UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

NOV 30 2017

Mr. Edwin S. Townsley
Chief, Operations and Regulatory Division
South Pacific Division
U.S. Army Corps of Engineers
1455 Market Street
San Francisco, CA 94103-1398

Subject: EPA Analysis of Hudbay Minerals' *Final Habitat Mitigation and Monitoring Plan Permit NO. SPL-2008-00816-MB Rosemont Copper Project* (HMMP) dated September 12, 2017

Dear Mr. Townsley:

On September 14, 2017, the South Pacific Division (SPD) requested EPA's review and technical comments on the subject HMMP. EPA Region 9 provided our review via email on October 5, 2017, reiterating our ongoing commitment to assist SPD with the project or discuss our review. On October 18, 2017, SPD requested permission to share EPA's interagency deliberative analysis with the applicant so they might address comments or further modify the HMMP. Attached are the documents you requested in a form suitable for public release. As with prior EPA reviews, we continue to find the permitted activities of the proposed mine will significantly degrade Cienega Creek, Davidson Canyon, and their tributaries despite the actions proposed in the HMMP.

Please refer your technical team to Elizabeth Goldmann at (415) 972-3398 with any questions, or call me directly at (415) 972-3409.

Sincerely,

Nancy Woo
Associate Director
Water Division

Attachments: EPA Analysis of the Rosemont Mine HMMP dated November 30, 2017
EPA Impact Analysis of the Rosemont Mine dated November 30, 2017
EPA Groundwater Impact Analysis of the Rosemont Mine dated November 30, 2017

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**EPA Analysis of the *Final Habitat Mitigation and Monitoring Plan***
***Permit NO. SPL-2008-00816-MB Rosemont Copper Project dated September 12, 2017***

***EPA Comments October 5, 2017 (Revised November 30, 2017)***

**The Mitigation Proposed by Rosemont Mine Will Not Offset Impacts to Waters of the U.S. Below the Level of Significant Degradation.**

EPA has reviewed the *Final Habitat Mitigation and Monitoring Plan Permit NO. SPL-2008-00816-MB Rosemont Copper Project dated September 12, 2017* (HMMP*).* The mitigation proposed in the final HMMP includes two components: the Sonoita Creek Ranch (SCR) project and the onsite stock tank removal. Rosemont Copper Company (Rosemont) submitted the mitigation package to compensate for impacts to waters of the United States by the proposed Rosemont Copper Mine (Rosemont Mine)
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Our review of the HMMP affirms our position that the mitigation does not comply with EPA's 404(b)(1) Guidelines and the requirements of the Mitigation Rule.[1] The HMMP proposed by Rosemont fails to offset the proposed mine's impacts to aquatic resources in the Cienega Creek watershed.

**Sonoita Creek Ranch and RX Ranch**
**Defining Compensatory Mitigation: Application of the wrong mitigation terminology.**

A significant and pervasive problem is the HMMP's misapplication of mitigation terminology. Mitigation credit is miscalculated by Rosemont in the Mitigation Ratio Checklist (MRC) and this erroneously inflates the credit value of the proposed mitigation. This error, coupled with the HMMP mischaracterization of the functions at the mine impact site, skews the MRC credit outcome.

For example, Rosemont proposes *reestablishment* of Sonoita Creek, but the activities described in the HMMP are *rehabilitation*. The definitions described in the Mitigation Rule are subtle, but translate into significant differences in compensatory outcome when applied to the MRC. Reestablishment is the manipulation of a site with the goal of returning natural historic functions to a **former** (emphasis added) aquatic resource. This results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and function.[2] Rehabilitation is the manipulation of the characteristics of the site with the goal of repairing natural historic functions to a degraded aquatic resource as a result of anthropogenic disturbances and natural processes.[3] With regard to SCR, Sonoita Creek still exists and provides important functions at the proposed mitigation site and therefore the creek would not be reestablished, but rehabilitated. And, while the HMMP describes a site design to increase the on-site acreage of Sonoita Creek, it fails to mimic important aspects of onsite reference reaches, or the reference site at Walnut Gulch

[1] Federal Register (33 CFR Parts 325 and 332 and 40 CFR Part 230). *Compensatory Mitigation for Losses of Aquatic Resources: Final Rule* dated April 10, 2008.
[2] Mitigation Rule. 33 CFR 332.2
[3] Ibid.

Experimental Watershed (WGEW). The HMMP proposes a site designed to increase the number of mitigation credits. This is contrary to the intent of restoration as described in the Mitigation Rule. As presented in the HMMP, the design is not sustainable.[4]

The HMMP misuses other mitigation terms such as *enhancemen*t to maximize credit generation on the SCR site. Enhancement means the manipulation of the characteristics of an aquatic resource to improve a specific aquatic resource function.[5] For example, the HMMP proposes *enhancement* credit of ephemeral washes and their buffers following the construction of a wildlife exclusion fence, stating the wildlife exclusion fence will enhance wildlife connectivity and wildlife habitat.[6] Yet, the HMMP states, *Sonoita Creek Ranch has not been intensively grazed so a substantial response in vegetation resulting from the excluding of grazing is not anticipated.*[7] In fact, it is likely the existing ephemeral washes and ephemeral wash buffers may already meet or exceed the performance standards proposed in the HMMP. Rosemont cannot demonstrate they can provide any measurable improvement and therefore, the 14.4 *enhancement* mitigation credits proposed in the HMMP are unacceptable.[8,9]

**Sonoita Creek Ranch is Not in the Same Watershed as the Mine Impacts and Consequently Does Not Offset the Pervasive Damage to Aquatic Resources in the Cienega Creek Watershed.**

SCR lies outside the watershed where the Rosemont Mine project will be constructed and therefore, mitigation proposed at SCR/RX Ranch will not offset any direct or secondary impacts to aquatic resources within the Cienega Creek watershed.[10] This is a serious deficiency in the conceptual design of the mitigation plan. By any measure, the Cienega Creek watershed supports one of the most exceptional and unimpaired aquatic ecosystems remaining in the American Southwest; as a result of the project this watershed will experience significant, permanent unmitigated impacts to its aquatic environment. The mine will irreparably undo decades of public efforts to protect drinking water supplies, biological resources and sensitive aquatic ecosystems within the Cienega Creek watershed. A crucial factor in our determination that the mine will result in significant degradation of the aquatic ecosystem is the lack of meaningful mitigation being proposed within the Cienega Creek watershed.

