

September 14, 2020

Bureau of Land Management, Arizona
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Re: Public Land Order No. 7467, Withdrawal of National Forest System Lands for San Francisco Peaks/Mount Elden Mineral Withdrawal; Arizona

Responsible Officials:

We support the expeditious renewal of the San Francisco Peaks/Mount Elden Mineral Withdrawal (the “withdrawal”) for an additional 20 years.¹ Renewal of the withdrawal additionally highlights the need for all U.S. Forest Service management decisions, not just those pertaining to mining, to be more responsive to and protective of the unique traditional cultural values of the San Francisco Peaks Traditional Cultural Property (TCP). We support and encourage federal agencies to work with tribes to improve management directives and to establish working relationships beyond the Section 106 tribal consultation limitations.

In this context, the undersigned individuals and organizations, on behalf of our thousands of members and supporters, write to support the U.S. Forest Service and Bureau of Land Management’s proposal to extend the withdrawal for an additional 20 years, and to request that federal agencies also undertake the following actions, outside of this current proposed action if necessary to avoid a lapse:

- (1) The Bureau of Land Management and Forest Service should also expand the scope of the withdrawal to include leasable and salable minerals; and
- (2) With sensitivity to timing relative to the COVID-19 pandemic and the level of resources and attention the pandemic is currently requiring of tribal governments, the Forest Service should make the following opportunities available to interested Tribes: (a) finalizing the San Francisco Peaks Traditional Cultural Property (TCP) designation, and its inclusion on the National Register of Historic Places, and (b) developing and establishing a San Francisco Peaks Tribal Commission, potentially similar to that described in the 2016 Presidential Proclamation for Bears

¹ FR Doc. 2020-12914

Ears National Monument, to provide guidance and recommendations on the development and implementation of management plans and ongoing management within the TCP; and

(3) The Bureau of Land Management and Forest Service should work with interested Tribes and members of Congress, at their solicitation, to make the withdrawal permanent.

Absent action from the Bureau of Land Management, the San Francisco Mountain/Mount Elden Mineral Withdrawal will expire on October 17th of this year.

1. The Withdrawal Should Be Extended Because Its Original Purpose and Need Are Still Valid Today.

On October 16, 2000, the Assistant Secretary of Interior Silvia V. Baca enacted the San Francisco Mountain/Mount Elden Mineral Withdrawal temporarily removing 74,380.50 acres of National Forest System lands from location and entry under the United States mining laws for twenty years. The withdrawal encompasses lands flanking the Kachina Peaks Wilderness Area and Inner Basin, which are separately withdrawn, and includes Mount Elden, Dry Lake Hills, Hart Prairie, and the Hochderffer Hills.

The withdrawal was established following completion of the Environmental Assessment for the San Francisco Peaks/Mountain Elden Mineral Withdrawal (EA) and an historic agreement that closed the White Vulcan pumice mine. The EA states, “The Mountain is also the cultural focal point for American Indian tribes in Northern Arizona and the Four Corners area.”² Both the assessment and the mine that still scars the San Francisco Peaks’ eastern flank, laid bare the deep incompatibility of hard rock mining with public values associated with the withdrawn lands.

Tribal concerns over impacts to the San Francisco Peaks were the primary impetus for the withdrawal. Although the purpose of the San Francisco Peaks Mineral Withdrawal is to protect unique cultural, biological, geological, recreational, scenic, and economic values associated with the San Francisco Peaks and Mount Elden areas, concerns about impacts to traditional cultural values, and the protection of the San Francisco Peaks Traditional Cultural Property, a sacred site where medicinal herbs that are not often available elsewhere are collected, compelled its proposal and passage.

The Forest Service states that the lands are an eligible TCP, affording additional importance to ensuring these lands remain withdrawn.³ The Forest Service states that the San Francisco Mountain and Mount Elden area is:

[W]ell known as a place holding extreme religious and cultural values to a number of American Indian tribes in the Southwest. The tribes holding significant traditional interests for the San Francisco Mountain are the Hopi, Navajo, Zuni, Hualapai, Havasupai, Yavapai-Apache, Yavapai-Prescott, Tonto Apache, White Mountain Apache, San Carlos Apache, San Juan Southern Paiute, Fort McDowell Mohave Apache, and Acoma. The Significance of the Mountain to the tribes

² *p.1 in* Environmental Assessment for the San Francisco Mountain/Mount Elden Mineral Withdrawal, Peaks Ranger District, Coconino National Forest. Doc. 2000-573-312/24154

³ Coconino Nat’l Forest, Coconino Nat’l Forest Land Resource Mgmt. Plan Final Evtl Impact Statement Vol. I at 374 (Mar. 2018).

