions." FEIS, Appendix H at H-1.

In fact, the analysis of the Tables and Figures contained in Resolution's own General Plan of Operations shows that Resolution's total water usage over the life of the Mine may be even greater—closer to 786,626 AF. *See* GPO Figures 3.6-1a, 3.6-1b, and 3.6-1c (Volume 2). The FEIS does not disclose or analyze the clear disconnect between Resolution's own water usage figures contained in the General Plan of Operations (totaling up to 786,626 AF) and the numbers ultimately analyzed by the Forest Service in the FEIS.

Moreover, in an attempt to mitigate for the high potential of the Project to use considerably more water than was actually analyzed in the FEIS, the Agency assumes all "makeup water will be physically pumped from the Desert Wellfield with no offsets" from long term storage credits that Resolution Copper has accumulated over the years in groundwater

storage and savings facilities in the Phoenix and Pinal Active Management Areas. Appendix H at H-1, *see also* FEIS at 981. Under this strategy, rather than making a reasonable effort to calculate and reasonably analyze the true water demands and water impacts of the Project, the Agency instead relies on Resolution Copper to voluntarily recover its long term storage credits for use in the Mine Project in the likely event that the Project's water demands exceed those predicted in the FEIS.

The FEIS estimates that "about 60 percent of the groundwater pumped [from the Desert Wellfield] will be associated with long-term storage credits already obtained by Resolution Copper or are under agreement to obtain." FEIS at 398. However, Resolution Copper cannot physically recover much, if any at all, of its long-term storage credits through the Desert Wellfield, since these credits are stored in groundwater storage or groundwater savings facilities that are in different subbasins than the Desert Wellfield. This means that the vast majority of water used in the Project—and any exceedances of the water budget predicted in the FEIS—will be pumped from raw groundwater in the East Salt River Valley under must issue mineral extraction permits under A.R.S. § 45-514.

All long-term storage credits held in groundwater storage facilities and groundwater savings facilities in Arizona are tracked and accounted for in accounts maintained by the Arizona Department of Water Resources. The Department's accounting of long-term storage credits attributed to Resolution Copper shows that only a portion of Resolution Copper's credits (far less than "60 percent") are accounted for as legally recoverable from the New Magma Irrigation and Drainage District groundwater savings facility, which is the only facility in relative proximity to the Desert Wellfield, and yet which is still miles away from the Desert Wellfield

The Forest Service does not disclose, analyze, or provide any groundwater modeling (or indeed any analysis whatsoever) in the FEIS to demonstrate that Resolution Copper could—in actual fact—physically recover any of its long term storage credits from New Magma or from any other groundwater storage or savings facility by pumping at the Desert Wellfield.

The MARRCO corridor is upgradient of the New Magma groundwater savings facility, and there are numerous groundwater wells located between this facility and the planned Desert Wellfield. These facts make it highly uncertain that any of Resolution Copper's long-term storage credits in New Magma could be physically recovered by pumping at the Desert Wellfield. None of this was reviewed by the Forest Service in the FEIS.

Even the Arizona State Land Department (a cooperating agency) stated that "the location along the rail corridor where Resolution proposes to withdraw the water is outside the area of hydrologic impact (AOI) where the water storage occurred." FEIS, Appendix R at R-43.

Resolution Copper has yet to secure a single Arizona Department of Water Resources permitted recovery well for the Desert Wellfield. Resolution Copper is not legally obligated in any way to preserve (continue to store) its long-term storage credits over the life of the Project to mitigate for the high potential of the Project to use considerably more water than was actually disclosed and analyzed by the Forest Service in the FEIS. Long-term storage credits become more and more valuable every year, and there is nothing that precludes Resolution from selling, exchanging, or transferring all or part of its credits at any time, making these credits unavailable to mitigate for the Forest Service's failure to determine, disclose, and analyze the full extent of

the Project's water demands and the corresponding adverse water impacts to local, regional, and state water supplies stemming from the Project.

In fact, Resolution has already begun to exchange its long-term storage credits. Arizona Department of Water Resources records show that in early 2023, Resolution transferred approximately 40,000 acre-feet of its long-term storage credits to EPCOR Water Arizona, Inc. In exchange, in late 2024, Resolution received approximately 2,000 acre-feet of effluent from EPCOR Water Arizona, Inc.

Other sources of water that could be stored in the New Magma groundwater savings facility (the only facility remotely close to the Desert Wellfield) in the future, such as excess Central Arizona Project water or Resolution's annual allocation of non-Indian agricultural priority Central Arizona Project water, are no longer legally available to Resolution, due to shortages on the Colorado River. Given the ongoing drought and effects of climate change in the Colorado Basin, excess Central Arizona Project water and non-Indian agricultural water are not anticipated to be available again in the future.

The BLM reviewers state that "There are many assumptions in the FEIS regarding availability of water to [Resolution], but few assumptions on the availability of water due to an extended drought or other planned projects." BLM Hydrology Review at 15.

In short, the Forest Service failed to disclose, analyze, and detail in the FEIS how, and where, all of the water needed for the Project will actually come from and, as a result, it failed to look at the impacts associated with the total water demand of the Project, and it failed to avoid, minimize or mitigate for these water related impacts.

A determination of all the sources of water, including the availability of the water supply, as well as the location, rate of pumping, and the governing legal authorities should have been made and included in the FEIS for full analysis of baseline conditions, and the Project's direct, indirect, and cumulative impacts, as well as mitigation.

The Forest Service cannot rely on future state permitting procedures and reviews to satisfy its NEPA and NDAA analysis requirements (as all analysis needed to be completed in the single FEIS as mandated by the NDAA). Under the Arizona Groundwater Management Act of 1980, areas of the state with "heavy reliance on mined groundwater" were designated as Active Management Areas, and for many of these Areas including the Phoenix Active Management Area, the primary management goal is to achieve safe-yield by the year 2025.

The Mine and much of its infrastructure, including mine dewatering infrastructure, "lies almost entirely within the Phoenix [Active Management Area]." FEIS at 410, n.67. The Desert Wellfield is located within the East Salt River valley of the Phoenix Active Management Area (FEIS at 416), although the Wellfield is in extremely close proximity to the Pinal Active Management Area.

The aquifers in the Phoenix Active Management Area and Pinal Active Management Area are hydrogeologically similar and connected, FEIS at 397, and groundwater flow passes between the two subbasins, Id. at 950. Thus, the substantial pumping that would occur at the Desert Wellfield will intersect and could deplete groundwater supplies within the Pinal Active Management Area as well.

The Forest Service acknowledges in the FEIS that "ultimately, the mine water supply for each alternative can be reduced to the need for fresh groundwater to be pumped or recovered from the Desert Wellfield…", FEIS, Appendix H at H-7); *see also* FEIS at 408 ("makeup water supply for the mine would come from a series of wells installed within the MARRCO corridor, drawing water from the deep alluvial units of the East Salt River valley.")(footnote omitted). The FEIS states this will be at least 544,858 AF, *see, e.g*., FEIS at 443, Figure 3.7.1-7, which is over 177 billion gallons of water.

The FEIS at ES-25 vaguely concludes that the numerous high-capacity wells to be developed at the Desert Wellfield pumping in the East Salt River Valley along the MARRCO corridor "would incrementally contribute to the lowering of groundwater levels and cumulatively reduce overall groundwater availability in the area." But the FEIS fails to provide substantive details about these impacts or to meaningfully or objectively consider the direct, indirect, or cumulative impacts of the Desert Wellfield pumping on the groundwater availability in the area or to local, regional, or state-wide water supplies and the environment overall.

For example, the Forest Service failed to adequately consider or analyze in the FEIS the direct, indirect and cumulative impacts of the large amount of water to be pumped by the Desert Wellfield on the important safe-yield goals of the Phoenix Active Management Area, which should have, in particular, considered the impacts of the massive amount of "fresh groundwater" to be withdrawn from the Desert Wellfield—which will be at least 544,858 AF under the preferred alternative (the Forest Service sometimes rounds this number up to 550,000 in the FEIS).

Much of the pumped groundwater from the Desert Wellfield will flow through one or both of the pipelines in the MARRCO Corridor for use at the West Plant Site and for the slurry pipeline to the Skunk Camp Tailings site, requiring Forest Service approval. As such, the Agency needed to analyze these impacts and baseline conditions under NEPA and FLPMA.

The Forest Service failed to adequately consider or analyze in the FEIS the direct, indirect, and cumulative impacts on groundwater dependent ecosystems and other resources resulting from the large amounts of groundwater to be pumped from the Desert Wellfield, summarily concluding (without any material analysis, surveys or other empirical information) that due to "depths to groundwater" there "are no [groundwater dependent ecosystems] in the East Salt River valley supported by regional groundwater that potentially could be impacted by drawdown from the mine water supply pumping." FEIS at 408. This is far from the detailed "hard look" required by NEPA.

The Forest Service states that "the amount of groundwater in storage in the East Salt River valley subbasin (above a depth of 1,000 feet) is estimated to be about 8.1 million acre-feet." FEIS at 444 (footnote omitted). The basis for this critical assumption remains wholly unclear, despite the fact that the FEIS continues to rely on this assumption throughout the FEIS.

The Forest Service also never explains in the FEIS where this 8.1 million AF estimate comes from, whether it has been independently verified by the Agency, or what the range of uncertainty is associated with this estimate. This falls far short of the basic requirement for a "hard look" under NEPA.

The Forest Service also fails to make clear: (a) if its critical assumption that there is 8.1 million AF of groundwater "in storage" in the East Salt River Valley is in reference to natural groundwater or if it includes Central Arizona Project water or other water sources that have been banked or stored in underground storage or saving facilities by others and are therefore accounted for as long term storage credits and not natural groundwater that could be relied on by Resolution for its Project; and (b) how much of the purported 8.1 million AF of groundwater "in storage" is already being utilized by others or if it is needed for committed demands in the future.

In fact, the Forest Service notes in its cumulative effects analysis that "Approximately 7 million acre-feet of long-term storage credits were stored in the entire Phoenix Active Management Area at the end of 2017 (Barter et al. 2020)." FEIS at 984. Yet, the FEIS does not distinguish these storage credits from the 8.1 million AF figure, injecting significant uncertainty into the Forest Service's evaluation of the impacts of Resolution's pumping on total stored water available.

As the Arizona Department of Water Resources (a cooperating agency) has analyzed and publicly announced, but the FEIS never acknowledges, there is currently an unmet water demand of 3.6 million AF in the Phoenix Active Management Area at the end of the Department's most recent 100-year projection period. In the FEIS, the Forest Service summarily rejects Arizona Department of Water Resources' modeling, with limited analysis, concluding that pumping from the Desert Wellfield under Alternative 6 "represents about 6.7 percent of the estimated 8.1 million acre-feet of available groundwater in the East Salt River valley subbasin," FEIS at 448, implying that this water is unallocated and available for use.

The FEIS inadequately analyzes the cumulative impacts of the Desert Wellfield pumping and Mine dewatering on regional and local water supplies—supplies that are already being stretched to their limit by drought and existing pumping, with more groundwater demand anticipated in the coming years as discussed herein.

As the BLM reviewers state, the impacts from ongoing drought conditions "are all factors that influence the cumulative impact of the mining operation and tailings storage on the landscape. The BLM reviewers do not believe factors known to be associated with climate change, such as higher average temperatures, decreased precipitation, higher evapotranspiration, more frequent and potentially more severe flooding, increase in forest fires due to dry vegetation, increased groundwater pumping due to the reduction of surface flows, and salinity, were thoroughly addressed within the FEIS." BLM Hydrology Review at 15-16.

Under NEPA and the single-EIS requirement in the NDAA, the Agency must provide the needed information in the Draft and Final EIS and this duty is not excused by a vague allusion to "uncertainties" or because either the Agency or the Project proponent has yet to obtain/compile the needed information. The Forest Service failed to provide the required information and analysis on baseline conditions and water impacts as noted herein, and failed to provide the specific justification why this failure is acceptable under NEPA. The Forest Service cannot credibly assert that the need to fully understand the direct, indirect, and cumulative water impacts of this Project, which could be catastrophic for regional and local water users (and the Phoenix Active Management Area's and Pinal Active Management Area's statutorily prescribed water goals) is not essential to its review of the Project under NEPA.

This includes the obligation to document and verify, among other things: (a) the total amount of water that is physically available for pumping at the Desert Wellfield—beyond an unverified suggestion that there is 8.1 million AF of water in "storage"; (b) the location and size of existing local and regional groundwater wells that might be adversely impacted (and even rendered dry) by the Project's pumping and water use; and (c) the reasonably foreseeable future planned developments in the area, such as the large Superstition Vista development, among other planned developments.

The Forest Service is required to fully review, verify, and understand any scientific models used in the FEIS. This includes any groundwater flow models used to examine the direct, indirect, and cumulative impacts of the massive groundwater pumping and mine dewatering requirements of the Mine. The Forest Service states (though does not explain) that the groundwater flow model used to predict pumping impacts from the Desert Wellfield was developed by Resolution Copper "from an existing, calibrated, regulatory model prepared by [Arizona Department of Water Resources]…." FEIS at 396.

The record reveals that Resolution relied upon the 2009 Arizona Department of Water Resources Salt River Valley flow model as the basis of their groundwater model for the Desert Wellfield.[10] However, the FEIS fails to provide any information that would assist the public to independently review the accuracy of the Resolution Copper model that was, presumably, built from the Arizona Department of Water Resources model. The Forest Service acknowledges in response to public comments that it did not independently review the model:

> These comments indicate that **the separate groundwater model used to predict impacts from the Desert Wellfield was not scrutinized or vetted by the NEPA team, as was the mine-site groundwater model.** This is a correct statement. Because the model used for the Desert Wellfield is a standard regulatory model prepared and used by the Arizona Department of Water Resources, the same level of evaluation was not deemed necessary.

FEIS at Appendix R at R380 (emphasis added).

Resolution's revisions to the Arizona Department of Water Resources model were evaluated by BGC Engineering USA, Inc., in its report entitled "Project Memorandum re: Review of the ADWR Salt River Valley Groundwater Model Application for Resolution's Desert Wellfield – FINAL," dated August 3, 2020 (Walser 2020a). Walser 2020a is included in the Project record.

The evaluation by Walser pointed out numerous material concerns with the Resolution Copper model that undermine its reliability that were not addressed. Walser notes that the Arizona Department of Water Resources model utilized by Resolution Copper to analyze the impacts of pumping from the Desert Wellfield "was last updated in 2009." Walser at 4. But, Walser also notes that in 2010 a "refined geology framework was developed for the model area (ADWR, 2010b), however, this framework has not been incorporated in the [Resolution Copper] numerical model." Id.

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[10] *See* Garrett, C. 2018a. *ADWR/Desert Wellfield Modeling Meetin*g. Phoenix, Arizona: SWCA Environmental Consultants. November 9, 2018 ("2018 Modeling Meeting minutes"). https://www.resolutionmineeis.us/documents/garrett-swca-adwr-meeting-2018

In addition, in 2014, Arizona Department of Water Resources completed a major update to its East Salt River Valley portion of the Salt River Valley model to perform key "structural modifications" related to the simulated thickness of aquifer materials and other matters. In 2023 and again in 2024, Arizona Department of Water Resources updated the entire Phoenix Active Management Area groundwater model. These important structural improvements and updates were also not included in the Resolution Copper model. *See* November 9, 2018, Montgomery & Associates Power Point Presentation, attached to the 2018 Modeling Meeting minutes ("Nov. 2018 Power Point") at slide 5 ("Utilize 2009 ADWR SRV model that simulates groundwater flow from 1983 through 2006 (Freihoefer et. al., 2009).").

Nevertheless, the Forest Service ultimately relied on Resolution's groundwater modeling in the FEIS, even though it was based on a much earlier version of the Arizona Department of Water Resources modeling (2009) that did not have the benefit of the Department's 2014 updates to correct structural problems or 2023/2024 model updates addressing unmet demand for groundwater supplies. The FEIS does not explain why the structural problems in the 2009 model or the unmet demands addressed in the 2023/2024 model can be ignored.

The Forest Service has an independent obligation under NEPA and the NDAA to objectively review, independently verify, and understand the groundwater flow model used by Resolution Copper, regardless of whether it represented a modification of an existing Arizona Department of Water Resources planning model. The Forest Service failed to perform its independent obligations relative to the Resolution Copper groundwater flow model for the Desert Wellfield in violation of NEPA.

The Desert Wellfield sits at the boundary of the Phoenix and Pinal Active Management Areas, yet despite the Desert Wellfield's extremely close proximity to the Pinal Active Management Area and the obvious pumping impacts from the Desert Wellfield to groundwater levels in the Pinal Active Management Area, the Resolution Copper groundwater model entirely excludes impacts to groundwater resources in the Pinal Active Management Area, and instead abruptly terminates at the boundaries of the Phoenix Active Management Area without explanation, despite the now-acknowledged hydrologic connection between the two Active Management Areas as noted elsewhere in the FEIS, *e.g.* at 950.

The Forest Service ignored this critical failing in its NEPA analysis of the Desert Wellfield, despite the fact that the drawdown contours from pumping the Desert Wellfield are shown in the FEIS to extend down past the southernmost boundary of this model by levels of at least 40 feet or more and into the Pinal Active Management Area model boundary.

As a result, the Forest Service did not identify or consider the direct, indirect and cumulative impacts from the pumping at the Desert Wellfield to groundwater levels or wells within the Pinal Active Management Area, meaning that the FEIS fails to disclose potentially catastrophic impacts from the Desert Wellfield pumping to groundwater resources within the Pinal Active Management Area. The Pinal Active Management Area groundwater flow model was updated by Arizona Department of Water Resources in October 2019 (as attached to Plaintiffs' DEIS comments) and again in 2021-2022 ("Pinal Stakeholder Model Revisions" and "ADWR's Review of Pinal Stakeholder Model Revisions"), as provided in Plaintiffs' April 2025 Supplement.

Among other things, the Arizona Department of Water Resources updates actually show a **shortfall** of 8.1 million acre-feet of water between demands and available groundwater resources (a/k/a "unmet demand") in the Pinal Active Management Area. This shortfall was not meaningfully evaluated by the Forest Service in the FEIS as NEPA requires.

In fact, "Modifications in the 2019 Pinal Model domain were concentrated in the northeast corner of the model where it overlaps with the SRV [Salt River Valley] model…" Given the rampant shortcomings in Resolution's groundwater modeling efforts for the Desert Wellfield, the Forest Service was required to perform an objective and independent analysis of the baseline conditions and of the direct, indirect, and cumulative impacts of pumping from the Desert Wellfield using the most recent modeling available.

