

June 28, 2010

MEMORANDUM

TO: KEN GARDNER
FROM: BRIAN BUCK
CC: DAVE KIKKERT, STEPHANIE LAUER
RE: DISCUSSION OF SCOPING COMMENTS THAT MAY AFFECT
ISSUES AND ALTERNATIVES

This memorandum provides background on several public and agency comments that concern issues and alternatives considered for the TCM EIS, and how these comments were addressed. The first section includes comment summaries taken from the draft scoping report that were discussed in an October 2010 conference call. The second section discusses additional comments that were discussed internally during agency review of the draft scoping and alternatives reports.

OCTOBER 2010 CONFERENCE CALL

On October 1, 2010 Ken Gardner, Dave Kikkert, and Brian Buck attended a conference call to discuss the following comments forwarded by Dave Kikkert that he thought could potentially affect the alternatives considered for the TCM EIS. The following excerpts from the scoping report include the subject comments advanced by Dave with the pertinent text underlined.

General

- The Thompson Creek Mine has a proven record of responsible action with regard to its environmental impacts and their environmental record and commitment should be taken into account in the EIS process (2.2, 4.3, 8.2, 8.5, 12.1, 15.1, 16.4, 17.2, 19.2, 20.2, 26.2, 32.1, 34.2, 36.2, 37.2, 42.1, 43.2, 46.3, 48.4, 49.2, 50.1, 52.2, 55.1, 55.4, 56.1, 56.4, 57.1, 58.2, 61.2, 62.3, 62.4, 67.2, 67.5, 74.2, 76.1, 79.2, 80.1, 81.2, 83.3, 90.2, 93.2, 108.2, 109.2, 111.3, 113.2, 116.1, 117.2, 118.2, 122.2, 125.2, 126.2, 128.2, 129.2, 134.3, 135.2, 138.1, 139.2, 140.1, 141.4, 144.2, 144.2, 145.1, 147.5, 148.5, 149.5, 150.3, 152.2, 153.3, 154.2, 164.1, 164.2, 167.2, 168.2, 172.2, 173.2, 176.2, 179.3, 180.2, 181.1, 183.4, 184.2, 188.2, 190.1, 192.2, 196.1, 196.4, 197.2, 206.3, 209.2, 210.3, 18.3, 200.5)

Response: It was decided that this comment does not affect alternatives but the fact that TCM has over 25 years of environmental monitoring data that can be used to assess the environmental impacts of the operations and will be mentioned in Chapter 2.

- The EIS should address only the environmental impacts of the modified plan of operations submitted by TCMC. The mine has operated since 1983 and the modified plan only requires a small amount of additional Federal land. Thus, only limited environmental impacts should result from the modified plan of operations and be analyzed in the EIS. (55.3, 56.3, 61.5, 137.2)

Response: This does not affect alternatives. The EIS cannot be limited only to the impacts of the MPOO because it must also assess impacts from the land exchange.

Further, the agencies are required to take a hard look at all direct, indirect, and cumulative impacts from the mine expansion and the land exchange in the EIS.

Air Quality and Noise

- The BLM should design alternatives that minimize air pollution risks, particularly those from diesel-fueled equipment. Specifically, former Mine sites should have the potential to be developed as renewable energy facilities should these resources (wind, solar, geothermal) be available. (77.1)

Response: Regarding air pollution risks and diesel-fueled equipment, the only alternative would be to replace certain equipment with electric-powered equipment. However, it would be both uneconomical (equipment already purchased and in use, operators and mechanics already trained, spare parts inventory developed, etc.) and technically infeasible (mobility requirements, battery-powered haul trucks do not exist, etc.) to replace any more of the diesel-fueled equipment with electric-powered equipment. Also, nearly all of the current diesel equipment is very new with start-of-the-art emissions control systems (e.g., TCMC just replaced the last of their older haul trucks and purchased a new diesel shovel).

The development of renewable energy facilities is outside the scope of the EIS, as it would not be feasible for the BLM to dictate what would occur on private land post mining. Although some speculation might occur in a very general sense (e.g., logging, trophy hunting ranch, donation to Custer County, etc.), such activities are too speculative for any more detailed analyses (e.g., if logged then there would be X logging-related sediment release to X drainage). Regardless, development of the site for alternative energy production would not be a reasonable foreseeable event (e.g., remote location with no relatively good opportunities for solar power generation, wind turbines, meaningful amounts of hydroelectric power generation, etc.).

