



REQUEST FOR STATE DIRECTOR REVIEW AND PETITION FOR STAY

July 29, 2025

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Re: Request for State Director Review and Petition for Stay of the Decision Record for Copper Creek Exploration Project (DOI-BLM-AZ-G010-2023-0003-EA)

Dear Mr. Suazo:

Pursuant to 43 C.F.R. §§ 3809.800-3809.809, we respectfully submit this Request for State Director Review and Petition for Stay of the June 30, 2025, Decision Record and associated Environmental Assessment ("EA") and Finding of No Significant Impact ("FONSI") for the Copper Creek Exploration Project (the "Project").

Because of its proximity to sensitive wildlife habitat, surface water resources, nearby communities, and culturally significant landscapes, the Project poses serious risks to wildlife, water resources, landscape connectivity, human health, and cultural resources of the San Carlos Apache Tribe ("Tribe"). The proposal would expand unlawfully segmented NOI drilling on public lands managed by the Bureau of Land Management ("BLM") east of Mammoth and the San Pedro River, increasing direct disturbance from 4 acres to over 18 acres across 67 drill pads

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in largely undeveloped wildlands, and increasing indirect disturbances throughout Copper Creek, the San Pedro River and surrounding areas.

This appeal is submitted by the San Carlos Apache Tribe (“the Tribe”), the Center for Biological Diversity, the Lower San Pedro Watershed Alliance, Archaeology Southwest, Sky Island Alliance, Concerned Citizens and Retired Miners Coalition, Patagonia Area Resource Alliance, Save the Scenic Santa Ritas, the Coalition for Sonoran Desert Protection, and the Arizona Mining Reform Coalition (collectively, “the conservation and cultural organizations”). The project presents significant and inadequately analyzed risks in violation of the National Environmental Policy Act, BLM regulations, the Federal Land Policy and Management Action and the National Historic Preservation Act. We respectfully request that the State Director reverse the decision and remand the matter to the Safford Field Office for full compliance with applicable law.

We incorporate by reference all the points made in the Request for Review and Petition for Stay submitted separately by the Lower San Pedro Watershed Alliance.

We further request that the State Director issue a stay of the decision, as this protest demonstrates that the protestors are likely to prevail on the merits, a stay will prevent irreparable harm, the equities favor such relief, and issuing a stay serves the public interest, as detailed below.

I. GROUNDS FOR APPEAL / STATEMENT OF REASONS

A. VIOLATIONS OF BLM NEPA REGULATIONS (43 C.F.R. PART 46)¹

Failure to Take a Hard Look at Groundwater Impacts (43 C.F.R. §§ 46.130, 46.300(a))

¹ The Interior Department partially rescinded BLM’s NEPA regulations via an interim final rule after BLM issued its Decision Notice in this case. Department of the Interior, *National Environmental Policy Act Implementing Regulations*, 90 Fed. Reg. 29498 (July 3, 2025). That decision does not impact this NEPA review because the preamble to the interim final rule states that the “revised agency procedures will have no effect on ongoing NEPA reviews, where DOI, following CEQ guidance, will continue to apply the preexisting procedures to applications that are sufficiently advanced.” 90 Fed. Reg. at 29500. Because BLM issued the Decision Notice before the interim final rule’s effective date, the NEPA process here was “sufficiently advanced.” Further, agency decisions are judged on their compliance with regulations the agency applied at the time. Here, BLM applied the version of the 43 C.F.R. Part 46 regulations in force as of June 30, 2025. *See* Draft EA at 36, n.6 (citing 43 CFR Part 46). We therefore cite to those regulations.

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The EA fails to use accurate scientific information or high-quality data in analyzing the impact of groundwater withdrawals on surface hydrology, particularly in Copper Creek and its tributaries. Estimated withdrawals of 5.2 acre-feet per year are presented without aquifer-specific modeling nor adequate documentation of recharge rates. Such an absence of data and the proper analysis of it contravenes BLM's obligation to ensure scientific integrity in impact assessment. *See* 42 U.S.C. § 4332(2)(D) (agencies "shall ... ensure the professional integrity, including scientific integrity, of the discussion and analysis in an environmental document"); 42 U.S.C. § 4332(2)(E) (agencies "shall ... make use of reliable data and resources in carrying out" NEPA compliance).

The EA's discussion of groundwater impacts falls far short of several requirements. No aquifer-specific analysis is provided. The EA does not describe which hydrogeologic units are being tapped, their transmissivity, or the potential connectivity to Copper Creek. No recharge or drawdown modeling is conducted. Despite acknowledging that groundwater withdrawals may affect riparian habitat and stream hydrology, BLM did not attempt even a basic predictive analysis of the magnitude or timing of such effects. No cumulative analysis of other groundwater uses is presented. The EA omits consideration of existing water rights, private well usage, or broader watershed-scale impacts that could compound project-related drawdown. No clear impact thresholds are established. The Adaptive Management Plan (AMP) proposes monitoring and reductions of water pumping based on observed changes, but without hydrologic modeling, BLM has no rational basis to conclude that these reactive thresholds are protective or timely (Section 2.3, Final EA).