The BLM reviewers also agreed that modeling for the Desert Wellfield was deficient. They questioned the Forest Service's failure to incorporate updated data on site geology into the model, consider future removal of stored water by other entities, and a lack of reference to any other water users within the 25-foot drawdown zone. BLM Hydrology Review at 25-26.

The Resolution model relied upon by the Forest Service in the FEIS is fundamentally flawed, likely grossly underestimates the decline in regional groundwater supplies in the East Salt River Valley that would be caused by the Desert Wellfield, and cannot be used by the Agency to examine the direct, indirect, or cumulative impacts from the Desert Wellfield pumping on individual wells in the area, or the local or regional water supply in the East Salt River Valley under NEPA.

The Mine Site (East Plant Site and Oak Flat)

Over the life of the Mine, groundwater modeling relied on by the Forest Service estimates that 87,000 AF of water will be dewatered (pumped) from the Mine and from ancillary facilities associated with the Mine at the East Plant Site and Oak Flat. FEIS at 428. This water will be substantially consumed by mining processes. Id. This is in addition to the massive amount of groundwater pumping planned for the Desert Wellfield as detailed above.

The Forest Service acknowledged in the FEIS that Mine dewatering and subsidence will impact or destroy between 18 and 20 groundwater-dependent ecosystems, including springs and surface water resources throughout the Oak Flat area. *See, e.g.*, FEIS at ES-25; FEIS at 396, Figure 3.7.1–11. The BLM reviewers noted that many more GDEs exist, but were not included in the FEIS. "The BLM reviewers did not see a discussion in the FEIS about why only a few of these GDEs were included within the study." BLM Hydrology Study at 18.

The work of hydrologist, Dr. Robert Prucha, whose report was attached to Plaintiffs' comments to the DEIS, illustrates the severe failures of the groundwater modeling approach used by the Forest Service to evaluate the adverse impacts of the mine Project, including the mine dewatering activities, predicted subsidence crater(s), and other mine activities. Dr. Prucha's work shows among other things: (1) formation of a pit lake or lakes associated with the subsidence at the mine site and thus ongoing impacts to the aquifer post mine-closure were not meaningfully evaluated by the Forest Service; (2) the true range of impacted groundwater-dependent ecosystems was severely underestimated; (3) the Forest Service examined surface water and groundwater in isolation, as if these two water resources are not hydrologically connected in key groundwater-dependent ecosystem locations when they are connected; and (4)

the model's evaluations of the relationship between stream flows and aquifer conditions (stream-aquifer flows) was not assessed.

The modeling used by the Forest Service fails to comply with industry standards in the larger modeling community—standards that consider many of the issues and factors outlined in the Prucha report, including the importance of simulating the dynamic interaction between surface and groundwater resources and the critical importance of conducting a predictive uncertainty analysis that would have provided critical information to the Forest Service regarding the range and possible extent of the drawdown (including the worst-case drawdown) and the corresponding impacts to groundwater-dependent ecosystems that would be caused by dewatering at least 87,000 AF of from the Mine, among other impacts.

The failures of the Forest Service's modeling efforts and corresponding failure to take a hard look at the impacts (including a range of impacts) from the Project and its impacts at the Mine violated NEPA, the NDAA and other public land laws. The BLM reviewers also noted that the FEIS failed to do any water budget analysis for the post-closure period. "[T]here is no indication that any water budget analysis was done for the period following year 45," nevertheless, "[w]ater budget values should be presented for out-years." BLM Hydrology Review at 19. Instead, the Forest Service failed to consider these long-term water impacts in the FEIS.

The Forest Service also acknowledged that a pit lake could form from the subsidence crater(s) at the Mine site: "We acknowledged in the DEIS that several conditions exist that suggest a lake could form, including the presence of a subsidence crater estimated to be 800 to 1,100 feet deep, recovering groundwater levels in the deep groundwater system after dewatering ends, and a block-cave zone that would hydraulically connect the deep groundwater system to the surface." FEIS, Appendix R at 359.

Yet, the potential for a pit lake to form in the subsidence crater(s) is later dismissed by the Forest Service without basis as speculative. FEIS at 492-93. However, Dr. Prucha's work demonstrates that it is reasonably foreseeable that a pit lake would form within the subsidence crater with water from the shallow alluvial aquifer and other sources that **would continue** to deplete the local and regional aquifer due to ongoing evaporation and other losses, well after the Life of Mine and closure. These post-closure water related impacts where not considered by the Forest Service or included in Resolution Copper's water balance/budget. This violates, *inter alia,* NEPA.

The BLM also rejected the Forest Service's conclusions regarding the potential formation of a pit lake. The BLM noted that once mining is completed, flows from the upper Apache Leap aquifer will drain into the lower until equilibrium is reached, "either by filling the extent of the workings and subsidence area or draining the Apache Leap aquifer." A description of post-mining groundwater system conditions is appropriate and "should not be avoided." BLM Hydrology Review at 25. The direct, indirect, and cumulative impacts from the pit lake are reasonably foreseeable and should have been considered by the Forest Service under NEPA.

Tailings Facility (Alternative 6 – Skunk Camp)

The Forest Service acknowledges generally that "Seepage from the tailings storage facilities has several unavoidable adverse effects. In all cases, the tailings seepage adds a

pollutant load to the downstream environment, including downstream aquifers and downstream surface waters where groundwater eventually daylights." FEIS at 564.

Yet the Forest Service failed to meaningfully analyze the direct, indirect, and cumulative effects to surface or groundwater quality for the preferred Alternative 6 Skunk Camp tailings site. Instead, the Forest Service says erroneously that because impacts to water quality are **assumed** to never occur, exceedances in surface water quality are not possible.

The Forest Service offers this circular reasoning: "Because concentrations in the aquifer just above the confluence with the Gila River are never anticipated to rise above surface water standards, there is no possibility that tailings seepage would lead to exceedances of surface water quality standards in the Gila River under any flow condition (median or low flow)." FEIS at 561. This is directly contradicted even by updated model runs done by the Forest Service since rescinding the prior FEIS, in which more than 10% of their runs "indicate exceedances of surface water quality standards near the Gila River," referencing the aquifer above the Gila River. FEIS at 551.

The direct, indirect, and cumulative impacts to surface and groundwater quality from the Skunk Camp tailings facility during construction and operations should have been considered by the Forest Service under NEPA. Yet they are not meaningfully analyzed in the FEIS.

As stated previously, the FEIS indicates that no meaningful baseline data has ever been collected for surface or groundwater quality for the Skunk Camp tailings site, but are instead assumed/approximated "based on single sample" collected seven years ago. FEIS at 547-548, Table 3.7.2-26.

> The Forest Service also summarily concludes, without any basis or support, that impairments to the aquifer are not expected to extend more than one mile from the tailings site. "Concentrations above aquifer water quality standards are only anticipated within about 1 mile of the toe of the tailings storage facility." FEIS at 561. Yet the tailings facility is expected to continue seeping, with concentrations of toxic constituents rising over time. "Concentrations of constituents of concern continue to increase over time, post-closure." FEIS at 553. In addition, seepage rates post-closure are "estimated to be 200 to 260 acre-feet per year." Id. And yet, despite this, the scope of post-closure period was severely limited: "it is estimated that active closure would be required up to 20 years after the end of operations." FEIS at 553.

The direct, indirect, and cumulative impacts to surface and groundwater quality from the Skunk Camp tailings facility during the post-closure period should have been considered by the Forest Service under NEPA. Yet this was not meaningfully analyzed in the FEIS.

Analysis of water in the post-closure period within and beyond this period are deficient and fail to meet the "hard look" required by NEPA. Despite all of this, the Forest Service states: "there are no committed mitigations for groundwater and surface water quality." FEIS at 563.

Reasonably Foreseeable Future Actions Were Not Included in Cumulative Effects Analysis.

The Forest Service's cumulative effects analysis also fails to adequately consider a number of "reasonably foreseeable future actions" that are in no way "speculative" and that are even currently underway in the East Salt River Valley. These include the Superstition Vistas mega residential development, other developments planned near Florence, and the development of numerous new agricultural production (groundwater) wells that are and will be developed due to impending shortages on the Colorado River, among other things.

As shown by the Objectors' previous Objections and comments (pp. 15-300 of AMRC's November 7, 2019 comments, pp. 3-65 of the ITAA's November 7, 2019 comments, and the Objectors' comments on water quality submitted to the USFS on October 30, 2020), the Draft EIS failed to comply with the Forest Service's mandatory public and environmental requirements under NEPA, the NDAA, FLPMA, the CWA and other applicable laws. These comments, and the FEIS' inadequate response, are contained in Volume 6 of the FEIS. See also Objectors supplemental comments submitted in October and December of 2020, and on April 11, 2025. Acting Supervisor Torres responded (albeit inadequately) to the Objectors' December 2020 comments in a January 12, 2021 letter to AMRC and ITAA, which are in the administrative record for these Objections.

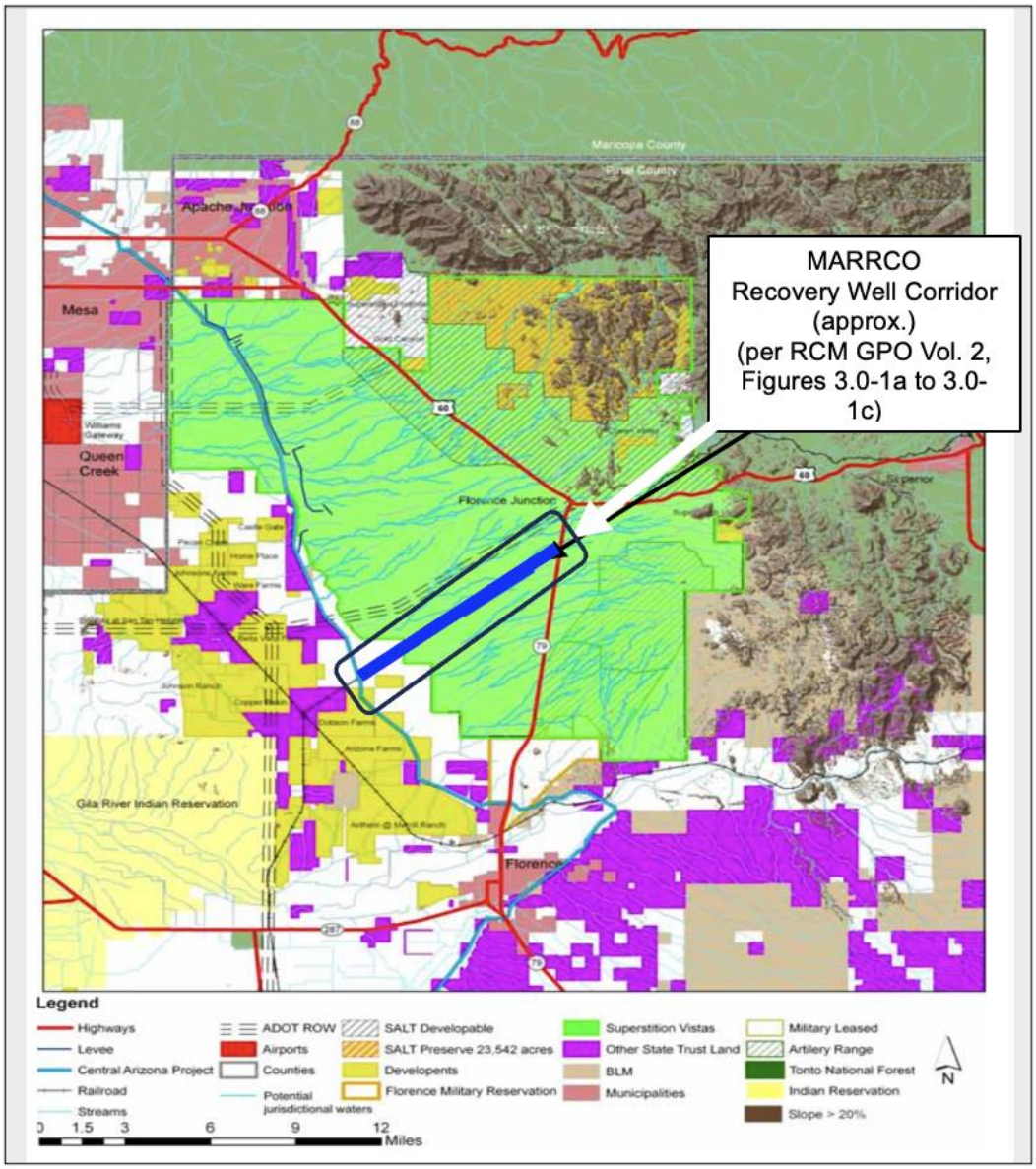
As the Forest Service acknowledges:

> A cumulative impact is one that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, which are those Federal or non-Federal activities not yet undertaken for which there are existing decisions, funding, or identified proposals (36 CFR 220.3). Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. Cumulative impacts are the combination of impacts from[:]
>
> - the proposed action or alternatives
> - other past or present actions
> - reasonably foreseeable future actions

FEIS at 923.

A reasonably foreseeable future action is one that is reasonably "likely to occur in the future." FEIS at 923. For example, despite the existence of longstanding proposals and plans by the Arizona State Land Department to develop its State Trust Lands into the 275-square mile Superstition Vistas mega development, which is located within the Project's analysis and impacts area, and even after acknowledging the portions of the Superstition Vistas development that have since been auctioned, the Forest Service declined to consider the water demands (to be served by groundwater pumping) of the Superstition Vistas fully-built out development as a reasonably foreseeable future action under NEPA.

The Desert Wellfield pumping area for the Resolution Project sits at the heart of the 275-square mile Superstition Vistas land (shown in green). This can be seen in the illustration below.



In addition to the plans of the Arizona State Land Department, Superstition Vistas has also been anticipated and considered in planning documents maintained by Pinal County and numerous local cities and towns. *See* Pinal County Comprehensive Plan (2019) & Resolution No. 2020-PZ-PA-004-20 by Pinal County Board of Supervisors Approving Amendment Recorded November 19, 2020.

Objectors provided numerous documents to the Forest Service detailing the Arizona State Land Department plans for the Superstition Vistas development, and its ongoing advancement, including information showing the Department's decision to auction over 2,700 acres of State Trust Lands for this very development. *See* Phase I Environmental Site Assessment Arizona State Land Department Auction Site prepared by Geotek (October 2019);

see also "Homebuilders run up price of East Valley land to $245.5M in controversial state auction" (AZCentral, Nov. 5, 2020). Homes have already been built and sold, and plans for the sale and development of additional acres are already underway. Id.

As early as 2006, the Arizona State University Morrison Institute for Public Policy issued a study on the Superstition Vistas development, called "The Treasure of the Superstition Vistas" (Morrison Report, ECF 68-4). Per the Morrison Report, the 275-square mile planned proposal for the Superstition Vistas development would cover an area larger than the cities of Mesa, Tempe, Chandler, and Gilbert combined. Morrison Report at 9.

The Forest Service admits in the FEIS that at least 900,000 people will live in the Superstition Vistas area. FEIS at 984. The development is predicted to have a minimum water demand of at least 190,000 AF per year. Morrison Report at 15. Water demands for the Superstition Vista development, discussed for well over a decade, have been estimated to be between 100 and 156 gallons per capita per day. (Morrison Report at 23). *See also* "Snider: New development will bring water concerns" inMaricopa.com, Dec. 3, 2011, article provided by Plaintiffs in Dec. 2020 Supplement).

The 100 gallons per capita per day estimate reflects a highly aspirational water conservation goal, as the actual water usage may be much higher. Using an average of the current per-capita water usage figures available from the Arizona Department of Water Resources for the towns of Mesa, Gilbert, Chandler and Tempe (approximately 187 gallons per capita per day) shows that Superstition Vistas development is likely to use approximately 210,000 AF of water per year for its an anticipated population of 1 million people (Phoenix AMA Draft 4th Management Plan, January 2020, p. Municipal 5-44).

The per capita water demands prepared by Hilgartwilson in 2021 in its Master Water Plan for the Arizona State Land Department's auctioned 2,783 acre DH Horton subdivision (located in the Superstition Vistas development) was noted by the Forest Service in the FEIS, FEIS at 987, but seemingly ignored. This Master Water Plan estimates that average daily demands for the portion of Superstition Vistas in development with homes already sold is 7,312,250 gallons per day (approximately 8,190 AFY), with only a portion of this coming from the City of Apache Junction's existing (and soon-expiring) Assured Water Supply right. *Id*. at 22.

These demands could easily have been extrapolated to the full Superstitions Vistas development area, but again, they were ignored, and little, if any, of the water uses or other impacts associated with the Superstition Vistas development were considered by the Forest Service, in violation of NEPA and the NDAA.

Although the Forest Service claims in the FEIS to have included the portion of Superstition Vistas in the regional cumulative effects groundwater model, this appears to be untrue based on the FEIS and documents cited in support (Barter et al. 2020 and Garrett 2018a.). That model does not appear to have been updated to include this new information or, indeed, any new information arising within the last 5-7 years.

In short, the Superstition Vistas development is undoubtedly "likely to occur in the future" and developments for the project are already underway. In other words, it is a reasonably foreseeable future action whose impacts should have been analyzed under NEPA.

The Forest Service acknowledges the existence of longstanding plans and identified proposals for the Superstition Vistas development in the FEIS, *see*, *e.g.*, FEIS at 984, 987—proposals that lay out the footprint of the development and even calculate the likely population and potential water demands for the development. But it then refuses to analyze these purportedly "speculative" activities.

Indeed, the Arizona State Land Department criticized the Forest Service's Draft EIS for the adverse impacts from Resolution's dewatering on the plans on the Superstition Vistas development. The Department filed extensive comments on the DEIS, warning of significant impacts from Resolution's Desert Wellfield pumping and dewatering on the plans for the Superstition Vistas development, and correspondingly, on the Arizona State Trust that is administered by the Arizona State Land Department under the Arizona Enabling Act. FEIS, Appendix R at R-43.

The Arizona State Land Department explained: "The greatest potential adverse impact to the [Arizona] Trust will be the water (usage of approximately 600,000 acre-feet (AF) over the LOM [Life of Mine]) that will be extracted from the aquifer beneath the Superstitions Vistas Planning Area (SVPA)." FEIS, Appendix R at R-43. The Arizona State Land Department also observed that, "[b]ased upon the anticipated groundwater requirements contained in the DEIS, the negative impact of the proposed water consumption sourced from the Superstition Vistas Planning Area (SVPA) far outweighs the estimated financial benefits to the Trust resulting from other aspects of the project by a factor of 20:1." Id. at R-44. The Arizona State Land Department further stated that "…the extraction and transportation of groundwater out of the SVPA [Superstition Vistas Planning Area] greatly compromises the ability to develop these lands to their full planned potential, and as a result, reduces the income and value of the Trust." Id.

