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November 25, 2011

Via Facsimile and Hand Delivery

Bureau of Land Management (BLM) - Phoenix District
Attn: Penny Foreman, RMP Project Manager
21605 North 7th Avenue
Phoenix, Arizona 85027

**Re: Lower Sonoran and Sonoran Desert National Monument ("LS-SDNM")
Draft Resource Management Plan/Draft Environmental Impact Statement
("DRMP/EIS"), 76 Fed. Reg. 53848 (Aug. 26, 2011)**

Dear Ms. Foreman:

On behalf of Freeport-McMoRan Corporation and its subsidiaries (collectively, "Freeport"), please consider the comments submitted herein regarding the LS-SDNM DRMP/EIS.

I. Background.

The planning area that is the subject of the DRMP/EIS covers nearly 9 million acres including much of Maricopa County, as well as portions of Gila, Pima, Pinal, and Yuma counties. Within this area, BLM manages over 1,416,600 surface acres containing 1,338,300 acres of mineral estate. Two of Freeport's operations are located within this planning area, one in Ajo (Pima County) and the other in Miami (Gila County).

In late 2002, the BLM published a notice of intent ("NOI") to prepare a revised resource management plan ("RMP") for the LS-SDNM planning area. *See* 67 Fed. Reg. 72968 (Dec. 9, 2002). Public scoping meetings were held in early 2003 and comments on the proposal were collected. *Id.* Nearly nine (9) years following the NOI, a notice of availability ("NOA") of the DRMP/EIS was published. *See* 76 Fed. Reg. 53848 (Aug. 26, 2011). The DRMP/EIS contains nearly 1,400 pages of content that is supplemented by over 100 different maps.

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Despite the expansive content, the DRMP/EIS is deficient in numerous respects discussed herein.¹ These deficiencies must be remedied prior to publication of the proposed RMP and final EIS ("FEIS") and public scoping should be reopened before completion of the FEIS and issuance of the RMP.

II. Issue Identification and Coordination.

The core of resource management planning is the identification of concerns, needs, and issues regarding resource use and development and receipt of input from interested parties. *See* 43 C.F.R. § 1610.4-1. According to the DRMP, over 6,000 comments were received from the scoping effort conducted in 2003. The BLM then distilled those comments into six major issues (i.e., Travel Management, Wilderness Characteristics, Wildlife, Livestock Grazing, Renewable Energy Development and Recreation) in an effort to summarize general public concerns. DRMP at 7-11. In the 2002 NOI, BLM stated that the identified issues would be placed into one of three categories: 1) issues to be resolved in the plan; 2) issues resolved through policy or administrative action; or 3) issues beyond the scope of the plan. *See* 67 Fed. Reg. 72968 (Dec. 9, 2002). Thereafter, the BLM stated it would provide rationale in the plan for the placement of the issues into categories and then identify other management questions and concerns to be addressed in the plan. *Id.* Agency follow through on this commitment in the NOA is absent in the DRMP/EIS. *Id.*

As directed by regulation, the next step in the planning process is the development of planning criteria based on applicable law, agency guidance, coordination with cooperating agencies, other federal and state agencies, local governments and federally recognized tribes. 43 C.F.R. § 1610.4-2(a)(b). Once identified, BLM is mandated to make the proposed planning criteria, including any significant changes, available for public comment prior to being approved by the agency field manager.² 43 C.F.R. § 1610.4-2 (c). These planning criteria are the parameters for the development of the RMP and the content therein. In this case, the criteria included the following BLM commitments:

- The planning process will include an EIS that complies with National Environmental Policy Act ("NEPA") standards.
- Planning decisions will be made in context of the best-available data, including information specific to public lands. Regional contextual data may also be used to identify regional importance of public lands for resource use and protection.

¹ *See* 40 C.F.R. §1502.15 (verbose descriptions . . . are not a measure of adequacy of an environmental impact statement) and 40 C.F.R. § 1502.7 (the text of final environmental impact statements shall . . . for proposals of unusual scope or complexity normally be less than 300 pages).

² According to the DRMP/EIS, these planning criteria were made publicly available during scoping and published in a scoping report evidently completed in 2003. DRMP/EIS at 22.

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- Consultation with the USFWS will take place throughout the planning process in accordance with Section 7 of the ESA and the National Memorandum of Agreement (August 30, 2000) to identify conservation actions and measure for inclusion in the plans.
- Coordination with Arizona SHPO will be conducted throughout the planning process.
- The RMP will recognize valid, existing rights.

DRMP/EIS at 22-23.