These omissions are particularly serious given BLM's own acknowledgment that Copper Creek supports riparian vegetation, hydric plant communities, and may provide habitat for ESA-listed, riparian-dependent species including the yellow-billed cuckoo, Gila topminnow, and others. The AMP is not a substitute for impact analysis; it is a mitigation framework that assumes the effectiveness of future responses, but NEPA requires the agency to evaluate potential impacts *before* approving the action, not to wait and see if damage occurs.

Such deferral of analysis violates NEPA, particularly where listed species or sensitive water resources are involved. BLM's own handbook (H-1790-1) cautions against relying on mitigation as a substitute for rigorous impact assessment. Here, BLM failed to identify the hydrologic drivers, pathways, and thresholds that would determine whether groundwater pumping poses a risk to surface flows and riparian health in Copper Creek.

By failing to use the best available scientific information, to conduct a meaningful assessment of foreseeable hydrologic impacts, or to support its conclusions with data, BLM has

not met its legal obligations under FLPMA and its NEPA regulations. This failure undermines the agency's broader duty to prevent unnecessary or undue degradation and calls into question the adequacy of the EA as a basis for project approval.

Insufficient Analysis of Cumulative Impacts (43 C.F.R. §§ 46.115, 46.145)

The EA does not analyze how the cumulative water demands of Redhawk's exploration activities, in combination with ongoing and foreseeable withdrawals in the region, would affect regional groundwater tables, aquatic-dependent species, or riparian ecosystem health. The discussion of foreseeable actions is incomplete and largely dismissive.

No modeling, tabular summary, or hydrologic basin analysis is presented to show how these water uses may interact. Despite acknowledging that surface flows in Copper Creek are partially groundwater-supported, BLM does not assess whether the cumulative groundwater demand will reduce baseflows, degrade riparian plant communities, or compromise habitat for aquatic and riparian-dependent species such as the Gila topminnow, yellow-billed cuckoo, or Chiricahua leopard frog. This omission is especially problematic in a hydrologically sensitive headwater area, where even small drawdowns can have disproportionately large ecological impacts.

While the final EA corrects its omission of the 7B Ranch mitigation property associated with the Oak Flat land swap, stating, "The 7B Ranch is located within the CESA and would be a RFFA" (EA, p. 53), it includes only an undisclosed portion of the approximately 3,000-acre property in the Cumulative Effects Study Area.

On page 40, the final EA now states, "The BLM is expected to acquire the 7B Ranch as part of the Resolution Copper land exchange as part of the San Pedro Riparian National Conservation Area. The 7B Ranch is located within the CESA" (EA, p. 40). The EA, however, downplays and summarily dismisses impacts from both expanded exploration and the reasonably foreseeable future action of full-scale mining. It does not take into consideration water withdrawals resulting from exploration and future mining activities at Copper Creek—a hydrological sub-basin of the lower San Pedro watershed—and the negative impacts of such activity to the 7B mitigation property's ecological vitality and final appraisal value. Nor does it take into effect increased road traffic along River Road and Copper Creek Road within the bosque canopy (increased wildlife mortality), and negative impacts to the 1 to 4 million migratory birds that traverse this vital flyway annually. This dismissal is incorrectly justified in the final EA: "The Proposed Action would have a negligible effect on the 7B Ranch as it is located 8 miles away. Wildlife, however, that are using the 7B Ranch as part of a larger wildlife

connectivity corridor or landscape, may have movement patterns that are temporarily disrupted by the presence of mineral exploration activities that are part of the Proposed Action” (EA, p. 72).

Foreseeable Future Actions Are Incompletely Identified and Minimally Analyzed

Although the EA includes a list of “reasonably foreseeable future actions” (RFFAs), its discussion of them is perfunctory and unsupported. For example, the EA fails to describe in detail the full build-out potential of the Copper Creek Project, which Faraday Copper has publicly promoted as a multi-phase mine development with long-term groundwater needs far exceeding those described for this initial exploration phase (Faraday Copper Corp., 2023). The EA does not account for the hydrologic or ecological impacts of State Trust land activities, private well development, or future exploratory actions by other mining companies in the region, despite known patterns of mineral interest in this portion of the Galiuro Range and the broader Sky Island landscape.

The EA’s discussion of RFFAs is especially deficient with respect to cumulative groundwater impacts. It fails to meaningfully analyze how current and foreseeable groundwater withdrawal will interact with existing regional trends of aquifer stress and streamflow depletion in the San Pedro Basin. For example, Tillman and Leake (2011) describe methodologies and findings showing that shallow alluvial aquifers across the basin are under pressure due to groundwater overdraft, and that these aquifers are hydrologically connected to perennial and intermittent stream systems. This scientific framework, available well before publication of the final EA, offers tools for evaluating cumulative drawdown and baseflow impacts, yet BLM failed to apply them.