The Forest Service rejects out of hand all existing information before it that details the ongoing development at Superstition Vistas, including detailed proposals for the development and their anticipated water demands, concluding (erroneously) that NEPA requires much more. Specifically, the Forest Service concluded that because only a "portion" of the Superstition Vistas project (the DH Horton subdivision totaling 2,783 acres, FEIS at 987) had met the technical requirement for a "demonstrated water supply" under the assured water requirements of Arizona's 1980 Groundwater Management Act, only this part of the development could be considered a reasonably foreseeable future action. Id. In doing so, the Forest Service improperly rejected all other cumulative impacts associated with the full Superstition Vista development as "speculative" under NEPA. Id.

The Forest Service's conclusion that the residential development anticipated for the Superstition Vistas mega development is merely "speculative" is internally inconsistent with the Forest Service's own finding that by the year 2030 (less than 5 years from today) all of the lands located in the adjacent New Magma Irrigation and Drainage District "will be converted to residential housing." FEIS at 988.

Contrary to its approach above, the Forest Service appears to have cherry-picked its selected reasonably foreseeable future actions, particularly with regard to housing developments. At Sec. 4.3.4 (FEIS at 977), FEIS concludes that a majority of the Superstition Vistas development and other developments in the Desert Wellfield area are "speculative, not reasonably foreseeable" because their development plans are "conceptual and lack adequate

detail to allow substantial analysis of resource effects" including particularly an Assured Water Supply (AWS) designation from the State Department of Water Resources.

Yet, the Forest Service did address the Merrill Ranch Master Planned Community Project, only a small sliver of which is located within the designated analysis area (FEIS at 949, Fig. 4.3.3-6), even though this Project does not have an Assured Water Supply Designation. FEIS at 948 (noting that lack of Assured Water Supply Designation for Merrill Ranch and that "the exact water supplies for the project are not yet known.").

The Forest Service cannot have it both ways, setting a bar so high for reasonably foreseeable future actions that it avoids looking at true cumulative impacts, while cherry picking selected more distant and less overlapping development, and finding neither, much less the former, are immaterial.

As a result of these tactics, the Forest Service did not consider or meaningfully analyze, via modeling or otherwise, the cumulative water impacts of the full Superstition Vistas planned development relative to groundwater demands and the pumping of at least 550,000 AF at the Desert Wellfield as required by NEPA. But under NEPA, the Agency cannot simply ignore cumulative impacts by labeling them as "speculative," especially when planning for these activities is already well underway, indeed many houses have already been built, many homes have been sold, houses and lots are for sale, and many more homes are still planned. Here, concrete steps have been taken to facilitate the action, and the action is considered in numerous plans by state and local communities.

"[P]rojects need not be finalized before they are reasonably foreseeable. 'NEPA requires that an EIS engage in reasonable forecasting. Because speculation is . . . implicit in NEPA, [ ]we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as crystal ball inquiry.'" N. Plains Res. Council, Inc. v. Surface Transp. Bd., 668 F.3d 1067, 1078-79 (9th Cir. 2011)(citations omitted).

Significantly, the Forest Service even gets it wrong when, in considering the 2,783 DH Horton subdivision, it concludes that this water demand was already included in the Desert Wellfield analysis at Barter, et al. 2020; however, the Barter et al. 2020 report only looked at existing Assured Water Supply designations through 2017. Barter et al. 2020 at 11-12. And contrary to the assertion in the FEIS at 987, the Barter et al. 2020 (the sole source cited in support of this assertion) has not been updated to incorporate information regarding components of the Superstition Vistas development or any other development after 2017, nearly 8 years ago.

The Forest Service violated NEPA and the NDAA when its cumulative effects analysis failed to fully evaluate all portions of the planned Superstition Vistas mega development and its substantial water needs as a reasonably foreseeable future action *vis-a-vis* the Project's massive groundwater pumping plans for the Desert Wellfield (located in the same area).

Other Reasonably Foreseeable Development Activities Were Not Considered.

The FEIS also failed to consider and fully analyze the cumulative impacts of other reasonably foreseeable future actions under NEPA, including a number of reasonably foreseeable housing developments in/near the nearby Town of Florence. These developments, although well documented, were dismissed from analysis under the FEIS. FEIS at 977.

In addition, regarding overall demands and usage of water in the area, although the Forest Service mentioned Arizona's Drought Contingency Plan and the impending "shortages" on the Colorado River in its cumulative effects analysis section of the FEIS, *see, e.g.*, FEIS at 977, 978–81, the Forest Service declined to consider as reasonably foreseeable future actions the plans of farmers in the East Salt River Valley to develop new pumping infrastructure in Pinal County under the Drought Contingency Plan and before 2026 to facilitate the extraction of up to 70,000 AF of groundwater to replace water supplies lost through shortages on the Colorado River. FEIS at 980. The Natural Resource Conservation Service has already committed $10 million dollars to support the development of this new pumping infrastructure and it is believed that some of this new pumping infrastructure has been completed. ("$10 Million to Fund Pinal County Water Infrastructure," included with Plaintiffs' April 2025 Supplement submitted to the agency).

This new infrastructure will be located within the East Salt River Valley in Pinal County —of which a portion of the area is also located within the Phoenix AMA. The pumping infrastructure and its potential drawdown squarely falls within the area impacted by Resolution's Desert Wellfield pumping.

The Forest Service declined to consider the Pinal County pumping described above, concluding that because the State's Drought Contingency Plan guidelines extend only until 2026, the pumping by Pinal County farmers will also conclude in 2026, and thus, this activity "will expire before Resolution Copper begins pumping groundwater." FEIS at 979. That is wrong, and it completely ignores common understandings about the ongoing and anticipated continued shortages on the Colorado River that Arizona is facing (shortages the Forest Service acknowledges elsewhere in the FEIS). FEIS at 979.

Under the Drought Contingency Plan, during the period between 2020 and ongoing through 2026, Pinal County farmers have experienced and will continue to experience a significant ramp down in terms of their Central Arizona Project water deliveries, much of which is a "low" priority water supply, but, as a result, have and will continue to ramp up their groundwater pumping as Central Arizona Project becomes increasingly scarce. The FEIS fails to analyze this ongoing and reasonably foreseeable future activity.

After 2026, the Pinal County farmers will continue to pump from their groundwater wells and infrastructure—pumping that will continue as long as there is water to pump. This will span well into the period of Resolution Copper's pumping from the Desert Wellfield. The BLM agreed with this point. BLM reviewers stated that they "do not believe factors known to be associated with climate change" including "increased groundwater pumping due to the reduction of surface flows, and salinity, were thoroughly addressed within the FEIS." BLM Hydrology Review at 15-16.

The Forest Service is also incorrect in the FEIS when it concludes that 70,000 AF in significant new pumping in the region will not have long-term impacts even if the wells Pinal County farmers are increasingly having to rely on are shut down prior to 2026 (which they will not be). It is well understood that the effects of groundwater pumping and the drawdown associated with groundwater pumping continue for many years after the pumping is completed, which the FEIS did not analyze.

Thus, the impacts from Pinal County farmers' new pumping will continue into the period of time that Resolution is extracting massive quantities of water from the Desert Wellfield. This reasonably foreseeable future activity was not analyzed in the FEIS as a cumulative impact. This violates NEPA and the NDAA.

As with the other inadequacies noted herein, the FEIS does not meaningfully address the direct, indirect, and cumulative impacts to Arizona's water supplies and to Arizona's water users stemming from Resolution's water pumping in the context of the past, present, and reasonably foreseeable actions required for a cumulative impacts analysis.

In addition, the cumulative impacts from the nearby Florence Copper Project were not analyzed in the FEIS. Located near the town of Florence, a demonstration project has been in operation since 2019 and the Arizona Department of Environmental Quality has issued an amended Aquifer Protection Permit for the project to allow a total of 1,765 injection and recovery wells, 90 perimeter wells and approximately 45 observation wells. The project calls for additional drawdown of groundwater in the impact area of the Desert Wellfield and holds a groundwater withdrawal permit from ADWR to use up to 1,778 acre-feet of water per year. In addition to adding to water quantity drawdown, the mine project could potentially render unusable a large quantity of groundwater surrounding the project.

The Forest Service declined to consider the groundwater impacts from the Florence Copper project as a cumulative effect because it summarily concluded without support that "there are no groundwater impacts" that would overlap with the Desert Wellfield, and because the Florence Copper project "falls outside the cumulative effects analysis area for groundwater resources." FEIS at 983. This self-limiting, circular reasoning is not supported in the FEIS, since the cumulative effects analysis area around the Desert Wellfield was unreasonably narrowed to exclude nearly all reasonably foreseeable future actions within the proximity of the Desert Wellfield. FEIS at 951, Figure 4.3.3-7.

The Current Alignment of Alternative 6 Skunk Camp (Preferred Alternative) Was Never Subject to Public Comment

The Scoping process began in early 2016 and subsequently concluded in late 2017 after the Alternatives Evaluation Report was published. It was not until the end of 2018, after Scoping had closed, that the Alternative 6 Skunk Camp site was even introduced as an alternative. It was never subject to scoping and was developed entirely outside of public awareness. The single opportunity for comment on the Alternative 6 Skunk Camp site occurred in 2019 when the DEIS was published, however this contained an older proposed pipeline route which has since been discarded.

The pipeline route for Alternative 6 Skunk Camp was "substantially redesigned" in July 2020, after the DEIS comment period closed. *See* Skunk Camp Pipeline and Powerline Disturbance Comparison (Memo prepared by WestLand Resources, Inc. dated July 8, 2020, received as part of a records request to the Tonto National Forest in August 2020). This substantial redesign is now part of the agency's preferred alternative. Yet there has been no opportunity for public review or comment on the current design of the pipeline route for the Alternative 6 Skunk Camp site.

Failure to Properly Analyze the Kings Crown Peak Tunnel

This section of the Objections focuses on issues that arose after the publication of the DEIS and thus could not have been adequately commented on during the public review process for the DEIS, as well as issues raised by Objectors during the public review process.

Kings Crown Peak is a prominent mountain peak on Forest Service Land located just north of Oak Flat and the US-60, and just west of Queen Creek. It stands approximately 5,600 feet in elevation. A substantial portion of the Kings Crown Peak includes resources such as critical habitat area for the endangered Arizona Hedgehog Cactus, multiple washes and springs, historical and cultural resources, and a hiking trail.

The FEIS now indicates that the new Alternative 6 Skunk Camp Tailings Site Northern Corridor route (which as discussed above was never subject to public review) includes a "tunnel" nearly two miles long that will be blasted through Kings Crown Peak. *See* DROD Map Package (Figure 2, USFS Special Use Permit, Proposed North Pipeline Corridor). The FEIS, at 132, has a brief mention of the tunnel and a claim that it will "avoid sensitive habitat", but there is no analysis of the impacts of blasting the tunnel will have on that habitat, or even what that specific sensitive habitat they are referring to. Figure 2.2.2-11 (FEIS at 75) is a vague stock-photo compilation which notes only that "[h]orizontal directional drilling and/or micro-tunneling will be used to undercut roads, waterways, or for high-point mountain passes." Figure 2.2.8-3 (FEIS at 126) shows "pipeline north tunnel" but doesn't even clearly note the existence of Kings Crown Peak.

The FEIS lacks any straightforward description and no NEPA-compliant analysis of the direct, indirect, and cumulative impacts to, as well as the baseline conditions of, all resources that may be affected by this tunnel and related activities. It's mentioned only vaguely in brief passing, and never analyzed or discussed in any detailed manner as required by NEPA, the NDAA, Organic Act, FLPMA, and implementing regulations:

1) A vague mention of "Pipeline boring locations" on the "east and west sides of Kings Crown Peak" (FEIS at 804) gives little information and was raised only in the context of listing various surface vegetation disturbances. No information is given about whether "pipeline boring" and "tunnel" (in the Map Package) refer to the same things or not.

2) The final U.S. Fish and Wildlife Service ("USFWS") Biological Opinion (FEIS Vol. 5) lists the various pipeline designs only, with no explanation and no description whatsoever of how these blasting plans would be reconciled with Arizona Hedgehog Cactus critical habitat: "The pipeline designs will include being buried to the extent possible, horizontal directional drilling (underneath U.S. 60, cable-stay bridges (across Queen Creek and Devil's Canyon), tunnels (Silver King-Kings Crown Peak area), or underground boring (Mineral/Mill Creek). Installation design would vary based on topography throughout each corridor segment." FEIS Appendix P Biological Opinion, 12-31-20 letter from USFWS to Tom Torres/USFS, at p. 14.

On this last point regarding the Endangered Species Act, the Forest Service failed to properly consult with the USFWS on these new impacts, in violation of the ESA, as well as relying on an inadequate Biological Opinion which does not analyze these impacts and ensure

the protection of listed species and habitat as required by the ESA. Failure to protect the cactus also violates the agency Part 251 and 261 special use regulations.

The remainder of the FEIS is entirely silent about this nearly two-mile tunnel through Kings Crown Peak. No information is provided about exactly where it would begin, where it would end, seismic surface and subsurface impacts from blasting, what would be done with the post-blasting waste material, post-blasting stability of the mountain, the geochemical and other properties of this material, impacts to existing hiking trails and other resources, impacts to species including the endangered Arizona Hedgehog Cactus, impacts to surrounding springs and washes, impacts to cultural/religious/historic resources, details on tunnel construction and operation, nor anything about how any of these impacts would be identified, reduced, avoided, or mitigated.

After the DEIS comment period closed in November 2019, Alternative 6 Skunk Camp Tailings Site Northern Corridor was "substantially redesigned," and the Southern Corridor dropped from consideration (see Briefing Paper re Changes to Alternatives for the Resolution Copper Project and Land Exchange EIS, August 20, 2020). The Pipeline Protection and Integrity Plan published by Golder Associates on May 15, 2020 states: "In the Kings Crown Peak where it is impractical to maintain acceptable pipeline slope, multiple pipeline tunnel options were proposed and evaluated based on constructability, landowner feedbacks, and cost. The most suitable tunnel route has been selected to penetrate the ridge with a slope less than 15%."

The Pipeline Protection and Integrity Plan does not give details as to exactly when this tunnel route was selected. The presence of Kings Crown Peak and identifying this segment as a planned tunnel to be blasted through the peak were only ever first noted in the FEIS. Plans to blast a tunnel through the Peak were never analyzed nor provided for public review under NEPA, FLPMA, the NDAA, and the other laws noted herein.

From the DEIS maps, it is impossible to ascertain whether any plans existed for a tunnel through this area. The vague corridor outline maps in the DEIS (shown below) never noted the presence of the Peak and never identified this segment as a proposed tunnel, but they do show a similar straight line from an aerial perspective. No other details are provided anywhere in the DEIS that would have indicated any additional details or plans for this particular area. Additionally, no other alternative alignment corridors were shown through this area. We only now know that this is a proposed tunnel to be blasted through the Peak, but no NEPA analysis has ever been done on this. *See* Figures 7a, and 1, Appendix C "Draft Practicability Analysis"); *See also* Figure 2.2.8-1 "Alternative 6 – Skunk Camp Overview", p. 95 of DEIS. Kings Crown Peak and tunnel not mentioned but alignment is shown.

This proposed tunnel also presents significant concerns about water resource impacts. The lack of baseline water conditions in the area in and near the tunnel prevents USFS (and the public) from understanding what current conditions are. This missing information and analysis in turn makes it impossible to understand what the risks are to these precious resources as well as the potential for the tunnel/tunneling operations to encounter water and what would be done, should such a development occur. What would the anticipated quantity and quality be of such water? What would be done to dispose 7of this water if it is polluted? Would an evaporation pond be needed? If so, where would it be located and what are the risks and impacts such a pond would have on habitat, wildlife, historical and cultural properties? These are just a few of

the relevant concerns that USFS has failed to disclose or consider for this tunnel. And they are not remote or speculative questions. In a nearby mine, the Ray Mine owned by ASARCO, there have been significant issues with water that seeped into its Mineral Creek tunnel. Presumably due to pollutants in this water, ASARCO could not discharge the water to Mineral Creek, but has had to drain the water into an evaporation pond.

Full and proper analysis under NEPA and FLPMA should have performed by the Forest Service to examine the full scale of this particular aspect of the corridor including direct, indirect, and cumulative impacts from blasting, impacts to the mountain and wildlife including endangered species, impacts to trails and recreation, water resources, impacts from seismic activity from the blasting, among many other things. In addition, neither the DEIS nor the FEIS contain the required analysis of the baseline conditions of the affected environmental resources (*e.g.*, water resources, wildlife, cultural resources, recreation, scenic values, etc.).

Failure to Comply with Laws Protecting Native American Resources

The FEIS and DROD also violate the procedural and substantive laws protecting the rights of Native American Tribes and their members, including ITAA member Tribes, as well as the public as a whole, related cultural, religious, and historical resources, practices, and values. Objectors previously raised these issues in comments on the DEIS. See ITAA comments dated 11-7-19 (pp. 30-38); AMRC comments dated 11-7-19 (pp. 109-128).

In addition to the FEIS' inadequate response to these comments, the FEIS and DROD rely on the finalization and execution of a Programmatic Agreement ("PA") to purportedly satisfy the agency's duties regarding these issues. Yet, the Advisory Council on Historic Preservation ("ACHP") recently informed the Forest Service that the PA was inadequate under federal law and that the Forest Service could not rely on it in support of the FEIS and DROD.

> [I]t is clear that the proposed undertaking would destroy significant historic properties, including the highly significant Oak Flat, and the measures in the PA are not sufficient to adequately resolve those adverse effects. The ACHP believes that further consultation in this case would be unproductive and therefore, we are hereby terminating consultation pursuant to 36 CFR § 800.7(a)(4).

February 2, 2021 letter from John M. Fowler Executive Director of the Advisory Council on Historic Preservation ("ACHP") to Acting Forest Supervisor Tom Torres (attached to ITAA previous Objections and in the possession of the Regional Forester's office).

The FEIS and DROD are based on a deficient PA, which shows that the agency failured to properly consult with Arizona Tribes and interested members of the public about the historic resources located at Oak Flat, including resources associated with its integrity as a Traditional Cultural Property as well as those historic resources associated with Works Progress Administration ("WPA") built infrastructure and other historic buildings and structures. In addition, as noted, the agency failed to review and protect historic and Native American resources, and failed to comply with Section 3003 of the NDAA, the National Historic Preservation Act ("NHPA"), 16 U.S.C. § 470 et seq.; Executive Order 13007, Indian Sacred Sites, May 24, 1996, 61 Fed. Reg. 26771 ("E.O. 13007"), the American Indian Religious Freedom Act ("AIRFA"), 42 U.S.C. § 1996, et. seq., NEPA, and related laws, regulations and

policies, including the agencies' trust responsibility duties to the affected Tribes, including tribal members of the ITAA.

