

## Excelsior Mine Objection Resolution Meeting Notes – March 13, 2019

In attendance: *E. Uloth (responsible official), J. Kingsbury (reviewing officer), L. Wisehart (Facilitator), T. Griffin (project lead), A. Montgomery (Mt. Baker-Snoqualmie NF-North Zone NEPA Planner and note taker for meeting), T. O'Toole (Mt. Baker-Snoqualmie NF Communications and Community Engagement Staff Officer)*

*Ed Henderson (NCCC)*

*Tom Uniack (WA Wild)*

*On Phone: Amy Mower (private citizen), Gary Graff (Ecology)*

*Jonathan Stumpf (American Rivers)*

*Jen Watkins (Conservation Northwest)*

*Scott Crain (NCCC)*

Kelly Marquardt (Representative DelBene's Office)

Ann Larsen (Senator Murray's Office)

Tommy Bauer (Senator Cantwell's Office)

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J. Kingsbury – Opening remarks

- Try to resolve as many points as we can, no decision coming from this meeting
- Today is about continuing dialogue and responding to questions or concerns

E. Uloth –

- Reminder that this process is super important, we are grateful we have the public engagement we do, we do our best to come up with a project and decision that best meets the needs of the land and community but your participation and input helps to ensure we do so
- Points of clarification from objections:
  - Objections are reviewed by the Forest and a review team composed of Forest Service staff from other Forests. That review results in recommendations to the Objection Reviewing Officer.
  - Duration of operations:
    - Why if it's mining, why are we only analyzing this portion of the mining operation?
      - The way we approach mining operations, is they have to demonstrate the need to have a full operation, this is the POO
      - They must show the logical/sequential nexus
      - Why are we not analyzing beyond exploration and sampling?

- There is no proposal for the entirety of the operation only for the exploratory sessions taking place
  - An initial proposal by the claimant included a broader scope but could not be supported by the available information so the Forest worked with him to reduce the scale of what was proposed to the current proposal. Our analysis is commensurate with the scope and scale of what is actually being proposed (sampling and exploration with access reasonably incident to such activity).
- Clarification that proposed access via the upper road would not add miles to Forest transportation system
  - This is a temporary road that would be maintained by the claimant, then at the end of the project it would be obliterated and the landscape restored, no Forest service road maintenance funding would be used to maintain the road
- Lower Road vs. Upper Road
  - In their review of objection issues, the review team recommended that we consider providing more information to explain why an alternative considering the “lower road” was not fully analyzed. We could have explained that better so we will try to do that with an addendum to the EA or with clarifying information in the final decision notice.
  - The proposal analyzed in the EA was the result of 6 years of consideration and development.
    - Claimant’s initial proposal included bulk sampling which would have required dump trucks and other large equipment and would have resulted in more traffic on the access route. Recognizing that use of a system road (reconstruction of the lower road) would better meet this need we asked the claimant for geo tech reports and engineering designs for how the road would be rebuilt. That wasn’t feasible at the time which contributing to the downscaling of the proposal to what it is now, limited sampling and exploration, and reasonable access to conduct those activities which would be pickup truck or jeep loads on a road that would not need to meet system road standards.
    - Forest consulted with multiple geologists on and off-Forest, including a geotechnical specialist from Olympic NF. After multiple site visits and with input from resource specialists, and recognizing the presence of serious unstable soils (S8) soils on the lower route as well as its proximity to Wells creek, it became very apparent that use of the upper non-system road would have less of an impact on the resources vs the lower road.
  - Through scoping efforts we also heard concerns that we should not utilize the lower road for the project. We were attempting to be responsive in hearing that concern.
- Gary Graff – Wash. Dept. of Eco.
  - Administers minerals and mining act of the State

- Requested clarification whether this is mining vs. sampling, FS staff confirmed this proposal is for exploration not mining
  - Also clarified that any impacts to water quality would be of interest to the State
    - Project hydrologist did not identify any issues beyond surface water runoff identified in the EA
  - Action items:
    - Do you need something in writing? no
    - He just needs to stay connected with the progress
- Amy Mower – private citizen
  - Biggest issue is related to the bifurcation of the entire project between mining and exploration
  - EIS requires us to not bifurcate, due to cumulative effects on the environment
  - Looking at the EA, she did not see any analysis on the impact to mountain goats (within one mile of mine)
  - FS clarified:
    - EA does include discussion of cumulative effects, included in that is reasonably foreseeable future actions
    - Cumulative effects does not dig into future development because we do not have a proposal and therefore it is not reasonably foreseeable
    - It is not guaranteed that there is another step to this project, they may not find anything and we wouldn't have a future project if that were the case, we can't speculate too much
    - Her remedy would be to prepare an EIS
- T. Uniack
  - Lead objector with joint objection (11 groups)
  - Acknowledged Forest's role in Sustainable Road Strategy
  - Very concerned with impacts to roadless character in Inventoried Roadless Area. Projects that impact roadless areas are a big deal.
  - There are mechanisms by which the project could be consistent with 2001 RACR, but this project doesn't meet any of them.
    - Maintenance of an existing system road does not violate the roadless rule, but this is not a system road
      - It's a temp road, what are the standards for which that road would meet?
      - It would not be up to FS standard
    - System road reconstruction also can be exempted, but this is not a system road.
    - Under the exemption for roads "needed" in conjunction with a mineral lease, this road isn't actually needed.
      - Is the road needed? We would say no, you can use the other route to do what the miner wants to do.
      - What is the logical and sequential access needed for the miner to remove the rocks from the mine and sell them to China?
  - Under NWFP
    - In key watershed, cannot construct road in roadless area.