encompasses many aspects, including healing powers, serving as home to deities, as a physical carrier of prayers to the gods, their role in creation myths and other stories, and many other cultural and religious associations.⁴

And that:

The Coconino National Forest has been told by the tribes that commercial ground disturbing activities associated with mining are a desecration. Continued mining will further adversely affect the traditional and spiritual values as well as the quality of religion experienced. Tribal and spiritual leaders have repeatedly expressed to the Forest Service the importance of protecting the area from further mining. Mining activities are not consistent with management and protection of perhaps the most significant traditional cultural property in the Southwest.⁵

In its EA, the Forest Service states that withdrawal was necessary because 1) the area is geologically and biologically unique; 2) the area is culturally significant; 3) there are diverse and popular recreation opportunities; 4) there are spectacular scenic experiences; 5) communities have identified the area as important to local economies and a sense of place; and 6) our experience has shown that we are unable to afford adequate protection to these values under current laws.⁶

In its EA, the Forest Service states that, by withdrawing the lands from availability for location and entry for mineral development, “threatened and sensitive species habitat values will be protected from disturbance from mining,” that “recreation opportunities will be protected from surface disturbance from mining,” that “soil and water quality and watershed health will have greater protection from additional surface disturbance from mining,” that “visual quality will be maintained in regards to surface disturbance mining,” and that, since “the overall economy of the Flagstaff area, including its low-income and minority populations, is strongly tied to the tourism industry,” the “economic values associated with tourism and recreation will be protected from surface disturbance from mining.”⁷

All of the reasons for enacting the San Francisco Mountain/Mount Elden Mineral Withdrawal persist today: The area is still sacred to at least 13 American Indian Tribes. The area remains eligible for the National Register of Historic Places as a Traditional Cultural Property due to the well-established record of the area being “associated with events that have made a significant contribution to the broad patterns of our history.”⁸ it continues to harbor federally protected species that, since the date of the withdrawal, have become more imperiled; recreational use and tourism in the area have continued to increase, and therefore, so has local economic dependence on that use and tourism; and hardrock mining now, as then, continues to be incompatible with the strong public values associated with the withdrawal area.

⁴ Coconino Nat'l Forest, Environmental Assessment for the San Francisco Mountain/Mount Elden Mineral Withdrawal at 11 (1999).

⁵ *Id.*

⁶ Coconino Nat'l Forest, Environmental Assessment for the San Francisco Mountain/Mount Elden Mineral Withdrawal at 5 (1999).

⁷ *Id.* at 11-14.

⁸ https://www.nps.gov/subjects/nationalregister/upload/NRB-15_web508.pdf

2. Extending and Expanding the Scope of the San Francisco Mountain/Mount Elden Mineral Withdrawal.

The Federal Land Policy and Management Act provides the Secretary of Interior with the authority to extend existing mineral withdrawals. However, (1) a withdrawal application must be submitted to the Secretary for any withdrawal seeking to be made, modified, *or extended*,⁹ (2) withdrawals may only be extended if the Secretary of the Interior determines that the purpose for which the withdrawal was first made requires the extension,¹⁰ and (3) to extend the withdrawal, regulations direct that it “shall be reviewed by the Secretary commencing at least 2 years before the expiration date of the withdrawal.”¹¹

Because the original purpose of the San Francisco Mountain/Mount Elden Mineral Withdrawal remains fully valid today, we request that the Forest Service and Bureau of Land Management take all necessary steps to ensure that the Secretary extend the mineral withdrawal before it expires, to ensure the extraordinary resource values in the San Francisco Peaks/Mount Elden Recreation Area remain protected from degradation.

We also request that the withdrawal be expanded to include withdrawal from the availability for leasable and salable minerals. The very purpose of the withdrawal is only partially realized by a withdrawal that excludes these two other types of incompatible mineral extraction. For sake of values at risk, this should be undertaken in a separate proposed action if its inclusion in the extant proposed action would result in a delay and corresponding lapse of the locatable mineral withdrawal.

While there are private inholdings that allow mining within the area, we recommend the CNF and USDA seek buyout options for the existing mines, including the Sugarloaf Dome pumice mine, that are incompatible with the values protected by the renewal of the withdrawal. The USDA and CNF conducted a similar buyout at the nearby White Vulcan Mine, which has since been reclaimed.

3. The Forest Service Should Provide an Opportunity to Interested Tribes and Traditional Practitioners To Develop A Cooperative Management Structure for the San Francisco Peaks Traditional Cultural Property.

In addition to extending and expanding the scope of the withdrawal, the U.S. Forest Service should initiate consultation with at least the 13 directly affected Tribes, under Section 106 of the National Historic Preservation Act (NHPA), to offer an opportunity to finalize the San Francisco Peaks TCP designation, and its inclusion on the National Register of Historic Places, and provide an opportunity to develop and establish a Tribal Commission in partnership with the interested tribes, potentially similar to that described in the 2016 Presidential Proclamation for Bears Ears National Monument, or as indicated otherwise by the affected Tribes.