In keeping with the requirement to coordinate and consult with other federal and state agencies, it should be noted that the content of what typically makes up an entire chapter on "Consultation and Coordination" in draft and final RMPs is absent from the document. This chapter must be included to ensure compliance with the NEPA and BLM land use planning policy. *See* 40 C.F.R. § 1502.25 and BLM Land Use Planning Handbook H-1601-1 (Appendix F). Without the inclusion of a chapter on Consultation and Coordination in the DRMP, it is not possible to determine if the agency has properly undertaken consultation with the United States Fish and Wildlife Service ("USFWS") (16 U.S.C. § 1536 (a)(2) and the Advisory Council on Historic Preservation pursuant to §106 of the National Historic Preservation Act ("NHPA").³ *See generally*, 40 C.F.R. § 1502.14. The absence of specific information on consultation and coordination also prevents the public from determining if input from any cooperating agencies (which evidently did not include a single local municipality) was considered or if BLM undertook any modern day efforts to make certain that issues identified almost a decade ago remain current and appropriate as drivers for the agency on decisions regarding resource management.

Due to the passage of time between the 2002 NOI, the conduct of scoping in 2003, and subsequent publication of the NOA in late 2011, BLM should have conducted additional scoping. The additional scoping should have included a summary of prior scoping comments, notice to the public that the agency still intended to complete the DRMP/EIS and the opportunity to provide further input. Public sentiment about the utilization of public lands has certainly changed over the past decade particularly in light of the "great recession." Job creation, support of industry, and domestic security resulting from minimizing dependence on foreign resources are important issues facing the public today and those key public policy issues were not as apparent in 2003. The above referenced defects in the planning and scoping process are

³ We note the inclusion of references to communications with various tribal entities (DRMP/EIS at 7 (early process workshop) and 345-346 (letters to certain tribes)) and reference to various § 7 consultations with USFWS on certain prior project level authorizations (DRMP/EIS at Appendix K). However, these do not meet the specific requirements for consultation on the adoption of the RMP. Further, no dates, meeting locations, identification of subject matter or attendees were ever specifically identified.

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fundamental flaws and can only be addressed through the conduct of additional scoping, public coordination and consultation.

III. The Development of Alternatives in the DRMP/EIS.

The BLM is required to consider all reasonable resource management alternatives and develop several complete alternatives for detailed study. 43 C.F.R. § 1610.4-5. In addition, any alternatives identified but eliminated from detailed study must be briefly discussed along with the reasons for their elimination. *Id.* The DRMP/EIS identifies a no-action alternative (i.e., Alternative A) as well as four other alternatives (i.e., Alternatives B, C, D and E). DRMP at 32-40.

It is worthy of note that only one of the four alternatives identified (i.e., Alternative B) includes an increase in opportunity for utilization of public lands. Alternative B, however, primarily evaluates expanded recreation uses as opposed to expanded opportunity for renewable energy or mineral development. This is in stark contrast to federal law and policy encouraging federal agencies to increase utilization and development of domestic mineral resources. For example, the Federal Mining and Minerals Policy Act (84 Stat. 1876; 30 U.S.C. § 21(a)) and the Domestic Minerals Program Extension Act of 1953 (50 USC § 2181) set forth United States Congressional policy to foster and encourage mineral development, including mineral deposits located on public lands.⁴ Likewise, NEPA requires that EIS documents include discussions of “energy requirements” and “natural or depletable resource requirements” See 40 C.F.R. § 1502.14 (e) and (f).

In addition, the DRMP/EIS misses the mark in terms of identifying and adequately discussing alternatives eliminated from detailed study. The DRMP/EIS identified four separate implementation strategies including: 1) the prohibition of carrying of weapons; 2) allowing unrestricted driving in washes; 3) disposing of federal land bordering the Gila River Indian Reservation and the Estrella Mountains; and 4) converting all grazing allotments to strictly ephemeral use only and states that those four “alternatives” were dismissed from further study for various identified reasons. DRMP at 40-41. None of the identified individual implementation strategies rise to the level of land use management alternatives for the entire planning area. Even if all four were considered together, the requirement to identify and dismiss

⁴ The Mining and Minerals Policy Act of 1970 states that it is the continuing policy of the federal government to “foster and encourage private enterprise in the (1) development of economically sound and stable domestic mining . . . industries.” The Domestic Minerals Program Extension Act of 1953 states, in part: “[i]t is therefore declared to be the policy of the Congress that each department and agency of the Federal Government charged with responsibilities concerning the discovery, development, production, and acquisition of strategic or critical minerals and metals shall undertake to decrease further and to eliminate where possible the dependency of the United States on overseas sources of supply of each such material.”

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other reasonable alternatives has not been met. This failure violates the BLM's planning regulations (43 C.F.R. § 1610.4-5) as well as applicable NEPA regulations. *See* 40 C.F.R. § 1502.14 (a) and (c) (mandate to rigorously explore and evaluate all reasonable alternatives including those not within the jurisdiction of the lead agency).

