



Greater Yellowstone Coalition

162 N. Woodruff Avenue • Idaho Falls, Idaho 83401 • (208) 522-7927
idaho@greateryellowstone.org • www.greateryellowstone.org

May 7, 2010

Barry Myers
Dairy Syncline Mine EIS
BLM, Pocatello Field Office
4350 Cliffs Drive
Pocatello, ID 83204

RE: Scoping Comments - Dairy Syncline Mine EIS

Dear Barry:

The following are the comments of the Greater Yellowstone Coalition (“GYC”) on the above referenced project. GYC is a 501(c)(3) non-profit organization dedicated to protecting the wildlands, wildlife, and other outstanding natural resources of the Greater Yellowstone Ecosystem. GYC has offices in Idaho, Wyoming, and Montana and more than 20,000 members and supporters nationwide. GYC’s members regularly use and enjoy the lands and waters of southeast Idaho for a variety of activities such as fishing, hiking, hunting, wildlife viewing, spiritual renewal, biological and botanical research, photography, and other pursuits. The proposed Dairy Syncline phosphate mine development will directly affect GYC’s members’ opportunities to use and enjoy these lands.

There are a number of issues that need to be disclosed and analyzed in the EIS. We first discuss process related issues in our comments and then substantive issues.

Alternatives

NEPA regulations (40 CFR 1502.14[a]) require agencies to “(r)igorously explore and objectively evaluate all reasonable alternatives...” Furthermore, “NEPA requires that federal agencies consider alternatives to recommended actions whenever those actions ‘involve [...] unresolved conflicts among alternative uses of available resources’ (42 USC 4332[2][E][1982]). ... (C)onsideration of alternatives is critical to the goals of NEPA even where a proposed action does not trigger the EIS process. This is reflected in the structure of the statute: while an EIS must also include alternatives to the proposed action, (42 USC 4332[2][C][iii][1982]), the consideration of alternatives requirement is contained in a separate subsection of the statute and therefore constitutes an independent requirement” (see id. (4332[2][E])).

To comply with NEPA's requirement that all reasonable alternatives be evaluated, the EIS should include and evaluate the following alternatives in addition to the proposed action.

- a. No land sale
- b. No lease modifications
- c. No lease modifications in the Huckleberry Basin roadless area
- d. No land exchange
- e. No land sale and no land exchange
- f. No land sale, no land exchange, and no lease modifications
- g. Mine plan with no out-of-pit waste dumps
- h. The use of a geosynthetic liner in place of the proposed rock cap

Reasonably Foreseeable Impacts

NEPA requires federal agencies to consider “every significant aspect of the environmental impact of a proposed action ... [and] inform the public that it has indeed considered environmental concerns in its decisionmaking process.”¹ To that end, “NEPA imposes procedural requirements designed to force agencies to take a ‘hard look’ at environmental consequences.”² NEPA requires agencies to disclose all significant impacts from projects, whether they are “direct” or “indirect.”³ “Indirect” impacts include any “reasonably foreseeable” impacts.⁴ Specifically, with this proposal, reasonably foreseeable impacts include both the BLM's proposed land sale, the exchange of the all Forest Service lands in adjacent Section 1 T9S, R43E, and the proposed Dairy Syncline Mine itself. These should be included in the analysis.

Connected Actions

NEPA requires proposals “which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.”⁵ A NEPA document must analyze the impacts of “[c]onnected actions,” including actions that are “interdependent parts of a larger action and depend on the larger action for their justification.”⁶ Here, the BLM should include an analysis of actions connected to the exploration activities, such as road building, increased traffic and noise, etc. in the EIS.

Cumulative Effects

NEPA is very specific in requiring agencies to consider cumulative impacts of each alternative considered.⁷ The BLM and Forest Service must address all foreseeable cumulative actions, “regardless of what agency (Federal or non-Federal) or person

¹ *Earth Island Inst. v. U.S. Forest Serv.*, 351 F.3d 1291, 1300 (9th Cir. 20003).

² *Id.*

³ 40 C.F.R. § 1502.16; *City of Davis v. Coleman*, 521 F.2d 661, 676 (9th Cir. 1975).