[4] Mitigation Rule, 33 CFR Parts 325 and 332
[5] Mitigation Rule, 33 CFR 332.2
[6] HMMP, p. 43
[7] HMMP, p. 54
[8] HMMP, Table 3
[9] Other examples include the "enhancement" of the ponds and the request for "rehabilitation" credit of uplands, which the Mitigation Rule excludes as a form of restoration. Preamble p. 19624-19625.
[10] Although Sonoita and Cienega creeks flow to the Santa Cruz River they lie within separate sub-watersheds and combined flow 100's of river miles within separate sub-watersheds prior to reaching a common confluence at the Santa Cruz River in Tucson. Furthermore, the Mitigation Rule states: *The size of the watershed addressed using a watershed approach should not be larger than is appropriate to ensure that the aquatic resources provided through compensation activities will effectively compensate for adverse environmental impacts resulting from activities authorized by DA permits.* 30 CFR 332.3 (c)(4)

**The Assessment and Comparison of Functions of Waters Between the SCR Mitigation Site and the Rosemont Mine Impact Site are Speculative, Inaccurate and Scientifically Flawed.**

The most serious underlying flaw with the HMMP's assessment of functions for the determination of mitigation credits is that it contains no quantitative functional assessment of waters at SCR, or the Rosemont Mine impact site. This fact alone limits the usefulness of this mostly speculative discussion in determining appropriate mitigation crediting.

A recurring flaw in the current and previous versions of the Rosemont HMMP is the use of direct qualitative functional comparisons of Sonoita Creek with streams at the mine impact site. From a hydrogeomorphic perspective, Sonoita Creek and streams at the mine impact site are incommensurable, and therefore should not be judged by the same standard. It is widely understood within the scientific community that comparisons of aquatic functions are meaningful only when comparing waters within the same hydrogeomorphic class or sub-class.[11] As is done in this HMMP, comparison of the functions of waters within different hydrogeomorphic sub-classes results in the false perception that one stream is functionally better than another. Below, we provide a simple analogy to illustrate this critical concept and the flawed logic when the HMMP compares the functions of Sonoita Creek at SCR with those of the streams at the Rosemont Mine site:

- Linnea and Joan both throw the shot put. Linnea can consistently throw a 10-pound shot put a greater distance than Joan can throw a 16-pound shot put. Linnea is better at throwing the shot put than Joan.

Obviously, this is not a valid comparison. While both girls throw the shot put, the shot put weights are different. Therefore, one cannot make a meaningful comparison and conclusion about who is better at throwing the shot put. Similarly, while streams at SCR and the mine site are riverine features, they are in entirely different hydrogeomorphic subclasses. Any direct comparison of the level of functions they perform is not ecologically meaningful, especially when using the comparison of functions to determine mitigation crediting. If anything, the fact that Sonoita Creek at SCR and streams at the mine site are in different hydrogeomorphic sub-classes highlights that the proposed mitigation for waters at SCR is different (*i.e.*, out-of-kind) from waters at the mine impact site.

We offer the following additional comments on the HMMP, *Section 7, Determination of Credits*.

1. The HMMP states: *The reestablished riparian floodplain system, including ephemeral channels and associated riparian habitat, have been designed to replicate, to the extent practicable, the form and function (gradient, sinuosity, composition, etc.) of the previous system that existed within the Sonoita Creek floodplain prior to the channelization of Sonoita Creek into its current configuration.*[12] Existing evidence supports the conclusion that Sonoita Creek was a single thread channel that was much less sinuous than the

[11] It is curious why the HMMP explicitly adopts functions derived from the Hydrogeomorphic (HGM) Approach, but fails to follow the HGM approach by then comparing the functions between different hydrogeomorphic sub-classes of waters. HMMP, Section 7.1.1, Background, p. 36.
[12] HMMP, Section 7.1.2.1, Reestablishment of Sonoita Creek Floodplain and Channel, p. 40.

proposed reestablished channel design.[13]

2. Page 41 of the HMMP provides comparisons of various physical features (*e.g.*, floodplain width, depth of alluvium, watershed size) of Sonoita Creek and streams at the mine site. These comparisons support the above contention that waters at the two sites differ significantly and are in different hydrogeomorphic subclasses.
3. The HMMP states: *As described elsewhere in this HMMP, the channelized reaches of Sonoita Creek are currently performing most functions poorly…*[14] There is no quantitative functional assessment of the current functions of Sonoita Creek upon which to base this speculative statement.
4. The HMMP states: *The 2008 Mitigation Rule allows for mitigation credit for non-aquatic riparian buffer habitat where necessary to ensure the long-term viability of aquatic resources (33 C.F.R. § 332.3(i)), and that is certainly the case for the reestablished riparian habitat within the Sonoita Creek floodplain. It is important to note that this mitigation component goes well beyond the simple "preservation" of buffer habitat.*[15] The Mitigation Rule states that *Non-aquatic resources* [including riparian areas, buffers, and uplands] *can only be used as compensatory mitigation for impacts to aquatic resources authorized by DA permits when those resources are* ***essential*** *to maintaining the ecological viability of adjoining aquatic resources.*[16] [emphasis added] The Mitigation Rule further defines buffer as *…an upland, wetland, and/or riparian area that protects and/or enhances aquatic resource functions associated with wetlands, rivers, streams…from* ***disturbances associated with adjacent land uses****.*[17] [emphasis added] The proposed reestablished Sonoita Creek channel will lie in the center of a large preserved parcel that is not threatened by adjacent land uses. As such, buffer functions will be provided by *simple preservation* of the floodplain. Awarding additional mitigation credits for buffer habitat functions that are already being met through preservation is not consistent with either the definition of buffer, or the meaning of *essential* within the context of the Mitigation Rule.
5. The HMMP states: *Rehabilitation of the Sonoita Creek channel will result in a more stable channel, thereby reducing bank erosion and excessive sediment transport while promoting groundwater infiltration and wildlife habitat development.*[18] There has been no analysis supporting the contention that Sonoita Creek suffers from excessive bank erosion or sediment transport (refer to discussion that follows below on bank erosion, and sediment transport and deposition in Sonoita Creek). The existing Sonoita Creek is a losing stream and already promotes groundwater infiltration.
6. The HMMP states: *Enhancement of all onsite ephemeral washes and riparian buffer (including the existing Sonoita Creek channel, Corral Canyon, and the other tributaries on the east side of the property) will be accomplished by the construction of wildlife-*

