



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

JAN 05 2012

Colonel R. Mark Toy
District Engineer, Los Angeles District
U.S. Army Corps of Engineers
Attn: Regulatory Branch (SPL-2004-01399-MB)
5205 E. Comanche Street
Tucson, Arizona 85707

Subject: Public Notice (PN) 2008-00816-MB for the proposed Rosemont Copper Mine Project, Rosemont Copper Company, Pima County, Arizona

Dear Colonel Toy:

We have reviewed the December 6, 2011 PN describing the proposed Rosemont Copper Mine Project (Rosemont) located 30 miles southeast of Tucson in Pima County, Arizona. According to the PN, the project would eliminate 38.6 acres of waters of the U.S. (waters) tributary to Davidson Canyon and Cienega creek, both designated as "Outstanding Waters" by the state of Arizona. In 2009, EPA worked closely with your staff regarding the ecosystem functions and services in this watershed, and we identified these waters as "aquatic resources of national importance." With the following comments, we reaffirm this resource designation and respectfully identify the Rosemont permit action as a candidate for review by EPA and Corps headquarters.ⁱ

EPA is concerned that substantial loss and/or degradation of water quality and other aquatic ecosystem functions is likely if this 4,200-acre mine is constructed and operated as proposed, in the upstream tributaries of these rare and protected aquatic resources. The proposed project site supports 101.6 acres of waters, including wetlands, in the Cienega Creek watershed, providing sediment transport and deposition downstream, energy dissipation, groundwater recharge, hydrologic and geochemical connectivity, and biological connectivity to the Santa Cruz River. Davidson Canyon Wash is a rare, spring-fed, low elevation desert stream supporting a variety of rare flora and fauna. Seven federally listed endangered or threatened species occur within or adjacent to the project area to which adverse impacts are reasonably foreseeable.ⁱⁱ

Corps regulations prohibit issuance of a 404 permit if it would jeopardize the continued existence of listed species, or result in violation of water quality or toxic effluent standard (40 CFR 230.10(b)). In addition, pursuant to Section 303 of the Clean Water Act (CWA) and regulations at 40 CFR 131.12, the state's "Outstanding Water" designation means both Davidson Canyon Wash and Cienega Creek must be afforded the highest level of protection, and that no degradation of water quality is allowable.

Only discharges meeting all of EPA's 404(b)(1) Guidelines – a series of independent tests at 40 CFR 230 including the analysis of practicable offsite and onsite alternatives – can be permitted by the Corps. The 404 program contributes to the CWA goals to restore and maintain the chemical, physical and biological integrity of the nation's waters by prohibiting discharges of dredged or fill material that would result in avoidable adverse impacts to the aquatic ecosystem (40 CFR 230.10(a)), or the

significant degradation of waters or human health and welfare (e.g., due to groundwater depletion and loss of cultural resources; 40 CFR 230.10(c)). Based on our review of the PN and the alternatives analysis submitted by the applicant, compliance with the 404(b)(1) Guidelines has not been demonstrated. There is presently insufficient information to conclude that the proposed project is the “Least Environmentally Damaging Practicable Alternative” (LEDPA), or meets any of the other restrictions on discharges, including the need to ensure appropriate compensatory mitigation for unavoidable impacts.

As additional information on this project becomes available, please ask your staff to contact Elizabeth Goldmann at (415) 972-3398 to continue our partnership in ensuring CWA compliance. If you would like to discuss this project personally, please call me at (415) 972-3572 or have your Regulatory Division Chief contact Jason Brush, Supervisor of our Wetlands Office, at (415) 972-3483.

Sincerely,

 5 Jan. 2012
Alexis Strauss
Director
Water Division

cc: Rosemont Copper Company
USFWS, Phoenix
USFWS, Tucson
M. Fulton, ADEQ
ADGF, Phoenix

ⁱ This letter follows field level procedures outlined in the 1992 Memorandum of Agreement between EPA and the Department of the Army, Part IV, paragraph 3(a) regarding section 404(q) of the CWA. EPA Region 9 believes the project as proposed “may result in substantial and unacceptable impacts to aquatic resources of national importance.”

ⁱⁱ This includes species known to occur in aquatic habitat or use these waters for forage or resting: Chiricahua leopard frog (*Lithobates chiricahuensis*), Mexican spotted owl (*Strix occidentalis lucida*), Southerwester willow flycatcher (*Empidonax traillii extimus*), Lesser long-nosed bat (*Leptonycteris yerbabuenae*), Ocelot (*Leopardus pardalis*), Gila chub (*Gila intermedia*), Gila topminnow (*Poeciliopsis occidentalis occidentalis*), and Jaguar (*Panthera onca*).