⁴ 40 C.F.R. §§ 1508.8(b); 1502.22.

⁵ 40 C.F.R. § 1502.4(a); *Kleppe v. Sierra Club*, 427 U.S. 390, 408 (1976).

⁶ *Id.*, § 1508.25(a)(1).

⁷ 40 C.F.R. §§ 1502.16, 1508.8, 1508.25(a)(2), (c).

undertakes such other actions.”⁸ These include all past, present, and “reasonably foreseeable future actions,” “which when viewed with other proposed actions have cumulatively significant impacts.”⁹ “Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.”¹⁰

The cumulative analysis must be reasonably detailed; “[g]eneral statements about ‘possible’ effects and ‘some risk’ do not constitute a ‘hard look’ absent a justification regarding why more definitive information could not be provided.”¹¹ As the court stated in *Lands Council v. Powell*:

NEPA requires adequate cataloguing of relevant past projects in the area. *Muckleshoot Indian Tribe v. United States Forest Serv.*, 177 F.3d 800, 809-10 (9th Cir. 1999) (“[A]n EIS must catalogue adequately the relevant past projects in the area. . . . Detail is therefore required in describing the cumulative effects of a proposed action with other proposed actions.”) . . . Stated differently, the general rule under NEPA is that, in assessing cumulative effects, the Environmental Impact Statement must give a sufficiently detailed catalogue of past, present, and future projects, and provide adequate analysis about how these projects, and differences between the projects, are thought to have impacted the environment.¹²

The EIS should clearly describe and analyze the cumulative impacts of this proposal in combination with other past, current and future activities such as logging, grazing, mining, off road vehicle use, and so forth. This analysis must include both the direct mining activities at the mine sites, as well as the considerable road (including both passenger vehicle and haul roads), slurry line, tailings impoundment, rail lines, electrical networks for all past and existing, and reasonably foreseeable mine development in southeast Idaho, that link the mines to power sources, processing plants and communities. This goes well beyond the rather narrowly constrained cumulative effects area outlined in the display at the scoping meetings.

⁸ 40 C.F.R. § 1508.7.

⁹ *Id.*, § 1508.7, 1508.25(a)(2).

¹⁰ *Id.*, § 1508.7.

¹¹ *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1379-80 (9th Cir. 1998).

¹² 379 F.3d 738 (9th Cir. 2004), *as amended* (9th Cir. 01/24/2005); *see, e.g., Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800 (9th Cir. 1999) (Forest Service had not adequately analyzed cumulative impacts from past and future planned land exchanges in the vicinity); *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1214 (9th Cir. 1998) (EA for fire salvage sale; cumulative impacts not adequately addressed); *City of Carmel-by-the-Sea v. United States Department of Transportation*, 123 F.3d 1142 (9th Cir. 1997) (rejecting EIS for highway because it referred in general terms to “development projects” and “ongoing urbanization” rather than identifying projects and impacts); *City of Davis v. Coleman*, 521 F.2d 661 (9th Cir. 1975) (EIS for road must analyze impacts of private development road is designed to accommodate); *Thomas v. Peterson*, 753 F.2d 754, 758-60 (9th Cir. 1985) (must address together roads and proposed logging which justifies the roads); *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1312 (9th Cir. 1990) (improper to ignore cumulative impacts of individual logging plans); *Sierra Club v. Penfold*, 857 F.2d 1307, 1320-21 (9th Cir. 1988) (cumulative impacts of mining operations); *Chelsea Neighborhood Associations v. U.S. Postal Service*, 516 F.2d 378, 388 (2d Cir. 1975) (EIS must consider construction of new housing foreseeably spurred by proposed postal facility); *Sierra Club v. Sigler*, 695 F.2d 957, 979 (5th Cir. 1983) (EIS for oil project must consider bulk cargo activities).