[13] Refer to Figure 3 and discussion in Kondolf and Ashby, Final Technical Memorandum to EPA, Conceptual Design for Sonoita Creek, AZ, Technical Review Support (Order Number EP-G149-00241), July 27, 2015. The Figure 3 aerial photograph depicts the Patagonia and Sonoita Creek area in a 1935, Fairchild Aerial Surveys, Inc. flight number C-3250, housed at U.S. Department of Agriculture's Natural Resource Conservation Service, Tucson, AZ.

[14] HMMP, Section 7.1.2.1, Reestablishment of Sonoita Creek Floodplain and Channel, p. 41

[15] Ibid, p. 42

[16] 33 CFR 332.8(o)(7)

[17] 33 CFR 332.2

[18] HMMP, Section 7.1.2.2 Rehabilitation of Sonoita Creek, p. 42

*friendly fence and exclusion of livestock grazing. The functions to be enhanced within the potential WOTUS at Sonoita Creek Ranch as a result of the exclusion of grazing are wildlife connectivity (through the construction of wildlife-friendly fencing) and wildlife habitat (through the anticipated modest increase in forage production).*[19] As discussed in more detail, below, there is no quantitative functional/condition assessment of the ephemeral waters proposed for fencing, nor for the functions allegedly enhanced.

7. The HMMP states: *As noted in the preamble to the 2008 Mitigation Rule, "[t]he term 'in-kind' in § 332.2 [§ 230.92] is defined to include similarity in structural and functional type; therefore, the focus of the in-kind preference is on classes of aquatic resources (e.g., forested wetlands, perennial streams)." (73 FR 19601). As such, any mitigation that includes ephemeral washes (the class of aquatic resource impacted at the Project Site) would be considered in-kind by the Rule.*[20] This interpretation of the definition of *in-kind* in the Mitigation Rule is not correct and is not scientifically valid. It is indisputable that the structural and functional types of aquatic resources at the mine site are different from Sonoita Creek. To state otherwise demonstrates a complete lack of understanding of the structure and function of these waters at both sites. By the same logic presented in the HMMP, a farm pond would be comparable to Lake Tahoe because they are both lacustrine classes.
8. The HMMP states: *Rare or regionally-significant habitat types in southern Arizona would include perennial water features, such as the ponds at Sonoita Creek Ranch and the perennial systems at the LSPRWA ILF Project. The aquatic resources to be impacted at the Rosemont Project are almost exclusively ephemeral washes.* ***These washes do not represent rare or regionally significant habitat types as ephemeral washes are common in southern Arizona****.*[21] [emphasis added] This statement and similar statements in the HMMP demonstrates a lack of understanding of the critical importance of the watershed at the mine site to the maintenance of perennial flows, riparian wetlands and drinking water supplies within the Cienega Creek watershed. It is undisputed that the washes at the mine site provide surface flow and recharge functions that support miles of perennial stream and many acres of riparian wetland critical to endangered fish and wildlife downstream from the project site within the Cienega Creek watershed.
9. The HMMP states: *The enhanced ephemeral washes and associated buffer habitat are comparable to the smaller washes associated with the Rosemont impact site, and therefore represent in-kind mitigation.*[22] As discussed in detail above, the proposed mitigation at SCR is almost exclusively out-of-kind.

**The HMMP Fails to Adequately Assess or Mitigate for Impacts to Existing Functioning Waters, Floodplain and Buffers at SCR/RX Ranch, or at the Mine Site.**

Implementation of the HMMP at SCR/RX Ranch will result in significant adverse impacts to the existing functioning waters and other valuable habitats that have not been adequately assessed or mitigated.

[19] HMMP, Section 7.1.2.4 Enhancement of Ephemeral Channels and Riparian Buffer, p. 43
[20] HMMP, Section 7.4 Type Conversion, p. 44
[21] Ibid.
[22] HMMP, Section 7.4.2 Sonoita Creek Ranch, p. 45

The HMMP characterizes several high functioning habitats at SCR that will be directly and secondarily impacted by implementation of the mitigation plan:
*Riparian vegetation adjacent to existing ephemeral drainages occurs on the ranch along Sonoita Creek, Corral Canyon, and their major tributaries. Oak (Quercus sp.), Arizona sycamore, velvet ash, Goodding's willow, Arizona walnut (Juglans major), and desert willow (Chilopsis linearis) were commonly observed during field assessments, though mesquite was dominant, particularly in the northern part of the ranch.*

*Large meadows of big sacaton grass (Sporobolus wrightii) are present in the Sonoita Creek floodplain south of the agriculture fields and in the broad, flat areas where drainages flowing off the Canelo Hills discharge into the Sonoita Creek floodplain. These large sacaton bottoms contain interspersed velvet mesquite, desert willow, velvet ash, and Arizona walnut. Again, mesquites become more prominent as one moves north.*

*The approximately 115 acres of agricultural fields exhibit varying densities and degrees of maturity of mesquites, likely indicators of time lapse since the fields were last cultivated. The most recently-cultivated fields are characterized by tall, dried stalks of Johnson grass (Sorghum halepense) with almost no mesquite saplings. The next older fields have no grass stalks and numerous small, multi-stemmed mesquite saplings, which indicate simultaneous establishment, likely within a year or two of the last cultivation of the field. Progressively larger mesquites indicate fields with longer periods without cultivation, culminating in a relatively old field at the north end of the property, in which there is a diversity of mesquite sizes; the largest mesquites are approximately 20-feet tall and up to 12 inches in diameter.*[23]