Similarly, Kennedy and Gungle (2010) provide data on the sources and magnitude of baseflow in the San Pedro River, demonstrating that regional groundwater declines—particularly near Tombstone—have contributed to measurable reductions in streamflow and riparian degradation. These findings are directly applicable to headwater areas like Copper Creek, which contribute to downstream flow. Despite the existence of these peer-reviewed USGS datasets, the EA fails to incorporate or analyze groundwater–surface water interactions or to apply any cone-of-depression modeling to assess how proposed pumping may influence connected systems.

In addition, Faraday Copper’s 2023 Preliminary Economic Assessment discloses the potential for a 30+ year mine life with extensive dewatering requirements tied to underground

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development, well beyond the scope of current exploration. This foreseeable build-out is entirely omitted from the EA's cumulative impact section, despite being publicly available and clearly relevant (Faraday Copper Corp., 2023). BLM's decision to disregard this scenario undermines the usefulness of its RFFA list and violates its duty under NEPA to consider cumulative effects in light of reasonably foreseeable development.

Additional regional stressors were also ignored. The ADWR's Wells55 database reveals widespread and ongoing well permitting in the broader San Pedro Valley (ADWR, Wells55, 2025), indicating groundwater demand far beyond that associated solely with this project. ADWR's Overdraft Data Dashboard further documents long-term aquifer declines throughout the basin, reinforcing the urgency of addressing cumulative drawdown risks (ADWR, Overdraft Dashboard). The Groundwater Site Inventory (GWSI) provides extensive monitoring data on well depths, recharge variability, and aquifer conditions (ADWR, GWSI, 2021), yet none of this is synthesized in the EA's analysis.

BLM also failed to reference or utilize the ADWR's San Pedro groundwater model, a well-established regional tool for simulating aquifer behavior under various pumping scenarios (ADWR, San Pedro Model). The model could have been used to project whether Redhawk's proposed withdrawals might contribute to broader declines in baseflow or impact sensitive riparian systems downstream. This modeling omission is particularly troubling given the San Pedro's status as a biologically rich and groundwater-dependent river system.

Additionally, the Arizona Department of Environmental Quality has published assessments of groundwater quality in the lower San Pedro Basin, indicating vulnerability to contamination and reduced recharge in certain subbasins (ADEQ, 2002). These findings further support the need for integrated hydrologic analysis, which is absent from the EA.

Collectively, these omitted data sources and analytic tools represent a serious failure to "take a hard look" at cumulative impacts. BLM's disregard for this readily available information — including state and federal datasets, peer-reviewed USGS studies, and the project proponent's own public filings, violates the agency's duties under 43 C.F.R. §§ 46.115 and 46.145. The resulting cumulative impact section is non-quantitative, conclusory, and insufficient to support informed decision-making. The Center for Biological Diversity and numerous other individuals and organizations raised these issues during the public comment period for the draft EA.

Relevant Sources:

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Fred Tillman & Stanley Leake. (2011). Water availability and use pilot; methods development for a regional assessment of groundwater availability, southwest alluvial basins, Arizona. U.S. Geological Survey Scientific Investigations Report 2011–5071.

Jeffrey R. Kennedy & Bruce Gungle. (2010). Quantity and sources of base flow in the San Pedro River near Tombstone, Arizona. U.S. Geological Survey Scientific Investigations Report 2010–5200.

Faraday Copper Corp. (2023). Copper Creek Project NI 43-101 Technical Report and Preliminary Economic Assessment (effective date May 3, 2023).

Arizona Department of Water Resources (ADWR). *Wells55 Database*. Accessed 2025.
<https://www.arcgis.com/home/item.html?id=054fd6d457da48828ef2367db8ae9371>

Arizona Department of Water Resources, *Overdraft Data Dashboard*,
<https://www.azwater.gov/adwr-data-dashboards>.

Arizona Department of Environmental Quality, *Ambient Groundwater Quality of the Lower San Pedro Basin*, https://static.azdeq.gov/wqd/gw/fs/02-09_lsp_fs.pdf.

Arizona Department of Water Resources, *Groundwater Site Inventory (GWSI) Database Handbook* (2021), https://www.azwater.gov/sites/default/files/2022-12/GWSI_DatabaseHandbook2021.pdf.

Arizona Department of Water Resources, *San Pedro Model*,
<https://www.azwater.gov/hydrology/groundwater-modeling/san-pedro-model>.

