UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105
MAY 29 2012

Amy Lueders
Bureau of Land Management
1340 Financial Boulevard
Reno, Nevada 89520

Subject: Final Environmental Impact Statement (EIS) for the Phoenix Copper Leach Project, Lander County, Nevada [CEQ #20120123]

Dear Ms. Lueders:

The U.S. Environmental Protection Agency (EPA) has reviewed the above referenced document. Our review and comments are provided pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality's (CEQ) NEPA Implementation Regulations at 40 CFR 1500 - 1508, and our review authority under Section 309 of the Clean Air Act, as well as the May 21, 2008 Memorandum of Understanding between the Bureau of Land Management (BLM) and EPA.

According to the Final EIS, the Phoenix Copper Leach Project would expand the existing Phoenix Mine, including the development and operation of two new copper heap leach pads and other facilities, which would add 902 acres of new disturbance to the 7,210 acres that are currently permitted. The expanded mine is expected to operate for 24 years, followed by at least 25 years of active reclamation, after which drain down fluids from the proposed copper leach pads would be managed in evaporation ponds for at least 500 years. BLM will require a long-term funding mechanism (LTFM) to cover the cost of post-closure monitoring and management of the heap leach facilities and evaporation ponds.

EPA rated the Phoenix Copper Leach Project Draft EIS as "3 – Inadequate Information" because it lacked critical information regarding the nature and adequacy of the LTFM. Without such information, the likely environmental impacts of the proposed project cannot be determined. If funds would not be adequate to effectively protect environmental resources from significant and long-term degradation, the project would be environmentally unacceptable. Our offices have discussed this matter in depth on multiple occasions, and we appreciate your willingness to engage in such discussions. Despite considerable efforts to seek resolution of the issues we identified, we find the Final EIS unresponsive to our principal comments.

Throughout our discussions, it has been apparent that BLM and EPA agree that adequate financial assurance at mines is important to safeguard the environment and taxpayers. EPA

believes that the adequacy of financial assurance is a critical element to be addressed in the NEPA process so that the potential environmental and fiscal consequences of the proposed project are disclosed to the public. We will continue to seek resolution of this matter, as well as interagency agreement on what constitutes adequate financial assurance for hard rock mining operations.

Our comments on the Draft EIS also included several recommendations regarding estimated reclamation and/or post-closure costs, based on our review of the draft reclamation cost estimate, which BLM separately provided to us for review. We have received the updated reclamation and post-closure cost estimates, which, for the most part, appear appropriate. Neither the cost estimate nor the Final EIS, however, responds to our recommendation that the EIS address the economic threshold for Phoenix Mine copper ore recovery and the costs and contingencies associated with potential early closure of the copper leach facilities. We continue to recommend that BLM determine how revenue-based ore control decisions regarding gold processing versus copper processing could affect the life of the copper leach operations. If suspended operations or earlier closure dates could affect the timing and funding needs of the various elements of the reclamation and/or post-closure plan, the reclamation bond and/or LTFM amount should account for this.

We also note that the post-closure costs do not include repair or replacement of the synthetic leach pad cover. It appears, from the response to comments in the Final EIS, that BLM has made assumptions regarding heap conditions, but no data are provided to support its conclusion that the cover would never need maintenance or replacement to ensure that it continues to meet originally specified performance standards. Performance standards for infiltration of meteoric water through both an evapotranspirative cover and a synthetic cover were used to model drain down scenarios and calculate evaporation pond needs. To minimize the potential for increased meteoric water infiltration through the cover over time, and the concomitant need for more frequent evaporation pond replacement, the cover should be monitored and maintained over the long term, and these costs should be included in the LTFM amount.

We look forward to working with you to resolve these issues. In the meantime, if you have any questions about the above comments, please call me at (415) 972-3843 or have your staff contact Jeanne Geselbracht, our lead NEPA reviewer for this project, at (415) 972-3853.

Sincerely,

Enrique Manzanilla, Director
Communities and Ecosystems Division

cc: Doug Furtado, BLM-Battle Mountain District Office
Colleen Cripps, Nevada Division of Environmental Protection