

To: Cal Joyner,  
Regional Forester,  
Southwestern Region, US Forest Service

**Re: Formal Objection to the Proposed Action for the Apache Leap Special Management Area Management Plan**

October 10, 2017

Submitted Via email to: [objections-southwestern-regional-office@fs.fed.us](mailto:objections-southwestern-regional-office@fs.fed.us)

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**The name of the plan:**

Apache Leap Special Management Area (ALSMA) Management Plan and associated Draft Decision Notice (DDN)

**The name and title of the responsible official:**

Neil Bosworth, Forest Supervisor, Tonto National Forest

**Statement of the issues to which the objection applies.**

**Statement explaining the objection.**

**Statements demonstrating the link between prior substantive formal comments and the content of the objection, and objections concerning issues that arose after the opportunity for formal comment.**

Our objection is timely as it is filed on October 10, 2017, the deadline for filing objections. In addition, our objection meets all the requirements for objecting. We commented substantively during the process in addition to attending a number of the public meetings for this action. We filed written comments on May 1, 2017 on the Proposed Management Plan (PMP) which are attached as many of our objections are based on your incorrect response to those comments. Our objections to the Apache Leap Special Management Area Management Plan and the Environmental Assessment and Finding of No Significant Impact follow. The issues we raise on our objection were not corrected from the PMP. Additional objections that have arisen since the close of the public comment period on the PMP which we have not had an opportunity to raise earlier are also brought to your attention.

We have attached and incorporated into this document our comments on the Apache Leap Special Management Area Proposed Management Plan dated May 1, 2017.

The Apache Leap Special Management Area Management Plan, EA and associated FONSI (published in August, 2017) are fatally flawed because they do not fulfill the mandate required by Congress in the National Defense Authorization Act of 2014 (NDAA). The Forest Service must revise the Plan to comply with the NDAA before it can be approved. Additionally, the Forest Service violated its rules and regulations in not addressing our comments.

**Ability to protect the Apache Leap Special Management Area from outside threats and to impose restrictions on those perpetrating the threat**

It is clear from the Management Plan and the Forest Service's response to comments that the Forest Service does not plan on fulfilling its Congressional mandate to:

- Preserve the natural character of Apache Leap;
- Allow for traditional uses of the area by Native American people; and
- Protect and conserve the cultural and archaeological resources of the area.

For example, in our comments, we said:

“The impacts from Rio Tinto’s proposed mine just 1,000 feet or less from the proposed boundaries of the ALSMA are so great that if the mine were to be built as proposed, it would be impossible to fulfill the three directions stated above. Yet this is not addressed in the PMP. Further, there is no discussion in the PMP about what measures will be taken when it becomes apparent that operation of the proposed mine makes it impossible for the direction of the US Congress to be fulfilled.”

The Forest Service responded:

“Adjacent mining cannot be limited through management actions in the Apache Leap SMA. Congress specified in Section 3003(g)(6) of the NDAA that “the provisions of this subsection shall not impose additional restrictions on mining activities carried out by Resolution Copper adjacent to, or outside of, the Apache Leap area beyond those otherwise applicable to mining activities on privately owned land under Federal, State, and local laws, rules, and regulations.””

While the Forest Service says it will fulfill these three mandates from the NDAA, it clearly also states that the Forest Service's is unable to enforce actions that would protect the Apache Leap Special Management Area (ALSMA) from threats that would destroy the natural character of Apache Leap, prohibit traditional uses of the areas, and protect and conserve the cultural and archaeological resources of Apache Leap. Section 3003(g)(6) cannot be used as an excuse to not act to protect the ALSMA from adjacent mining threats. The Management Plan must be rewritten to provide Management Approaches that would clearly allow for enforcement actions to protect ALSMA.

Section 3003(g)(6) clearly does not abrogate the Forest Service's ability to impose restrictions on mining activities on private land under Federal laws, rules, and regulations. The Forest Service has regulations allowing it to protect SMAs from impacts from adjacent private lands that could be implemented to protect ALSMA from negative impacts.

### **Seismic monitoring is inadequate to protect ALSMA**

We commented that:

“The PMP is silent on baseline data of any kind within or near the ALSMA before mine construction begins. The PMP requires seismic testing to begin two or three year after a mine plan is approved. However, there needs to be a seismic baseline before any mining activity takes place as a starting point for seismic activity.”

The Forest Service responded:

“Resolution Copper has submitted a “General Plan of Operations” to the Forest Service that includes proposed block caving mining methods that would occur generally beneath Oak Flat, east of Apache Leap. The intent of the management plan is to provide for an adequate period of baseline seismic monitoring prior to the start of block caving operations on adjacent lands. As proposed, an adequate period of at least 7 years of baseline monitoring would likely be collected. After a decision is finalized in the record of decision for the Resolution Copper Project and Land Exchange EIS, Resolution Copper would still be required to submit and receive approval on a final “General Plan of Operations” to incorporate aspects of the decision not in the original proposal. After the final “General Plan of Operations” is approved, Resolution Copper still estimates that construction will take approximately 10 years prior to the start of block caving and copper production. Having the seismic testing in place 2 or 3 years after the record of decision still allows for at least 7 years of baseline monitoring.

Additional language has been added to management plan Section 3.1.4, “Management Approaches,” for Natural Character and Scenery to elaborate on the expectations and intent of the monitoring plan (including seismic monitoring) to be prepared during the NEPA (EIS) process.”

The Forest Service is saying that since Rio Tinto estimates it would take 10 years for construction of their proposed mine, and that the Management Plan requires that seismic monitoring begin 2 or 3 years after a mining plan is approved that would give 7 years of baseline data. However, this reasoning is fatally flawed because Rio Tinto would begin construction (one would assume) immediately after permits were granted at the completion of the NEPA process. This would mean that construction would begin well before the 2 or 3 years the Forest Service requires in the Management Plan. Construction would create seismic activity that would negate the meaningful collection of baseline data. As we stated in our comments, baseline seismic data must be collected before any construction would take place.

### **Non- commercial mining activity**

In response to our comment on PMP 1.4 (page 4 of our Apache Leap Special Management Area PMP Comments – Attached), the Forest Service has clarified in 3.6 of the Management Plan that the ALSMA is withdrawal from mining activities, but does not address the impacts that non-commercial mining activates from the tunnel adjacent to ALSMA or other possible non-commercial underground activities, excepting seismic monitoring, that the NDAA allows could

have on the ALSMA. The issue and impacts of allowable (or even what exactly is allowed) non-commercial mining activity must be addressed before the Management Plan can be approved.

**Impacts to the natural character of ALSMA**

The Forest Service failed completely to address our concerns that dewatering, noise, and fog plumes and other weather conditions, could seriously negatively impact the Natural Character of ALSMA that the Management Plan is supposed to protect.

While the Management Plan addresses the seismic monitoring, it does not address these impacts that Rio Tinto’s current mining plan would create. As under our discussion of seismic monitoring, the Forest Service has the obligation and the ability to protect the ALSMA from these impacts. The Management Plan must be revised to outline and propose desired conditions and management approaches that would protect ALSMA from these negative impacts.

**Other issues not addressed**

The Forest Service did not fully address our concerns raised in our May 1, 2017 comments regarding:

- PMP 3.1 Access for traditional cultural activities
- PMP 3.3 Access for recreational activities
- PMP 3.5 Wildlife connectivity
- PMP 3.6 impacts to the native vegetation

The Management Plan should be revised to outline and propose desired conditions and management approaches that would protect ALSMA from these negative impacts.