Source	Relevance	BLM's Omission
Tillman & Leake (2011)	Provides regional groundwater availability assessment methods and identifies aquifer connectivity essential to evaluating drawdown impacts.	EA does not use regional aquifer modeling or connectivity analysis to assess hydrologic effects of pumping.
Kennedy & Gungle (2010)	Documents baseflow contributions from	EA fails to assess how groundwater withdrawals

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	groundwater to the San Pedro River, including trends in streamflow decline.	might reduce baseflows or affect riparian habitat.
Faraday Copper Corp. (2023)	Describes long-term, multi-phase mine development with major groundwater demands far exceeding the initial exploration phase.	EA ignores foreseeable full build-out and associated water use, despite public availability of the PEA.
ADWR Wells55 Database	Shows widespread well permitting across the San Pedro Valley, indicating increasing groundwater extraction.	EA does not incorporate regional well data or consider additive drawdown effects.
ADWR Overdraft Dashboard	Highlights long-term overdraft conditions and aquifer stress in the San Pedro Basin.	EA omits basin-scale aquifer health indicators relevant to cumulative impacts.
ADWR Groundwater Site Inventory (GWSI) (2021)	Offers well-level data, groundwater levels, and recharge information for the region.	No GWSI data is cited or analyzed; BLM does not evaluate long-term water table trends.
ADWR San Pedro Model	Provides a ready-made groundwater model for simulating drawdown and aquifer response.	EA fails to use or acknowledge available hydrologic modeling tools for impact prediction.
ADEQ (2002)	Summarizes ambient groundwater quality data for the Lower San Pedro Basin.	EA does not assess water quality risks or include cumulative impacts from potential contamination.
Hot Breccia Project (2023)	An exploration project in the same region with potentially shared aquifers, impacts to San Pedro River and overlapping cumulative impacts.	EA does not mention the Hot Breccia project, despite its spatial and operational connection to the San Pedro River.

Cumulative Impacts on Species and Habitats Are Not Quantified

BLM's analysis further fails to assess how cumulative hydrologic changes may affect habitat connectivity, particularly in the Santa Catalina–Galiuro linkage corridor; the frequency and persistence of surface water in Copper Creek, including the wetted width and depth, which are critical parameters for riparian species; sensitive and listed species whose persistence

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depends on shallow groundwater and intact riparian structure (e.g., Gila topminnow, yellow-billed cuckoo, Huachuca water umbel) (Sections 3.4.4 and 3.4.5, Final EA).

The EA omits any population-level or landscape-level analysis of these impacts and does not even qualitatively discuss whether the incremental harm from this project could contribute to broader ecological degradation already underway in the region.

In summary, BLM's cumulative effects analysis for the Copper Creek Exploration Project is superficial, unsupported by data, and legally insufficient under 43 C.F.R. §§ 46.115 and 46.145. The agency has not met its obligations to assess whether its decision—when viewed in the context of other foreseeable development pressures—may contribute to regional groundwater depletion, riparian habitat loss, or degradation of sensitive species habitat. This failure compromises the integrity of the EA and undermines BLM's compliance with both NEPA and FLPMA's mandate to protect public lands from cumulative degradation.

Deficient Range of Alternatives (43 C.F.R. § 46.420(b))

The EA improperly limits its alternatives analysis by asserting that the No Action Alternative is not a viable option due to the 1872 Mining Law. This is legally incorrect. BLM retains full discretion under FLPMA and its own regulations (43 C.F.R. § 3809.411) to reject or condition plans that would cause unnecessary or undue degradation. Suggesting that the No Action alternative is not legally viable, undermines NEPA compliance and fails to provide the required comparison of environmental impacts (Section 2.2, Final EA).

Failure to Take a Hard Look at Potential Impacts to the Mexican Spotted Owl (43 C.F.R. §§ 46.130, 46.300)

Despite credible third-party reports submitted during public comment identifying the Mexican spotted owl in the vicinity of the project, the EA fails to mention or evaluate potential effects on this federally listed species. BLM regulations require the use of all relevant environmental information, and this omission renders the wildlife analysis incomplete and legally deficient.

The omission of the Mexican spotted owl from the Final Environmental Assessment constitutes a clear violation of BLM's duties under 43 C.F.R. §§ 46.130 and 46.300, which require the agency to use all relevant environmental information and to consider issues raised through public involvement. During the public comment period, the Center for Biological Diversity submitted credible third-party reports documenting the presence of Mexican spotted owls in or near the project area, including suitable habitat in the upper elevations of the Galiuro

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Mountains adjacent to the exploration footprint. Despite this, the Final EA fails to mention submitted evidence of the presence of the species at all. The Mexican spotted owl is almost entirely omitted from the EA and in Appendix G. No rationale is provided for excluding the species from analysis, and no survey data or habitat evaluation is presented. This failure to properly address a federally listed species raised during public comment renders the wildlife analysis legally and scientifically deficient.

