

Rosemont FEIS
Major Issues

- Impacts to Empire Gulch and Cienega Creek, as stated in the FEIS, may conflict with the approved Las Cienegas Resource Management Plan and Record of Decision (LCNCA RMP and ROD 2003). From the LCNCA RMP and ROD (page 8-9), refer to the riparian vegetation objectives a-d, Aquatic Habitat Objective, and Fish and Wildlife Management Objective 1. From the LCNCA RMP and ROD (page 34-38), refer to the Fish and Wildlife Management Actions. From the LCNCA RMP and ROD (page 72), refer to the Riparian and Aquatic Habitat Objectives. Conflicts with land use plans have been identified in past agency comments (see M. Radke comments 12/16/2011).

See also:

http://www.blm.gov/wo/st/en/prog/planning/nepa/webguide/40_most_asked_questions/questions_20-29.html

“23a. **Conflicts of Federal Proposal With Land Use Plans, Policies or Controls.** How should an agency handle potential **conflicts** between a proposal and the objectives of Federal, state or local land use plans, policies and controls for the area concerned? See Sec. 1502.16(c).

The agency should first inquire of other agencies whether there are any potential conflicts. If there would be immediate conflicts, or if conflicts could arise in the future when the plans are finished (see Question 23(b) below), the EIS must acknowledge and describe the extent of those conflicts. If there are any possibilities of resolving the conflicts, these should be explained as well. The EIS should also evaluate the seriousness of the impact of the proposal on the land use plans and policies, and whether, or how much, the proposal will impair the effectiveness of land use control mechanisms for the area. Comments from officials of the affected area should be solicited early and should be carefully acknowledged and answered in the EIS.”

- Impacts to Empire Gulch and Cienega Creek may conflict with the Congressional Act which designated Las Cienegas NCA, which states: “In order to conserve, protect, and enhance for the benefit and enjoyment of present and future generations the unique and nationally important aquatic, wildlife, vegetative, archaeological, paleontological, scientific, cave, cultural, historical, recreational, educational, scenic, rangeland, and riparian resources and values of the public lands...” (Section 4.a), and “The Secretary shall manage the Conservation Area in a manner that conserves, protects, and enhances its resources and values, including the resources and values specified in section 4(a), pursuant to the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and other applicable law, including this Act” (Section 5.a).
- The FEIS continues to acknowledge decreases to LCNCA groundwater in the Cienega Basin i.e. 1) groundwater conditions at Empire Gulch could experience several feet of drawdown, 2) that impairment of mountain-front groundwater recharge of about 35 acre-feet will occur, 3) basin water loss equivalent to approximately 3% of recharge will occur from mine pit water evaporation, and 4) that the duration of these effects is in perpetuity (FEIS page 316-317). The FEIS also acknowledges “The relationship between aquifer water levels and stream flow is not linear, but for the purposes of this analysis it is assumed that a drawdown in the regional aquifer would be reflected by a similar change in the depth of flow in the stream,” referring to “Cienega Creek, Empire Gulch, and Gardner Canyon (FEIS page 500). BLM has not relinquished any Federal Reserved Water Rights to the Rosemont Copper Project (see M. Radke comments 12/16/2011).
- The FEIS continues to mischaracterize reaches 1 and 2 of Cienega Creek and Empire Gulch on LCNCA as spatially intermittent (FEIS page 491) when they are perennial, and BLM has continued to request this change (see M. Radke comments 12/16/2011). The FEIS acknowledges the large cottonwood willow gallery in Empire Gulch, but continues to mischaracterize the xeroriparian plant community; there is very little soapberry (see also TFO comments from October 29, 2013). Therefore, the description of the affected environment is not accurate, and impact analysis to these areas cannot be correctly conducted without knowledge of what the environment truly is.
- The FEIS acknowledges impacts to LCNCA riparian and wetland areas (see above comments), however, these impacts are not analyzed individually to LCNCA wetlands or riparian areas (FEIS page 496 and 500), although requested in the October 29, 2013 TFO letter. Please note 40 CFR 1502 (1986): “The final amendment requires all federal agencies to disclose the fact of incomplete or unavailable information when evaluating reasonably foreseeable significant adverse impacts on the human environment in an EIS, and to obtain that information if the overall costs of doing so are not exorbitant. If the agency is unable to obtain the information because overall costs are exorbitant OR because the means to obtain it are not known, the agency must (1) affirmatively disclose the fact that such information is unavailable; (2) explain the relevance of the unavailable information; (3) summarize the existing credible scientific evidence which is relevant to the agency’s evaluation of significant adverse impacts on the human environment; and (4) evaluate the impacts based upon theoretical approaches or research methods generally accepted in the scientific community. The amendment also specifies that impacts which have a low probability of occurrence but catastrophic consequences if