IV. Evaluation of the BLM's Preferred Alternative (Alternative E).

A. ACEC Establishment.

The most problematic element of Alternative E is the proposed establishment of numerous Areas of Critical Environmental Concern ("ACEC"). Currently, only 8,900 acres in the planning area are designated as ACEC (i.e., the Coffee Pot Botanical ACEC and the Vekol Valley Grasslands ACEC, both designated in 1988). Alternative E would create five (5) new ACECs which would include a total of 250,000 acres. Two of the proposed ACECs (i.e., the Coffeepot Batamote ACEC and Cuerda de Lena ACEC) surround Freeport's Ajo operation, and would severely impair future resource development. In fact, the proposed Cuerda de Lena ACEC directly abuts the southern boundary of the Ajo pit, making future expansion in conjunction with development of existing unpatented claims on BLM land virtually impossible without extraordinary mitigation.

The Federal Land Policy and Management Act ("FLPMA") states that during the development and revision of land use plans, BLM shall "give priority to the designation and protection of areas of critical environmental concern." 43 U.S.C. § 1712(c)(3). FLPMA defines ACEC as "areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or process, or to protect life and safety from natural hazards." 43 U.S.C. § 1702(a) (emphasis added). *See also* 43 C.F.R. § 1601.0-5(a). "Special management attention" refers to management prescriptions developed during the preparation of a resource management plan expressly to protect the important and relevant values from the potential effects of actions permitted by the plan. Such management measures would not be necessary and prescribed if the critical and important features are not present, or alternatively, the measures would not be prescribed in the absence of ACEC designation. BLM Manual 1613.1.12.

BLM's planning regulations require the agency to analyze the inventory data to determine whether there are areas containing: (i) resources; (ii) values; (iii) systems or process; and/or (iv) hazards that are eligible for consideration for ACEC designation. 43 C.F.R. § 1610.7-2(a). Eligibility for ACEC designation hinges on two basic criteria: relevance and importance. *Id.* With respect to "relevance," the area must have:

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- (i) significant historic, cultural or scenic value (including but not limited to rare or sensitive archeological resources and religious or cultural resources important to Native Americans);
- (ii) fish or wildlife resources (including but not limited to habitat for endangered, sensitive or threatened species, or habitat essential for maintaining species diversity);
- (iii) natural systems or processes (including but not limited to endangered, sensitive, or threatened plant species; rare, endemic or relic plants or plant communities which are terrestrial, aquatic, or riparian; or rare geological features); and/or
- (iv) natural hazards (including but not limited to areas of avalanche, dangerous flooding, landslides, unstable soils, seismic activity, or dangerous cliffs).

See 43 C.F.R. § 1610.7-2(a)(1); BLM Manual 1613.1.11 (A).

With respect to “importance,” the threshold is “substantial significance and values,” which generally requires “qualities of more than local significance and special worth, consequence, meaning, distinctiveness or cause for concern.”⁵ 43 C.F.R. § 1610.7-2(a)(2).

1. Cuerda de Lena ACEC.

The proposed Cuerda de Lena ACEC includes 59,300 acres. If designated, the BLM intends to manage the ACEC as a retention area for land as well as an “avoidance area” for land use authorizations. DRMP/EIS at 806. In addition, BLM intends to remove the existing El Paso Natural Gas utility corridor and prohibit utility-scale renewable energy development. Washes would be closed to the disposal of mineral materials; the entire area will be closed to leasable minerals and open to locatable minerals only with appropriate stipulations. *Id.* at 807. The DRMP/EIS does state that existing rights would be recognized but caveats that “using plans of operations on existing rights foot prints of operations could be decreased in the ACEC to allow for habitat availability for all wildlife species.” *Id.* at 808. This is particularly disturbing in light of the proposed closure of the entire ACEC to public use from March 15 to July 15 for the protection of Sonoran Pronghorn. DRMP/EIS at Map 2-2e.

⁵ Importance is generally characterized by one or more of the following: (i) more than locally significant qualities which give it special worth, consequence, meaning, distinctiveness, or cause for concern, especially compared to any similar resource; (ii) qualities or circumstances that make it fragile, sensitive, rare, irreplaceable, exemplary, unique, endangered, threatened, or vulnerable to adverse change; (iii) recognized as warranting protection in order to satisfy national priority concerns or to carry out the mandates of FLPMA; (iv) qualities which warrant highlighting in order to satisfy public or management concerns about safety and public welfare; and/or (v) poses a significant threat to human life and safety or to property. BLM Manual 1613.1.11 (B).