Visual and Aesthetic Resources

- The mine closure plan needs to include additional information on the type, pattern, and projected ecological succession on all reclaimed areas. Specifically, the pits should be refilled to the maximum extent possible, and where external waste rock dumps remain, these areas should be re-contoured in such as way as to blend into the surrounding environment instead of remaining in zigurat form. (77.8)

Response: The grading plan for the waste rock dumps does include a few large terraces that will be constructed during operations for dump slope stability. The crests of these terraces will be contoured, but the width of the terraces will not allow them to be completely obliterated by regrading. The terraced dump faces will only be noticeable to the public on the Thompson Creek road. An alternative dump configuration will not be feasible to ensure slope stability criteria are met.

Range Resources

- The land exchange would convert a portion of the BLM Thompson Creek grazing allotment to private property, which would effectively eliminate grazing on the allotment and negatively affect the permittee and its management of the allotment. The EIS should consider alternative land exchange configurations that would meet the purpose and need, including moving the eastern boundary of the selected land at least 500 yards east of Thompson Creek. This alternative would protect potential livestock grazing, which is limited to the riparian corridor by steep terrain. (194.1, 194.3, 194.4, 194.5, 211.1, 211.2, 211.4)

Response: This would create a narrow strip of BLM land between the USFS land and potential future private land owned by TCMC. This has already been considered by the BLM and dropped because of management problems. This will be addressed in Chapter 2 as an alternative considered but not evaluated.

- Livestock should be excluded from the upper meadow above the Lyon Creek property. (77.21)

Response: The BLM would manage the meadow with a priority for, but not to the sole benefit of, wildlife and fisheries resources. Therefore, limited grazing might be used as a tool to enhance vegetation to benefit wildlife (e.g., elk grazing on grass re-growth and increased woody vegetation), but the meadow would not be grazed to the degree of a typical cattle pasture. .

- The BLM should design alternatives to reflect increased water conservation, specifically measures in addition to the current recycling of water. (77.3)

Response: This is already part of the proposed management plan for this parcel and will be mentioned in Chapter 2.

- The BLM should evaluate an alternative in which the tailings are relocated back into the main pit or other geologically stable area, double lined with ground-water monitoring, capturing, pumping, and treatment capabilities. The cost of this alternative should be weighed against the expense of catastrophic dam failure. (77.7)

Response: The tailings dam has already been extensively evaluated by engineers working for TCMC and the State DWR and found to be stable. The federal agencies are conducting their own, independent evaluation of these previous decisions. Assuming the federal experts do not disagree with the previous stability assessments, there will be no need to evaluate a catastrophic failure of the tailings dam. Such a worse case analysis is not required under NEPA. As tailings are generated simultaneously with mining, if they were to be placed in the open pit during operations, they would interfere with mining the orebody. Relocating the tailings to the pit following cessation of mining operations would not be required for stability reasons. This will be discussed in Chapter 2 as an alternative considered but not evaluated in detail.

Fisheries and Aquatics

- The BLM should develop alternatives which maintain, improve, redesign, or dismantle the current network of irrigation ditches in the upper Lyon Creek meadow so that more water is available in Lyon Creek for spawning of ESA-listed fish species. (77.22)

Response: This is already part of the proposed management plan for this parcel and will be mentioned in Chapter 2.

Recreation and Land Use

- Before the development of an IDPR campground on the Broken Wing Ranch is considered, especially considering there is already one at the confluence of the Salmon River and East Fork, the negative effects of increasing use, particularly, increased motorized use in the area, should be considered. Additionally any campground should be on the right/east side of the Salmon River and not on the west side. (77.18)

Response: A potential campground on the east side of the river is already part of the proposed management plan for this parcel and will be mentioned in Chapter 2. The impacts of this will be evaluated in the EIS

- The private bridge which accesses the Lyon Creek property could be opened to pedestrian or mountain bike use, as engineering and liability issues likely preclude use of the bridge by the public in full-sized vehicles. Converting the two-track road into a non-motorized, single-track trail would provide increased non-motorized opportunities. (77.20, 77.26)

Response: The Lyon Creek Bridge would be used for administrative access at the discretion of the BLM. The bridge would not be used by the public (no motor vehicles, bikes, foot traffic, etc.) because the BLM does not want to be responsible for the inspections and maintenance of the bridge that would be required to allow such access (even for foot traffic).