The Failure to Consider and Require Appropriate Avoidance, Minimization, or Mitigation for Project Impacts.

According to the Forest Service, the potential mitigation measures that needed to be analyzed in the FEIS included (to varying degrees):

- Avoiding the impact altogether by not taking a certain action or parts of an action;
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- Reducing or eliminating an impact over time, through preservation and maintenance operations during the life of the action; and
- Compensating for an impact by replacing or providing substitute resources or environments.

FEIS at 135.

As shown by the Objectors' previous Objections and comments (pp. 15-300 of AMRC's November 7, 2019 comments, pp. 3-65 of the ITAA's November 7, 2019 comments, and the Objectors' comments on water quality submitted to the USFS on October 30, 2020), the Draft EIS failed to comply with the Forest Service's mandatory public and environmental requirements under NEPA, the NDAA, FLPMA, the CWA and other applicable laws. These comments, and the FEIS' inadequate response, are contained in Volume 6 of the FEIS. See also Objectors supplemental comments submitted in October and December of 2020, and on April 11, 2025. Acting Supervisor Torres responded (albeit inadequately) to the Objectors' December 2020 comments in a January 12, 2021 letter to AMRC and ITAA, which are in the administrative record for these Objections.

The Forest Service also explains that as part of the FEIS process it "has developed mitigation measures and monitoring actions to be included as project design features in the proposed action and action alternatives. The effectiveness of the mitigation measures and monitoring actions has been evaluated as part of the projected impacts analyses for the proposed action and action alternatives." Id.

However, in addition to the Forest Service's failure to comply with NEPA, the NDAA, and other public law (such as FLPMA) mandates that require a reasonable review of baseline conditions and all direct, indirect, connected, and cumulative impacts from the Project as discussed above, the Forest Service has also failed to meets its obligations under these laws to reasonably analyze all potential mitigation measures, and the effectiveness of any such mitigation measures, related to the Project's adverse impacts on groundwater resources, local wells, infrastructure, groundwater dependent ecosystems (GDEs), surface water resources, and other resources, and to impose necessary mitigation measures to minimize, rectify, or compensate for these adverse impacts.

Mitigation Related to Water Impacts from the Desert Wellfield—East Salt River Valley.

Even with the limitations identified above pertaining to Resolution Copper's Desert Wellfield, which (among other things) grossly underestimates declines in groundwater levels in the East Salt River Valley, and in the case of the Pinal Active Management Area, ignores groundwater declines completely, the Forest Service still predicts substantial groundwater declines in the region stemming from the Desert Wellfield pumping.

The FEIS estimates that the "[p]rojected drawdown [in the East Salt River Valley] would be greatest in the center of the Desert Wellfield, reaching a maximum drawdown of 228 feet, as shown in figure 3.7.1-2. FEIS at 444. "At the north and south ends of the wellfield, maximum drawdown ranges from 109 to 132 feet, and farther south, within NMIDD [New Magma Irrigation and Drainage District], maximum drawdown is roughly 49 feet (Bates et al. 2018; Garrett 2018a)." Id.

"Impacts resulting from drawdown could include loss of well capacity, the need to deepen wells, the need to modify pump equipment, or increased pumping costs." Id. The significant decline in groundwater levels resulting from drawdowns from the Desert Wellfield would adversely impact numerous individual wells throughout the East Salt River Valley, in both the Phoenix Active Management Area and the Pinal Active Management Area; however, the Forest Service fails to consider or require any measures under NEPA to avoid, minimize, or mitigate for these harms.

The Forest Service acknowledges that this drawdown could impact individual wells, rendering shallow wells dry or requiring other well owners to deepen their wells. FEIS at 416; *see also* FEIS at 986 ("[T]here likely would be certain areas that experience lack of well capacity and groundwater shortages, particularly around the edges of the basin."). The Forest Service also acknowledges that even an "hypothetical 10-foot drop in the water table could leave a shallow well completely dry (requiring it to be redrilled)...." FEIS at 416.

The Forest Service also admits the "overall the cost of pumping would increase as groundwater deepens, and infrastructure costs would increase as wells and pumps need to be lowered or replaced." FEIS at 986. The loss of water from the East Salt River Valley due to groundwater pumping is "an irretrievable impact." FEIS at 454. Yet, the Forest Service declined to analyze or require any form of mitigation for the above-described impacts to groundwater wells and resources in the East Salt River Valley resulting from the massive pumping at the Desert Wellfield.

In the 2021 Rescinded FEIS, the Forest Service analyzed and considered the inclusion of a "Potential Future Measure" (PF-WR-03) to partially mitigate for anticipated effects from groundwater declines in the East Salt River Valley stemming from Desert Wellfield pumping. 2021 FEIS at Appendix J-50. Under this Potential Future Measure, Resolution Copper committed to "work with any impacted stakeholder to mitigate effects of water level declines caused by the project." Id.

In the BLM Hydrology Review, the BLM recommended that this Potential Future Measure be implemented by the Forest Service as a required mitigation measure. "Measure PF-WR-03 is another 'potential future measure' that should become a required measure." BLM Hydrology Review at 21. "If no effects [to wells] are observed, there will be no action

necessary, however, the BLM reviewers believe it should be a mandatory mitigation if in fact negative impacts are observed. The uncertainty in occurrence should not preclude the requirement for action should it occur; as such, this should be a required measure." Id.

Instead of making PF-WR-03 mandatory, the Forest Service eliminated this mitigation obligation entirely in the 2025 FEIS, shifting all risks and burdens associated with declining groundwater levels from the Project (including the financial losses associated with having to deepen wells or losing wells entirely, which can severely impact property values) to individual well owners.

The Forest Service did not analyze or make any effort to avoid or minimize these impacts by limiting the degree or magnitude of the action and its implementation, choosing instead to select Alternative 6, which has one of the highest water demands of all alternatives, thereby rejecting alternatives that would have required less pumping from the Desert Wellfield. And despite adopting one of the highest water-demanding alternatives, the Agency did not analyze or even require Resolution to rectify these impacts through funding a well compensation or replacement program or committing to provide a substitute water supply. The Agency did nothing.

But an EIS must include a detailed discussion of mitigation measures. Robertson, 490 U.S. at 351. The omission of a reasonably complete discussion of possible mitigation measures would undermine the "action-forcing" function of NEPA. Id. In the response to comments, the Forest Service ultimately admits, "no specific monitoring or mitigation measures are included in the DEIS specific to the Desert Wellfield in the East Salt River valley. This groundwater pumping is subject to permitting by the ADWR." FEIS at R-235.

The Forest Service's attempt to punt mitigation into the hands of future permitting authorities like Arizona Department of Water Resources for when the Department would authorize mineral extraction wells or recovery wells at the Desert Wellfield is not legally appropriate. Under NEPA (and the NDAA), the Forest Service cannot defer the analysis of impacts, mitigation measures, and their effectiveness, to some future state permitting process. Great Basin Resource Watch v. BLM, 844 F.3d 1095, 1103–04 (9th Cir. 2016)(federal agency EIS could not rely on future state permitting as substitute for the environmental review requirements under NEPA).

Here, the Forest Service violated NEPA and the NDAA when it left it up to Resolution Copper to decide whether or not it might voluntarily "mitigate" for the potentially catastrophic impacts from the Desert Wellfield on local water supplies and wells, and where the Forest Service decided in the FEIS to defer to a subsequent state permitting process the determination of (1) whether or not there will be "unavoidable impacts" from the Desert Wellfield (a point that seems clear); and (2) whether or not, and how, these impacts should be mitigated.

In addition, under FLPMA, the Forest Service has a substantive duty to protect the environment when it issues the Special Use Permits required for the mine's infrastructure, as it may only grant a right-of-way/special use permit if it, "(4) will do no unnecessary damage to the environment." 43 U.S.C. 1764(a). A Title V right-of-way special use permit "shall contain terms and conditions which will … (ii) minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment." Id. § 1765(a). *See* 43 U.S.C. § 1765(b) (additional public land and resource protection requirements). Thus, in addition to

failing to adequately analyze all reasonable mitigation measures, the Agency failed to require sufficient mitigation to meet its FLPMA duties.

In short, the Forest Service readily acknowledges in the FEIS that (1) Resolution Copper would consume from the Desert Wellfield at least "550,000 acre-feet over the life of the mine" under the preferred alternative, FEIS at 448 (enough to meet the water demand for 2.2 million households in Arizona for a year); (2) the Wellfield would reduce groundwater levels substantially; and (3) the pumping by Resolution Copper at the Desert Wellfield would adversely impact individual groundwater wells and the needed water supply for the region and the State of Arizona overall. Nevertheless, the Agency failed to meaningfully consider or analyze any ways to avoid or minimize these substantial and adverse water impacts through mitigation. This violates NEPA, FLPMA, the NDAA, and applicable public land law.

An additional mitigation failure of the FEIS involves the direct and indirect effects on the physical infrastructure that exists in the East Salt River Valley which is associated with the massive depletion of groundwater at the Desert Wellfield to serve the Project. Depletions of this magnitude can contribute substantially to land subsidence and earth fissuring, which has become an increasing problem across the state of Arizona. *See* Plaintiffs' April 2025 Supplement (ADWR Land Subsidence Monitoring Report, and Land Subsidence Rate Maps).

As the Forest Service acknowledges, "[t]here are numerous societal costs associated with land subsidence caused by basin-wide pumping, but specific impacts are unpredictable. Gradual widespread regional subsidence may have no effect at all on infrastructure, whereas the opening of earth fissures due to subsidence can directly destroy infrastructure." FEIS at 437. However it is well-known that even widespread gradual subsidence can severely damage infrastructure.[11]

Some of the most "common" damage associated with earth fissures include cracked or collapsed roads, broken utility pipes, damaged or breached irrigation canals, cracked foundations and separated walls, damaged well casings or wellheads, and disrupted drainage. Id. "An important aspect of subsidence is that it is irreversible; once sediment layers collapse when dewatered, they remain collapsed even if water levels recover." FEIS at 412. These occurrences would be particularly concentrated in the East Salt River Valley subbasin, where at least 544,858 AF of water would be pumped for the Project under the preferred alternative as noted above.

The Arizona Department of Water Resources' Water Planning Atlas states: "Earth fissuring and subsidence have occurred in the ESRV [East Salt River Valley] sub-basin due to localized pumping. These occurrences are found near Apache Junction and in the vicinities of Queen Creek, North Scottsdale and Paradise Valley (Rascona, 2005)." Arizona Water Atlas Vol. 8, Active Management Area Planning Area, p. 8 (2010).

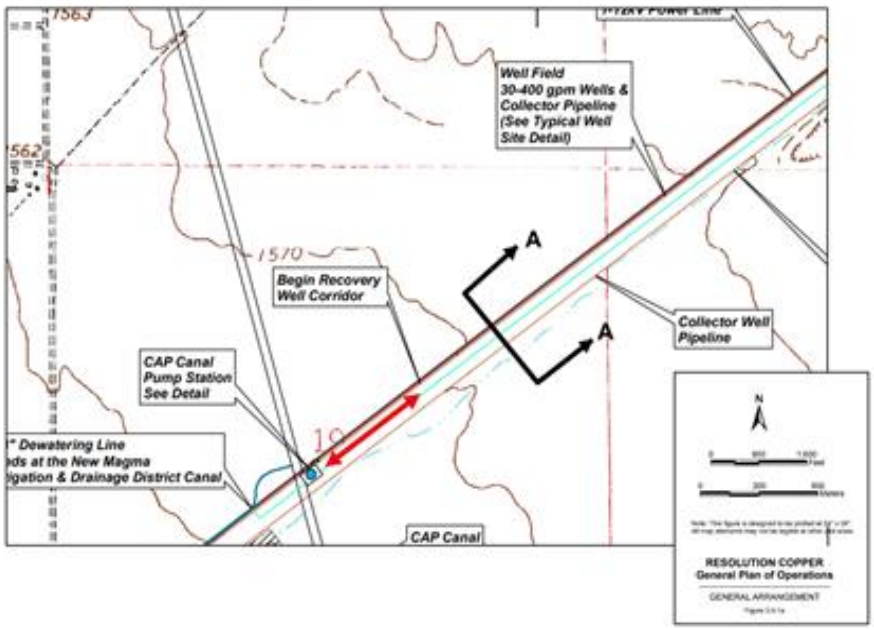
Based upon estimates of groundwater declines in the Desert Wellfield area, in a range of 228 feet, FEIS at 444 & Figure 3.7.1-2, the Forest Service acknowledges the potential for

[11] T. Davydzenka, P. Tahmasebi, N. Shokri, *Unveiling the Global Extent of Land Subsidence: The Sinking Crisis*, Vol. 51, Issue 4. Geophys. Research Letters (Feb. 2024). "Although it is a gradual process, taking years to decades to develop, land subsidence presents serious socioeconomic, environmental and security challenges globally".

significant land surface subsidence, admitting "drawdowns associated with the Desert Wellfield likely would result in subsidence of roughly 24 to 52 inches." FEIS, V-2 at 436.

Subsidence can be costly to farmers, since it can crack and break irrigation ditches and canals, disturb previously leveled farm fields, and disrupt the flow of irrigation water, among other things. Subsidence can also harm groundwater wells and well-casings, result in ruptured water and sewer lines, damage streets, highways and bridges, and damage the foundations of houses and buildings, all requiring costly repairs.

For example, the Central Arizona Project canal that delivers critical water supplies from the Colorado River all the way to Phoenix, and then down past Tucson, is less than half a mile from the Desert Wellfield well recovery corridor[12], and it is well within the projected subsidence impact area for the Desert Wellfield. Additionally, at least 20 miles of both the Federal US-60 and another 20 miles of State Route SR-79 are also well within in the projected subsidence impact area for the Desert Wellfield, as are irrigation canals, houses, utility lines, and other infrastructure.



Modified Excerpt of Figure 3.0-1a
from the General Plan of Operations, Resolution Copper Mining
(red arrow inserted to indicate distance)

Nevertheless, the Forest Service fails to meaningfully identify or consider any measures in the FEIS that would require Resolution Copper to monitor and mitigate for adverse impacts to the types of infrastructure described above from the land subsidence or fissuring in the East Salt River Valley caused or substantially contributed to by Resolution's groundwater depletions from the Desert Wellfield. Instead, the Forest Service concludes that while "mapped fissures have been identified near Apache Junction and along the San Tan Mountains," fissures have not been

[12] General Plan of Operations, Resolution Copper Mining (May 9, 2016) Vol. 2, Figure 3.0-1a.

identified "in the immediate vicinity of the Desert Wellfield" and then failed to go any further in determining what would be the impacts when, as a result of the proposed mine, the fissures or land subsidence occur within the vicinity of the Desert Wellfield. FEIS at 437.

The failures of the Forest Service to identify, analyze or require mitigation for the subsidence and fissuring impacts caused or contributed to by the Desert Wellfield violates NEPA, FLPMA, and the NDAA.

Mitigation Related to Water Related Impacts from the Mine Site—East Plant Site and Oak Flat.

The FEIS acknowledges that numerous groundwater-dependent ecosystems of critical value to this arid region, including the vitally important springs, seeps, and surface resources, will be lost due to the Mine and mine dewatering of at least 87,000 AF at the East Plant Site and Oak Flat over the Life of Mine. *See*, *e.g.*, Table E-1, Alternatives Impact Summary, FEIS at E-10-13; *see also* FEIS Appendix J at J-19; FEIS at 617. Other groundwater-dependent ecosystems will be irretrievable destroyed due to the subsidence caused by the Mine. "When block caving occurs, groundwater impacts would expand to overlying aquifers...." FEIS at E-25.

The Forest Service acknowledges in the FEIS, "that even relatively small changes in water levels can have large effects on natural systems." FEIS at 381. "The cumulative number of GDEs lost due to specific groundwater removal from the same aquifer has impacts on habitat for wildlife population health and extent, and large-scale changes in the nature and characteristics of the overall landscape." Table 4.3.1-1, FEIS at 929. In addition, the Mine's massive dewatering plans will impact numerous local wells in the area, requiring that they be deepened or in some instance, wells will be rendered dry by the dewatering.

The Forest Service required very limited mitigation for the Project's devastating impacts to groundwater-dependent ecosystems and local wells in the Oak Flat Area. *See* FS-WR-01, Monitoring and Mitigation Plan for groundwater-dependent ecosystems and Water Wells, FEIS, Appendix J at 9-19. FS-WR-01 "is not intended to address water sources associated with the perched shallow groundwater in alluvium or fractions" id., even though the surface disturbances and massive crater caused by subsidence from the Mine will destroy numerous GDEs that rely on these shallow sources and will deplete shallow alluvial sources throughout the region.

The plan limits mitigation to only the small, enumerated list of groundwater-dependent ecosystems described in the plan. Id. No other groundwater-dependent ecosystems will be the subject of mitigation. Id. The Forest Service purports in the FEIS that impacts to wildlife would be mitigated by "replac[ing] water sources for any riparian areas associated with springs or perennial streams (groundwater-dependent ecosystems) impacted by the drawdown from the mine dewatering and block caving." FEIS at 642. Yet, the FEIS only identifies potential actions that could be used to replace certain water sources and makes these potential actions dependent on "monitoring reach[ing] a specified trigger." FEIS at 598: Appendix J, J-19-20. This "trigger" can only be activated after a showing of 2 years of decline data plus additional regional data, and still allows for an exception to implementing mitigation "if a defensible argument could be made" that quantitative triggers have not otherwise been met. Id.

The "triggers" for monitoring render the potential for actual mitigation on the part of Resolution Copper unreasonably limited and unlikely. Moreover, although the FEIS identifies "[a] variety of potential actions that could be used to replace" adversely impacted water sources

(like installing spring boxes, guzzlers for rainwater harvesting, surface water capture systems and, in limited instances, new wells), there is no substantive analysis of the effectiveness of such measures despite NEPA requiring as much. Id.

There are numerous domestic, stockwatering, and other wells in the Oak Flat region that were identified by the Forest Service as early as 2008 that may be impacted by Mine subsidence and dewatering, but most of these wells are not eligible for monitoring or mitigation under FS-WR-01. FS-WR-01 would require monitoring and mitigation only for those wells located in the Town of Superior or at Top-of-the-World (and potentially Boyce Thompson Arboretum), FEIS at E-25. This is because, in the Forest Service's erroneous and unsupported view, that only "[g]roundwater supplies in Superior and Top-of World could be impacted by groundwater drawdown" from the Mine Project. Id. And, under the plan, mitigation for qualified wells would be required only after there is a demonstration that "no other source of water supply is available." FEIS, Appendix J at J-20.