In addition to the EA's complete omission of analysis of the presence, habitat and potential impacts to the Mexican Spotted Owl, BLM failed to consider existing camera-trap and wildlife journal data confirming the species' presence within the project area. Since 2017, citizen-science and partner organization efforts—including those in conjunction with Sky Island Alliance—have documented the Mexican Spotted Owl and the Sonoran Desert Tortoise on at least three separate occasions. These records were submitted during the public comment period but were dismissed without analysis or acknowledgment. Even though the final EA (p. 56) states that “AZGFD has also informed the BLM of records for the Sonoran Desert tortoise occurring within the same proximity to the Project,” the species is still only described as having “the potential to occur” (EA, p. 65), and Table 3.5 (p. 58) continues to list it as merely “possible.” No rationale is provided for excluding the Mexican Spotted Owl from the EA entirely. The proposed Worker Environmental Awareness Program (WEAP), intended to mitigate impacts to sensitive species, is not included in the EA text, nor is there any schedule or enforcement plan. With immediate approval of exploratory activities, such training should have already occurred.

B. VIOLATIONS OF FLPMA AND SURFACE MANAGEMENT REGULATIONS

Failure to Prevent Unnecessary or Undue Degradation (43 C.F.R. § 3809.411(d)(3))

The EA acknowledges that road improvements, drilling activities, and fuel handling will cause short- and long-term disturbance in biologically sensitive and erosion-prone terrain. Yet the mitigation measures offered (e.g., speed limits, signage, seasonal restrictions) are unenforceable or lack performance standards. This does not satisfy BLM's duty under 43 C.F.R. § 3809.420 to prevent unnecessary or undue degradation.

In Section 2.2.1, BLM notes that surface disturbance will affect up to 18 acres, including reclaimed roads and pads, with clearing to be performed by heavy equipment in areas where “topsoil is thin to non-existent,” including riparian crossings (Section 2.2.1, Final EA). Of course, because much of these 18 acres are roads, the indirect effects of road construction and

increased use such as noise, light, and dust will extend well beyond the roadway, effectively increasing the affected area several times over.

Section 2.2.2 describes fuel handling protocols but lacks any enforceable standards for spill response beyond the use of containment trays and ad hoc shoveling of contaminated soil. Section 2.2.10 sets forth “design features and best management practices,” such as signage, seasonal restrictions, and vegetation trimming “to the extent practicable,” but none of these include measurable performance criteria or mandatory enforcement mechanisms. Similarly, Section 3.4.2, which analyzes impacts to special status species, admits that construction, noise, and lighting will affect the habitat but relies again on soft mitigation without commitments to effectiveness monitoring or performance thresholds. In response to public concerns, BLM in Appendix G reiterates its reliance on generic BMPs and project design features, claiming they are “sufficient to avoid undue degradation,” yet it declines to adopt binding mitigation measures (Appendix G, Final EA). As a whole, the EA demonstrates that BLM has not met its regulatory obligation to ensure that authorized activities do not cause unnecessary or undue degradation.

C. CULTURAL RESOURCE AND CONSULTATION FAILURES

Incomplete Compliance with National Historic Preservation Act, Section 106 (36 C.F.R. Part 800)

Although five historic properties eligible for the National Register of Historic Places (NRHP) are located near the project, the EA fails to analyze potential indirect effects from noise, light, and dust. It also fails to assess the broader cultural landscape values identified by the Tribe, including ancestral cultural artifacts and present day uses. These include not only historic and prehistoric burial sites, but remnants of pit houses, stone houses, rock-dwellings, and associated artifacts, as well as natural springs and deposits of malachite, cuprite, turquoise, azurite, and copper oxides used in traditional body painting and artwork.

Additionally, this matter reflects a troubling pattern similar to BLM’s handling of the SunZia project, where the agency finalized a decision despite repeated and archaeological advisements by the Tribe regarding the potential for Traditional Cultural Property. Here too, BLM has proceeded without evaluating or documenting whether one or more TCPs exists in the project area and San Pedro Valley. BLM has failed thus far to complete the consultations required per NHPA and, more fundamentally, to make use of authoritative, readily available, information directly relevant to Native American history, land use, and cultural resources in and near the project. The following sources of information, and others ignored or discounted by BLM, could

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and should have been used by BLM to identify and document cultural resources, to provide context for required consultations, and to assess the impacts (per NEPA) and effects (per NHPA) on cultural resources:

Bagstad, Kenneth J., Darius J. Semmens, Rob Winthrop, Delilah Jaworski, and Joel Larson. 2012. *Ecosystem Services Valuation to Support Decision making on Public Lands—A Case Study of the San Pedro River Watershed, Arizona*. US Geological Survey, Washington, DC.
<https://pubs.usgs.gov/sir/2012/5251/sir2012-5251.pdf>

Clark, Jeffrey J., and Patrick D. Lyons. (editors). 2012. *Migrants and Mounds: Classic Period Archaeology of the Lower San Pedro Valley*. Anthropological Papers 45. Archaeology Southwest, Tucson.

Ferguson, T. J., and Chip Colwell-Chanthaphonh. 2006. *History Is in the Land: Multivocal Tribal Traditions in Arizona's San Pedro Valley*. University of Arizona Press, Tucson.

