



January 6, 2023

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***RE: Discovery Day Mining Draft Decision Notice and Finding of No Significant Impact Objection as per 36 CFR 218.8(d)***

- **Project Name: Discovery Day Mining Operations Environmental Assessment**
- **Responsible Official: Klamath National Forest Supervisor Rachel Smith**
- **Klamath National Forest**

Thank you for accepting this Objection pursuant to 36 CFR § 218 from the Klamath Siskiyou Wildlands Center (KS Wild), the Klamath Forest Alliance (KFA) and the Environmental Protection Information Center (EPIC) regarding elements of the Draft Decision Notice for the Discovery Day Mining Project located on the Klamath National Forest. For the purposes of this proceeding KS Wild is the “lead objector.”

The issues covered in this Objection were discussed and raised in our February 1, 2018 scoping comments and in our October 1, 2021 comments regarding the Discovery Day Mine Environmental Assessment (EA). Thus, our organizations have standing to bring this objection as authorized by 36 CFR 218.8(d).

In our 2018 scoping comments and our 2022 EA comments we asked Forest Service planners to ***please recognize the outstandingly remarkable values of the Wild and Scenic South Fork Salmon River which serves as a NW Forest Plan Key Watershed for fisheries and water quality.*** We also requested that the agency be mindful of the significant recreational and fisheries values provided by the Salmon River. Finally, we asked that the Forest Service acknowledge that

the proposed mining activities are located within the Late Successional and Riparian Reserve land use allocations in which providing high quality terrestrial and aquatic habitat are the required management goals. We repeat those requests in this objection to the Discovery Day Mine draft decision notice.

### **Scope of this Objection**

As per 36 CFR § 218 this Objection applies to the following activities authorized in this project:

**Mining activities located on the Late Successional Reserve and Riparian Reserve land use allocation within the South Fork Salmon Key Watershed that are approved by the Discovery Day Mine draft decision document and finding of no significant impact.**

### **Objection Issue #1: The Draft Decision Does Not Further the Management Objectives of the Land Use Allocations Where the Mining Project is Located**

The Draft Decision and the supporting Environmental Assessment read as if the Late Successional Reserve (LSR) land use allocation and the Key Watershed designation for the project area do not exist. Rather than contribute to the Forest Service management objectives of the LSR and the Key Watershed, the proposed mining will directly harm and inhibit the purpose of the land use allocations where the mining occurs. The proposal to manage the LSR as a non-forested private mine represents a violation of both the Klamath National Forest Resource Management Plan and the Northwest Forest Plan.

**Suggested Resolution Point #1:** Please manage this project area to contribute to the late successional forest habitat and key watershed values that are the purpose of the land use allocations where the project is located.

### **Objection Issue #2: The Environmental Assessment and Draft Decision Document Fail to Account for the Current Condition of the Mining Site**

The current condition of the Discovery Day mining site is not acknowledged or reflected in the draft decision documents or in the Environmental Assessment (EA). Currently the site is littered with non-functional heavy equipment some of which are leaking oil. Trash and tires are strewn throughout the site. Numerous rusting and leaking barrels containing unknown liquids are present at the mining site. The site is the source of a noxious weed infestation. The two existing tailing ponds have “non-compliant levels of arsenic” such that they “exceed allowable limits of heavy metals” including copper. The mill site currently contains accumulations of unknown petroleum liquids and other substances in open pits. It is arbitrary and capricious for the Forest Service to approve a new Plan of Operations when the project proponent is not in compliance with existing Forest Service mining authorizations and conditions.

The Aquatic Resources Report (p. 18) for the project states:

*“There will be no indirect impacts to anadromous salmonids, resident rainbow trout, or lamprey because...*

*(6) Potentially hazardous material -e.g., fuel/oils, sulfide concentrates (originating from natural occurrence in the ore), garbage, residential/office wastewater -are stored and/or disposed of in an appropriate and approve upon manner.”*

The mining site does not currently meet this criteria and therefore the conclusions and assumptions contained in the Aquatic Resources Report do not reflect past, present and (the likely) future site conditions.

**Suggested Resolution Point #2:** Conduct a field visit with representatives of the objecting parties and representatives from the Forest Service Regional Office to view and explain the current condition of the LSR public lands managed by the Klamath National Forest at the Discovery Day mining site.

