UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
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MAY 16 2011

Ms. Amy Leuders
Acting Director
Bureau of Land Management
Nevada State Office
1340 Financial Boulevard, P.O. Box 12000
Reno, Nevada 89520

Subject: Genesis Mine Project Final Environmental Impact Statement (Final EIS), Elko County, Nevada [CEQ #20110115]

Dear Ms. Leuders:

The U.S. Environmental Protection Agency (EPA) has reviewed the Final Environmental Impact Statement (Final EIS) for the Proposed Genesis Mine Project (Project). Our review and comments are provided pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) Regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act (CAA).

The proposed Project would expand the existing open pit mining operations at the Genesis Mine, extract approximately 60 million tons of ore, backfill previously excavated pits with waste rock material, and include a number of other associated activities. On August 6, 2010, EPA rated the Draft EIS as "Category 3 - Inadequate Information" based primarily on the failure to offer an adequate prediction of the acid producing potential of the project's waste rock. In addition, we disagreed with BLM's proposed use of an Adaptive Management Plan (AMP) in lieu of up front geochemical testing. Despite considerable efforts to seek resolution of the issues we identified, we find the Final EIS unresponsive to many of our principal comments.

Inadequate Geochemical Characterization and Use of an Unacceptably Formulated AMP

The waste rock geochemical characterization that is provided in the Final EIS remains inadequate. Proceeding with the proposed project without first completing adequate geochemical analysis circumvents NEPA's intent of informing decision makers and the public of the full extent of potential environmental impacts of the proposed action. This approach also limits consideration of appropriate mine design, could result in an underestimation of the project's impacts to groundwater resources, and is inconsistent with BLM's January 2010 Instructional Memorandum regarding Rock Characterization and Water Resources Analysis for Mining Activities [1], which was issued prior to the Draft EIS for the Genesis Project. EPA had made our objections to this approach clear over the course of years of consultation with BLM on not only the proposed Genesis Mine Project, but also the Emigrant Mine

[1] Nevada BLM, January 8, 2010, Instruction Memorandum No. NV-2010-014

Project. We appreciate Nevada BLM's commitment not to use an AMP in lieu of adequate up front testing for any future projects. We request written confirmation of BLM's commitment to this approach.

Groundwater Monitoring

The Final EIS continues to lack site-specific monitoring or mitigation, relying instead upon monitoring that would take place in accordance with a number of existing monitoring plans. The Final EIS does not demonstrate that the monitoring plans mentioned will capture all potential contamination and address all potential impacts that might result from the Genesis project. Nor does it indicate action thresholds or contingency measures that would apply in the event that monitoring indicates that anticipated levels are exceeded. The FEIS states that no unaddressed environmental contamination has occurred on the site; however, with neither site specific monitoring nor action thresholds, EPA believes that the proposed project lacks the necessary mechanisms for both identifying potential contamination and ensuring appropriate action should it occur. The Record of Decision (ROD) should be explicit about where and how any potential impacts to groundwater resulting from the Genesis Project would be assessed. If the BLM intends to continue to rely upon existing monitoring plans, it should provide sufficient detail in the ROD to support its claim that these plans will fully protect from impacts associated with the Genesis Project.

In response to EPA's suggestion that monitoring wells be installed at the foot of waste rock dumps to monitor for shallow subsurface seepage of contaminants, the Final EIS states simply that BLM could require the installation of monitoring equipment, "if necessary". It is not clear what criteria BLM would use to determine what is or is not necessary in regards to shallow subsurface monitoring. It appears that no previous data of this kind exist for the proposed site; therefore, the ROD should commit to evaluating the need for the installation of monitoring equipment of this nature (described in additional detail in our August 2010 comments on the DEIS), and include a detailed discussion of the criteria that will be employed to determine whether or not installation of such equipment is necessary.

Impacts to Groundwater

The DEIS and referenced documents contain information indicating that the proposed project has the potential to release high levels of zinc, nickel, arsenic, and antimony to groundwater. These impacts would begin to occur many years after mining has ceased in the region, when the rebounding groundwater begins to make contact with the waste rock in backfilled pits. The Final EIS refers to these potential impacts as occurring over a "reasonably short period of time" (p. S-7). Correspondence between EPA staff, BLM, and BLM's consultants indicates that this statement is meant to refer to a period of 50 to100 years, or more, before attenuation eliminates the contaminants in question. Considering the duration of this "temporary" condition, EPA recommends that the ROD contain a more detailed discussion of the duration and severity of these potential impacts to groundwater, as well as any measures that may be necessary to avoid and mitigate them.

Financial Assurance

We understand that, because BLM does not anticipate long-term groundwater impacts, it does not view the proposed project as a candidate for long term financial assurance; however, EPA continues to be concerned that, because the geochemical characterization performed was inadequate, long term treatment may be necessary to protect groundwater resources. For this reason, we recommend that the ROD discuss the process whereby a long term trust fund would be established in the event that supplemental testing reveals that such measures are necessary.

FEIS Content

The practice of incorporating information into NEPA documents by reference is a valuable tool for reducing costs and increasing efficiency. We note, however, that information that is critical for decision-makers and the interested public should be made readily available either in the text of the EIS or with specific citations (page numbers, etc.). In the Genesis Mine Final EIS, we found that a great deal of vital geochemical, baseline environmental, and monitoring information that should have been provided in the Final EIS text was, instead, incorporated by reference. Furthermore, these references should have been to specific passages and page numbers, rather than to entire documents. We recommend that BLM reconsider the degree to which incorporation by reference is appropriate in future EISs. In addition, Page S-2 of the FEIS states that "Newmont, BLM and the Environmental Protection Agency developed an Adaptive Management Plan for Waste Rock… [for] the proposed project." As stated in this letter and others, EPA objects to the manner in which an Adaptive Management Plan (AMP) is proposed to be used for this project, and disagrees that the AMP that BLM has developed constitutes an adaptive plan. EPA should not, therefore, be included in this list of developers. We request that BLM correct this error in the Record of Decision (ROD).

If you have any questions about the above comments or recommendations, please call me at (415) 972-3843 or have your staff contact Carter Jessop, our lead NEPA reviewer for this project, at (415) 972-3815. Please send two copies of the ROD to this office (mail code CED-2) at the same time it is it is made available to the public.

Sincerely,

Enrique Manzanilla, Director
Communities and Ecosystems Division

cc: Ken Miller, BLM – Elko District Office
Leo Drozdoff, Nevada Division of Environmental Protection
Willie R. Taylor, Department of Interior
Horst Greczmiel, Council on Environmental Quality