Hadley, Diana, and Peter Warshall. 1991. *Environmental Change in Aravaipa, 1870-1970: An Ethnoecological Survey*. Arizona State Office of the Bureau of Land Management, Phoenix.
<https://dn790006.ca.archive.org/0/items/environmentalcha7355hadl/environmentalcha7355hadl.pdf>.

Failure to Respect Government-to-Government Consultation Obligations

Government-to-government consultation remains a federal mandate. 65 Fed. Reg. 67249, (Nov. 6, 2000); Joint Secretary's Order 3403; BLM Manual 1780, Tribal Relations; [BLM Permanent Instruction memorandum No. 2022-011](#), Sept. 13, 2022). BLM's attempts at such consultation were initiated late, and lacked "meaningful" exchange prior to key Project decisions (Sections 3.6 and 4.3; Appendix D, Final EA). Moreover, BLM cannot rely on meetings with the Tribe's representatives as a substitute for government-to-government consultation without the express authorization of the San Carlos Council, the governing body of the Tribe. By meaningful, BLM has to engage with the Tribe and respond to its concerns. As a matter of the Tribe's sovereignty and the powers granted by the Tribe's constitution and bylaws, the San Carlos Council alone has the authority to represent the Tribe in matters related to official consultations. Further, it has long been the policy of the Tribe that government-to-government consultation may only take place before the San Carlos Council. While the Project's owners,

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Faraday Copper, have met with the Tribe's Council and responded to some of the Tribe's concerns, BLM has not.

BLM's coordination with the Tribe did not meet the standards of meaningful government-to-government consultation, as required under BLM Manual 1780 and Executive Order 13175. The Tribe submitted substantive comments objecting to the lack of cultural landscape analysis, which BLM has not adequately addressed (Section 4.2 and Appendix G, Final EA).

Although the EA (p. 85) lists the Tribe's concerns, it summarily claims that "those concerns have been addressed" without providing any analysis, specific responses, or substantive remedy. This constitutes a complete failure of both process and good-faith consultation.

The EA claims compliance with all relevant federal laws including NEPA and NHPA, yet fails to meet several of those laws' core procedural and substantive requirements. Assertions of compliance do not absolve the agency from independently verifying and documenting lawful processes, especially where the Tribe's specific cultural resources are concerned. We note here that other tribes may have an interest in protection of their cultural resources, and it remains unclear as to the depth and breadth of any effort by BLM to assess impacts for other tribes.

Appendix G includes BLM's responses to the San Carlos Apache Tribe's formal comment letter. These responses are incomplete and perfunctory, failing to engage with the Tribe's substantive objections, including the need to evaluate the cultural landscape and TCP considerations.

D. INADEQUATE TREATMENT OF SENSITIVE SPECIES

Insufficient Wildlife Impact Analysis (43 C.F.R. § 46.130(b))

The Final EA's analysis of impacts on wildlife fails to meet BLM requirements which mandates the use of high-quality scientific information and an accurate assessment of environmental consequences. For example, Section 3.4.2 discusses BLM Sensitive Species, including the yellow-billed cuckoo, but does not provide quantitative data, survey results, or habitat impact thresholds. While the EA acknowledges that lighting and drilling noise may affect nocturnal wildlife behavior, it summarily concludes such effects are "not expected to impact population stability," without support from species-specific studies or adaptive mitigation (Section 3.4.2, Final EA). Notably, the Mexican spotted owl is omitted from analysis entirely,

despite being a federally listed species potentially affected by project activities. In Section 2.2.10, BLM proposes general design features and BMPs, but these measures lack performance standards, enforceability, or a plan for long-term biological monitoring (Section 2.2.10, Final EA). The absence of targeted data and enforceable protections renders the wildlife impact analysis incomplete and scientifically unsupported under NEPA.

Though the final Environmental Assessment indicates the addition of a wildlife trail-camera monitoring program to be developed and monitored by Redhawk in collaboration with BLM, the EA fails to incorporate or even acknowledge data from ongoing citizen camera-trap studies and wildlife journals maintained in the project area since 2017. These efforts, including work conducted in conjunction with Sky Island Alliance, have confirmed the presence of both the ESA-listed Mexican Spotted Owl and the BLM Sensitive Species Sonoran Desert Tortoise within the project area on at least three separate occasions. Despite this data, the final EA maintains that the Sonoran Desert Tortoise only has “the potential to occur within the Project Area” (EA, p. 65), and Table 3.5 (p. 58) still lists the species as “possible.” While the EA does acknowledge (p. 56) that “AZGFD has also informed the BLM of records for the Sonoran Desert tortoise occurring within the same proximity to the Project,” it fails to reconcile this information with BLM’s own findings or upgrade the species’ status in the EA. The Mexican Spotted Owl is entirely omitted from the species lists and habitat assessments. Additionally, the Worker Environmental Awareness Program (WEAP) proposed as mitigation is not included in the final EA, and there is no schedule, plan, or enforceable commitment for training. Given that BLM has already approved exploration activities, this training should have occurred before project implementation began.