they do occur, should be evaluated if the analysis is supported by credible scientific evidence and is not based on pure conjecture, and is within the rule of reason.”

- Actions that are yet not proposed may still need to be analyzed in cumulative effects analysis if they are reasonably foreseeable (BLM H-1790-1, Section 6.5.2.1). Actions are connected if they automatically trigger other actions that may require an EIS; cannot or will not proceed unless other actions are taken previously or simultaneously; or if the actions are interdependent parts of a larger action and depend upon the larger action for their justification (40CFR 1508.25 (a) (i,ii,iii). If any planned future pits would rely on the infrastructure in place from the current proposed pit, future pits may be a connected action under NEPA and have not been analyzed in this FEIS (see M. Radke comments 12/16/2001). Augusta Resources has a presentation for investors with a map that depicts three additional future pits (Peach Elgin, Copper World, and Broad Top Butte). See attached Rosemont Augusta Investor Presentation, slide 5.

- The no action alternative should be identified as the environmentally preferred alternative (see M. Radke comments 12/16/2001).

See:

http://www.blm.gov/wo/st/en/prog/planning/nepa/webguide/40_most_asked_questions/questions_1-10.html

“6a. **Environmentally Preferable Alternative.** What is the meaning of the term "environmentally preferable alternative" as used in the regulations with reference to Records of Decision? How is the term "environment" used in the phrase?

A. Section 1505.2(b) requires that, in cases where an EIS has been prepared, the Record of Decision (ROD) must identify all alternatives that were considered, ". . . specifying the alternative or alternatives which were considered to be environmentally preferable." The environmentally preferable alternative is the alternative that will promote the national environmental policy as expressed in NEPA's Section 101. Ordinarily, this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves, and enhances historic, cultural, and natural resources.

The Council recognizes that the identification of the environmentally preferable alternative may involve difficult judgments, particularly when one environmental value must be balanced against another. The public and other agencies reviewing a Draft EIS can assist the lead agency to develop and determine environmentally preferable alternatives by providing their views in comments on the Draft EIS. Through the identification of the environmentally preferable alternative, the decisionmaker is clearly faced with a choice between that alternative and others, and must consider whether the decision accords with the Congressionally declared policies of the Act.

6b. Who recommends or determines what is environmentally preferable?

The agency EIS staff is encouraged to make recommendations of the environmentally preferable alternative(s) during EIS preparation. In any event the lead agency official responsible for the EIS is encouraged to identify the environmentally preferable alternative(s) in the EIS. In all cases, commentators from other agencies and the public are also encouraged to address this question. The agency must identify the environmentally preferable alternative in the ROD.”

- Mitigation in the FEIS (page 566-568) have little, if any, applicable measures for LCNCA, even though impacts are expected on LCNCA (see above). Existing mitigation in the FEIS includes purchase of water rights to become in-stream flow rights on Lower and Upper Cienega Creek (FS-SSR-01). This has no benefit for LCNCA, because of already existing water rights. Spring, seep, and water monitoring (FS-SSR-02), construction of water features (FS-BR-05), or more monitoring (FS-BR-27) is not mitigation for riparian areas and wetlands lost on LCNCA. Establishment of the Cienega Creek Watershed Conservation Fund (FS-BR-16) is not enough money to compensate for loss of water rights, degradation and possible loss of wetlands and riparian areas, and ongoing (in perpetuity) efforts to mitigate this lost habitat.