- Some NEPA issues, generally centered around the idea that we did not have enough alternatives in the EA
- Also concerned that miner has already done unauthorized work on the road.
- Members of congressional delegation sent letters to chiefs office
  - No evidence that letter has been responded to, where is it?
    - FS confirmed that it will follow up on status of response, knows there was a response reviewed by the Region
- Jen. (Cons. NW)
  - Concerned about the precedent of this road being constructed? This may lead to a slippery slope. Any existing non-system road on the landscape could be treated as an existing road in future management actions. The specific language used has matters.
- Ed Henderson
  - Supportive of everything Tom said,
  - Personal concern that should the evaluation provide samples that it is a viable mining opportunity, then they would want to use the road for the full developed mining activity
  - It should not be allowed because we can assume that the proposed activity would require maintained use of the “temporary” road.
- E. Uloth – Response
  - The bottom line is that District doesn’t share the same interpretation of the prohibitions and exemptions regarding road maintenance and construction in IRA.
  - The roadless rule allows for maintenance and use of roads in IRA under the mining law of 1872
  - Classified roads in addition to roads needed under the mining law:
    - It will be a temp road so that the miner is required and responsible for the use of that road, it won’t be to a maintenance level standard
- T. Uniack –
  - When would the road be decommissioned?
  - We really need to address what the word needed means?
- E. Uloth
  - Discussed determination of what access is needed and whether the proposed road is needed. Deferred to professional judgment of specialists who acknowledged this as a reasonable request for access needed.
  - My main concern is protecting resources- had to weigh building road in roadless vs. protecting resources. My decision recognizes some tradeoff in impacting roadless values to minimize impacts to aquatic values
    - Clarification that “upper road” is the subject of the objections while the “lower road” is the system road that was previously decommissioned and is technically no longer in existence.
  - Key watershed issue: the standard and guideline is specific to “new road construction,” whereas this is utilization of an existing road.
  - Discussion with Jen and Tom about what the future consequences may be of that interpretation. There are unauthorized non-system roads in key watersheds across the Forest and NWFP area, we don’t want interpret the NWFP as allowing any of those roads to be legitimized. Jen recognized that you could build a new road in a key

watershed by doing plan amendment, so if the road is needed, that should be the approach taken. Treat this as “new road” since it is not an existing authorized road.

- Discussion about whether there is language that can be added to the draft decision to resolve some of the concerns about the precedence this decision might set. Is there a place we can come to in the middle that meets the need for the project, protects the resources, and addresses some of the objectors concerns?
  - Not sure, there could be but objectors would like more time to discuss and consider.
- J. Kingsbury
  - Clarified that the precedent-setting concerns discussed should be within the “box” of minerals, projects under the 1872 mining law are uniquely guided by that law and the actions taken in this project wouldn’t necessarily apply to non-mineral projects.
  - Raised question of the primitive nature of the road, could they haul things out with the ATV, why do we need road improvements?
    - Claimant requested use of jeep to haul samples ranging from 5gal buckets to 55 gal drums. The road maintenance proposed matches the primitive nature of the road
- Discussion about origin of road and potential for using pack animals or other transportation.
  - The road was not required to be decommissioned as part of earlier reclamation efforts (whereas the system road was) and the road likely predates the RACR
  - Plan will require that the road be obliterated at the end of the plan
  - Why not use pack animals? The use of animals could reduce the work that needs to be done
    - Forest has obligations to respond to the claimant under the 1872 mining law. There may have been early discussions about potential for pack animals but it was determined that vehicle access was reasonably incident to what was proposed. Erin will look into the feasibility/potential for requiring such use but also must weigh considerations around “takings” under the mining law.
- Closing remarks
  - J. Kingsbury.; we appreciate openness and candor and time
  - E. Uloth; same
  - T. Uniack; R6 said we need to do more explaining of rationale, are you going to rehash the alternative for the lower road? E. Uloth, no the information does not go that far.
    - Lori clarified that the recommendations from the review team are draft and are just recommendations for Jamie to consider. It is the Reviewing Officer’s determination how to respond to objections and what instructions, if any, to give to the Responsible Official. It is not a Region 6 determination or a Regional Office response.
- Next steps:
  - The Reviewing Officer will respond in writing to each of the objectors. At the close of the objection period, regulations provide for 45 days to response (March 18), the reviewing officer also has the discretion to add 30 days to the response period (extension) if more time is needed to seek resolution or review and respond to issues. The response will address each of the objector’s concerns and will identify and instructions or

recommendations the Reviewing Officer may have for the Responsible Official.  
Objectors are welcome to continue discussions with the Responsible Official.