The BLM found that mitigation measure FS-WR-01 was grossly inadequate and failed to comply with NEPA requirements, describing the proposal to use wells, guzzlers, or spring boxes, or catchments to mitigate for groundwater-dependent ecosystems spring flow loss as a "flawed approach which follows the 'rob Peter to pay Paul' logic and would more accurately be called 'passing the buck' or 'kicking the can' than 'mitigation'." BLM Hydrology Review at 20-21. The BLM correctly noted that this approach is merely "taking water that would have provided another resource downgradient", id. at 21, leading to the potential for "future negative impacts on other undetermined downgradient resources." Id.

The BLM found additional issues with the monitoring plan, including that monitoring "will only be done for 10 years after dewatering has ceased. The BLM reviewers believe 10 years is not adequate, considering the effects will be felt for hundreds of years, and that monitoring and mitigation action should be in place until the effects of mining on those sources have been mitigated from the effects of the mining project." BLM Hydrology Review at 20 and 22. BLM's finding of insufficiency for the purported mitigation measure and its suggestions as a cooperating agency related to FS-WR-01 were not addressed by the Forest Service in the FEIS.

The likely impacts to groundwater-dependent ecosystems and wells throughout the Oak Flat region are substantial. However, the Forest Service failed to identify, analyze, or ultimately require mitigation for the vast majority of these impacts. FW-WR-01 is grossly insufficient, as it does not in any meaningfully way rectify the impact, reduce or eliminate the impact over time, or compensate for the impact by providing an adequate substitute supply as proper mitigation dictates. This violates NEPA, the NDAA, and other requirements of public land law.

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Mitigation Related to Impacts from the Tailings Facility—Alternative 6 Skunk Camp.

"BLM reviewers recognize that the alternatives presented in the FEIS are not fully developed and that the purpose of the alternatives analysis is to consider a reasonable range of alternatives that can accomplish the purpose and need of the proposed project." BLM Hydrology Review at 17.

The Forest Service admits that "there are no committed mitigations for groundwater and surface water quality" for the Exchange and Mine. FEIS at 563. This means there would be no mitigation to surface or groundwater quality under any circumstances required as part of this NEPA process, whether from leaks, up to a major catastrophic failure of the tailings dam impacting water resources for miles around.

Mitigation measure RV-WR-03 (Skunk Camp water quality monitoring plan)—a previously required mitigation measure in the prior FEIS ("RC"), is now recoded as a voluntary measure ("RV"). FEIS at 563.

With this approach for mitigation, the Forest Service wrongfully defers all responsibility for requiring any water quality mitigation at Skunk Camp to future state agency permitting processes. "Authority for these measures will ultimately reside with ADEQ under the APP and AZPDES programs; however, it is anticipated that much of the sampling detailed in the plan will remain voluntary by Resolution Copper." FEIS, Appendix J at J-24.

In addition to being voluntary, the Skunk Camp water quality monitoring plan is not implemented and indeed, can be modified at any time as part of some future state permitting process. The Forest Service notes that under Alternative 6, "the downstream communities on the Gila River would experience an overall greater risk of being impacted in the event of a partial or complete failure of a tailings storage facility." FEIS at 960. The lack of any meaningful, enforceable monitoring and mitigation for water quality impacts from the Skunk Camp tailings facility is extremely concerning, and a violation of NEPA.

Failure to Adequately Analyze the Transmission and Power Infrastructure.

In addition to the issues and problems detailed above regarding the proposed Special Uses, the FEIS also notes that there are multiple new proposed power transmission lines and multiple new and/or expanded substations required for this Project and yet, the FEIS fails to fully disclose or analyze impacts on values such as wildlife and vegetation, visual impacts, cultural resources, air quality, water, or other resources resulting from the development of the power corridors and the necessary power related infrastructure needed for the Project. The Forest Service also fails to reasonably identify or analyze in the FEIS how it would avoid, minimize, or mitigate for such impacts, as required by FLPMA and the Organic Act. These failures to take a hard look at the power related issues associated with the Project also violates NEPA, FLPMA, and the NDAA.

The analysis needed to look at the alternatives, baseline conditions, impacts, and mitigations cannot be done later in time, but rather, must be done now under the "single FEIS" requirement of the NDAA. For example, the FEIS indicates two additional new 230kV proposed new transmission lines that appear to cross a portion of Forest Service lands and tie

into an existing transmission line (see callout box, Figure 2.2.2-15, FEIS p. 83), but the details of these new 230kV lines are never disclosed or analyzed.

The FEIS indicates two new 69/34.5kV proposed new transmission lines (Figure 2.2.2-15, FEIS p. 83), which also are never analyzed. The FEIS (p.81) notes that, "[s]ubstations also would need to be upgraded and/or new 230-kV substations would need to be constructed" but fails to ever give any specifics about where a new 230kV new substation (or substations) would be located. In addition, the FEIS notes that estimates of electricity use by the mine are "higher than previously estimated" FEIS at 81, and yet the transmission line analysis is unchanged.

The FEIS indicates two new proposed 69kV power lines, and one new proposed 12kV power line to run from the Abel substation "adjacent to the MARRCO corridor" (not within) (Table 2.2.2-7, FEIS p. 84). Yet Figures 2.2.2-12 and 2.2.2-13 (FEIS at 77–78) show only one "Proposed Transmission Line," not the three lines indicated just pages later. The DROD proposes to approve Special Use Authorizations for just two transmission lines: 1) One new 3.6-mile, 230kV power line from the Silver King substation to Oak Flat, and 2) a 16.9-mile, 115kV power line from the Silver King substation to the Skunk Camp tailings storage facility.

The Forest Service failed to conduct a meaningful review and analysis, required by FLPMA, NEPA, and the NDAA, of the many direct, indirect, and cumulative impacts from these two transmission line corridors on the environment. The FEIS' discussions on Project impacts are highly vague and largely unchanged from the 2019 Draft EIS, despite the recent and "substantial" redesign of the Skunk Camp transmission line corridor (USFS Briefing Paper, 8/20/2020). Additionally, the new 3.6-mile 230kV transmission line was misleadingly described as merely an "upgrade" of an existing line and as such, no new corridor footprint for this line was ever fully analyzed or provided for public comment as required under NEPA.

It is misleading to characterize this as an "upgrade," since the DROD at Figure 3 notes that the 115kV line will not be upgraded. Rather, it will remain, and a new 230kV line (and its new accompanying right-of-way) will be "co-located" alongside the existing 115kV line and its existing right-of-way. *See also* the General Plan of Operations at Vol. 2, p. 12. This will much more than double the footprint of this corridor, the impacts of which were not disclosed or analyzed in the FEIS.

Review of the Project record indicates that only a cultural resources report for the 230kV and 115kV lines (Charest 2020) may have been conducted. And still, only the title page is provided and it is impossible to determine the scope of what this document includes or does not include, or even which exact transmission lines (or design iterations thereof) it purports to address.

In addition, the FEIS contains no other similar report for any of the other myriad environmental impacts of the transmission lines including but not limited to water impacts, impacts to wildlife species, vegetation, visual resources, recreation, air, access, or otherwise. Any older reviews predating the substantial redesign of Skunk Camp tailings corridor are now outdated and cannot be reasonably relied upon to fulfill the requirements of a full NEPA review.

The impacts from blasting a miles-long tunnel through Kings Crown Peak as part of the Skunk Camp tailings pipeline (and 115kV powerline) alignment are not meaningfully disclosed or analyzed in the FEIS. Indeed, the existence of this massive tunnel to be blasted through the

mountain is only fleetingly alluded to by the Forest Service. There is no mitigation associated with this blasting as well.

The Forest Service modified the configuration of this proposed tunnel through Kings Crown Peak without any public notice or opportunity for review. The FEIS admits that "a portion of the MARRCO corridor is located on [National Forest Service] lands and would be subject to Forest Service regulatory jurisdiction." FEIS at ES-7. Yet as noted above, the Forest Service did not disclose or analyze the need for, or impacts from, a Special Use Permit for the uses along the MARRCO corridor.

A new substation would also be required at the Skunk Camp tailings site to convert the high-voltage power being transmitted through the new transmission line(s) into distribution voltages for use, as well as the access roads to service Skunk Camp. The potential impacts of this substation are not analyzed in the FEIS.

In its November 18, 2020 letter responding to Salt River Project on its Special Use Permit application for the transmission line(s), the Forest Service refers to the company's "proposal to construct, maintain, and operate high voltage transmission lines" (plural). The letter further says that "it is assumed" that the 500-foot corridor would be used. The agency admits that: "It is understood that this proposal is preliminary and additional design, review, and other regulatory process are required before an authorization will be issued." The agency then says, "[i]f the design and other regulatory processes have been completed and it is determined that the proposed high voltage transmission line cannot be located within the analyzed corridor, [Salt River Project] shall submit a revised proposal and a complete review will be required." FEIS, Appendix Q. Yet the FEIS did not include this.

To the extent that the application purports to request authorization for multiple transmission lines, this has not been disclosed or analyzed under NEPA, has not been included in the FEIS in violation of NEPA and the NDAA, and as such, approval of this application would be contrary to law.

The Special Use Permit for Salt River Project for the Skunk Camp tailings transmission line has not been updated since 2020, however the new FEIS now includes a new "Project Description" narrative that was slipped into the existing Special Use Permit section. The description indicates it is based on the pipeline design as of 2019, and notes that if design or regulatory constraints prevent SRP from constructing in the designated corridor, "additional environmental analysis may be required."

The 2025 FEIS states that "further assessment by the electrical utility operating Silver King substation (SRP) would be needed to determine the adequate voltage and construction engineering, including access roads to the transmission lines that would service the Skunk Camp tailings storage facility." FEIS at 130. The FEIS improperly failed to include this, and under the NDAA, all such impacts and alternatives must have been completed in the FEIS, as no further NEPA review is allowed. As the law requires, all aspects of this proposal must be contained in one single FEIS. All of the impacts from all transmission lines required for this project must have been (but were not) included in the single FEIS, in plain violation of the NDAA.

Failure to Analyze the Baseline Conditions of All Potentially Affected Resources.

As discussed, the FEIS fails to adequately analyze the affected environment, and baseline conditions, of all potentially affected resources. This is especially true regarding the baseline water conditions on and around the lands affected by Project facilities as detailed above. The FEIS also fails to adequately analyze the baseline conditions and impacts to wildlife. For example, the FEIS (Table 3.8.4-2, pp. 627-631) notes that thousands of acres of bird and other species' habitat, "potentially would be impacted under each action alternative," but no analysis is included as to how the Project activities—including but not limited to dewatering and water use and transmission lines—would directly, indirectly, and cumulatively impact wildlife, birds and habitat or the traditional, cultural or religious practices of the Tribes. Under the Land Exchange, the Oak Flat federal lands would leave Forest Service jurisdiction, which would reduce wildlife protections on these lands as the NFMA, Tonto National Forest Land and Resource Management Plan, the Organic Act, FLPMA, and provisions of the Endangered Species Act would no longer apply.

Socioeconomic Impacts of the Mine Were Ignored In the FEIS.

Under NEPA, the Forest Service must disclose and analyze the social and economic (socioeconomic) effects of the land exchange and mine Project, including its potential impacts on communities, employment, income levels, public services, and property values, among other things. In doing so, the Forest Service was required to provide sufficient information about potential socioeconomic impacts to the public and to consider comments from the public and other cooperating agencies related to these impacts. The Forest Service failed to meet its obligations under NEPA (and the NDAA) as these relate to socioeconomic impacts.

As shown by the Objectors' previous Objections and comments (pp. 15-300 of AMRC's November 7, 2019 comments, pp. 3-65 of the ITAA's November 7, 2019 comments, and the Objectors' comments on water quality submitted to the USFS on October 30, 2020), the Draft EIS failed to comply with the Forest Service's mandatory public and environmental requirements under NEPA, the NDAA, FLPMA, the CWA and other applicable laws. These comments, and the FEIS' inadequate response, are contained in Volume 6 of the FEIS. *See also* Objectors supplemental comments submitted in October and December of 2020, and on April 11, 2025. Acting Supervisor Torres responded (albeit inadequately) to the Objectors' December 2020 comments in a January 12, 2021 letter to AMRC and ITAA, which are in the administrative record for these Objections.

The Socioeconomic Impacts From The Loss of Recreational Resources Are Not Meaningfully Analyzed

While the FEIS does (very briefly) provide some figures on the economic values of tourism generally and certain types of popular recreation in Pinal County and the Tonto National Forest (FEIS at 846-847), the analysis is deficient and falls short of performing any kind of a meaningful analysis regarding what the actual impacts from this Mine could have on these general figures. It also fails to analyze or assess any data or figures for the specific visitation and recreational uses at Oak Flat.

Indeed the Forest Service admits that it has failed to perform this analysis. Despite admitting that the loss of Oak Flat would result in a reduction of recreation and visitor spending,

"[m]any of the potential economic effects on nature-based tourism are not quantified" FEIS at 856.

The FEIS notes that the "projected loss of Federal land from project features and the land exchange could be as much as 110,600 acres" (FEIS at 856), but again the Forest Service does not perform a meaningful socioeconomic analysis of what recreational resources would be lost on those lands, or what economic impacts those losses may have. Indeed, the FEIS improperly diminishes the scale of this loss in the surrounding sentences by noting that this is "less than 0.5 percent" of the Tonto National Forest area, and "about 2 percent" of the Federal land in Pinal County. This is not meaningful analysis.

This is despite the fact that the Arizona Game & Fish Department (a cooperating agency) has provided specifics about the negative impact this Mine will have on recreational resources. The FEIS acknowledges this briefly, but the analysis is deficient. "AGFD indicates that this alternative [Skunk Camp] would have the largest negative effect on recreation of any of the proposed alternatives due to the location of the tailings storage facility" – primarily because it is a popular hunting area (FEIS at 679). Yet the estimated annual economic impact from the loss of Skunk Camp as a hunting resource ($4.2 million over a 60-year period, the highest of any of the alternatives) was only looked at for the duration of the Mine's lifespan (FEIS at 858) despite the fact that any tailings site would be lost *forever* as a recreational resource and the associated economic losses would also extend forever.

No associated economic analysis was done for any other recreational uses of the Skunk Camp area. Although the recreational uses of the Oak Flat area are widely known, no such economic analysis was done from any the recreational uses at the Oak Flat Campground area or Ga'an Canyon, or the recreational uses on the other surrounding lands to which access would be lost as a result of this Mine and land exchange.

Impacts to Arizona State Land Department Trust Land Assets.

The Arizona State Land Trust was created by the Arizona State Constitution, the 1910 Enabling Act, among other authorities. The purpose of these legal authorities was to reserve certain lands within each township to be held in trust for the benefit of Arizona's schools and public institutions. These lands and the income they generate are assets held in trust status and managed by the ASLD. The ASLD functions as the trustee of the State Land Trust and it has a fiduciary responsibility to responsibly manage the assets of the State Land Trust to maximize financial revenues for its beneficiaries, typically done through land auctions, leasing and other permitted uses of the land. The ASLD is listed as being a cooperating agency, with "[j]urisdictional responsibilities and special expertise in matters related to management of, and potential impacts on, State Trust land." FEIS at 41.

The ASLD filed extensive comments on the Draft EIS enumerating **multiple** adverse impacts to State Trust lands (and the assets of the State Land Trust) stemming from the Project. Most of these were dismissed or ignored by the Forest Service, including the ASLD comments related to the socioeconomic impacts of the Project and State Trust Lands. FEIS, Appendix R at R-43-44.

The economic values associated with State Trust Lands and the assets of the State Land Trust will be economically harmed by the Project in a number of ways, including due to the

direct, indirect, and cumulative impacts associated with Project's development and operation near State Trust Lands, the water demands of the Project, the direct loss of State Trust Lands within the subsidence zone at Oak Flat, the use of or need for rights of way across State Trust lands for pipelines, power lines and access roads, and the loss of many thousands of acres of State Trust Land that are currently available for grazing leases.

For example, the ASLD notified the Forest Service about the significant direct, indirect, and cumulative impacts from Resolution's Desert Wellfield pumping and its dewatering effects on State Trust Land. FEIS Appendix R at R-43-44. ASLD stated that even with partial mitigation (if Resolution were to withdraw its storage credits from within the same impact area in which they are stored), "the loss of 3,440 acres of developable State Trust land represents a minimum potential loss to the Trust of at least $536,640,000 in revenue." FEIS, Appendix R at R-43. None of these socioeconomic impacts were considered by the Forest Service in the FEIS.

ASLD stated that the "greatest potential adverse impact to the [State Land] Trust will be the water (usage of approximately 600,000 acre-feet (AF) over the LOM [Life of Mine]) that will be extracted from the aquifer beneath the Superstitions Vistas Planning Area (SVPA)." FEIS, Appendix R at R-43. The ASLD also observed that based upon the Project's anticipated groundwater requirements, "the negative impact of the proposed water consumption sourced from the Superstition Vistas Planning Area (SVPA) far outweighs the estimated financial benefits to the Trust resulting from other aspects of the project by a factor of 20:1." Id. at R-44. The ASLD further stated that "…the extraction and transportation of groundwater out of the SVPA [Superstition Vistas Planning Area] greatly compromises the ability to develop these lands to their full planned potential, and as a result, reduces the income and value of the Trust." Id.

Despite ASLD position as a cooperating agency and the level of concern presented in the ASLD's comments, the Forest Service did not include any analysis in the FEIS related to the socioeconomic impacts to State Trust Lands or the economics of the State Land Trust and it did not disclose, analyze, or require any action to avoid, minimize or mitigate for the impacts of the Project on State Trust Land or the State Land Trust.

The Mine will also directly impact State Trust Land adjacent to and within the subsidence area at Oak Flat. FEIS at 65, Figure 2.2.2-5 (*shown on following page*). The State Trust Lands that will be subsumed by (swallowed up) by the Mine subsidence at Oak Flat, will be lost from the State Land Trust forever as will the potential of these State Trust Lands to generate revenue for the State Trust Fund. None of these socioeconomic impacts are disclosed, quantified, or evaluated in the FEIS. The FEIS only notes the Forest Service's "assumption" that the State Trust lands in the subsidence zone "would be sold rather than leased." FEIS at 318.

