

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

	)	
FRIENDS OF THE FLORIDAS; NEW MEXICO	)	
WILDERNESS ALLIANCE; WILDEARTH	)	
GUARDIANS; GILA RESOURCES	)	
INFORMATION PROJECT; AMIGOS BRAVOS;	)	Case No.: 1:20-cv-924
	)	
Plaintiffs,	)	
	)	
vs.	)	PETITION FOR REVIEW OF AGENCY ACTION
	)	
UNITED STATES BUREAU OF LAND	)	
MANAGEMENT; WILLIAM CHILDRESS,	)	
in his official capacity as District Manager of the	)	
BLM Las Cruces District Office;	)	
DAVID WALLACE, in his official capacity as	)	
Assistant District Manager of the BLM Las Cruces	)	
District Office;	)	
	)	
Defendants.	)	
	)	

**INTRODUCTION**

1. Plaintiffs Friends of the Floridas, New Mexico Wilderness Alliance, WildEarth Guardians, Gila Resources Information Project, and Amigos Bravos file this action for vacatur, and equitable, declaratory and injunctive relief under the Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706; the Federal Land Policy Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701 *et seq.*; the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et. seq.*; and their implementing regulations and policies. Plaintiffs challenge the actions of the United States Bureau of Land Management (BLM) in authorizing and approving the American Magnesium Foothill Dolomite Mine Project (mine or Project) located on federal public lands managed by BLM near Deming, New Mexico, in violation of these laws, policies, and regulations.

2. The Project is proposed by American Magnesium, LLC (AM). As approved by BLM, the Project would construct a new road across public land, conduct extensive exploration drilling, blast and excavate a large open pit, as well as develop additional infrastructure on public land. Project operations would last 20 years and include 92 truck trips per day, passing through residential areas and Deming on their way to a necessary, but still unreviewed, processing mill.

3. On August 7, 2020, the District Manager of BLM's Las Cruces District, Defendant William Childress, issued the Decision Record (DR) authorizing the Project. The DR was based on BLM's Environmental Assessment (EA) issued by the Las Cruces District in July of 2020. The DR also relied on BLM's "Finding of No Significant Impact" (FONSI) issued on July 31, 2020 by the Assistant District Manager of the Las Cruces District, Defendant David Wallace. Plaintiffs challenge these BLM actions and decisions.

4. The Project is adjacent to the Florida Mountains Wilderness Study Area (WSA), and the Florida Mountains Area of Critical Environmental Concern (ACEC).

5. BLM designated the Florida Mountains ACEC and WSA to protect the significant scenic values, wildlife resources, biological systems including sensitive plant communities, and unique natural features of these lands. WSAs like the Florida Mountain are areas of public land that the agency recognizes as suitable for inclusion in the National Wilderness Preservation System.

6. According to BLM: "The Florida Mountains WSA also contains special features such as ecological and scenic features. The WSA contains suitable habitat for a New Mexico State-listed species, night blooming cereus. The peaks and slopes of the Florida Mountains creates a high scenic quality within the WSA (BLM 1991). The higher elevations of the WSA contain steep, angular, red and gray rock outcroppings." EA at 64.

7. Although the directly disturbed lands at the Project site do not lie within the Florida Mountains ACEC and WSA, because of its close proximity to these protected lands, the Project will result in direct and adverse impacts to wildlife, scenic beauty, and recreation in and around the ACEC and WSA. This is in addition to the significant impacts to the local communities that will be affected by the constant truck traffic to and from the Project, as well as to the BLM-managed public lands at and around the Project site itself.

8. The Florida Mountains are known as a “sky island,” and contain a diversity of habitats not found in the desert below. Coniferous woodland, mountains scrub (or chaparral), grasslands, and desert shrub and cactus plant communities comprise much of the vegetation. Small pockets of riparian areas are found around the numerous springs in the area. Canyons in the range direct rainfall into the closed drainage basin of the Mimbres River.