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The proposed Cuerda de Lena ACEC does not meet the statutory and regulatory criteria for designation. In addition to being duplicative of each other, the BLM's stated rationale for the relevance and importance criteria do not identify any supporting inventory data and fail to rise to the level of significance. In addition, existing statutory programs provide adequate protections for the resources of concern. There is no effort to explain why those existing protections are inadequate. In separate charts below, the "relevance" and "importance" criteria for ACECs are identified along with the BLM rationale for determination that each criteria has been met. See DRMP/EIS at Appendix V. The reason the BLM's rationale fails to meet applicable regulatory criteria is set forth in the third column and must be considered in the FEIS.

"Relevance" Value	BLM Rationale For Determination	Failure to Meet Statutory and Regulatory Criteria for Designation
Significant Historic, Cultural or Scenic Value.	<p>Adjacent to Tohono O'odham Nation and part of their traditional homeland. Broad varieties of cultural sites are represented in the area in higher density than surrounding areas.</p> <p>Important prehistoric obsidian sources for tool material are located in this area.</p>	<p>This determination is inconsistent with DRMP/EIS, which states only 4% of the BLM administered land in the planning area has ever been surveyed (DRMP/EIS at 264) and that "no extensive inventories of traditional cultural resources have been completed." DRMP/EIS at 345-346.</p> <p>Protection of specific areas of concern could be addressed via use of a specific cultural use allocation in the RMP or a Special Cultural Resource Management Area. See BLM Manual 8110.4 or DRMP/EIS at Appendix I.</p> <p>Special management consideration is not warranted due to other available statutory protection.⁶</p>

⁶ See generally, National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470 *et seq.*), Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. § 3001), Indian Sacred Sites (EO 13007, May 24, 1996), Archaeological Resources Protection Act of 1979 (16 U.S.C. § 469), Archaeological and Historic Preservation Act of 1974 (16 U.S.C. § 469) and BLM Manual 8140 – Protecting Cultural Resources (MS-8140).

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"Relevance" Value	BLM Rationale For Determination	Failure to Meet Statutory and Regulatory Criteria for Designation
Fish and Wildlife Resources	<p>Only area within the Lower Sonoran Field Office that is managed for endangered Sonoran pronghorn antelope. There are currently Sonoran pronghorn that take up residence on public lands within the proposed bounds of the ACEC.</p> <p>Suitable and occupied habitat for the candidate species Cactus ferruginous pygmy-owl ("CFPO").</p>	<p>The current range of the Pronghorn is limited to the Cabeza Preita NWR, Barry-Goldwater Range, Organ Pipe Cactus National Monument, and a "relatively small block of land to the west and south of Ajo." EA for Reestablishment of Sonoran Pronghorn (Oct. 2010).⁷</p> <p>Failure to demonstrate how the area is not otherwise adequately protected through implementation of Conservation Measures identified in <i>Amended Proposed Action for Five Livestock Grazing Allotments in the Vicinity of Ajo Arizona</i> (02-21-94-F-192), 2004. See DRMP/EIS at Appendix K.</p> <p>Failure to demonstrate how the proposed ACEC will benefit the species.</p> <p>Species re-introduction efforts are not being focused in this area but on KOFA NWR and Barry Goldwater Range north and east of Ajo. <i>Id.</i></p> <p>CFPO is not a candidate species and listing of the species is not warranted as recently determined by USFWS. See 76 Fed. Reg. 61856 (Oct. 5, 2011). CFPO is otherwise protected by the Migratory Bird Treaty Act (16 U.S.C. § 703-712). BLM must use best available scientific information in making these determinations.</p>

⁷ Map 3-4 in the DRMP/EIS is misleading to the extent the identified "current range" is correctly the Pronghorn's "historic range" and Area D shown as the "reintroduction area" appears inconsistent with reintroduction areas shown in the EA for Reestablishment of Sonoran Pronghorn (Oct. 2010).

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"Relevance" Value	BLM Rationale For Determination	Failure to Meet Statutory and Regulatory Criteria for Designation
Natural Process or System	<p>Saguaro cactus forest situations which are foraging habitat for endangered lesser long-nosed bat. Suitable and occupied habitat for CFPO.</p> <p>Fawning, breeding, loafing and foraging habitat for Sonoran pronghorn.</p>	<p>The presence of suitable/foraging habitat for two endangered species and one non-listed species is not sufficient absent a demonstration the plant species present are "endangered, sensitive, or threatened plant species; rare, endemic or relic plants or plant communities which are terrestrial, aquatic, or riparian."</p> <p>CFPO not listed. See 76 Fed. Reg. 61856 (Oct. 5, 2011).</p>