E. IMPROPER USE OF NOTICE-LEVEL DRILLING AND NEPA SEGMENTATION

The EA acknowledges that Redhawk Copper previously conducted notice-level drilling operations within the same area and for the same purpose as the currently proposed exploration project. Although this prior activity was excluded entirely from the Draft EA, it was later mentioned in the Final EA, but only briefly and without analysis. This procedural maneuver raises serious legal and regulatory concerns (Section 1.1 and 3.2, Final EA).

Segmentation and Precedent Activity Ignored (43 C.F.R. §§ 46.115, 46.140)

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Under BLM's NEPA regulations, the agency must consider all connected actions, including past and present activities that are part of a broader development scheme. Here, BLM allowed notice-level operations to proceed on multiple drill sites that are now included in the current Plan of Operations, yet failed to meaningfully assess the unlawful segmentation and cumulative or precedent-setting nature of those activities. This omission constitutes improper segmentation of the environmental review process.

Per 43 C.F.R. § 46.115, BLM must consider the reasonably foreseeable environmental trends and planned actions in the area, while § 46.140 requires inclusion of connected and cumulative actions. The EA's failure to integrate or assess prior disturbance undermines the integrity of its conclusions and may have artificially minimized the project's environmental footprint.

Improper Use of Notice-Level Authority (43 C.F.R. § 3809.21)

BLM regulations only allow notice-level operations if they disturb 5 acres or less and do not cause unnecessary or undue degradation. If the prior drilling operations were similar in scope, location, and intent to those now analyzed under the full Plan of Operations, BLM's earlier decision to allow them without full NEPA review violate 43 C.F.R. §§ 3809.11 and 3809.21.

The EA does not describe whether the cumulative surface disturbance, when including both notice-level and proposed actions, exceeded this acreage threshold, nor does it clarify whether the past work met the standard of "no undue degradation." Without this information, the public and decisionmakers cannot accurately evaluate the project's baseline impacts or reclamation needs.

NEPA Precommitment and Bias (43 C.F.R. § 46.100)

By allowing Redhawk to carry out materially similar operations prior to completion of the EA, and then failing to meaningfully consider those actions in the current analysis, BLM appears to have undermined the NEPA process. Courts have consistently held that agencies must not allow an applicant's piecemeal development to bias or preordain the outcome of environmental review. That principle is codified in BLM's own NEPA policy, which prohibits irreversible or irretrievable commitments of resources prior to completing analysis.

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BLM's Authorization of Notice-Level Drilling Violated Section 7 of the Endangered Species Act

BLM's approval of exploration drilling on May 1, 2024, under the NOI process, without conducting consultation under Section 7 of the Endangered Species Act (ESA), constitutes a clear violation of federal law. The ESA mandates that every federal agency shall ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species (16 U.S.C. § 1536(a)(2)).

BLM was required to initiate consultation with the U.S. Fish and Wildlife Service under 50 C.F.R. § 402.14(a) because the NOI-level activities "may affect" listed species and designated critical habitat. The agency's own IPaC report, dated May 3, 2024, identified eleven federally listed or candidate species that may be present within or near the NOI project area, including the ocelot, Mexican spotted owl, yellow-billed cuckoo, Chiricahua leopard frog, Gila topminnow, Gila chub, and monarch butterfly, among others. Yet there is no record of BLM initiating either informal or formal consultation for the May 1, 2024 approval. This failure to consult violates not only the ESA, but also NEPA regulations that prohibit agencies from approving actions with potential environmental effects before required consultation is complete.

Moreover, the Section 7 consultation later conducted for the Plan of Operations and formalized in USFWS's June 26, 2025 concurrence letter cannot retroactively cure this violation. BLM authorized NOI-level drilling a full year earlier, in habitat with known or potential presence of ESA-listed species, without evaluating those effects through the ESA's mandated consultation process. As such, the NOI approval remains unlawful and the continued operations under that approval are in violation of Section 7.

This violation is not a procedural technicality; it strikes at the heart of the public's and Tribes' right to informed and meaningful participation in the NEPA process. By approving and allowing ground-disturbing activities to proceed under the NOI prior to conducting Section 7 consultation, BLM fundamentally altered the environmental baseline against which impacts in the Draft EA were assessed. This not only unlawfully narrowed the range of alternatives but also deprived the public of an opportunity to comment on the full scope of impacts, including cumulative and connected actions, based on a complete and accurate record.

Critically, BLM also failed to consult with affected Tribes on the NOI-level drilling, despite multiple formal requests from the San Carlos Apache Tribe and the clear applicability of the government-to-government consultation obligation under both NEPA and Executive Orders 13175 and 12898. The NOI drilling occurred within the Tribe's ancestral and culturally significant landscape, including the San Pedro Valley and Galiuro Mountains, without prior consultation or consent. This is not only a breach of NEPA's procedural requirements, but a profound failure of BLM's trust and treaty responsibilities. BLM's refusal to engage in consultation prior to approving ground disturbance on culturally significant ancestral lands fundamentally undermines the legitimacy of the EA and violates the federal government's obligation to consult with Tribes at the earliest possible stage of decision-making.

