



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION IX**  
75 Hawthorne Street  
San Francisco, CA 94105

October 1, 2010

Mr. Gerald Smith  
Bureau of Land Management  
50 Bastian Road  
Battle Mountain, NV 89820

Subject: Cortez Hills Expansion Project Draft Supplemental Environmental Impact Statement (SEIS), Lander County, Nevada [CEQ # 20100323]

Dear Mr. Smith:

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 (CEQ) Regulations at 40 CFR Parts 1500-1508, and our NEPA review authority under Section 309 of the Clean Air Act.

EPA has rated this Draft SEIS as EC-2 – Environmental Concerns-Insufficient Information (see enclosed “Summary of Rating Definitions and Follow-Up Action”). Our rating of this document is based on our concerns regarding how mitigation for losses of surface water flows and riparian/wetland vegetation will be accomplished, as well as the need for additional information in the Final EIS on financial assurance and air emissions modeling. Our detailed comments are enclosed.

We appreciate the opportunity to review this Draft SEIS. We request a copy of the Final SEIS when it is filed with our Washington, D.C. office. If you have any questions, please call me at (415) 972-3521, or have your staff call Jeanne Geselbracht at (415) 972-3853.

Sincerely,

/s/

Kathleen M. Goforth, Manager  
Environmental Review Office

Enclosures: EPA Summary of Rating Definitions and Follow-Up Action  
EPA Detailed Comments

Cc: David Gaskin, Nevada Division of Environmental Protection  
Katie Miller, Nevada Division of Wildlife

## **SUMMARY OF EPA RATING DEFINITIONS**

This rating system was developed as a means to summarize EPA's level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the EIS.

### **ENVIRONMENTAL IMPACT OF THE ACTION**

#### ***"LO" (Lack of Objections)***

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

#### ***"EC" (Environmental Concerns)***

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

#### ***"EO" (Environmental Objections)***

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

#### ***"EU" (Environmentally Unsatisfactory)***

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

### **ADEQUACY OF THE IMPACT STATEMENT**

#### ***Category 1" (Adequate)***

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

#### ***"Category 2" (Insufficient Information)***

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analysed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

#### ***"Category 3" (Inadequate)***

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analysed in the draft EIS, which should be analysed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

\*From EPA Manual 1640, "Policy and Procedures for the Review of Federal Actions Impacting the Environment."

**Cortez Hills Expansion Project Draft Supplemental EIS**  
**EPA Comments -- September, 2010**

**Water Resources Mitigation**

The Water Resources Mitigation Summary (Table 3.2-1) and Draft SEIS discussion provide useful information on each of the resources potentially affected by the project, as well as action thresholds, mitigation measures, follow up contingency measures, and effectiveness of the measures. For several water resources, loss of flow would be mitigated by piping water from another source at a specific flow rate based on the historical flows measured for those resources. It is unclear whether or how flows from alternate piped water sources would be adjusted throughout the year to mimic historic average seasonal flows for each individual water resource. We believe it is important that the natural functions and values of each resource, whether they are perennial, intermittent, or ephemeral, be preserved by adjusting flows to mimic their natural flow regimes. For example, supplying a steady flow rate to an ephemeral stream all year would not be appropriate, as it could significantly change the character of the aquatic resource, species composition, etc. We recommend that the Final SEIS clearly describe how natural flow regimes would be preserved through the mitigation process.

**Wetland/Riparian Vegetation Mitigation**

The Water Resources Mitigation Summary applies to those resources that could be affected by groundwater drawdown. However, neither the Water Resources Mitigation Summary (Table 3.2-1) nor the description of Mitigation Measure V1 in the Final EIS provide sufficient detail on the proposed new or enhanced mitigation sites that would compensate for wetland/riparian vegetation that would be affected by fill or groundwater drawdown. We recommended in our October 31, 2008 comments on the Final EIS that the mitigation plan describe the proposed new or enhanced mitigation sites, including their locations, existing values and functions, and the goals for future values and functions; and provide a timeline for compensation activities, with the goal of no temporal losses of this habitat in the project area. Compensation areas should be selected to avoid any direct, indirect, or cumulative impacts of the project that could reduce the success of the mitigation plan. The plan should describe contingency measures that would be implemented should the initial plan fail to meet specified goals, and specify who will be responsible for implementing the contingency measures. These details should be included in the Final SEIS.

**Financial Assurance**

The Final SEIS should include a cost estimate for implementing the mitigation and monitoring plan if all mitigation measures would need to be implemented, including construction, maintenance and replacement of guzzlers; purchasing compensation property; drilling new wells; construction of fences and pipelines; etc. The Final SEIS should also describe the financial assurances, such as a long-term trust fund, which will be required to ensure that sufficient funds will be available for as long as they may be needed for this purpose.

**Air Emissions**

It appears that, overall, the PM<sub>2.5</sub> (particulate matter smaller than 2.5 microns) air modeling for the proposed project was conducted well. However, we do have questions about the inputs or assumptions in a couple of areas. For example, the modeling receptor grid is based on 200-meter spacing, rather than spacing of 50 meters or less, which we would normally recommend. It is unclear whether or how a tighter grid spacing would affect the results. This should be discussed

in the analysis and in the Final SEIS. In addition, the report contains very little information regarding: (1) the AERMOD surface characteristics inputs, and (2) the representativeness of the meteorological data from Boulder Valley, which is used as a surrogate for Crescent Valley in the analysis. Discussion of these issues should be added to the Final SEIS.