

Congress of the United States
Washington, DC 20515

June 8, 2009

The Honorable Tom J. Vilsack, Secretary
U.S. Department of Agriculture
Jamie L. Whitten Federal Building RM 200-A
12th & Jefferson Drive, SW
Washington, DC 20250

Dear Secretary Vilsack,

We are writing to bring to your attention an issue of great importance to us and the constituents of the 7th and 8th Congressional Districts in Arizona. This has to do with the proposed open pit copper mine at the Rosemont property in Santa Cruz County and the recently announced opinion from the Forest Service that it cannot consider a “no action” alternative when it makes a decision on the Mine Plan of Operation.

Over the past 16 months the Forest Service has been managing a scoping process to produce an Environmental Impact Statement (EIS) on the proposed mine. This has been a turbulent process as we have struggled with the Forest Service to ensure that the public was properly heard and all of the environmental issues clearly identified. Unfortunately, the initial scoping meetings were not designed so that the public had meaningful opportunities to provide comments. At the request of Congresswoman Giffords, the Forest Service added a series of public forums which were attended by hundreds of citizens and at which over 11,000 comments were submitted. These comments are now being analyzed and a draft EIS is expected before the end of the year.

Last week the Forest Service proposed a Memorandum of Understanding (MOU) with Pima County government and in that MOU indicated that it would not be able to consider a “no action” decision on the Mine Plan of Operation. Pima County disagreed with this opinion and this was so noted in the MOU. We, too, are concerned that the Forest Service is interpreting its authority too narrowly. We would appreciate your review of the Forest Service opinion to see if it is a correct interpretation of the existing laws or if the Forest Service has greater latitude in making this decision.

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As you may be aware, Congress gave the U.S.F.S. express authority to regulate mining to prevent destruction of the national forests as far back as 1897 (see 16 U.S.C. §§478, 551). According to that statute, the Secretary of Agriculture “may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction...”

In addition, the Federal Land Policy and Management Act (FLPMA, 43 U.S.C. 1732(b)) (1976), provides that “In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.”

The proposed Rosemont mine would have far reaching negative impacts on the forest and surrounding areas and it is hard to imagine how these could be mitigated effectively. We believe the Forest Service is ill advised to take the “no action” alternative off the table before it has completed a comprehensive and robust examination of this alternative. We ask that you direct the Forest Service to remain open to the possibility that their analysis will result in a “no action” recommendation, as stipulated under 40 C.F.R. §1502.14.

The National Environmental Policy Act (NEPA) requires federal agencies to do the following:

NEPA (1969): "Congress authorizes and directs that, to the fullest extent possible: that all federal agencies of the government shall ... include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on -

- (i) the environmental impact of the proposed action,*
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,*
- (iii) alternatives to the proposed action,*
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and*
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.*

Finally, it should be noted that the proposed project does not intend to use Forest Service land for any actual mining, but for the deposition of mining waste. (The actual ore body is located under adjacent, private land). Under these circumstances, we believe it is even more questionable whether any perceived constraints imposed by current mining law should apply to the Forest Service in its consideration of the Mine Plan of Operations.

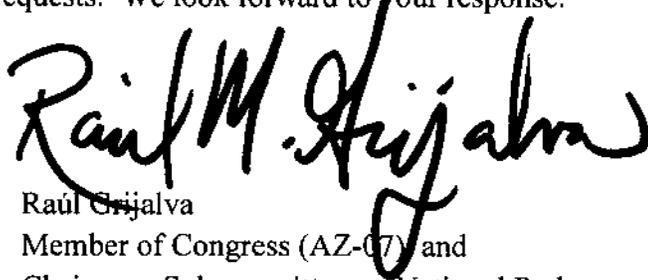
Given the importance of these matters to our constituents, we would be grateful for an opportunity to meet with you to discuss them in person. We ask that you contact our offices to identify a mutually acceptable time and location for a meeting.

Thank you for your consideration of these requests. We look forward to your response.

Sincerely,



Gabrielle Giffords
Member of Congress (AZ-08)



Raúl Grijalva
Member of Congress (AZ-07) and
Chairman, Subcommittee on National Parks,
Forests & Public Lands

cc: Jay Jensen, Deputy Under Secretary for Natural Resources & Environment
cc: Gail Kimbell, Chief of the Forest Service