These omissions, both ESA consultation and consultation with the Tribe, render the Final EA legally deficient. Courts have repeatedly held that agencies may not rely on an environmental review process that is procedurally tainted or based on a pre-determined outcome. Under NEPA, BLM may not authorize connected actions such as NOI drilling that limit the choice of reasonable alternatives or pre-judge the outcome of a pending EA. Nor may it substitute post hoc justification for a failure to consult with Tribes or comply with mandatory duties under the ESA.

Accordingly, BLM must withdraw its Final EA and approval decision, suspend all ongoing activities under the May 1, 2024 NOI, and initiate a new, integrated NEPA process that fully complies with Section 7 of the ESA, ensures early and meaningful government-to-government consultation with affected Tribes, and restores the public's right to participate based on a full and accurate disclosure of environmental impacts.

F. UNSUPPORTED FINDING OF NO SIGNIFICANT IMPACT (FONSI)

The June 30, 2025, FONSI dismisses the risk of violations of federal, and environmental protection laws, including those that specifically protect interests of the Tribe, despite acknowledging short-term and potentially significant adverse effects to riparian and aquatic habitats, threatened species, and water sources. The analysis rests heavily on mitigation measures and an AMP that remains vague and unenforceable. Reliance on speculative mitigation without performance standards or certainty of success cannot justify a finding of no significant impact. On the contrary, the AMP expressly contemplates significant impacts, including the complete depletion of surface water in Copper Creek. Furthermore, the FONSI's statement that "no laws will be violated" is conclusory and unsupported, especially in light of documented deficiencies in Section 106 consultation and species review.

Although the FONSI notes that “tribes have communicated to the proponent, Redhawk, the potential for a Traditional Cultural Property encompassing the San Pedro Valley,” it fails to acknowledge that BLM itself was also directly advised of this potential TCP and has not undertaken or completed the required NEPA and NHPA processes to assess its presence, eligibility, and significance.

The FONSI’s claim that “no Federal, State, local or Tribal laws or requirements imposed for the protection of the environment would be violated” is unsubstantiated and contradicted by multiple failures of compliance with legal requirements under NEPA and NHPA, and obligations to engage in meaningful government-to-government consultation with the Tribe.

II. PETITION FOR STAY OF THE DECISION

Pursuant to 43 C.F.R. § 4.21(b), we request an immediate stay of the Decision Record for the following reasons:

1. *Irreparable Harm*: Disturbance to riparian corridors through the bulldozing of 67 drill pads across 18 acres, withdrawal of groundwater, and alteration of habitat connectivity cultural resources will cause permanent degradation to the Tribe’s resources, Reservation, water, riparian habitat and the wildlife that use it and other environmental values. This damage cannot be reversed through post-facto reclamation, and that cannot be repaired with money damages. These impacts will irreparably harm members of the conservation and cultural organizations and the Tribe who use and enjoy the area for recreational, esthetic, cultural and other purposes.
2. *Likelihood of Success on the Merits*: This appeal raises clear and demonstrable violations of BLM’s NEPA regulations, FLPMA duties, and the BLM’s obligation to engage in meaningful government-to-government consultation. The conservation and cultural organizations and the Tribe are likely to prevail on these issues.
3. *Balance of Harms*: the environmental harms are potentially grave; the harm to the project proponent of a stay is minimal except for a short delay, and a stay will not harm BLM. Granting the stay will pause non-essential exploration activity while preserving irreplaceable environmental and cultural values. Denial would allow permanent damage before legal review.

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4. *Public Interest:* BLM-managed lands must be protected for all users, including residents and the Tribe or other tribes. A stay supports responsible stewardship and accountability, and ensures compliance with environmental and cultural resource laws, all of which are in the public interest.

III. CONCLUSION AND REQUESTED RELIEF

The Record of Decision fails to provide any additional remedies or commitments to correct the environmental assessment's deficiencies or to substantiate the unsupported findings in the FONSI

Accordingly, we respectfully request that:

1. The Arizona State Director grant this Request for Review, and remand the Copper Creek EA and Decision Record for full compliance with NEPA, FLPMA, the ESA, and applicable consultation requirements;
2. The Arizona State Director issue a stay of the Project until such time as BLM corrects the errors identified herein and issues a new EA and Decision Notice; and
3. BLM initiate formal, government-to-government consultation with the San Carlos Apache Tribe prior to any new decision.

Pursuant to 43 C.F.R. § 3809.805(b), we also request a meeting with the State Director to discuss this filing.

This appeal and supporting materials have been filed with the Arizona State Director and the Safford Field Office.

Respectfully submitted,

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