"Importance" Value	BLM Rationale For Determination (DRMP/EIS-Appendix V)	Rationale for Failure to Meeting Statutory and Regulatory Criteria
Greater than locally significant qualities, giving special worth, consequence, meaning, distinctiveness, or cause of concern, especially compared to any similar resource.	Adjacent to Tohono O'odham Nation and part of their traditional homeland. Broad varieties of cultural sites are represented in the area in higher density than surrounding areas. Important prehistoric obsidian sources for tool materials are located in this area.	<p>See comments in "relevance" chart above.</p> <p>Does not meet criteria of greater than local significance.</p>

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"Importance" Value	BLM Rationale For Determination (DRMP/EIS-Appendix V)	Rationale for Failure to Meeting Statutory and Regulatory Criteria
<p>Qualities or circumstances that make it fragile, sensitive, rare, irreplaceable, exemplary, unique, endangered, threatened or vulnerable to adverse change.</p>	<p>Contains significant wildlife resources for three endangered (priority) species – Sonoran pronghorn, lesser long-nosed bat, and CFPO. Area was proposed as critical habitat for CFPO and includes a proposed recovery area for the CFPO. Area provides important fawning habitat for the pronghorn. Several large washes provide suitable CFPO habitat.</p> <p>Foraging habitat for lesser long-nosed bat.</p> <p>Habitat for Sonoran desert tortoise and rosy boa.</p> <p>Strong cultural resource component associated with the area as part of traditional Tohono O’odham homeland and contains much important information about prehistoric settlement and subsistence.</p>	<p>CFPO is not a listed species, nor is critical habitat proposed or designated. No recovery plan for the species was ever finalized.</p> <p>No demonstration that Sonoran pronghorn occupy anything other than a “small portion” of land in the area. Pronghorn reintroduction efforts are focused elsewhere. Species benefits from ESA protection. No demonstration that the land proposed is “fragile, sensitive, rare, exemplary, or unique.”</p> <p>Foraging habitat is not determinative that land is “sensitive, rare or irreplaceable.” The bats utilize columnar cactus and agave for foraging. These plants are widespread throughout Southern Arizona, which is why no critical habitat was designated at the time of the species’ listing.</p> <p>The mere existence of habitat for any particular species is not determinative of the “fragile, sensitive, rare, irreplaceable, exemplary, unique, or endangered status” of the plant species utilized for habitat or the land.</p> <p>Does not meet criteria of being something more than local significance. Cultural recourse that may be present benefit from protection under NHPA among other federal statutes. No special management protection is required.</p>

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"Importance" Value	BLM Rationale For Determination (DRMP/EIS-Appendix V)	Rationale for Failure to Meeting Statutory and Regulatory Criteria
	Area is popular with local residents and seasonal winter visitors from U.S. and Canada for dispersed recreation including camping and sightseeing.	Non-determinative criteria and no factual basis to conclude that the area proposed for designation is vulnerable to "adverse change" from the sightseeing.
Protection to satisfy national priority concerns or to carry out mandates of FLPMA.	Mandate to protect threatened, endangered and candidate species and their habitats under the ESA.	Protection of species under the ESA is the primary responsibility of USFWS. No demonstration the ESA is a "substantially significant" national priority concern or critical to carrying out the mandates of FLPMA (which is primarily the prevention of "unnecessary and undue degradation" to federal lands) has been demonstrated.

2. Coffee Pot Batamote ACEC.

The proposed 64,000 acre Coffee Pot Batamote ACEC designation suffers from the same deficiencies as those identified for the Cuerda de Lena ACEC. Almost uniformly, the rationale identified for the Coffee Pot Batamote ACEC designation replicates the rationale used for justification of the Cuerda de Lena ACEC. In addition to the designation of the area as an ACEC, over 55,000 acres of the ACEC would be managed for wilderness characteristics essentially excluding any intensive surface disturbance. The Coffee Pot Batamote ACEC would expand upon the existing Coffee Pot Botanical ACEC, which evidently contains more than 285 plant species, many with limited distributions in the United States. *See* DRMP/EIS at 344. This level of plant species diversity is not demonstrated in the expanded ACEC. For this reason, and the others set forth above, the Coffee Pot Batamote area does not meet regulatory criteria for ACEC designation.

B. Utility Corridors - Land Use Authorizations ("LUAs").

Reliable power, water, fuel and transportation are critical for mineral development. In the western United States, mineral deposits are commonly located and developed in rural areas surrounded by federal land, and access to these core resources for exploration and development is crucial. The elimination of existing utility corridors and preclusion of new utility LUAs (via avoidance and exclusion areas) in the proposed ACECs that surround Ajo under Alternative E is

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extremely disconcerting. To the extent the BLM is committed to honoring valid existing rights in its planning, the agency fails to do so when it “gives” with the right hand and “takes back” with the left hand.