U.S. Forest Service management within the San Francisco Peaks TCP has not always met the agency’s obligation to protect the San Francisco Peaks as a landmark that is sacred to Indigenous Peoples, most notably with regard to Arizona Snowbowl, a ski resort located within the proposed TCP. Controversy

⁹ 43 C.F.R. § 2310.1-2(a).

¹⁰ 43 U.S.C. § 1714(f).

¹¹ *Id.*

attending the ski area's past expansion, which was met by opposition of the 13 affected Tribes, has been nationally significant, and a defining failure in the Forest Service's administration of sacred sites nationwide. As the Forest Service has acknowledged, the 2005 Record of Decision to expand and allow snowmaking with reclaimed water at the ski area "has had profound impacts on the agency's relationships with many American Indian people and communities"¹²

According to the 2012 *USDA and Forest Service: Sacred Sites Policy Review and Recommendations*:¹³

"The Forest Service is committed to restoring our forests and the vital resources important to our survival, while wisely respecting the need for a natural resource economy that creates jobs and vibrant rural communities. Respecting, honoring, accommodating, and protecting AI/AN sacred sites must be part of that commitment and be considered in the context of other uses. Economic and recreational drivers are important in land management decisionmaking, but not more or less important than sacred sites concerns. In the past, however, the Forest Service has not always thoroughly considered sacred sites concerns, balanced sacred sites concerns with other values or used its discretion in land management decisions to find creative ways of incorporating protections for sacred sites in its decisions. The Forest Service also must acknowledge that, in certain instances, its decision space is very limited, making it hard—perhaps impossible—to protect AI/AN sacred sites in the way the Tribes prefer in specific cases. Tribes and national forests are increasingly entering into agreements that establish a shared understanding of the agency-Tribal relationship. These agreements can improve communications, formalize a productive working relationship, and help the agency to honor its commitments to Tribes."

Examples of such agreements include the Memorandum of Understanding between the Pueblo of Jemez and the USDA, Forest Service, Santa Fe National Forest, and the Memorandum of Understanding Regarding Tribal-USDA-Forest Service Relations on National Forest Lands Within the Territories Ceded in Treaties of 1836, 1837, and 1842.¹⁴ Yet, despite decades of controversy relating to Forest Service management on the San Francisco Peaks, the Forest Service has still not proposed management structures for the TCP that "formalize a productive working relationship(s)" and "help the agency to honor its commitments to Tribes."

To that end, we urge the Forest Service to make available to interested Tribes an opportunity to develop and establish a cooperative management structure for the San Francisco Peaks TCP. We suggest the scope of that opportunity include, at a minimum, the establishment of a San Francisco Peaks Tribal Commission to provide guidance and recommendations on the development and implementation of management plans and on ongoing management of the TCP. That could include, for example, (1) promulgation of a TCP management plan, (2) corresponding amendments to the Coconino National Forest Land and Resource Management Plan, as needed, and (3) a review and alignment of the compatibility of existing special use permits and authorizations within the TCP. Finally, given the magnitude of controversy among the 13 affected Tribes attending past Arizona Snowbowl expansion and "improvements," we urge the Forest

¹²See: <https://www.fs.fed.us/spf/tribalrelations/documents/sacredsites/SacredSitesFinalReportDec2012.pdf> p. 15.

¹³See: <https://www.fs.fed.us/spf/tribalrelations/documents/sacredsites/SacredSitesFinalReportDec2012.pdf> p. 9.

¹⁴ <https://www.fs.fed.us/spf/tribalrelations/partnerships.shtml>

Service to stay any further National Environmental Policy Act (NEPA) analysis relating to the ski area pending completion of a TCP management plan.

4. Conclusion

We support the proposal to expeditiously extend the San Francisco Peaks/Mount Elden Recreation Area Withdrawal (the “withdrawal”) for an additional 20 years¹⁵ and we encourage federal agencies to expand its scope to include salable and leasable minerals. We urge the U.S. Forest Service to finalize the San Francisco Peaks TCP, and to provide an opportunity to all affected Tribes to establish a San Francisco Peaks Tribal Commission, or other similar structure of interest to the Tribes, to provide guidance and recommendations on the development and implementation of management plans and ongoing management within the TCP. This and other outlined actions are necessary to ensure that all management decisions, not just those relating to mining, are responsive to and protective of the nationally unique traditional cultural values of the San Francisco Peaks.

Sincerely,

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¹⁵ FR Doc. 2020-12914

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