It is also important that the EIS fully assess the cumulative and indirect impacts of this proposal with all other past, current, or future activities on public and private lands in the area, such as but not limited to, grazing, logging and roading, and off-highway vehicle use in the general area of the project. More specifically, the cumulative effects analysis should include, but not be limited to:

- a. Upper Blackfoot River basin water quality
- b. Selenium contamination of ground and surface waters
- c. Yellowstone cutthroat trout and their habitat
- d. Sage grouse and sage grouse habitat in southeast Idaho
- e. Big game habitat in the upper Blackfoot River basin

Roadless Area Impacts

Most of the proposed mine is within the Huckleberry Basin roadless area including approximately 450 acres that are not currently under lease. Roading building and mine development in the Huckleberry Basin roadless area will significantly alter the undeveloped character of this inventoried roadless area. While the Idaho Roadless Rule may permit incursions into the unleased portions of the roadless area, the 2001 Roadless Rule does not permit such incursions. On January 16, 2009, GYC and four other organizations challenged the Idaho Roadless Rule in federal court. That case is currently active. The Forest Service must not permit the proposed road building and mine development since such activity would prejudice our case. To date plaintiffs in the legal challenge of the Idaho Roadless Rule have not requested an injunction, because no projects that would violate the 2001 Roadless Rule have been permitted. However, given the implications of this proposal, we will need to review our position on injunctive relief.

Water Quality/Quantity – Groundwater and Surface Water

The project area overlays dozens of ephemeral channels as well as seeps and springs, and isolated wetlands, all of which are important to wildlife. These surface waters primarily flow into Slug Creek, which is important habitat for many aquatic species, including Yellowstone cutthroat trout. The EIS should thoroughly describe and analyze the effects of the proposal on water resources, particularly selenium contamination resulting from mining, milling and waste disposal, including the tailings impoundment. The analysis should include impacts on water quality and water quantity. All alternatives must include enough information to indicate they will be in compliance with all state and federal water quality standards, and if applicable with all laws and regulations that apply to water rights.

Sage Grouse

The lands being proposed for this sale provide key habitat for sage grouse, as noted on appended map 1. In fact two historic leks occur within ½ mile of the lands the BLM proposes to sell and a third historic lek occurs approximately two miles to the north (See Maps 1 and 2). Sage grouse are known for having extraordinarily large home ranges. On April 16, 2010 GYC staff observed and photographed two or more male sage grouse, one

of which was within 1 mile of the drilling program project area. I have appended copies of two photographs, which I took on that date to these comments. One other male sage grouse was observed that same day at what is known as the Knudsen Ranch barn. Lands proposed for this proposal contain important sage grouse habitat and the species no doubt make use of it. As you are aware, sage grouse are a Candidate Species for listing under the Endangered Species Act. A thorough discussion of the effects of the entire mining proposal, including land sales, land exchanges, the tailings impoundment, pipeline construction, road construction and use, etc. on sage grouse must be included. In addition, as noted above in the section on cumulative effects, the effects of this proposal with other past present, and future proposals that may affect sage grouse must be part of the analysis in the EIS.

Tailings Impoundment

The EIS must fully disclose and analyze the effects of constructing a new tailings impoundment as part of the mine and reclamation plan. Such disclosure must include the effects the tailings impoundment will have on surface waters, groundwater, fish, amphibians, waterfowl and shorebirds, and other wildlife species – including as noted in these comments, sage grouse and sage grouse habitat. The EIS should also include the disclosure and assessment of the elements and compounds that will occur in the water/slurry/solids of the tailings impoundment, and what impacts those constituents will have on the environment, including wildlife.

Furthermore the EIS must disclose and analyze the effects of impoundment failure/breach, or leaks caused by earthquakes, human error, or other reasons, and the effects such failures will have on the environment. Because of the proposed location of the impoundment, a failure of that structure would have a devastating, perhaps permanent impact on water quality in the upper Blackfoot River basin, including the Blackfoot Reservoir. This is especially important in light of the recent, massive oil spill that British Petroleum is responsible for. BP claimed that such a spill was “virtually impossible” while the administration shrugged off the National Oceanic & Atmospheric Administration’s (NOAA) September 2009 warning of such a catastrophe. NOAA wrote then that the administration’s “analysis of the risk and impacts of accidental spills and chronic impacts are understated and generally not supported or referenced, using vague terms and phrases such as ‘no substantive degradation is expected’ and ‘some marine mammals could be harmed.’” The same mistake should not be repeated here. Rather, the analysis should include a comparison of the impacts of such an event should they occur on the BLM lands that Simplot seeks to buy, or if such an event were to occur on private lands located elsewhere that are available for Simplot to purchase for the purpose of a tailings impoundment.