The BLM intends to utilize four classifications of LUAs in the RMP:

- 1) utility scale renewable energy development;
- 2) major linear LUAs (right of way (“ROW”) width greater than 20 feet, lines greater than 115 kV; pipelines greater than 10 inches);
- 3) minor linear LUAs (ROW less than 20 feet, transmission lines smaller than 115 kV; pipelines smaller than 10 inches, fiber optic and phone lines); and
- 4) nonlinear LUAs (oil, gas or water well sites, communication facilities, less than five acres of surface disturbance).

Within the RMP planning area, Freeport directly utilizes the following LUAs and benefits from others:

- *El Paso Natural Gas Corridor* - 50 foot wide LUA for transmission line parallel to the utility corridor in section 19, T. 12 S., R. 5 W.;
- *Tucson Electric Power Utility Corridor* - Tucson Cornelia Gila Bend Railroad holds a 200 foot wide LUA for a rail line, which intersects the corridor at section 35 of T. 11 S., R. 5 W. and Freeport holds a 50 foot wide LUA for one 44kV transmission line and two water pipelines, which intersect the corridor at the same location referenced above; and
- *Gila Bend to Ajo Corridor* - Tucson Cornelia Gila Bend Railroad holds a 200 foot wide LUA for a rail line and the Arizona Corporation Commission.⁸ In addition, APS has obtained Arizona Corporation Commission approval for a 47 mile 230 kV line from Gila Bend to Ajo in a route parallel to State Route 85 primarily on BLM land for the construction of a transmission line to power Freeport’s mine in Ajo.

Alternative E completely eliminates the Gila Bend to Ajo corridor, the Tucson Electric Power corridor and the El Paso Natural Gas corridor. Absent non-compliance with the terms of an existing LUA, BLM has no authority to terminate prior existing rights in these corridors through land use planning. Accordingly, the notion of “elimination” of corridors must be

⁸ This Tucson Cornelia LUA was not referenced in the DRMP/EIS in Table 3.15 but should have been listed (AZ-PHX-027645 and AZ-PHX-053258). See DRMP/EIS at 308-315.

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re-considered. Critical backbone infrastructure supplying power, water and natural gas to the communities of Gila Bend, Ajo and Why is located within these corridors and they cannot simply be “eliminated.” If the termination of existing rights and/or the prohibition against locating new utilities in these corridors is actually intended, the economic impact would be extremely significant and analysis of those impacts would be mandated pursuant to NEPA, along with the identification of potential mitigation measures. No such consideration is present in the DRMP/EIS.

In addition to the proposed elimination of major utility corridors, Alternative E contemplates LUA “Avoidance Areas” on all BLM land surrounding Ajo.⁹ Within the Cuerda de Lena ACEC and Coffee Pot Batamote ACEC the prohibitions are even greater as “Exclusion Areas” are specified therein.¹⁰ DRMP/EIS at 120, 131-132. No justification is provided in the DRMP/EIS for these restrictive management prohibitions. No inventory or resource data is provided to demonstrate that the areas are so “sensitive” that they cannot withstand surface disturbance resulting from linear LUAs or that impacts cannot otherwise be mitigated. This effective closure of the public lands for utility corridors is an extreme and undue burden on industries dependent on water, power, fuel and available telecommunication for a variety of purposes, including mineral exploration and development. The administration of ACECs to exclude any LUAs is contrary to FLPMA’s multiple use mandate and the effect is akin to a de-facto wilderness designation.

Remarkably, the BLM concludes that the effects of the “Avoidance and Exclusions Areas” on future mineral development and other industries are “negligible.” DRMP/EIS at 240. This result is due to the fact that the impacts were not properly considered.¹¹ The direct effects analysis relative to the elimination/prohibition of LUAs identifies only a single impact which is that the few remaining multi-use utility corridors might “interfere with or eliminate mineral exploration and development” within their linear boundaries. DRMP/EIS at 678. This completely insufficient level of analysis demonstrates a fundamental misunderstanding about the

⁹ “Avoidance Areas” are defined as “areas with sensitive resource values where minor linear LUAs and nonlinear LUAs . . . would be strongly discouraged. Authorizations to be considered within avoidance areas must be compatible with the purpose for which the area was designated and not be otherwise feasible on lands outside the avoidance area.” In addition, the proponent would be required to meet additional mitigation measures set forth by individual program areas that manage the “avoided” designated allocation.” DRMP/EIS at 122.