- BLM should dispose of, or sell, the land surrounding TCM to TCMC rather than conduct a land exchange. (4.1, 7.7, 68.1)

Response: Initial response was that a direct land sale could be an alternative considered but not evaluated further, or an alternative considered only internally, for the following reasons. The BLM Challis Field Office would need to amend the RMP to approve either a direct land sale or a land exchange, i.e., no savings in administration time or money between the two alternatives. In addition, since only the receipts from the sale or exchange (equalization payments) of lands identified as suitable for disposal in land use plans approved on or before 25 July 2000 can be deposited into the FLTFA account, a FLPMA sale of the subject land would simply bring money to the U.S. Treasury, and not provide the public with the numerous benefits of the Broken Wing Ranch and Garden Creek parcel becoming Federal land, e.g., protecting the Salmon River and Garden Creek watershed from residential development, public access to the Lyon Creek drainage, greater water from the Lyon Creek perennial stream to the Salmon River, etc.

However, after further consideration, including input from the BLM Idaho Falls District NEPA Coordinator, the BLM would like the EIS to evaluate a land sale alternative (i.e.,

the selected land would be sold to TCMC via a modified, competitive bid in which the proponent would have the right to match highest bid). The reasons for such are the following:

- 1) The alternative would address comments from several members of the public, including the proponent. In addition, the Custer County Commissioners are known to have a distinct desire to increase the County tax base by increasing the amount of private land in County;
- 2) The feasibility analysis still needs the signature of the BLM Director; therefore, the NOI describes a proposed land disposal (land exchange or land sale) action;
- 3) The alternative would be relatively simple to analyze as the alternative is a subset the proposed action;
- 4) The alternative would certainly be feasible; and
- 5) The alternative would offer perhaps the broadest range of reasonable alternatives.

- The proposed land exchange should include a condition requiring TCMC to remove unwanted structures following mine closure. (69.1)

Response: The current reclamation plan already includes removal of structures and equipment no longer required by TCM for ongoing uses. The majority of the structures present at the TCM are located on existing private land owned by TCMC and these are not subject to conditions created by the potential land exchange.

- The land exchange should include a condition that upon completion of mining and reclamation, an easement would be established to allow public access. This would highlight successful reclamation and allow full access to surrounding BLM and Forest Service land. Allowing access to the selected lands for hunting (without TCMC fees) would limit TCMC liability under Idaho law. (69.3, 69.4)

Response: The current thinking on the land exchange already includes a number of mitigative measures that would allow ongoing public use of the Selected Lands following the exchange. Access to private lands currently owned by TCMC would be controlled by TCMC for purposes of public safety. TCMC was contacted about granting a post-mining public access and/or a conservation easement on private land currently owned by TCMC. TCMC's response was that the post-mining (including final reclamation) situation is too far in the future for TCMC to make a decision now on such an easement.

- The proposed eastern boundary of the selected lands would border private land owned for recreation residences and would decrease property values and create user conflict. The proposed eastern boundary of the selected lands would also include land involved in a pending land sale between BLM and another private land owner. The EIS should include an alternative where the eastern boundary of the selected lands does not extend north of Bruno Creek or east of the ridge dividing the Bruno Creek and Squaw Creek drainages. Additional public land south of Bruno Creek and west of the Squaw Creek road could be included in the land exchange, rather than the area north of Bruno Creek. (72.2, 72.4, 72.5, 72.6, 72.7)

Response: This alternative exchange boundary north of Bruno Creek is already included in the EIS. Adding more land to the Selected Lands south of the existing boundary is out of the scope of the analysis.

- The proposed eastern boundary of the selected lands would include a portion of the Squaw Creek road. The public should retain access to all parts of this road, as it leads to public land higher in the drainage. (201.1)

Response: The public road easement that already exists for this road would continue under all existing alternatives for the land exchange.

- The transfer of Thompson Creek and Squaw Creek to TCMC is unnecessary because the current uninhibited use of Thompson Creek, along with the requested Phase 8 Expansion, is adequate for TCMC's needs. (76.5, 76.6, 76.8)

Response: Mitigative measures already included in the land exchange would allow continued public access to both creeks.

- The BLM should develop additional alternatives of private lands for exchange in the event that land trade evaluations require additional private properties, such as private inholdings and mining claims in the White Clouds, Frank Church River of No Return Wilderness, and Sawtooth National Recreation Area. An expanded land exchange that includes the Broken Wing Ranch, the Garden Property, and additional properties (with improved infrastructure more suitable for wildlife and public uses) is preferable to an outright sale. (77.19, 77.24)

Response: This is out of scope for the land exchange that has been proposed. If property values for the offered and selected lands are found to be unequal, portions of either the selected or offered lands would be dropped from the exchange to provide equality of values.