The EIS should also include a reasonable range of alternatives for the construction of a tailings impoundment, not just to location but also construction methods, and containment strategies. For example, in addition to the proposed method of construction the EIS should also provide alternatives for design, construction, and failure response mechanisms. These would include, but not be limited to:

- a fully lined structure
- avian protection measures, such as screens or other cover devices,
- a leak detection system that includes, but is not limited to permanent surface water monitoring stations, permanent groundwater monitoring wells, and failure protection measures and warning devices,
- a fully implementable emergency response system.

Divestiture of public lands

The EIS must include alternatives to the proposal for selling and trading away the almost 1,800 acres of public land, including the 631 acres within the Huckleberry Basin roadless area. There is ample private land adjacent to the public land that Simplot seeks for its toxic tailings impoundment. The cost to Simplot should not be a factor in the decision. The public notice for the land sale includes the following claim:

According to the applicant, the economic viability of this project is dependent upon the successful transfer of this land through sale to the mineral lessee. The mineral lessee would suffer substantial economic loss if the proposed sale tracts were purchased by another party or if the tracts were made unavailable for sale or exchange.¹³

Since the BLM and Simplot share this view, the EIS must include a complete and thorough analysis of the various scenarios, which Simplot could pursue to acquire other lands for its proposed tailings impoundment. That analysis must include a complete and transparent comparison of the costs associated with acquiring private lands and those costs for acquiring the BLM lands. And, as noted elsewhere in these comments the EIS must include and analyze one or more alternatives that are not dependent on the sale of public lands to Simplot for its proposed mine and reclamation plan.

According to public statements appearing in news outlets around the region, the BLM states that it is in the public interest to sell these lands, in large part because they are scattered, isolated parcels, difficult and expensive to manage. If that is a primary reason, then the BLM could sell off a significant portion of the lands they manage in southeast Idaho since there are literally thousands upon thousands of similarly situated BLM lands in this region of the state. Virtually all of them provide important resources to the public, as do the lands being considered in this sale. Just as importantly these lands share a long and direct border with the adjacent Caribou-Targhee National Forest, which further enhances their public value; and the BLM lands in question are accessible by public road. Furthermore, the lands being proposed for this sale provide key habitat for sage grouse and other important wildlife species. Finally, the BLM manages more than 1,200 acres in the two parcels identified for sale, yet both the scoping notice and the land sale notice both indicate that the sale includes only 1,142 acres, leaving the BLM with an even more isolated/fragmented parcel to manage. We DO NOT advocate that the remainder be sold, but note this discrepancy to demonstrate the hypocrisy of the BLM reasoning for selling the land.

¹³ Federal Register / Vol. 75, No. 70 / Tuesday, April 13, 2010 / Notices at 18882

This precedent-setting public land divestiture makes a bad proposal even worse.

Other Issues that should be evaluated in the EIS

- The EIS should thoroughly discuss the implications of this potential contamination from other elements released into the environment by phosphate mining, including cadmium, zinc, copper, molybdenum, chromium, arsenic, nickel, vanadium, uranium, barium, cobalt, gallium, thorium, etc.
- Effects of increased traffic and human use of roads and motorized trails in and adjacent to the project area, including dust generation and abatement, noise, wildlife collisions/poaching.
- Long-term impacts on permitted domestic livestock grazing within and adjacent to the project area.
- Impacts to recreational opportunities, particularly non-motorized recreation including hunting, hiking, wildlife viewing, photography and so forth, for both the short term of mine operation and long-term.
- Impacts on property values of landowners within viewing or hearing distance of the mine.
- Noise effects of the mine operation.
- Visual impacts of the mine.

Sincerely,



Marv Hoyt
Idaho Director