9. In reviewing and approving the Project, BLM violated NEPA by failing to take the required “hard look” at: (1) the Project’s direct, indirect and cumulative impacts; (2) the baseline conditions of the areas that may be affected by the Project; (3) mitigation measures that would reduce Project impacts; and (4) reasonable alternatives to the Project.

10. BLM approved both extensive exploration drilling as well as the full-scale 20-year mine, yet admits that there is no plan or proposal to process the excavated minerals from the mine. BLM also admits that neither it nor the company know the extent of the purported ore body, or even if the mine would be a going concern. In essence, BLM approved a full-scale mine with nowhere to go.

11. Under NEPA, BLM is obligated to fully consider all of the “direct, indirect, and cumulative impacts” from the mine as well as all “reasonably foreseeable future actions.” BLM admits that the processing mill is necessary, indeed there could be no viable mine without the

mill, yet BLM's EA has no details about the mill, outside of a vague reference to a mill location on the north side of Deming.

12. Regarding BLM's decision to approve mining even before exploration has occurred, BLM mining regulations and policy mandate that BLM cannot approve full mining before the initial exploration. Pursuant to its duty to "prevent unnecessary or undue degradation" under FLPMA, 43 U.S.C. § 1732(b), BLM requires that all mineral operations follow the "performance standards" at 43 CFR § 3809.420. These standards include the requirement that BLM review and approve operations in the logical sequence of operations – where exploration is a prerequisite of actual mining, excavation, and processing.

13. Plaintiffs had specifically requested that BLM review the reasonable alternative that BLM only consider the exploration at this time. Yet BLM refused, violating NEPA's requirement that BLM fully consider all "reasonable alternatives."

14. For these and the related reasons addressed herein, Plaintiffs ask this Court to declare that BLM's actions violate the above-listed federal laws, regulations, and policies. Plaintiffs ask this Court to vacate and remand BLM's decisions and enjoin any road construction, exploration, mining, and other Project operations pending compliance with federal law.

#### **JURISDICTION AND VENUE**

15. This is a suit pursuant to the APA, FLPMA, NEPA, and the implementing regulations and policies of these laws. Jurisdiction over this action is conferred by 28 U.S.C. § 1331 (federal question), § 2201 (declaratory relief), and § 2202 (injunctive relief).

16. Venue is properly before the District of New Mexico pursuant to 28 U.S.C. §§ 1391 (b) and (e). The BLM Las Cruces District Office, and the named defendants are located in

New Mexico. The Project is located in Luna County, New Mexico. Plaintiffs' offices and members reside in New Mexico.

17. The requested relief would redress Plaintiffs' actual, concrete injuries caused by the BLM's failure to comply with duties mandated by NEPA and FLPMA and their implementing regulations and policies.

18. The challenged agency actions are final and subject to judicial review pursuant to 5 U.S.C. §§ 702, 704, & 706.

### **PARTIES**

19. Plaintiff FRIENDS OF THE FLORIDAS (Friends) is a nonprofit organization based in the Deming, New Mexico area whose mission is to protect the public lands in the Florida Mountains and nearby areas. Friends was formed to respond to the environmental threats posed by the Project. Members of Friends use, enjoy, and value the lands and resources affected by the Project, including the public lands and access roads at and around the Project. Friends members live in close proximity to the Project and use on a daily basis the roads that the Project will use. Members of Friends hike, view and photograph wild plant and animal life, and generally enjoy using the lands affected by the Project for recreational, historical, conservation, and aesthetic purposes. These uses will be immediately and irreparably affected by the direct and adverse impacts to Friends members resulting from the road construction, drilling, blasting, and other Project operations.

20. Plaintiff NEW MEXICO WILDERNESS ALLIANCE (NMWA) is a 501(c)(3) nonprofit organization based in Albuquerque, New Mexico, dedicated to the protection, restoration, and continued enjoyment of New Mexico's wildlands and wilderness areas, with thousands of members across the state. The Project at the base of the Florida Mountains will

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