¹⁰ “Exclusion Areas” are defined as “areas with sensitive resource values where minor linear LUAs and nonlinear LUAs . . . would not be authorized.” In these areas, LUAs would be granted only in cases where there is a legal requirement to provide such access or an immediate public safety concern. *Id.*

¹¹ An internal inconsistency in the DRMP/EIS is noted in that the executive summary of impacts classifies the range of intensities from impacts due to LUA restriction in Alternative E as “negligible – major.” DRMP/EIS at *lxiii*.

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impact of prohibiting the lifeblood of mining and industry from being allowed within the vicinity of the mineral resources that exist on public lands.

Similarly, the cumulative effects analysis is nothing more than a statement of the obvious, proclaiming that “more utility development would be shifted to non-federal lands, as large portions of public lands within the planning area would be off limits to surface disturbing activities.” DRMP/EIS at 895. Put simply, the economic consequences of land use administration that leaves large portions of federal lands “off limits” to surface disturbance must be fully evaluated. At a minimum, the effects on rural low-income population areas whose future growth and prosperity depends on commerce and industry must be considered. Currently, the extent of the socio-economic analysis in the cumulative effects section of the DRMP/EIS is a mere mention that growth-inducing effects are not expected to occur from the less than 50,000 acres of public land that will be offered for disposal. DRMP/EIS at 903. Again, this analysis is inadequate and fails to meet NEPA requirements and BLM’s stated planning criteria. *See* 40 C.F.R. § 1502.16(a) and (b) (BLM will produce an EIS in compliance with NEPA standards).

C. Grazing.

Freeport Miami holds the existing permit for the Lost Gulch grazing allotment in the far eastern portion of planning area. Alternative E proposes to continue grazing on all available allotments under their current classifications and permitted AUMs as reflected in relevant permits. Freeport is supportive of this land use determination and encourages BLM to maintain flexibility based on changing range conditions primarily related to wet-dry cycles.

One concern, however, is Management Action GR-1.1.19 which states that BLM will use the guidelines described in the “Not Likely to Adversely Affect” section of “*Guidance Criteria for Determinations of Effects of Grazing Permit Issuance and Renewal on T&E Species*” (BLM and USFS Arizona and New Mexico, 1999). DRMP/EIS at 146. These guidelines are outdated, inconsistent with the ESA, and to the extent BLM wishes to utilize them for purposes of permit decisions or permit updates, the guidelines must be promulgated as a rule under the Administrative Procedure Act. 5 U.S.C. § 553. At a minimum, they should be disclosed for public review and comment. Their guidelines expand the scope of the ESA to areas where members of listed species are not present and critical habitat does not exist. The determination of livestock grazing uses should be on a case by case basis involving the permittee. Prohibitions of use resulting from consultation under § 7 of the ESA should only arise where threatened and endangered species are present or critical habitat has been designated. 16 U.S.C. § 1533 (a)(2).

D. Minerals Management.

Of the BLM managed surface and mineral estate in the planning area, only 53% is presently open to mineral activity. Of the non-federal surface and BLM mineral estate, 66% is open to mineral activity. Mineral potential for locatables is identified as moderate to high in

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areas surrounding Ajo (primarily in the mountain ranges), Gila Bend, and near Superior and Globe-Miami. DRMP/EIS at 324-325. The potential for leasable and saleable mineral resources is also quite high in these same zones of the planning area. The DRMP/EIS notes that the continued development of locatable minerals in the Ajo and Globe-Miami areas is reasonably foreseeable with high potential. DRMP/EIS at 378.

Despite the abundance of mineral resources in the planning area and the high potential for development in certain areas, not a single alternative evaluated in the DRMP/EIS evaluates opportunities to promote the expansion of mineral resource development. Instead, every alternative proposes the closure of public land for mineral activities in varying degrees. If adopted, Alternative E will result in the following:

- The closure of 2,350 acres for locatable minerals near Gunsight Wash south of Why, Arizona;
- The closure of 53,700 acres for leasable minerals, the prohibition of seismic exploration on 15,400 acres, and the imposition of special mitigation for Desert Tortoise on an additional 259,500 acres; and
- The closure of 192,300 acres for saleable minerals including the entire Cuerda de Lena ACEC and Coffee Pot Batamote ACEC.

See DRMP/EIS at 153. Further, the foregoing acreage figures do not include the additional 55,000 acres in the Coffee Pot Batamote ACEC that would become managed to protect wilderness characteristics, effectively eliminating the opportunity for mineral exploration and development.