- Lands on the Broken Wing Ranch where agriculture would continue under BLM administration should be made available for public lease through a bid process. (5.1)

Response: Continued agricultural used of parts of the ranch is already part of the proposed management plan for this parcel and will be mentioned in Chapter 2. How the actual administration of this will be handled does not affect environmental impacts or alternatives.

- The University of Idaho should be considered as a potential overseer of Broken Wing Ranch management because the BLM is understaffed in their current management of allotments. (76.10)

Response: This is out of scope of the EIS.

- The Proposed Action should include development of a boat ramp and parking area on Parcels D, E, and F of the Broken Wing Ranch. (66.3)

Response: A recreational site (campground) is already part of the proposed management plan for this area and will be mentioned in Chapter 2. BLM will consider if a boat ramp would be part of this development.

- Problematic land use issues should be addressed on the land exchange parcels before transferring them to public ownership. Improvements should be considered such as fencing riparian and other areas from livestock grazing, improving road and trail systems to reduce resource impacts, and closing, rehabilitating and signing roads and trails that are problematic. In addition, as the 404 permitting process is quicker and simpler for private lands, the proposed land exchange should include a condition requiring TCMC to get all applicable permits for removal of the dam on Lyon Creek prior to transfer of ownership. (69.2, 77.17)

Response: TCMC is the owner of the ranch and has control over what improvements or changes to the ranch are made prior to the potential land exchange not BLM.

- The EIS should include a land exchange alternative that analyzes the impacts of the Broken Wing Ranch being returned to native vegetation with no irrigated agriculture. (194.12)

Response: This will be added to Chapter 2 as an alternative considered but evaluated in the EIS. Partial restoration of natural conditions in some parcels is already part of the approved management plan and will be discussed in Chapter 2. Rapid restoration of the current tilled fields to natural conditions is not feasible and past experiences elsewhere have shown this practice would likely lead to infestations of noxious weeds.

- The EIS needs to analyze reasonable alternatives for the operation of the Broken Wing Ranch, including the level of public access and examples from other BLM administered land with similar agricultural activities. (194.17)

Response: The RAC has already considered alternative management approaches to the different parcels of the ranch and has decided on the current management plans as a result of this review of alternatives. No new alternative is required at this time.

- Development of the Broken Wing Ranch could lower adjacent private land values. There should be no development adjacent to this property, including buildings, campgrounds, tree removal along the irrigation canal, or discontinuation of water flow through the irrigation canal. And roads should discourage frequent or noise traffic. (201.2, 201.3)

Response: This is already part of the proposed management plan for the ranch and will be mentioned in Chapter 2.

Socio-economic Factors

- Custer County is 97 percent public land and 3 percent private land; additional public land should be made available for private industry to compensate for lost tax revenue as a result of the land exchange or the land exchange should be for private land outside Custer County and not for agricultural property currently in production. (199.2, 199.3)

Response: The impacts of the land exchange on tax revenue to the county will be evaluated in the EIS. Revising the land exchange to include other selected or offered lands is outside the scope of the project.

Cultural Resources

- It is not necessary to destroy historic structures (e.g., old homestead buildings) on Parcels D, E, and F of the Broken Wing Ranch. (66.2)

Response: This will be discussed with the BLM cultural resources experts and appropriate consideration for preservation of historic structures will be included in the final decision on the exchange.

Transportation and Access

- The road accessing the Lyon Creek property from the south is in poor condition, and should be closed or converted to a non-motorized, single-track trail with an alternate access route developed to access the property. The current access road that parallels the river crosses several high-gradient streambeds which regularly wash out the road. Continued use of this road contributes to sedimentation in the Salmon River. (77.19)

Response: This recommendation will be discussed within BLM and appropriate consideration for changing access within the ranch will be included in the final decision for the land exchange.

Based on the above consideration of these comments, it has been determined that additional alternatives to what are already included are not necessary. Some additional discussion of alternatives considered but not evaluated will be included in Chapter 2 as will some narrative better describing the proposed management of the ranch.

ADDITIONAL COMMENTS

Issues Removed From the Scoping and Alternative Report

Five issues identified earlier in the scoping process were removed from the Scoping and Alternatives Report upon BLM review of the draft report. These issues and the explanations for why they were reviewed are listed below.

- Disposal of selected land would affect the Challis Herd Management Area.

This issue was removed from the draft Scoping and Alternatives report because the boundary of the Challis Herd Management Area is not Highway 75 as Ken Gardner (BLM) once believed, but rather the outer edge of BLM land in the vicinity of the highway. Therefore, none of the offered lands (Broken Wing Ranch) are within or would become part of the Challis Herd Management Area. None of the offered lands are within any Pocatello Herd Management Areas.