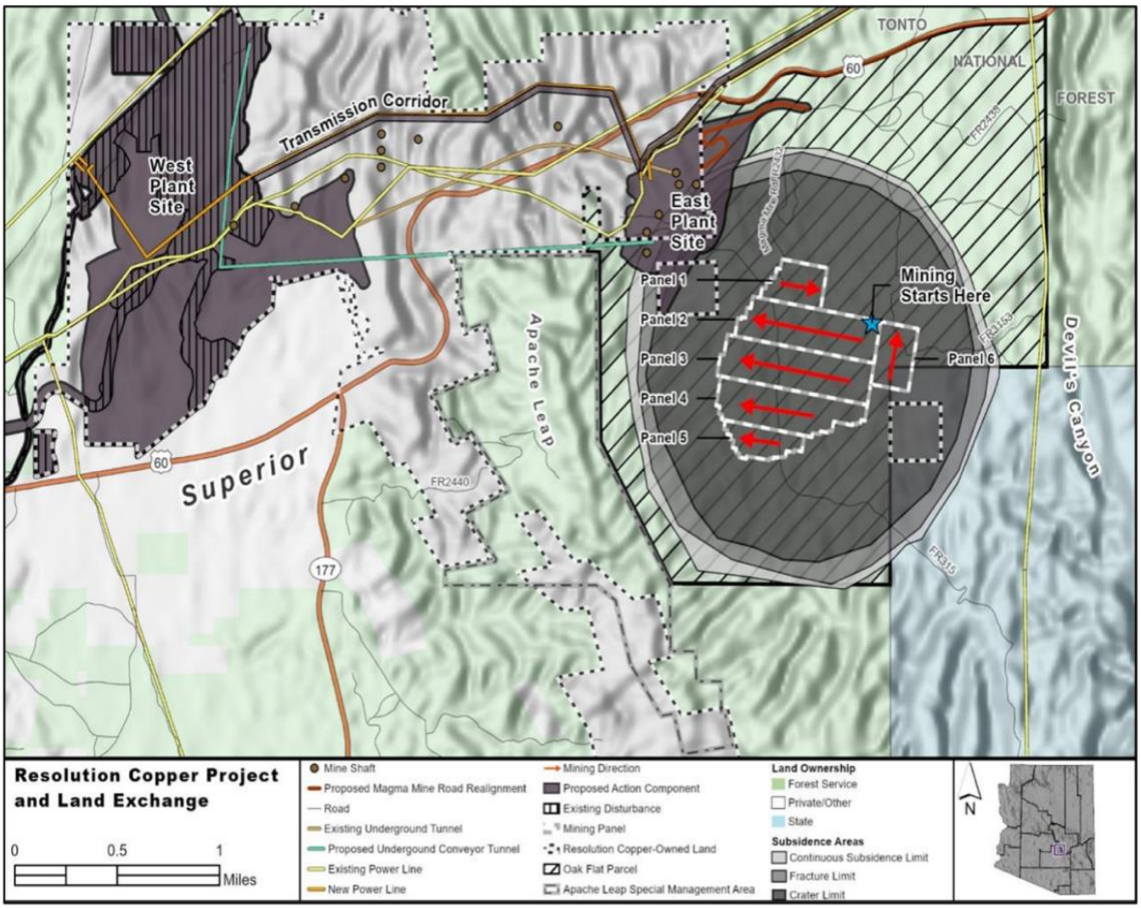

Figure 2.2.2-5. Predicted mining subsidence areas and the East Plant Site area

The Project will also impact State Trust Lands in and around the Skunk Camp tailings site footprint, as well as across the miles-long 500-ft. wide tailings pipeline alignment, impacting the surface and waters associated with those State Trust resources as well. The State Trust Lands that will be subsumed by (swallowed up) by the Mine subsidence at Oak Flat, will be lost from the State Land Trust forever as will the potential of these State Trust Lands to generate revenue for the State Trust Fund. None of these socioeconomic impacts are disclosed, quantified, or evaluated in the FEIS.

The FEIS only notes the Forest Service's "assumption" that the State Trust lands in the subsidence zone "would be sold rather than leased." FEIS at 318. The Project will also impact State Trust Lands in and around the Skunk Camp tailings site footprint, as well as across the miles-long 500-ft. wide tailings pipeline alignment, impacting the surface and waters associated with those State Trust resources as well. The ASLD stated in its comments on the Draft EIS that "ASLD is also concerned that a potential sale of the State Trust land directly at or near the Skunk Camp property would not adequately recognize the future value of the Skunk Camp property and fails to consider the inherent decrease in surrounding property values once the facility is established." None of these socioeconomic impacts are quantified or analyzed in the FEIS.

Instead, the Forest Service "kicks the can down the road" on these issues, vaguely concluding, "[o]btaining access to use ASLD-administered trust land and private land is the

responsibility of the applicant." (DEIS, p. 94)." FEIS, Appendix R at R-157. However, NEPA (and the NDAA) require that the Forest Service value and address the economic impacts to State Trust Lands and the losses to the State Trust Fund from the Project.

The Project (Alternative 6) will result in the loss of at least 8,210 acres of State Trust lands. FEIS at 122. It is not clear whether these 8,210 acres also include the many additional acres of pipeline right-of-way, Desert Wellfield, or the unknown thousands of additional surrounding acres of State Trust lands which will be impacted and devalued.

The FEIS further admits that "The proposed mine would likely affect residential property values within at least a 5-mile radius of the proposed location of the tailings facilities under each alternative." FEIS at 858. Why this statement was restricted to impacts just on residential property values is not clear. It is more likely that all property values within the vicinity of any tailings location will be negatively impacted, including the value of State Trust lands.

The Forest Service states perfunctorily, with no further explanation or analysis: "By encumbering a large area with mine tailing storage, the surrounding State Trust land will be depreciated to the detriment of the Trust." FEIS, Appendix R at R-43. But again, the Forest Service makes no effort in the FEIS to quantify the socioeconomic impacts of this depreciation or otherwise examine reasonable ways to mitigate for these impacts.

ASLD holds a surface water right ("36" filing) for water to Dripping Springs Wash. FEIS at 592. ASLD remarked that a Jurisdictional Determination from the U.S. Army Corps for the Dripping Springs Wash "could greatly compromise ASLD's ability to realize the highest value for those State Trust lands located downstream." FEIS, Appendix R at R-43.

The Forest Service nevertheless fails to consider or require mitigation for impacts to State Trust lands, stating "The effects of jurisdictional delineations on the ASLD's ability to realize the highest value for those State Trust lands located downstream, if any, are speculative and would be inappropriate for analysis." FEIS, Appendix R at R-245.

Impacts to Well Infrastructure and Property Values

The FEIS acknowledges that pumping from the Desert Wellfield and dewatering at the Mine could result in "loss of well capacity, the need to deepen wells, the need to modify pump equipment, or increased pumping costs." FEIS at 425, 438, 444. Hundreds of wells are located within the drawdown contours around the Mine and the Desert Wellfield. FEIS at 434-435, 444. Yet the Forest Service failed to analyze the socioeconomic and cultural impacts related to the costs associated with these well impacts or any corresponding losses to property values resulting from wells going dry or a lack of affordable water access.

Impacts to Central Arizona Project Canal and Other Infrastructure.

FEIS anticipates the Desert Wellfield will be located inside the MARRCO Corridor in close proximity to power lines, roads, irrigation canals, and the Central Arizona Project Canal, among other types of infrastructure. According to the FEIS:

> The [MARRCO] corridor currently contains multiple utility lines and water pipelines and infrastructure. The existing infrastructure within the corridor includes the following: a buried fiber-optic line, an overhead transmission line and telephone line, buried natural gas pipelines, Arizona Water Supply pipelines and infrastructure providing water supply to the town of Superior, and an 18-inch dewatering line transporting water being dewatered from the East Plant Site to the New Magma Irrigation and Drainage District (NMIDD). New corridor facilities would include additional water pipelines, water pumps and recovery wells, and copper concentrate pipelines to transport ore concentrate to the filter plant and loadout facility." FEIS at 76. *See also* Appendix G at G-9 through G-11.

The Desert Wellfield well corridor will also be located less than half a mile from the Central Arizona Project (CAP) Canal which delivers surface water throughout the state. FEIS at 78, Figure 2.2.2-13. The FEIS acknowledges that "drawdowns associated with the Desert Wellfield likely would result in subsidence of roughly 24 to 52 inches." FEIS at 436. If there is land subsidence or potential fissuring from the Desert Wellfield between 24 inches (2 feet) and 52 inches (4.3 feet) near the CAP Canal or in proximity the existing infrastructure in the MARRCO corridor this infrastructure could be damaged and require repair or replacement.

However, the socioeconomic and other impacts related to damage to infrastructure from groundwater pumping-related surface subsidence or fissuring were not accounted for or analyzed in the FEIS and the Forest Surface does not require any mitigation for these socioeconomic impacts.

Additional Critical Issues Ignored by the FEIS.

As shown by the Objectors' previous Objections and comments (pp. 15-300 of AMRC's November 7, 2019 comments, pp. 3-65 of the ITAA's November 7, 2019 comments, and the Objectors' comments on water quality submitted to the USFS on October 30, 2020), the Draft EIS failed to comply with the Forest Service's mandatory public and environmental requirements under NEPA, the NDAA, FLPMA, the CWA and other applicable laws. These comments, and the FEIS' inadequate response, are contained in Volume 6 of the FEIS. *See also* Objectors supplemental comments submitted in October and December of 2020, and on April 11, 2025. Acting Supervisor Torres responded (albeit inadequately) to the Objectors' December 2020 comments in a January 12, 2021 letter to AMRC and ITAA, which are in the administrative record for these Objections.

Impacts to Apache Leap.

The NDAA established the Apache Leap Special Management Area "to preserve the natural character of Apache Leap; to allow for traditional uses of the area by Native American people; and to protect and conserve the cultural and archeological resources of the area." Section 3003(g)(2)(A)-(C). "In Section 3003(g) of PL 113-291, Congress designated a portion of the Tonto National Forest as the Apache Leap Special Management Area (SMA) for the purposes of preserving the natural character surrounding the Apache Leap escarpment, allowing traditional and religious uses by Indian Tribes, and protecting and conserving the cultural and archaeological resources of the area." FEIS at 47.

The potential for subsidence from the crater to impact the Apache Leap Special Management Area mandates that the Forest Service require mitigation measures to avoid, minimize, and otherwise mitigate subsidence impacts, and NEPA requires that the Forest Service analyze the effectiveness of such measures in the FEIS. Appendix J, J-11 (noting USFS authority under 36 C.F.R. § 251.56 and 36 C.F.R. § 228.8).

The block caving operation is anticipated to create a nearly a 2-mile diameter crater estimated to be between 800 and 1,115 feet deep. To accompany proposed monitoring of subsidence, the FEIS unveiled a proposal to establish three tiers of triggers to inform potential mitigation for subsidence, should it be greater than what the modeling anticipated. These triggers, Level 1, Level 2, and Level 3, if met, may prompt additional monitoring and review and potential responsive actions. FEIS at 194.

Level 1 is triggered if subsidence extends farther than the model results anticipated by less than 30 percent and would prompt only "focus on data validation and more intensive monitoring." FEIS at 194. Only Level 2 and Level 3 could provide any potential for substantive mitigation in response to larger than intended subsidence, namely in the form of potentially altering the mining operation. Level 2 is triggered if subsidence extends farther than the model results by 30 to 60 percent and could prompt reduction or modification of the amounts and locations of ore removal. FEIS at 194. Level 3 is triggered by subsidence that extends farther than the model results by 60 percent, and could include the cessation of mining. FEIS at 194.

Although NEPA requires the Forest Service to analyze the effectiveness of mitigation measures for this anticipated subsidence, and thus the effectiveness of the percentages for triggering mitigation actions, the FEIS is devoid of any such analysis. Also, these proposed triggers are new since the DEIS and were never provided for public review or comment.

The Forest Service's decision to use a 30 percent increase as the threshold of when substantive mitigation measures may be undertaken, renders the proposed mitigation worthless for protecting Forest Service resources, particularly the Apache Leap Special Management Area. Apache Leap is less than a quarter-mile away from the modeled upper-end subsidence diameter (1.8 miles). Thus, a 30 percent increase would result in a 2.34 mile wide diameter, and would be the minimum required for Level 2 trigger and could potentially lead to modifications of the mine plan. But this would be too little too late, as Apache Leap would already be engulfed. The lack of analysis of the effectiveness of these triggers for mitigation is a grave error in the Forest Service's NEPA analysis. This failure also violates the NDAA in failing to ensure the very purposes for which the Apache Leap Special Management Area was established will be met and will be protected.

Failure to Fully Review Water Quality Impacts and Baseline Conditions.

The FEIS acknowledges the Mine's significant water quality problems. ES-25. The Project would impact groundwater and surface water quality throughout the region. Id.

> The proposed mine could potentially impact groundwater and surface water quality in several ways. The exposure of the mined rock to water and oxygen, inside the mine as well as in stockpiles prior to processing, can create depressed pH levels and high concentrations of dissolved metals, sulfate, and dissolved solids. After processing, the tailings would be transported for disposal into the tailings storage

> facility. Seepage from the tailings has the potential to enter underlying aquifers and impact groundwater quality. In addition, contact of surface runoff with mined ore, tailings, or processing areas has the potential to impact surface water quality.

FEIS at 454.

Yet, the FEIS contains virtually no information pertaining to the level of contaminants that would be likely to occur from the mine discharges, runoffs, seepage, or other aspects of the Project. Similarly, the FEIS also does not disclose or consider if or where these contaminants might result in water quality impacts to surface waters and to what levels.

The FEIS at ES-25 acknowledges: "[a]ll of the tailings facilities would lose seepage with poor water quality to the environment," but then asserts that seepage from Alternative 6, "does not result in any anticipated water quality problems."

The Skunk Camp TSF [Tailings Storage Facility] Seepage Assessment Report[13] contains no information about the possible contaminants in tailings seepage water, and no information on background ground and surface water quality or potential impacts thereto from seepage water contamination, nearby impaired waterways, etc. Rather, the report just vaguely acknowledges that a seepage management plan, "has not been optimized, rather, it is intended to demonstrate that compliance is expected to be achievable for the Skunk Camp TSF. Future designs and studies will optimize the plan to reduce impacts to groundwater and uncertainties" (p.15). Yet "future studies" are not permitted under NEPA and the single-EIS requirement of NDAA 3003(c)(9)(B), and therefore, these studies were required to have been done already.

The agency admits that a final post-closure management plan for the tailings storage facility is not completed but rather deferred to some vague future point in time. "The final method of post-closure management for seepage collection water would be determined as the project progresses through the current NEPA process and engineering design. The final post-closure management plan would be based on overall expected volumes, anticipated seepage rates, and duration, in combination with the water chemistry assessment." FEIS at 90.

Many sections of the posted Skunk Camp TSF Reclamation Plan document[14] are marked as "preliminary," and references abound throughout to "preliminary estimates" and matters that "will be reviewed in future design stages," all confirming that this is not in final form based on the aforementioned language in the FEIS. This is a violation of the NEPA and the single-EIS requirement of the 2015 NDAA and is not permissible.

Regarding the extremely high temperature of the groundwater encountered at the site, the FEIS does not contain any discussion regarding how the groundwater model was adjusted or corrected in any way when, in 2014, it failed to predict the hot (180-degree F) water encountered while drilling Shaft No. 10. The Forest Service also failed to include or meaningfully analyze any similar issues of geothermally influenced water circulation or the

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[13] https://www.resolutionmineeis.us/documents/kcb-skunk-camp-seepage-assessment-2020 (last visited August 1, 2025).

[14] https://www.resolutionmineeis.us/sites/default/files/references/kcb-skunk-camp-tsf-reclamation-plan-2020.pdf (last visited August 1, 2025).

direct, indirect, or cumulative impacts thereof, including on groundwater dependent ecosystems and water quality, and including within the post-closure subsidence fracture zone/pit lake.

Regarding baseline conditions and impacts closer to the town of Superior, the FEIS states, "groundwater drawdown caused by the mine could affect groundwater supplies for wells that may draw from either the regional Apache Leap Tuff aquifer or the deep groundwater system. Drawdown from 10 to 30 feet is anticipated in wells in the Superior area, as shown in table 3.7.1-4. In addition, in about 20 percent of sensitivity modeling runs, impacts from 10 to 30 feet could also occur in wells near Top-of-the-World. In total, 53 registered wells are located within the 10-foot drawdown contour for the best-calibrated base-case model (48 exempt wells, five non-exempt wells), and 124 registered wells lie within the expanded 10-foot drawdown contour from the sensitivity modeling runs (111 exempt wells, 13 non-exempt wells." FEIS at 434.

Yet the agency fails to include a detailed analysis of these impacts and purported mitigation for public review as required by NEPA, FLPMA, and the NDAA.

The FEIS makes no mention of the ongoing Queen Creek TMDL being required pursuant to a Consent Decree entered in Federal Court. Instead, the FEIS continues to erroneously cite to the old draft Queen Creek TMDL from 2017 (FEIS at 480-481, 1013) which was never finalized nor completed and is now based on outdated information.

Despite the fact that Resolution holds an active AZPDES discharge permit issued by the State of Arizona which allows them to discharge water into Queen Creek, the FEIS notes that "discharges are not anticipated as part of the proposed project" and never meaningfully analyzes the impacts from any discharge into Queen Creek. FEIS at 481. This is despite the fact that ADEQ, the permit-issuing agency with knowledge of the status of that permit and its permissions, is a cooperating agency.

Regarding the water resources at the Skunk Camp tailings waste facility, the FEIS states that: "A single downvalley seepage collection pond would be the primary means for seepage and embankment construction and surface water collection during operations, with the collected water then pumped to a recycled water pond located within the operating PAG cell for use as process water at the cyclone house and/or at the West Plant Site, or for dust management at the tailings storage facility." FEIS at 130.

But there is no meaningful analysis of how the tailings seepage water would be transported to the West Plant Site, or consideration of that water use at the West Plant. Further, if the seepage is collected below the tailings facility, the FEIS is devoid of the required analysis of the infrastructure needed for a return pipeline/pump system at the bottom of the facility. *See* FEIS at 125, Figure 2.2.8-2.

Additionally, there is no detailed analysis of the quality of the seepage from the tailings that may be spread on the ground for dust suppression, allowed to reach groundwater at the site, or be transported back to the West Plant site and then discharged as noted above. Indeed, the Forest Service recently admitted that seepage from the tailings will only meet the applicable, "Arizona numeric aquifer water quality standards in the downgradient aquifer beyond the immediate vicinity of the tailings storage facility." January 10, 2021 letter from Defendant Thomas Torres the Terry Rambler, Chairman of the San Carlos Apache Tribe, at 5.