The HMMP calls for filling 8.9 acres of Sonoita Creek waters at SCR/RX Ranch, including about 28 acres of existing riparian buffer habitat.[24] In addition, 12.1 acres of existing riparian/floodplain buffer habitat will be impacted by the proposed rehabilitation of channel and buffer habitat on SCR.[25] Construction of eight soil repositories on SCR/RX Ranch will impact 116 acres of existing riparian, mesquite floodplain, and sacaton grassland habitat. Thus, a total of at least 153 acres of existing channel, riparian and floodplain habitat will be impacted by implementation of the HMMP at SCR/RX Ranch. These impacts have not been adequately assessed and there is no mitigation proposed for several of the impacted habitats. In addition, impacts to buffer and other upland habitats at the mine site have not been mitigated.[26] It is inequitable and therefore inappropriate to accept mitigation credit for rehabilitated and enhanced channel, buffer and floodplain at SCR/RX Ranch for impacts to waters of the United States (WOTUS) at the mine site without first applying those credits to offset impacts at SCR/RX Ranch and the mine site. Such an approach encourages the disproportionate use of relatively abundant upland habitat to offset impacts to scarce WOTUS. This strategy is employed when

[23] HMMP, Section 5.2, Existing Vegetation, pp. 24-25
[24] Estimate of existing buffer habitat (assumed 50' width except for east bank) to be impacted by implementation of SCR/RX Ranch channel filling: SCR reach, east bank (13.26 ac) + west bank (9.14 ac) = 22.4 ac. RX Ranch (total = 5.51 ac). Total buffer impacted for SCR/RX Ranch = 27.91 ac.
[25] HMMP, Summary of Mitigation Credits Provided by All Mitigation Elements, p. ES-5
[26] The proposed mine will result in the permanent loss, alteration or degradation of 5,431 acres of vegetation, including direct impacts to 585 acres of riparian, 2,557 acres of grassland and 2,690 acres of Madrean evergreen scrub (FEIS, Table 2, p. 666). In addition, about 436 acres (18 linear miles of stream channel x 2 sides x 50-foot buffer width) of existing buffer habitat will be destroyed by mine construction.

determining mitigation credits to offset 21.2 acres of fill into the Rosemont Mine headwater streams; the majority of proposed mitigation credits being sought are from enhancement, rehabilitation and reestablishment of upland buffers and floodplain. This is disturbing because the impacted headwater streams at mine site perform several critical ecosystem functions that will not be offset by this proposed mitigation.

**The Use of Reference Reaches as a Design Guide for SCR/RX Channel Reestablishment.**

The channel reach from Flume 6 to Flume 2 at the Walnut Gulch Experimental Watershed (WGEW) and Reaches 6 and 8 at SCR are used as reference reaches to guide the channel design cross-sectional shape for the reestablishment of Sonoita Creek at SCR and RX Ranch.[27] The HMMP identifies Site 6 on Sonoita Creek as a reference design reach primarily because it has not been historically straightened and presumably exhibits relatively undisturbed hydrologic, geomorphic and ecological attributes and functions.[28] Comparison of 1935[29] and recent Google Earth aerial photography of SCR and RX Ranch indicates that Sonoita Creek beginning near and including Site 6 and continuing upstream to beyond the proposed reestablishment channel at RX Ranch has not been straightened and has remained stable for at least 82 years. This means that the entire reach along Sonoita Creek from Site 6 upstream could be used as reference, including for calculations of channel sinuosity for the proposed reestablished channel.

Attachment 2 of the HMMP states that typical values of sinuosity observed in the least altered reaches of Sonoita Creek ranged from 1.1 to 1.4.[30] Our analysis indicates that this range in sinuosity is significantly overestimated. Our initial calculations observed that the sinuosity of existing Sonoita Creek ranges from 1.05 to 1.26 (mean sinuosity = 1.13) based on the following individual reaches: 1) RX Ranch = 1.05; 2) Sonoita Creek adjacent to the proposed reestablished reach = 1.08; 3) Reference Reach 6 upstream to Adobe Canyon confluence = 1.09; 4) confluence of Casa Blanca Wash downstream to the end of Reference Reach 8 at the road crossing = 1.17; and 5) Reference Reach 6.5 to the end of Reach 8 = 1.26. Attachment 2 goes on to erroneously claim that the proposed restored channels at SCR and RX Ranch will have a maximum design sinuosity of 1.2.[31] We calculated the sinuosity of the proposed reconstructed channels at RX Ranch and SCR at 1.10 and 1.61, respectively. This means that the design sinuosity for SCR is 22 to 35 percent greater that the sinuosity of existing reference reaches at SCR and RX Ranch. In fact, the design sinuosity for SCR (1.61) is 33 percent greater than at the reference reaches at Walnut Gulch Experimental Station, Flume 6 to Flume 2 (1.07). A visual side-by-side

[27] According to Pima County, the WGEW is an inappropriate reference for Sonoita Creek Channel Design. Letter from C.H. Huckelberry, Pima County Administrator, to R. Sherill, ADEQ, RE: 2017 Addendum to Water Quality Permit, Rosemont Copper Project, ACOE Application No. SPL-2008-00816-MB, dated November 17, 2017.
[28]Attachment 2, Final Design of the Sonoita Creek Mitigation Project (September 8, 2017), prepared by Water and Earth Technologies, Section 5.1, Reference Reaches Surveyed at Sonoita Creek Ranch, p. 26.
[29] Refer to Figure 3 in Kondolf and Ashby, Final Technical Memorandum to EPA, Conceptual Design for Sonoita Creek, AZ, Technical Review Support (Order Number EP-G149-00241), July 27, 2015. The Figure 3 aerial photograph depicts the Patagonia and Sonoita Creek area in a 1935, Fairchild Aerial Surveys, Inc. flight number C-3250, housed at U.S. Department of Agriculture's Natural Resource Conservation Service, Tucson, AZ.
[30]Attachment 2, Final Design of the Sonoita Creek Mitigation Project (September 8, 2017), prepared by Water and Earth Technologies (WET), Section 5.1, Reference Reaches Surveyed at Sonoita Creek Ranch, p. 25.
[31] Ibid.

comparison of the proposed channel design figures and drawings with existing reference reaches underscores these discrepancies.