The lack of any meaningful direct, indirect or cumulative effects impact analysis in the DRMP/EIS resulting from the proposed closure of public lands to mineral entry for locatable, leasable and saleable minerals is disconcerting and fails to comply with the fundamental requirements of NEPA. *See* 40 C.F.R. § 1502.16(a) and (b). The cumulative effects analysis in the DRMP/EIS regarding the impacts on mineral development consists of a single paragraph that speaks volumes about the insufficiency:

“Minerals development is dependant on resource demand and is not constrained by local and management decisions. If mineral deposits are removed from availability by planning decisions, the resource will simply be developed at another location, be it located (on non-BLM lands) regional, national or international. Since particular environmental impacts are location specific, the eventual cumulative impacts of necessary minerals development could be more or less than if the resources within the decision area were

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developed. The impact of developing low unit value minerals (sand & gravel, crushed rock, etc.) from outside the market area could be significant since the primary expense for these commodities is usually transportation.” DRMP/EIS at 883.

The sentiment appears to be that if mineral development is precluded in this BLM planning area, it will simply go elsewhere. The key fact missing from this result driven analysis is that minerals occurrence is not universal and if mineral resource development is foreclosed in areas where minerals are naturally occurring, the development cannot simply be replicated in another location.

The general theme of failing to evaluate the impacts of withdrawal or other limitations placed on mineral development is unfortunately replicated in the analysis of socio-economic impacts.¹² There is no consideration of the economic burden on local economies resulting from the management prescriptions for minerals in the DRMP.¹³ The BLM is encouraged to review available public information about the economic benefits of mining in Arizona and incorporate such information into a proper effects analysis in the FEIS.¹⁴ In fact, the total estimated direct and indirect economic impact of Freeport’s Arizona operations was approximately \$2 billion, including \$79 million in state and local taxes and the employment of 23,271 Arizonans. To the extent mineral resource development in Ajo is limited or made even more costly as a result of the creation of ACEC or otherwise made impossible through the implementation of Avoidance and Exclusion zones surrounding Ajo, those economic impacts and socioeconomic effects must be evaluated in the FEIS. Similar impacts resulting from withdrawals and limitations on development of leasable and saleable mineral operations should also be considered.

¹² In fact, one of the few mentions of economic benefits of mineral resource development occurs in the effects analysis for the “No Action Alternative” (Alternative A), which states that “[s]ince investment in locatable mineral development in the Planning Area is expected to increase, this alternative is expected to have minor to moderate impacts on local economic growth in employment and income in the surrounding communities.” But even that analysis concludes with “[c]ontinued mineral development could cause a loss of scenic views and natural landscapes, which would decrease the social well-being of those individuals or groups who value these resources.” DRMP/EIS at 840.

¹³ Using 2003 data for population and 1999 economic data, the DRMP/EIS cites Ajo as having a 38.5% minority population with a poverty rate of 22.3% (in contrast to the average rate of 13.9% for the balance of the State of Arizona). Miami is identified as having a minority population of 57.0% and a poverty rate of 21.5%. DRMP/EIS at 368-369.

¹⁴ *See, for example*, The Economic Impact of Freeport-McMoRan Copper & Gold Inc. on the State of Arizona and Selected Counties 2009, L. William Seidman Research Institute, W.P. Carey School of Business (2010).

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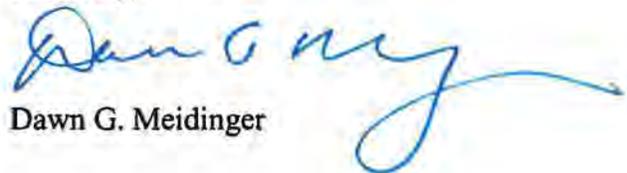
E. Land Tenure Strategy

Appendix O to the DRMP/EIS sets forth the summary of the tools BLM has at its disposal for the acquisition and disposition of land, along with a strategy for evaluating land tenure project approvals. The BLM's strategy is to commission an Arizona Land Tenure Steering Committee to guide the agency in its decision making processes. Freeport encourages the BLM to utilize such a process to the extent it can streamline opportunities for exchange or disposal of public lands. In addition, Freeport supports the identification of land outside of known mineral deposits for disposal for purposes of buffer and the implementation of mitigation measures.

It appears that Alternative E proposes certain land not previously identified for disposal near Ajo and Miami and that other land south of Ajo that was previously eligible for disposal would no longer be available. Notwithstanding, because the Map 2-6 series is not supplemented with any specific legal descriptions, it is not possible to provide detailed comment on the determination that the parcels are suitable for disclosure. To the extent legal descriptions are available, Freeport encourages publication of that data for supplemental public review and comment.

Thank you for your consideration of these comments. Freeport is hopeful that the identified deficiencies in the DRMP/EIS will be adequately addressed in the FEIS and that BLM will take the time necessary to modernize the scoping, management goals and analysis. In addition, Freeport encourages the BLM to consider and evaluate an additional alternative that increases utilization of public land in the planning area for mineral development.

Sincerely,



Dawn G. Meidinger