In other words, because the seepage water quality would exceed the applicable water quality standards at the site, the Agency cannot allow this contaminated water to be used for dust suppression, or transported via the pipeline back for discharge at the West Plant site or beyond. At a minimum, the FEIS's failure to fully analyze the quality and uses of this contaminated water violates NEPA, FLPMA, and the NDAA.

Further Violations of the Clean Water Act.

a. The FEIS and DROD Fail to Recognize the Need for a CWA Section 401 Certification for All of the Project Discharges.

The FEIS and DROD do not analyze, and fail to ensure full compliance with, all standards and requirements of the CWA. Objectors raised significant water quality concerns in their November 2019 and October 2020 comments to the Forest Service. *See* AMRC November 7, 2019 comments at 98-108 (as well as discussion related to the Army Corps Section 404 permit, at 304-317); ITAA November 7, 2019 comments at 10, 49-56 (as well as discussion related to the Army Corps Section 404 permit, at 9-19). AMRC's October 30, 2020 comments were focused entirely on water quality, yet were never adequately addressed. The EPA also raised substantial concerns about water quality impacts (FEIS at R-62 to R-66), yet the FEIS and DROD failed to adequately respond to these comments as well.

At the outset, the FEIS and DROD are inadequate and legally flawed as they review only the discharges associated with the proposed Clean Water Act Section 404 permit. This is due to the mistaken view that the Army Corps 404 permit is the only "federal license or permit" that has been proposed regarding the Resolution Copper Project. "The proposed mine development includes the construction of a TSF, known as the Skunk Camp TSF [Tailings Storage Facility]. Construction of this TSF, its appurtenant facilities, and associated pipelines **are the only aspects of Resolution's overall project that triggered Section 404 permitting and the associated Section 401 certification that is the subject of this WQC**." Arizona Department of Environmental Quality ("ADEQ") Draft Water Quality Certification ("WQC") at 2 (emphasis added).

Objectors raised this issue in their October 30, 2020 comments to ADEQ and the Forest Service. The new FEIS acknowledges that "ADEQ issued the 401 water quality certification for the Resolution Copper Project on December 22, 2020" FEIS at 31. However it only covers the Skunk Camp tailings site.

Under the CWA, federal caselaw, and USFS policy, the issuance of a Special Use Permit by the Forest Service, as well as approval of a proposed mining plan of operations, such as Resolution's "General Plan of Operations," or any other requested approval of Project operations by the USFS, is considered a "federal license or permit" triggering Section 401 Certification. *See* Hells Canyon Preservation Council v. Haines, 2006 WL 2252554, at *3-4 (D. Or. 2006)(Section 401 applies to mining PoO submitted to USFS). As stated by the USFS:

> Pursuant to CWA § 401, both the Forest Service and the mining operator have CWA requirements to meet. If the mining activity "may result in any discharge into the navigable waters," (CWA, Title IV, § 401(a) (1), 33 U.S.C. 1341(a), 1972) the mining operator must obtain a 401 certification from the designated CWA federal, state or tribal entity, typically the state. This 401 certification from the designated entity certifies that the operator's mining activities and associated best management practices (BMPs), mitigation and/or reclamation are in compliance with applicable provisions of state,

> federal and/or tribal water quality requirements of the CWA. The mining operator must give a copy of this 401 certification to the Forest Service prior to the Agency approving the Plan of Operations. Pursuant to CWA, the Forest Service cannot authorize a Plan of Operations until the 401 certification has been obtained or waived by the designated entity. Finally, the Forest Service may not authorize a Plan of Operations if the designated entity denies the certification.

USFS Manual, Section 2817.23a.

There is no dispute that the Resolution Project "may result in any discharge into the navigable waters" (Id.) that are in addition to the limited discharges associated with the Tailings Storage Facility and related infrastructure reviewed by the limited WQC. For example, Outfalls 1 & 2 that allow discharge from the West Plant (and now water from shafts 9 & 10) into Queen Creek, were not considered by ADEQ. Nor were all potential stormwater discharges associated with the Project analyzed and included in the WQC.

In addition, the Forest Service does not have the required Certification, as the ADEQ WQC does not consider potential discharges associated with the MARRCO corridor, including the loadout facility for copper concentrate slurry and pumpback storage and delivery back to the West Plant (including water from the CAP and other sources for the West Plant). There is the potential for discharges that could end up in Queen Creek or the Gila River. Also, on the MARRCO corridor are the water pipelines and the 30+ water wells (Desert Wellfield). The MARRCO corridor crosses Queen Creek at least once. There is the potential for spills into Queen Creek from these and other facilities (*e.g.*, West Plant facilities, ore/material conveyance structures).

At the mine site itself there would be (at a minimum it is reasonably foreseeable there would be) the pit lake in the subsidence crater (which the FEIS inadequately considered/acknowledged) as well as washout bays, and numerous other potential sources of water discharge from the buildings that are or would be at the East plant. This includes potential discharges from the chilling plant/cooling towers.

In addition, there is no Certification regarding the other potentially impacted waters, such as those affected by the buried pipeline and the power lines and the impacts these pipelines and power lines will likely have on water quality in the critical habitat areas on Mineral Creek. Mineral Creek is critical habitat for Gila Chub and is proposed critical habitat for yellow billed cuckoo. Also, critical habitat for Mexican spotted owl is less than 2 miles away from portions of the pipeline route.

There are also dozens of such unnamed washes (one report said 60) that, when dug up to install or maintain the buried pipeline, will result in the inevitably discharge of some amount of sediment or contaminants downstream. Even the named Lyons Fork and Mill Creek which flow into Mineral Creek will have pipelines buried beneath. Ga'an Canyon will face the same situation with likely contamination of the plunge pools located on the State Trust land.

As detailed above, the Agency cannot limit its review to only those direct impacts from the Project's discharges directly associated with the 404 permit. In addition to improperly failing to consider the Special Use Permits (and mining plan as reviewed in the FEIS) as noted above, this self-imposed restriction violates the CWA. As held by the U.S. Supreme Court, the 401 Certification is not limited to only direct impacts from the discharge, but rather, all impacts

associated with a project once the threshold prerequisite of the potential for a discharge exists (which is not in dispute here):

> Section 401, however, also contains subsection (d), which expands the State's authority to impose conditions on the certification of a project. Section 401(d) provides that any certification shall set forth "any effluent limitations and other limitations ... necessary to assure that *any applicant*" will comply with various provisions of the Act and appropriate state law requirements. 33 U.S.C. § 1341(d) (emphasis added). The language of this subsection contradicts petitioners' claim that the State may only impose water quality limitations specifically tied to a "discharge." The text refers to the compliance of the applicant, not the discharge. Section 401(d) thus allows the State to impose 'other limitations' on the project in general to assure compliance with various provisions of the Clean Water Act and with 'any other appropriate requirement of State law'… Section 401(a)(1) identifies the category of activities subject to certification--namely, those with discharges. And § 401(d) is most reasonably read as authorizing additional conditions and limitations on the activity as a whole once the threshold condition, the existence of a discharge, is satisfied.

Jefferson County PUD No. 1 v. Washington Dept. of Ecology, 511 U.S. 700, 711-12 (1994). As the Court stated: "activities—not merely discharges—must comply with state water quality standards." Id.

As noted in EPA's guidance on Section 401 certification: "[I]t is important for the § 401 certification authority to consider all potential water quality impacts of the project, both direct and indirect, over the life of the project." Clean Water Act Section 401 Water Quality Certification: A Water Quality Protection Tool For States and Tribes (2010)("EPA 401 Handbook"), at 17. https://19january2017snapshot.epa.gov/sites/production/files/2016-11/documents/cwa_401_handbook_2010.pdf (viewed July 23, 2025).

As EPA summarized:

> Section 401 applies to any federal permit or license for an activity that may discharge into a water of the U.S. The Ninth Circuit Court of Appeals has ruled that the discharge must be from a point source, and agencies in other jurisdictions have generally adopted the requirement. **Once these thresholds are met, the scope of analysis and potential conditions can be quite broad. As the U.S. Supreme Court has held, once § 401 is triggered, the certifying state or tribe may consider and impose conditions on the project activity in general, and not merely on the discharge, if necessary to assure compliance with the CWA and with any other appropriate requirement of state or tribal law.**

EPA 401 Handbook, at 18 (emphasis added), *citing* Jefferson County PUD, 511 U.S. at 711-712; S. D. Warren Co. v. Maine Board of Environmental Protection et al, 547 U.S. 370, 126 S.Ct. 1843 (2006).

Thus, all aspects of the Project contained in the Special Use Permit applications (as well as the ore concentrate pipeline in the MARRCO corridor that has improperly been excluded from USFS permitting as detailed above), must be considered in the 401 Certification review, not just the Skunk Camp tailings site Because the Forest Service does not have the required 401 Certification which covers all of the operations and discharges associated with the Project

(outside of the Tailings facility), the USFS cannot approve any Special Use Permits, Road Use Permits, or any other activity associated with the Project.

b. The Forest Service Failed to Protect All Water Quality Standards, Including All Beneficial Uses.

The FEIS and DROD are only concerned with ensuring that the numeric water quality standards are not violated by the 404 discharge. In addition to improperly limiting its review to only the direct 404 discharges discussed above, this ignores the fact that all aspects of water quality protection, not just numeric standards, must be considered and protected.

The CWA is primarily implemented through the establishment and maintenance of water quality standards, and the CWA directs each state to establish its own water quality standards. 33 U.S.C. §§ 1313(a) and (c)(2)(A). "A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses." 40 C.F.R. § 131.2. The minimal designated use for a water body is the "fishable/swimmable" designation which "provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water." 33 U.S.C. § 1251(a)(2). As the Supreme Court stated:

> The text [of the CWA] makes it plain that water quality standards contain two components. We think the language of § 303 is most naturally read to require that a project be consistent with *both* components, namely, the designated uses *and* the water quality criteria. **Accordingly, under the literal terms of the statute, a project that does not comply with a designated use of the water does not comply with the applicable water quality standards.**

Jefferson County PUD, 511 U.S. at 714-715 (*italics* emphasis in original, **bold** emphasis added). Thus, the CWA prohibits any activity that will not fully protect all of the designated uses for that waterbody.

Similarly, the Project also implicates the CWA's "antidegradation" requirements. Antidegradation policies "shall, at a minimum, be consistent with . . . [e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected." 40 CFR § 131.12(a)(1). Under this regulation, "'no activity is allowable . . . which could partially or completely eliminate any existing use.'" Jefferson County PUD, 511 U.S. at 718-19 (*citing* EPA, Questions and Answers on Antidegradation 3 (Aug. 1985)).

Under Arizona Administrative Code (AAC) R18-11-107.01(D) – Antidegradation – ADEQ is required to conduct an antidegradation review of the Army Corps 404 permit if any of the impacted surface waters are listed as impaired under the State's 303(d) list, such as Queen Creek. This must be done on a pollutant-by-pollutant basis. ACC R18-11-107(A). Specifically, R18-11-107.1D states:

> Antidegradation review of a § 404 permit shall be conducted as follows:
> 1. For a Corps-issued § 404 permit. The Director shall conduct the antidegradation review of any discharge authorized under a nationwide or regional § 404 permit as part of the § 401 water quality certification prior to issuance of the nationwide or regional permit. The Director shall conduct the antidegradation review of an individual § 404

> permit if the discharge may degrade existing water quality in an OAW or a water listed on the 303(d) List of impaired waters. For regulated discharges that may degrade water quality in an OAW or a water that is on the 303(d) List of impaired waters, the Director shall conduct the antidegradation review as part of the § 401 water quality certification process.

https://apps.azsos.gov/public_services/Title_18/18-11.pdf. That did not happen here.

As noted herein and in Objectors' previous comments to ADEQ, USFS, and the Corps, including the Objectors' previous comments to the USFS, neither the Agency nor Resolution have shown that the Project will protect all beneficial uses, comply with all numeric and narrative standards, and comply with all antidegradation requirements. As such, the FEIS violates NEPA and the NDAA, and the Forest Service cannot approve any aspect of the Project.[15] In addition, because the Project would not fully comply with all CWA requirements, any authorization of Project activities would violate the provisions of Tonto National Forest Plan and thus NFMA § 1604 (i).

State water quality regulations dictate numeric water quality standards both for surface waters and for groundwater. State regulations also identify a narrative water quality standard for surface water. The narrative water quality standards also state that a wadeable, perennial stream, such as those affected by the Project, shall support and maintain organism richness comparable to that of a stream with reference conditions in Arizona. According to state regulations, "A wadeable, perennial stream shall support and maintain a community of organisms having a taxa richness, species composition, tolerance, and functional organization comparable to that of a stream with reference conditions in Arizona." R18-11-108.E. "The narrative biological criteria in this Section apply to a wadeable, perennial stream with either an aquatic and wildlife (cold water) or an aquatic and wildlife (warm water) designated use." R-18-11-108.01.A.

The Draft WQC lists, some, but not all, water bodies that will be affected by the discharges:

> State of Arizona Surface Water Quality Standards (SWQS), Arizona Administrative Code (A.A.C.) Title 18, Chapter 11, Article 1. Designated uses for impacted washes are:
> • Devil's Canyon: Aquatic and Wildlife Warm, Full Body Contact, Fish Consumption and Agricultural Livestock;
> • Mineral Creek: Aquatic and Wildlife Warm, Full Body Contact, Fish Consumption and Agricultural Livestock; Impairments: Dissolved Copper, Selenium, Dissolved Oxygen;
> • Queen Creek: Aquatic and Wildlife Warm, Partial Body Contact, and Agricultural Livestock; Impairments: Copper, Selenium, Lead;
> • Dripping Springs Wash and unnamed ephemeral tributaries: Aquatic and Wildlife Ephemeral and Partial Body Contact;
> • Skunk Camp Wash and unnamed ephemeral tributaries: Aquatic and Wildlife Ephemeral and Partial Body Contact;
> • Stone Cabin Wash and unnamed ephemeral tributaries: Aquatic and Wildlife Ephemeral and Partial Body Contact

[15] Under the 1897 Organic Act and agency implementing regulations, the USFS cannot approve any activity or operation that may violate or not comply with all applicable water quality standards and requirements.

Draft WQC at 4. *See also* Current RCM AZPDES permit (same). As noted herein, this list does not include all of the water bodies potentially affected by the Project, such as those affected by the approval of the Special Use Permits (and the omitted ore concentrate pipeline).

State regulations define the following designated uses: "'Aquatic and wildlife (warm water) (A&Ww)' means the use of a surface water by animals, plants, or other warmwater organisms, generally occurring at an elevation less than 5000 feet, for habitation, growth, or propagation." R18-11-101.8 (definitions). "'Full-body contact (FBC)' means the use of a surface water for swimming or other recreational activity that causes the human body to come into direct contact with the water to the point of complete submergence. The use is such that ingestion of the water is likely and sensitive body organs, such as the eyes, ears, or nose, may be exposed to direct contact with the water." R18-11-101.21. "'Fish consumption (FC)' means the use of a surface water by humans for harvesting aquatic organisms for consumption. Harvestable aquatic organisms include, but are not limited to, fish, clams, turtles, crayfish, and frogs." R18-11-101.20.

The Arizona wadeable/perennial narrative water quality standard at R18-11-108.E. applies to the perennial reaches of streams/water bodies that may be affected by the Project's dewatering of the aquifer/groundwater, as well as its discharges. As shown by the Objectors previous comments, this standard will not be meet on all stream reaches of the affected water bodies. For example, the change from being a perennial stream to an ephemeral or intermittent stream caused by the dewatering (alone and in combination with modeled impacts from climate change), such as could occur here, would violate the Arizona wadeable/perennial water quality standard R18-11-108.E; R-18-11-108.01.A.

c. <u>The FEIS and DROD Impermissibly Defer Submission and Review of the Requisite Surface Water Mitigation Plan</u>

The Forest Service and ADEQ propose to allow Resolution to submit a water quality mitigation plan in the future. As detailed above, this violates NEPA and the one-FEIS mandate under NDAA. The Objectors raised this issue with the Forest Service and ADEQ in their October 30, 2020 comments. In response, ADEQ admitted that there was no water quality mitigation plan and that one would be submitted in the future to the Army Corps of Engineers.

> **Comment No. 15 received from WMAP, et al**
> The Draft WQC impermissibly defers submission and review of the requisite surface water mitigation plan. Deferring to Resolution's submittal of an adequate mitigation plan until after it obtains a 404 permit and plan of operations approval deprives the public of the ability to review and comment on that mitigation plan, in violation of state water quality law/regulations, the CWA, and public land and environmental laws applicable to the USFS (Organic Act, etc.).
>
> **Response No. 15**
> *The review and approval of surface water mitigation plans lies with the USACE and is therefore out of the scope of the 401 WQC and the ADEQ's authority.*

ADEQ, **RESPONSE TO PUBLIC COMMENTS** LTF No. 80929, §401 Water Quality Certification, Applicant: Resolution Copper Skunk Camp TSF, at 6 (italics in original, bold emphasis added)(previously submitted).

Deferring Resolution's submittal of an adequate mitigation plan until after it obtains a 404 permit or Special Use Permits deprives the public of the ability to review and comment on that mitigation plan, in violation of state water quality law/regulations, the CWA, public land and environmental laws applicable to the USFS (Organic Act, etc.), and NEPA and the NDAA as detailed above.

Violation of the Clean Air Act ("CAA")

As noted herein, because of the FEIS' and DROD's failure to fully consider all of the project's direct, indirect, and cumulative impacts, as well as a complete analysis of all background/baseline conditions and a lack of adequate mitigation analysis, the USFS cannot ensure that the project will comply with all applicable air, water, and other environmental standards, as required by NEPA, FLPMA, and the Organic Act, as well as the CWA and CAA. This is true whether the USFS regulates the project under its Part 228 or Part 251/262 regulations. For example, under § 251.56(a)(1)(C), the USFS must: "Require compliance with applicable air and water quality standards established by or pursuant to applicable Federal or State law." The "Operator shall comply with applicable Federal and State air quality standards, including the requirements of the Clean Air Act, as amended (42 U.S.C. 1857 et seq.)." *See also* 36 C.F.R. §§ 228.8(a); § 228.8(b)(same, for water quality requirements/standards and the Clean Water Act).

Objectors specifically highlighted the Project's failure to comply with all required Clean Air Act standards and related public health requirements. *See* AMRC November 7, 2019 comments at 3, 31, 57-60, 134-146, 317. Yet the FEIS and DROD do not comply with these mandates.