Calculating accurate sinuosity along reference reaches is important for two reasons. First, the jurisdictional area of channel below the 5-year flow (Ordinary High Water Mark - OHWM) is a function of channel width and length; therefore, the greater the sinuosity the greater the stream length and area below the OHWM. A reconstructed SCR channel design that mimicked the average sinuosity of reference reaches at SCR and WGEW (*i.e.,* 1.13) would result at least 30 percent less area below the 5-year flow or OHWM. This would mean that a maximum of 40.3 acres of *reestablished* channel would be available at SCR/RX (57.4 ac – 17.1 ac = 40.3 ac). A second important reason is that if the channel design is too sinuous for the geomorphic setting, then there is a greater likelihood that channel will adjust and significantly straighten after the first high flow. Why should *reestablishment* credit be given in an amount in-excess of what can be sustained under natural flow conditions? Clearly, the attempt here is to design a channel with a sinuosity that will maximize *reestablishment* credit in-excess of what is appropriate given the geomorphic setting.

As mentioned, the channel reach from Flume 6 to Flume 2 at the WGEW is used as a reference reach to guide the channel design cross-sectional shape for the reestablishment of Sonoita Creek at SCR and RX Ranch. Attachment 2 notes the similarities between WGEW from Flume 6 to Flume 2 and Sonoita Creek (*e.g.*, watershed area, channel gradient, channel substrate).[32] WET further states *Walnut Gulch has numerous reaches exhibiting broad, shallow channel forms with significant channel braiding near to, and downstream of, Flume 6.* p. 13. WET cites *Exhibit 1, Walnut Gulch and Sonoita Creek Comparison* to make its case for why Sonoita Creek can expect to exhibit a braided channel pattern similar to Walnut Gulch. The problem is that WET Exhibit 1 depicts a reach of Walnut Gulch from Flume 7 to downstream of Flume 1 which is not within the same reference reach and, in fact, is not comparable to Sonoita Creek in terms of critical geomorphic variables that would affect sinuosity and channel braiding. For example, the contributing watershed area, number of tributary connections/inputs, and channel dimensions (average channel width is 100-200 feet) from Flume 7 to Flume 1 are significantly greater than the Flume 6 to Flume 2 reference reach (40-50 feet). Why doesn't WET use the reference reach from Flume 6 to Flume 2, as they do for channel design metrics, for a comparison of channel form and braiding patterns? One answer is that the Flume 6 to Flume 2 reach doesn't exhibit braiding patterns and, in fact, demonstrates that Sonoita Creek will likely not exhibit and any significant braiding.

As discussed above, Attachment 2 of the HMMP[33] states that the cross-sectional geometry of the restored (reestablished) channel designs for the RX Channel and SCR Channel emulate the Sonoita Creek reference reach cross sections identified and surveyed during the field investigation. Specifically, Site 6 is chosen as a reference reach because it is 2,000 feet upstream from the historically straightened reach of Sonoita Creek. The report states: *The two (2) reference reach sites in Sonoita Creek are characterized by self-formed geometry, relatively large channel widths, **frequent floodplain access by flows** [emphasis added], and relative*

[32] Ibid.

[33]Attachment 2, Final Design of the Sonoita Creek Mitigation Project (September 8, 2017), prepared by Water and Earth Technologies, Section 5.1, Reference Reaches Surveyed at Sonoita Creek Ranch, p. 26.

*channel equilibrium. Channel braiding and perched overbank channels were also observed at both of these sites. These two sites possessed the highest ecological function of all the reference sites and were used to develop the final restored channel designs. The RX Channel and SCR Channel cross-sectional shape is based on reference reaches at Site 6 and Site 8…Channel bottom widths in the reference reaches range from approximately 40 feet up to 70 feet with an average bottom width slightly greater than 50 feet. Typically, at least one, and usually both sides of the existing channel have horizontal bench and floodplain features that lie 1 to 3 feet above the active channel bottom. The combined right and left bench widths range from approximately 28 feet up to 175 feet.*[34]

A review of Google Earth aerial photography shows that there is infrequent floodplain access by flows within this reference reach, especially on the adjacent horizontal bench and floodplain features. A photograph dated June 1996 depicts a scoured channel main and floodplain channel, with the formation of a mid-channel bar. By September 2003, this main channel sandbar and the adjacent floodplain channel were vegetated. The floodplain channel apparent in the 1996 aerial photograph is clearly cut off from the main channel. There is no compelling photographic evidence from 2003-2017 (and perhaps since about 1996) that the floodplain benches (even the main channel sandbar) have received frequent floodplain access by flows. This site-specific physical evidence calls into question whether flow analysis assumptions and results are valid; suggesting that the modeled frequency of overbank flooding is significantly overestimated.

**The Proposed Meander Belt Geometry for the SCR Channel Does Not Mimic the Reference Reaches.**

The proposed meander belt geometry for the SCR/RX Ranch channels do not mimic the reference reaches at SCR or WGEW. In addition, the regular meander path design for the SCR/RX Ranch channels do not resemble a complex, deformed pattern found in natural settings. For these reasons, the proposed reconstructed channels are not sustainable. While the HMMP generally recognizes that channel dimensions and geometry will change over time, it is likely that such changes will occur almost immediately after the first large discharge. This raises the question of why the amount mitigation credit for the reconstruction of WOTUS (as measured by areas below the modeled 5-year return flow) should be based on a channel design that is not sustainable.