- The stated purpose and need in responding to the land exchange proposal does not reflect the need for BLM or USFWS to protect and recover ESA-listed fish in Thompson Creek and is not in the best public interest considering only the ESA.

This issue was removed from the draft Scoping and Alternatives report because compliance with all applicable Federal laws and regulations is implicit in the Federal purpose, i.e., ensuring compliance with Federal mining regulations (which require

compliance with ESA and specifically mention ESA consultation requirements). In addition, the Federal purpose was subsequently re-stated to emphasize that the Federal purpose was to ensure compliance with the laws as opposed to approving the MMPO. Also, a Federal agency may not approve a mining plan of operations or issue permits that would violate any Federal or State laws and regulations. Moreover, specific effects to ESA fish species will be fully evaluated in the EIS, in a biological assessment, and will receive a biological opinion as part of ESA consultation. Also, the public interest is not expressed or considered through a single law, but is instead the collective interest as summarized in the FLPMA.

- The appraisal process may not adequately reflect the intrinsic value of either the selected or the offered lands.

This issue was removed from the draft Scoping and Alternatives report because the appraisal process is an administrative (non-NEPA) process done in accordance with specific laws, regulations and policy. For example, by regulation, in estimating market value the appraiser shall: (3) include historic, wildlife, recreation, wilderness, scenic, cultural, or other resource values or amenities that are reflected in prices paid for similar properties in the competitive market; (4) Consider the contributory value of any interest in land such as minerals, water rights, or timber to the extent they are consistent with the highest and best use of the property (43 CFR 2201.3-2).

Furthermore, the authorized officer does not consider the fair market values of the selected and offered lands in an exchange, because such values must always be approximately equal. The EIS will fully evaluate the intrinsic (non-monetary) values of the selected and offered lands and effects to these lands in the various elements of the human environment in Chapter 3 and Chapter 4. The authorized officer must then weigh all of these values for both the selected and offered lands in deciding if an exchange would be overall in the public interest pursuant to the FLPMA.

- The Challis RMP may need to be amended to allow the BLM to manage agriculture on the offered lands.

This issue was removed from the draft Scoping and Alternatives report because it would not be a violation of the RMP to acquire the subject private property and let agriculture continue under BLM management, e.g., under a stewardship agreement. In addition, any potential violations of the RMP should be dealt with in the RMP conformance section (section 1.4 of the DEIS), and not as a NEPA issue with measurement indicators.

- Treaty rights need to be considered in the valuation of the selected and offered lands.

This issue was removed from the draft Scoping and Alternatives report because the appraisal of the fair market (monetary) values of the selected and offered lands is an administrative (non NEPA) process done in accordance with specific laws, regulations and policy. For example, in estimating market value the appraiser shall: (3) include historic, wildlife, recreation, wilderness, scenic, cultural, or other resource values or amenities that are reflected in prices paid for similar properties in the competitive market; (4) Consider the contributory value of any interest in land such as minerals, water rights,

or timber to the extent they are consistent with the highest and best use of the property (43 CFR 2201.3-2).

Thus, appraisals would not generally assign monetary value due to tribal treaty rights as the best and highest use of a tract of land. As a consequence, it is not possible for a decision maker to consider tribal treaty rights in the context of a specific sum of money. However, a decision maker certainly considers non-monetary tribal treaty rights, which are fully evaluated in the EIS, in considering if a land sale or land exchange would be in the public interest pursuant to the FLPMA.

Alternatives not Screened

The USFS identified two scoping comments in Table 1.5-2 in the draft Scoping and Alternatives Report that were not formally screened. In the final Scoping and Alternatives Report, additional language was added to Table 1.5-2 to explain why these alternatives were essentially "non-starters." Below is some additional background information on the language added, provided by Ken Gardner (BLM).

For the first comment I thought about stating that the BLM and USFS do not have the authority to rescind the portions of the original RODs approving the subjects areas for waste rock storage. However, I believe the agencies could issue subsequent RODs approving a modified plan of operations for either 1) Phase 8 operations in addition to the previously approved Phase 7 operations (and all subsequent modifications), or 2) Phase 8 operations in addition to the realized Phase 7 operations (and all subsequent modifications). I believe the MMPO submitted by TCMC represents the first situation, especially since TCMC might want to use the subject areas in the future if Phase 9+ mining were ever possible. Thus, I believe the second situation is an unnecessary mixture of NEPA and administrative (non-NEPA) matters. That is, the agencies should not do NEPA analysis for not using the subject areas (e.g., "undo previous NEPA analysis"), but rather continue to regulate the use of such areas administratively.