For example, as EPA Region IX pointed out in its November 1, 2019 comments (reprinted at FEIS R-62 to R-66), the Forest Service should have obtained a conformity determination for projected PM 10 emissions that would be associated with its East Plant Site that would impact the Hayden and Miami PM 10 Nonattainment Areas. In the FEIS the Forest Service argues that it can demonstrate that a conformity determination would be merited for the Hayden PM 10 Nonattainment Area based on just modeling. FEIS at 360. In addition, the FEIS provides no analysis and asserts no facts regarding the potential that the project could demonstrate attainment in the Miami PM 10 Nonattainment Area. No is there a conformity determination for PM2.5, nor assurances that all NAAQS will be met at all times.

As part of its State Implementation Plan (SIP), Arizona has adopted EPA's general conformity regulations. These regulations include public participation requirements regarding conformity determinations. The SIP public participation requirements for conformity determinations include the following: 1) the agency [AZDEQ] must make available for review its draft conformity determination; 2) agency must make public its draft conformity determination by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action and by providing 30 days for written public comment prior to taking any formal action on the draft determination; and, 3) the agency must document its response to all the comments received on its draft conformity determination and make the comments and responses available. To our knowledge none of the public participation requirements associated with obtaining such a determination have been followed.

The NDAA requires that the FEIS to be adequate for all, "decisions under Federal law related to the proposed mine and the Resolution mine plan of operations and any related major Federal actions significantly affecting the quality of the human environment, including the granting of any permits, rights-of-way, or approvals for the construction of associated power, water, transportation, processing, tailings, waste disposal, or other ancillary facilities." Because the Arizona SIP is federal law, the needed conformity determination would be a "decision[] under Federal law related to the proposed mine and the Resolution mine plan of operations."

As a result, the FEIS was required to be adequate to support conformity determinations regarding the Hayden and Miami PM 10 Nonattainment Areas. We question whether the FEIS discussion of the Hayden PM 10 Nonattainment Area is sufficient under the NDAA. More important, however, is the fact that the FEIS completely ignores the Miami PM 10 Nonattainment Area. Therefore, it is clear that the FEIS fails to comply with the NDAA with respect to Clean Air Act conformity with respect to the Miami PM 10 Nonattainment Area.

Violation of the National Forest Management Act

The FEIS and DROD do not ensure that all requirements of the Tonto National Forest Plan, the 2012 Planning Rule, and associated Regional Guide for Region 3 will be met at all times, in violation of the National Forest Management Act ("NFMA"), 16 U.S.C. § 1601 *et seq.* Because the Forest Plan was amended in 2023, neither the Objectors nor the public had the opportunity to comment on violations of the current plan during the DEIS comment period in 2019.

Among other mandates, the NFMA requires the Forest Service to prepare a land and resource management plan, or "forest plan," for each National Forest. 16 U.S.C. § 1604(a). Each plan must include standards and guidelines for how the forest shall be managed. 16 U.S.C. §§ 1604(c), (g)(2) & (g)(3).

Once a forest plan is adopted, all resource plans, permits, contracts, and other instruments for use of the lands, such as Special Use Permits, Road Use Permits, mining plan approvals, etc., must be consistent with the plan. 16 U.S.C. § 1604(i). "It is well-settled that the Forest Service's failure to comply with the provisions of a Forest Plan is a violation of NFMA." Native Ecosystems Council v. Dombeck, 304 F.3d 886, 961 (9th Cir. 2002). *See also* Save Our Cabinets v. U.S. Dept. of Agric., 254 F.Supp.3d 1241, 1258-59 (D. Mont. 2017)(Forest Service approval of mining project that would not meet the Forest Plan's "desired conditions" protecting water quality violated the NFMA).

Failing to follow, or to evaluate and document compliance with, a Forest Plan provision is also a NEPA violation. *See* ONDA v. BLM, 625 F.3d 1092, 1110–11 (9th Cir. 2010) (NEPA analysis must include "considerations made relevant by the substantive statute driving the proposed action"); Westlands Water Dist. v. United States Dept. of Interior, 376 F.3d 853, 866 (9th Cir. 2004) ("When an action is taken pursuant to a special statute, the objectives of that statute serve as a guide by which to determine the reasonableness of alternatives" examined under NEPA).

As shown above, the Project will result in massive and permanent environmental and cultural resource impacts, which could not occur without the issuance of the Special Use Permits (including the omitted permit for the ore concentrate pipeline). These impacts violate the Forest

Plan and Regional Guide. For example, for "Soils, Water and Air Quality," the Forest Plan requires the Agency to:

> Provide direction and support to all resource management activities to (1) meet minimum air and water quality standards, (2) emphasize improvement of soil productivity, air and water quality, (3) augment water supplies when compatible with other resources, (4) enhance riparian ecosystems, by improved management. All major riparian areas under intensive management by 1995, (5) obtain water rights necessary to ensure orderly resource development, and (6) inventory and interpret soil, air and water resources. Resource planning and management activities within the desert zone must fully recognize the limitations this unique ecosystem has to the impacts of man's uses and activities.

Tonto Forest Plan at 19. In addition to these requirements, the Plan requires specific compliance with the standards and guidelines of the Regional Guide:

> The standards and guidelines for conservation of soil and water resources; protection and treatment of streams, streambacks, shorelines, lakes, wetlands, and other water bodies are found in the Regional Guide; Region 3 TE Note 23 and Hydrology Notes 11 and 14; and individual management prescriptions. The majority of the specific standards and guidelines are in the Forest-wide prescription decision units 33, 34, 63, 45, 48, 62, 51 and activities F01, F02, F03, F04, F05, K01, K03, K04, K05, K06. Some individual management area prescriptions contain additional specific standards and guidelines in these decision units and activities. Standards and guidelines for air quality are found in the Regional Guide, and individual management prescriptions under decision units 2 and 3 and activities A03, P16, and P17.

Tonto National Forest Plan at 20.

The 2025 FEIS and DROD, for the first time, propose to amend (i.e., eliminate) a number of Forest Plan requirements. DROD Section 2.1.4. But those amendments do not cover all the Plan requirements that will be violated.

For example, the Plan requires the Agency to "preserve the character and use" of "Locations identified as important by American Indian tribes." "Locations identified as important by American Indian tribes are acknowledged and ***there is an emphasis on the resilience and protection of natural and cultural resources and to preserve the character and use of these places***." Desired Conditions (TRB-DC), Plan at 58 (Tribal Relations and Areas of Tribal Importance (TRB)(emphasis added). That requirement will certainly be violated by the agency's approval of the Special Use Permit for the tailings waste and water pipelines in the Ga'an Canyon sacred site and TCP. *See* Save Our Cabinets v. U.S. Dept. of Agric., 254 F.Supp.3d 1241, 1258-59 (D. Mont. 2017)(Forest Service approval of mining project that would not meet the Forest Plan's "desired conditions" protecting water quality violated the NFMA).

As shown herein, there is no question that the cultural and religious values of Oak Flat and surrounding lands will be destroyed or significantly altered by the Project. As noted herein, the fact that majority of this destruction will occur on the lands to be exchanged-away does not excuse the Agency's noncompliance with these requirements, as without issuance of the Special Use Permits the Project could not proceed and thus the damage would not occur.

As noted herein, the Project's devastating and permanent impacts to lands, fish, wildlife, water quality and quantity, among the other impacts detailed herein, violate these requirements.

Another fundamental error in the Agency's NFMA analysis is that it did not consider the connection between the impacts from the overall Project on public lands that would result from issuance of the Permits. For example, the Review does not consider the impacts on water, wildlife, cultural resources, etc. that will be caused by the Project's massive dewatering of the regional aquifers. As noted herein, because it is undisputed that the Project could not proceed without the issuance of the Special Use Permits for Project infrastructure, the impacts from Project operations occurring on private lands (assuming the Exchange takes place as the FEIS and DROD do) to public land resources were required to be fully considered.

The Proposed Significant Amendments to the Tonto Forest Plan, Without Any Public Comment or Review, Violate the NFMA, NEPA, and Federal Public Land Law.

The June 2025 FEIS and DROD included, for the first time, a new proposal to substantially amend the current Tonto National Forest Plan, exempting the Project's pipelines, transmission lines, roads, and other infrastructure from the Plan's current requirements protecting cultural resources, wildlife, recreation, soils, and other critical public resources. *See* new FEIS Appendix T and DROD Section 2.1.4.

"The Resolution Copper Project preferred alternative (Alternative 6 – Skunk Camp) proposes a multi- component forest plan amendment that would except the Resolution Copper Project from nine guidelines and seven desired conditions." FEIS at T-1. As admitted by the Agency, these amendments are needed in order to ensure compliance with the Tonto Forest Plan, which is required under the NFMA.

"A review of the Resolution Copper Project FEIS in relation to the December 2023 'Tonto National Forest Land Management Plan' indicated that the preferred alternative, as proposed, cannot adhere to nine forest plan guidelines and seven forest plan desired conditions that are intended to protect soil productivity, scenic resources, national scenic trails, recreation resources, wildlife habitat, and cultural resources. … This appendix (appendix T) describes how the Forest Service proposes to … amend the forest plan contemporaneously with the approval of the project so that the project would be consistent with the plan as amended." FEIS at T-2. Appendix T does not show how these amendments comply with the 2012 NFMA Planning Rule, 36 C.F.R. Part 219, (as the DROD, at 42, alleges).

Under the NFMA, none of the Project facilities could be approved if they would not be consistent with the Tonto Forest Plan. 16 U.S.C. § 1604. None of these proposed sixteen Plan amendments were subject to any public review and opportunities for comment, as they were first seen in the June 16, 2025 FEIS and DROD.

This was a complete reversal from the 2021 DROD, which specifically stated that: "I find that the authorized uses do not require an amendment to the forest plan." 2021 DROD at 32. That has now fundamentally changed, as Appendix T and the new DROD now say that the sixteen Plan amendments are needed in order to allow the Project to be approved.

Neither the 2025 FEIS or new DROD explain the Agency's dramatic departure to its policies and regulation from 2021 to 2025, nor why it failed to provide for public review of these significant amendments, despite having over 4 years to do so.

The NFMA and its Forest planning regulations, 36 C.F.R. Part 219, require that proposed Forest Plan amendments be subject to public review, comment and notice—which did not occur here. For Plan amendments, "the responsible official shall: … Provide opportunities for public participation as required in § 219.4 and public notification as required in § 219.16." 36 C.F.R. § 219.13(b)(2). Public "[p]articipation opportunities must be provided throughout all stages of the land management planning process, including during plan revision and amendment." 77 Fed. Reg. 21195 (April 9, 2012)(preamble to current part 219 rulemaking).

Despite this, the proposed significant amendments to the Plan were only first divulged to the public on the Agency's website on June 16, 2025 (when the FEIS and DROD were released).

This is not an idle exercise, as the eliminated Forest Plan requirements were put in place to protect valuable resources such as the recognized Traditional Cultural Property of Ga'an Canyon (through which the massive waste pipeline would be constructed) as well as wildlife migration routes.

The direct effect of the amendments would cover "about 2,500 acres of National Forest System (NFS) land on the Tonto National Forest that will be disturbed by the preferred alternative. . . This is composed of 2,458 acres of mine infrastructure and 44 acres of NFS land where recreation mitigation is required, for a total of 2,502 acres. This area is referred to as the 'preferred alternative area of disturbance.' This is the area in which construction of electrical transmission lines, pipelines, and associated infrastructure would be located." FEIS at T-3 to -4.

That is only the direct acreage effects, as without the amendments the whole Project would not occur—the true result of approving the amendments, however, encompasses the full range of Project impacts detailed above, including the destruction of Oak Flat and the massive loss of groundwater affecting the entire region,.

The current Forest Plan requires: "**Cultural and Historic Resources Desired Condition 01 (CUH-DC-01)** - Historic properties, including traditional cultural properties, retain all of the characteristics that qualify the property for listing in the National Register of Historic Places and convey its historical significance, including any aspects of the property's integrity (e.g., location, design, setting, materials, workmanship, feeling, or association) that have been identified as supporting its eligibility (Forest Plan p. 55). FEIS at T-5.

Yet these protections would be eliminated: "Although the preferred alternative includes mitigation measures designed to avoid, minimize, rectify, reduce, or compensate for resource impacts, impacts to historic properties cannot be avoided or fully mitigated. It is not feasible to retain all characteristics that qualify impacted properties for listing." FEIS at T-5.

The same is true for other Forest Plan requirements enacted to protect cultural resources: "**Cultural and Historic Resources Desired Condition 02 (CUH-DC-02)** - Historic properties are not threatened by human disturbances (forest plan, p. 55). The pipeline, electrical transmission, lines and associated infrastructure constructed and operated with the preferred

alternative would impact historic properties." FEIS at T-5.; Cultural and Historic Resources Desired Condition 07 (CUH-DC-07), requiring that Cultural resources (including artifacts) are preserved in place (forest plan, p. 55)." FEIS at T-5.

The Forest Plan wildlife protections are also proposed to be eliminated for the Project:

> **Fish, Wildlife and Plants Guideline 06 (WFP-G-06)** - Landscape and vegetation alterations that significantly contribute to uncharacteristic habitat fragmentation should be avoided. Project design should provide for movement and dispersal of species between treated and untreated areas (forest plan, p. 142). The analysis of wildlife connectivity concludes that there would be a loss of long-term movement habitat along pipeline corridors by the preferred alternative; therefore, dispersal and movement of species would be adversely affected.
>
> **Fish, Wildlife and Plants Guideline 07 (WFP-G-07)** - New infrastructure or constructed features (e.g., fences, roads, recreation sites, facilities, drinkers, and culverts) should be designed and maintained to minimize negative impacts to the movement and dispersal of wildlife, fish, and rare plants. Infrastructure and constructed features already present that negatively impact movement and dispersal should be modified or removed when no longer in use in order to improve connectivity. Barriers may be used to protect native species or prevent movement of nonnative species (forest plan, p. 142). The analysis of wildlife connectivity concludes that there would be a loss of long-term movement habitat along pipeline corridors with the preferred alternative; therefore, dispersal and movement of wildlife would be adversely affected.

FEIS at T-6. The Project's pipelines, transmission lines, roads, and infrastructure would also be exempted from other current Forest Plan protections for soils, recreation and other public values. FEIS at T-5 to 7.

Despite the undeniable fact that the full Project itself, let alone the 2,500 acres directly affected by the pipelines, transmission lines, roads, and other facilities, the Agency determined that the result of the exemptions and Project approval represented an insignificant impact to the environment, cultural resources, and public values. "This amendment applies only to the Resolution Copper Project; therefore, the amendment is not considered a significant change in the plan for the purposes of the NFMA." FEIS at T-36.

But this "insignificance" finding contradicts the Agency's own NFMA planning regulations, which equate the "significance" of the impacts from the amendment with the "significance" determination made under NEPA. "[T]he final rule makes the NEPA and NFMA findings of 'significance' one finding. If under NEPA a proposed amendment may have a significant effect on the environment and an EIS must be prepared, the amendment would automatically be considered a significant change to a [Forest] Plan." 77 Fed. Reg. at 21238.

It is undisputed here that an EIS was conducted for the Project, due to its significant impacts. Indeed, Section 3003 specifically determined that the FEIS "shall be used as the basis for all decisions under Federal law related to the proposed mine and the Resolution mine plan of operations and any related major Federal actions significantly affecting the quality of the human environment, including the granting of any permits, rights-of-way, or approvals for the construction of associated power, water, transportation, processing, tailings, waste disposal, or

other ancillary facilities." 16 U.S.C. § 539p(c)(9). These are the very same facilities that are governed by the proposed Plan amendments, without which the Project could not be approved, constructed, or operated.

Thus, the Agency's decision to bypass public review and propose amending the Forest Plan at the expense of recognized and irreplaceable public resources and values violates the substantive and procedural requirements of the NFMA, as well as the substantive protection and review requirements of FLPMA and the Organic Act. The Agency has not shown that eliminating these protections for cultural values/uses, wildlife, recreation, soils, and other public values complies with the Agency's substantive protection duties under FLPMA and the Organic Act. This also includes the failure to comply with and federal requirements protecting Native American religious, cultural, and historical values and uses—such as, for example, Executive Order #13007 (sacred sites), the National Historic Preservation Act, and the American Indian Religious Freedom Act. The DROD simply states that "I find that the selected Federal action complies with Executive Orders 13175 and 13007." DROD at 42, but no details or supporting justifications is provided.

CONCLUSION

As detailed above and in previous comments and Objections submitted by the Objectors, the FEIS and Draft ROD fail to fully comply with numerous federal and state laws, regulations, policies, and other requirements. As such, the Regional Office must withdraw the FEIS and DROD and vacate and remand both documents and order the correction of all errors noted herein.

The Forest Service cannot approve or authorize any of the action alternatives described in the FEIS and DROD, including the Exchange and Special use Permits, or any action alternative at all that the applicant may propose, unless and until all laws, etc., noted herein are satisfied.

Please direct all communications regarding this Objection to the undersigned attorneys.

Thank you,

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Enclosures (transmitted with Objections via USFS Portal in four parts)

2025_08_04 ITAA et al. Objections to FEIS & DROD - Attachments Part 1
2025_08_04 ITAA et al. Objections to FEIS & DROD - Attachments Part 2
2025_08_04 ITAA et al. Objections to FEIS & DROD - Attachments Part 3
2025_08_04 ITAA et al. Objections to FEIS & DROD - Attachments Part 4

Attachment Contents
ITAA, et al. Objections to the FEIS and DROD (Jan. 26, 2021)
ITAA, et al. Supplement to Objections to the FEIS and DROD (Feb. 26, 2021)
CBO Cost Estimate (July 11, 2013)
H.Rept. 113-167 (July 22, 2013)
April 2025 Supplement letters from ITAA and AZMRC (previously provided to the Agency on April 11, 2025 with all attachments)
BLM Hydrology Report (June 13, 2022) (previously provided with April 2025 Supplement)
2019 Pinal AMA Model Technical Memo (Oct. 11, 2019) (previously provided with DEIS comments and April 2025 Supplement)
2024 Phoenix AMA Model Technical Memo (Nov. 2024) (previously provided with April 2025 Supplement)
Master Planned Community Plan, Auction Property at Superstition Vistas (Aug. 30, 2021) (previously provided with April 2025 Supplement)
Master Planned Community Plan, Retained Property at Superstition Vistas (Aug. 30, 2021) (previously provided with April 2025 Supplement)
Master Water Plan for Superstition Vistas, HilgartWilson (Sept. 2021) (previously provided with April 2025 Supplement)
Non-Potable Water Infrastructure Master Plan for Superstition Vistas (Sept. 7, 2021) (previously provided with April 2025 Supplement)
Homebuilder Lennar buys more lots at giant Blossom Rock Community; more builders on tap, Phx Business Journal (Jan. 10, 2025)