**There is No Compelling Ecological Justification to Reestablish Sonoita Creek at the RX Ranch Property, or at SCR.**

As discussed above, the HMMP identifies Site 6 on Sonoita Creek as a reference design reach primarily because it has not been historically straightened and presumably exhibits relatively undisturbed hydrologic, geomorphic and ecological attributes and functions.[35] Comparison of 1935[36] and recent Google Earth aerial photography of SCR and RX Ranch indicates that Sonoita

[34] Ibid.
[35] Attachment 2, Final Design of the Sonoita Creek Mitigation Project (September 8, 2017), prepared by Water and Earth Technologies, Section 5.1, Reference Reaches Surveyed at Sonoita Creek Ranch, p. 26.
[36] Refer to Figure 3 in Kondolf and Ashby, Final Technical Memorandum to EPA, Conceptual Design for Sonoita Creek, AZ, Technical Review Support (Order Number EP-G149-00241), July 27, 2015. The Figure 3 aerial

Creek beginning near Site 6 and continuing upstream to beyond the proposed reestablishment channel at RX Ranch has not been straightened and has remained stable for at least 82 years. This means that the entire reach from Site 6 upstream could be used as a reference reach.

In addition, cross sections of the existing Sonoita Creek at RX Ranch indicate that much of the immediately adjacent floodplain lies at elevations ranging from 2-5 feet above the existing naturally functioning low flow channel.[37] Site visits and review of aerial photography indicates that the existing Sonoita Creek channel and adjacent floodplain at RX Ranch provides undisturbed buffer and corridor functions (except for a small area of instream gravel extraction and staging operations) connecting on the east to existing high quality publicly owned grassland and woodland habitat through several ephemeral jurisdictional drainages. Much of the abandoned agricultural field to the west of Sonoita Creek (the location of the proposed RX reestablishment channel) is passively re-vegetating, and can be expected to naturally recover to mesquite bosque.

As a reference or near-reference channel with an existing intact, functioning floodplain there is no justifiable ecological reason to fill and reconstruct Sonoita Creek at RX Ranch. There is no demonstrable environmental benefit to moving the existing channel several hundred feet to the center of the floodplain. Many alluvial channels in the arid American west are high functioning in settings where the channel lies at the edge of the floodplain.

As a stand-alone project, the Clean Water Act (CWA) mitigation requirements to offset the proposed filling of Sonoita Creek at RX Ranch would greatly exceed the amount of proposed *reestablishment* there. That means the proposed reconstructed channel isn't fully self-mitigating. It is reasonable to assume that because of temporal habitat losses alone a mitigation ratio much greater than 1:1 replacement-to-loss would be reasonable for filling the existing RX Ranch Sonoita Creek channel. This does not even factor in impacts to existing buffer (existing average 50' channel width x 2,400' channel length x 2 = 5.51 acres of existing buffer impacted) and wildlife corridors, among other functional impacts not addressed in the mitigation plan. Only mitigation credit for the preservation of existing aquatic and floodplain resources is justified at RX Ranch.

Finally, we have concerns regarding the proposed design of the reconstructed RX Ranch channel. A simple comparison of the sinuosity (channel length/valley length) of the reconstructed Sonoita Creek channel (1.15) with the existing Sonoita Creek (1.01) or the reference channel along Walnut Gulch, Flume 6 to Flume 2 (1.07), indicates that the design sinuosity is not within reference, and this channel form is not likely to persist after a high flow. This difference in sinuosity is very apparent in a cursory side-by-side visual comparison of the proposed reconstructed channel sinuosity with the reference reach at Walnut Gulch, or the existing reference reaches along Sonoita Creek.[38] Therefore, we suspect the existing mitigation channel design sinuosity is no more than an effort to maximize mitigation credits for reconstruction and is not justified. As we have stated to the Corps in our review of a previous

photograph depicts the Patagonia and Sonoita Creek area in a 1935, Fairchild Aerial Surveys, Inc. flight number C-3250, housed at U.S. Department of Agriculture's Natural Resource Conservation Service, Tucson, AZ.

[37] Pg. 584, WET drawing no. 5, RX Existing Sonoita Backfill Detail Sheet.

[38] Ibid.

iteration of the SCR mitigation plan[39] there is no geomorphic justification to expect that the constructed channel junction at Adobe Canyon and Sonoita Creek will remain unchanged. It is difficult to maintain constructed features similar to that proposed in unstable alluvial environments. The proposed takeoff point for the constructed channel at RX Ranch was observed to be very dynamic, and receives high sediment loads from the input of Adobe Canyon. A takeoff point into the proposed constructed channel in this area would be subject to the constant influx of sediment and changing channel geometry due to the highly dynamic alluvial stream behavior. It was additionally observed that for the proposed constructed channel at RX Ranch to accommodate the property ownership available to the project and avoid impacting bordering private parcels, the tie back of the proposed reconstructed channel into Sonoita Creek must occur before the end of Lot 1. This would require a specific angle of connection in order to accommodate those specific property constraints, which would be challenging given the dynamic nature of Sonoita Creek in the proximity of the Adobe Canyon confluence. The existing Sonoita Creek at its confluence with Adobe Canyon is able to adjust to those constraints and remain relatively stable below the confluence.

For many of the reasons discussed above, there is also no compelling reason to reestablish the existing channel on SCR to the center of the floodplain. As noted, many alluvial streams flow at the edges of their floodplains. The existing Sonoita Creek channel could be rehabilitated or enhanced by leaving it in its current alignment and excavating portions of the adjoining floodplain along its eastern bank. Such an approach would require far less excavation of floodplain material (and its associated impacts) and eliminate the need to construct a new channel. This less intrusive, but effective approach to rehabilitation would mean that mitigation credit for channel reestablishment would be far less than under the current proposal.