**Objection Point #3: The production of 12,087 cubic yards of toxic mine tailings is a significant action necessitating analysis and disclosure in an EIS.**

The Plan of Operation and the EA fail to analyze the effectiveness of “disposal alternatives” that are being considered for mill tailings. The EA also fails to fully disclose the findings of the testing concerning these mine tailings. The Plan of Operations and EA also fails to disclose the content of the hypothetical “optimal tailings disposal plan” that may (or may not) be developed with the Forest Service. We believe that the production of significant amounts of toxic mine tailings necessitates the completion of an Environmental Impact Statement (EIS) for this project.

**Suggested Resolution Point #3:** Rescind the draft Finding of No Significant Impact (FONSI) and prepare an Environmental Impact Statement (EIS) prior to authorizing the additional production of toxic tailings.

**Objection Point #4: It Does Not Appear that the Mining Proponents Have a Water Right**

The Forest Service appears poised to allow the mining proponents to withdraw up to 125 gallons of water per minute from a stream that is 303(d) listed under the Clean Water Act (CWA) for temperature located within a NW Forest Plan designated Key Watershed.

Although not stated clearly in the EA or DN, it appears that the KNF is intends to authorize the miners’ use of the federal government’s riparian water right to Granite Gulch. This water is diverted (in a stated quantity that likely exceeds the available amount of water) to supply the camp and the mill site, including the reservoir at the mill site.

By law, riparian rights may not be used to supply water to a reservoir for use in the dry season. Yet the USFS proposes to authorize: “continued use of water supplied to a lined water supply pond by a spring-fed tributary to Granite Gulch via a gravity-fed pipeline” (EA at 17)

The EA also states that “[t]he Discovery Day Mine draws operational water from a spring in Granite Gulch in compliance with state and federal water regulations.” (EA at 105) However, compliance with state law includes the filing of an annual Statement of Diversion detailing the actual use of water under a riparian water right. For this, state law requires that the diversion be metered and recorded with measuring devices and this data filed with the state. Our organizations are unable to locate a record of Discovery Day or the USFS ever having metered water use or having filed a statement of diversion with the state. The past and proposed water use may be illegal and the draft decision will continue this practice and therefore is not in compliance with state law.

Please see this brief synopsis of water rights:

[https://www.waterboards.ca.gov/waterrights/board\\_info/water\\_rights\\_process.html](https://www.waterboards.ca.gov/waterrights/board_info/water_rights_process.html)

**Suggested Resolution Point #4: Do not authorize water withdrawals as part of this project. Manage Knownothing Creek as a Riparian Reserve and contribute to the attainment of the objectives of the NW Forest Plan Aquatic Conservation Strategy.**

#### **Objection Point #5: Transportation Management**

Unauthorized road/route utilization is authorized by the draft decision document. How does continued use of this road/route contribute to the Transportation Management Plan (TMP) as implemented through the Motor Vehicle Use Map (MVUM) or to the goals and the objectives of reducing road density in the Key Watershed? Is the unauthorized road/route also located in the Late-Successional and Riparian Reserve land use allocations? The Forest Service’s contention in the EA that the MVUM and TMP process are inapplicable to the Discovery Day mine is incorrect.

We are concerned about the proposed heavy equipment crossing through Knownothing Creek. It appears that this portion of the creek provides critical habitat or essential habitat for fisheries and that spawning has occurred at this location during high flow events. There does not appear to be an existing permit to “rock” the low-water crossing.

**Suggested Resolution Point #5: Implement the KNF TMP and MVUM by closing the road/route at issue.**

#### **Objection Point #6: Reclamation Bond**

Given the history of the Discovery Day mining site, its currently non-compliant and disorderly condition, and the foreseeable production of toxic mine tailings a substantial reclamation bond is necessary prior to authorizing additional mining activities. Our organizations are skeptical that

the mining proponents are capable of restoring the terrestrial and aquatic values of these LSR and RR public lands.

**Suggested Resolution Point #6:** Require that the current spills and trash at the site be cleaned up and that a substantial reclamation bond be posted prior to authorizing additional mining activities.

**Conclusion**

We urge the Forest Service to manage this project area for the wildlife and aquatic values that this Late Successional Reserve, Riparian Reserve and Key Watershed are intended to provide.

Thank you for considering our comments, concerns and suggestions.

Sincerely,



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