**Bank and Buffer Rehabilitation along Lower Sonoita Creek is Unnecessary and Will Provide No Permanent Ecological Benefit to the Existing Stream and Floodplain.**

The HMMP proposes 12.1 acres of channel rehabilitation along lower Sonoita Creek beginning at the Sonoita Creek – SCR Channel confluence and continuing downstream for approximately 2,511 feet. Rehabilitation involves excavating a 100-foot wide terrace into the existing left bank that gradually transitions to 25 feet in width further downstream. The terrace will be cut into the existing natural bank approximately 2 vertical feet above the existing channel bottom and will daylight to the existing ground at a 10:1 slope.[40] The HCCP states: *The purpose of the bank widening is to reduce specific stream energy and the resulting* ***high level of ongoing bank erosion****, and to* ***create a riparian zone which is currently non-existent in this reach****.* [emphasis added] *This reach of Sonoita Creek is currently extremely confined with vertical or near vertical banks 6 to 9-feet high that are actively sloughing and eroding. As proposed in the new design, the greater width, lower bank height, and flatter bank slopes will reduce flow velocity and associated bank erosion.*[41] The HMMP depicts this proposed mitigation as *Rehabilitated*

[39] Kondolf and Ashby. Final Technical Memorandum to EPA, Conceptual Design for Sonoita Creek, AZ, Technical Review Support (Order Number EP-G149-00241), July 27, 2015.
[40] Attachment 2, Sonoita Creek Bank Modification Detail, Drawing WET 16, and Final HMMP, Section 6.1.2 Rehabilitation of Sonoita Creek, p. 30.
[41] Ibid.

*Sonoita Creek (5-Year Inundation)* and is also seeking an additional 50 feet of *Rehabilitated Sonoita Creek Buffer* credit for the area immediately adjacent to the excavated terrace.[42] These ill-conceived measures would damage existing high quality sacaton grassland and woodland riparian/floodplain habitat and likely will fail to achieve their stated geomorphic and stream habitat restoration goals. The mitigation proposal involves significant excavation and re-contouring of what is described as an *actively sloughing and eroding* Sonoita Creek bank and floodplain. It is common knowledge that all fluvial systems continually erode, transport and deposit sediment in response to a host of controlling geophysical variables. Bank erosion and channel movement within the setting of a broad, undeveloped alluvial floodplain, as in the case of Sonoita Creek, does not call for large-scale channel remediation. The HMMP does not identify the causes that contribute to the ongoing bank erosion or why these fluvial processes would be expected to cease following implementation of their mitigation measures. Because the HMMP does not identify the underlying causes of bank erosion, there is great risk that these proposed measures would fail to provide any meaningful, long-term ecological benefits to Sonoita Creek greater than what natural processes will eventually achieve.

As discussed in our review of WET's August, 2014 version of channel designs for SCR, there is no ecological benefit to controlling bank erosion at Sonoita Creek: *The plan asserts there will be benefits to controlling bank erosion along Sonoita Creek and presents an example of a high vertical cohesive bank, which is actively eroding. Such high, eroding banks occur naturally when a stream channel impinges into valley side slopes. There is nothing inherently wrong with such banks, and in fact such sites can be important sources of sediment to the channel (Florsheim et al. 2008). Within the project reach, we observed that this condition is rare rather than common. The WET report presents no information to indicate that Sonoita Creek is experiencing unusual, artificially-elevated bank erosion rates. Thus, the available evidence suggests that bank erosion highlighted in the WET report and observed by us during the site visit is a natural process appropriate to this type of stream and necessary for proper ecological function.*[43]

It is noteworthy that the 2014 WET report[44] proposed similar channel and floodplain rehabilitation (*i.e.*, erosion control) measures downstream and including the current SCR reference Reach 8. During a site inspection of Reach 8, EPA's expert fluvial geomorphologist expressed concern to WETs' consultants that the proposed rehabilitation measures were aimed at arresting ongoing natural fluvial processes; the Sonoita Creek channel was actively adjusting its channel as evidenced by bank erosion, sediment deposition and channel meandering. This adjustment was ultimately responsible for the creation of the existing complex channel and high functioning riparian zone and floodplain within Reach 8. In apparent recognition of EPA's observations of the importance of maintaining active fluvial processes for the creation of high-functioning stream and riparian habitat, WET dropped its proposal to rehabilitate Reach 8 and other reaches, and is now proposing their preservation. The HMMP notes that Reach 8 is characterized by active processes of erosion and deposition and is a high-functioning reference

[42] Attachment 2, Sonoita Creek Bank Modification Detail, Drawing WET 16, and Final HMMP, Figure 13.
[43] Kondolf and Ashby. Final Technical Memorandum to EPA, Conceptual Design for Sonoita Creek, AZ, Technical Review Support (Order Number EP-G149-00241), July 27, 2015, pp. 11-12
[44] Conceptual Design for Ephemeral Channel Adjacent to Sonoita Creek, August 12, 2014, Water and Earth Technologies

reach.[45] Similarly, in the absence of the intervention proposed in the current HMMP, the proposed 2,500' rehabilitation reach will continue to naturally move toward equilibrium eventually characterized by a high-functioning floodplain.

Finally, the HMMP erroneously describes the riparian zone in this reach as *currently non-existent…*[46] This overly simplistic characterization dismisses the ecological importance of the existing floodplain. Observations of this reach during several site visits and review of current aerial photography confirms that the floodplain adjoining Sonoita Creek is composed of high functioning, regionally rare, sacaton grassland[47] interspersed with mesquite and other native riparian woodland species. In fact, the HMMP describes high quality, natural, existing vegetation communities within this proposed rehabilitation area.[48] Finally, vegetation monitoring conducted at SCR also documents the high native plant diversity and healthy vegetative cover that characterizes the existing floodplain, especially in areas not disturbed by past agricultural practices.[49] Despite this compelling description in the HMMP and repeated cautioning by EPA about the ecological importance of these sacaton grasslands/meadows, the current HMMP proposes rehabilitation measures that will destroy this native grassland habitat. The HMMP naively assumes that reestablished riparian woodland is more ecologically important than the existing native riparian grassland – woodland (also a riparian habitat). This unjustified bias will result in the loss of an existing high functioning riparian habitat; an impact that itself warrants mitigation.

**Extension of Three Tributary Channels to the Reconstructed SCR Channel is Unnecessary and Will Not Provide Any Long-term Ecological Benefit.**

The HMMP states, *There are three existing ephemeral drainages east of Sonoita Creek that no longer have a direct flow path to Sonoita Creek since they are intercepted by an access road*

[45] *Site 8 is located near the southern end of the SCR Project in a complex, highly ecologically-functional reach with numerous secondary channels and microtopographic complexity that Fremont cottonwood trees. This reach of Sonoita Creek will be preserved…The two (2) reference reach sites in Sonoita Creek are characterized by self-formed geometry, relatively large channel widths, frequent floodplain access by flows, and relative channel equilibrium. Channel braiding and perched overbank channels were also observed at both of these sites. These two sites possessed the highest ecological function of all the reference sites and were used to develop the final restored channel designs.* p. 23, Section 5.1, Reference Reaches Surveyed at Sonoita Creek Ranch.

[46] Attachment 2, Sonoita Creek Bank Modification Detail, Drawing WET 16, and Final HMMP, Section 6.1.2 Rehabilitation of Sonoita Creek, p. 30.

[47] Tiller, R., Hughes, M., and G. Bodner. 2013. Sacaton Riparian Grasslands of the Sky Islands: Mapping Distribution and Ecological Condition Using State-and- Transition Models in Upper Cienega Creek Watershed. USDA Forest Service Proceedings RMRS-P-67. https://www.fs.usda.gov/treesearch/pubs/44474

[48] *Large meadows of big sacaton grass (Sporobolus wrightii) are present in the Sonoita Creek floodplain south of the agriculture fields and in the broad, flat areas where drainages flowing off the Canelo Hills discharge into the Sonoita Creek floodplain. These large sacaton bottoms contain interspersed velvet mesquite, desert willow, velvet ash, and Arizona walnut. Again, mesquites become more prominent as one moves north.* HMMP, Section 5.2 Sonoita Creek Ranch, p. 23.

[49] In particular, note the results for vegetative cover, species diversity and woody species density for Reach #6.5 that lies in proximity of the proposed rehabilitation reach. Appendix F2, Sonoita Creek Mitigation Project, Vegetation Characterization Report, p. 484

*located along the eastern edge of the agricultural field. During construction of the SCR Channel, the three tributary channels will be extended to flow directly into the SCR Channel.*[50]

Tributaries E1, E2, and E3 will be extended past their natural canyon mouths termini about 470 feet, 350 feet and 700 feet, respectively.[51] A review of Google Earth aerial photography and the 1935 aerial photograph[52] show that these tributaries are not naturally characterized by discharges that would connect to the main channel of Sonoita Creek, nor in the absence of constructed channels would they naturally reach the reconstructed SCR channel. The access road on the eastern edge of the agricultural field does not block their flows as alleged; the defined stream channels end before meeting the road. Stream power under natural flows is not sufficient to form a permanent bed and bank channel. As a result, water recharges into the alluvial fan at the mouths of these canyons far from the main Sonoita Creek channel. In addition, several soil repositories will be constructed mostly within 10 to 75 feet of the channels.[53] The repositories will be constructed of floodplain alluvium that is highly erosive. It is reasonable to expect elevated levels of erosion and sediment deposition from the repositories into the newly constructed channels, until the slopes of the repositories are effectively stabilized, if ever. This means that the proposed artificially constructed channels will not be sustainable under existing tributary flow regimes or newly constructed slope conditions. The channels will quickly fill with sediment and no longer maintain a bed and bank and ordinary high water mark. These artificial channels will quickly cease to be WOTUS. For these reasons, it is not appropriate to award mitigation credit for these unsustainable constructed drainage features.

**Preservation of Existing Wildlife Migration Corridors at SCR Will Not Mitigate for Fragmentation of Critical Animal Migration Corridors at the Project Impact Site.**

The HMMP states that *…the Sonoita Creek Ranch is located in the Patagonia to Santa Rita Linkage as identified by the Arizona Wildlife Linkages Workgroup (AGFD 2009). The linkages were identified to provide for the safe movement of wildlife minimizing further habitat fragmentation and ensuring the survival of wildlife. Restoration of riparian habitat from agricultural fields and the broader floodplain will promote safe wildlife passage along Sonoita Creek between areas downstream such as the Patagonia-Sonoita Creek Preserve and upstream to the Las Cienegas National Conservation Area.*

*By comparison, while the Project Site and the riparian areas contained within are likely used by wildlife for movement, they are located within an area defined as a wildland block (Figure 8; Beier et al. 2008). Wildland blocks are large areas that are relatively unfragmented and contain little to no anthropogenic impedance to wildlife movement. Riparian corridors, like those associated with Sonoita Creek, are unique in that they provide refugia along disturbed areas (i.e.*

[50] HMMP, Section 6.1.1 Reestablishment of Sonoita Creek Floodplain and Channel, p. 30
[51] Attachment 2, Tributary Channel Details, WET Drawing 17. Compare with recent Google Earth aerial photographs.
[52] Refer to Figure 3 in Kondolf and Ashby, Final Technical Memorandum to EPA, Conceptual Design for Sonoita Creek, AZ, Technical Review Support (Order Number EP-G149-00241), July 27, 2015. The Figure 3 aerial photograph depicts the Patagonia and Sonoita Creek area in a 1935, Fairchild Aerial Surveys, Inc. flight number C-3250, housed at U.S. Department of Agriculture's Natural Resource Conservation Service, Tucson, AZ.
[53] Attachment 2, Sonoita Creek Mitigation Project, WET Drawing 3 and Tributary Channel Details, WET Drawing 17

*SR 82) allowing for wildlife shelter, usage, and movement. They also allow for lateral movement between two habitat blocks that are separated by open or disturbed areas.*[54]

We would agree that the existing wildlife corridors through Sonoita Creek Ranch constitute an important linkage and habitat for the passage of wildlife. However, we are incredulous by the attempt to denigrate the significance of the wildlife migration corridors at the mine project site simply by describing these lands as *wildland blocks*.

It is well understood that the Santa Rita Mountains provide several critical regional animal movement corridors or wildlife linkages.[55] The recontouring of the mine site and the filling of the extensive stream network will irreversibly change the natural topography of the site. The mine will result in the significant fragmentation of six animal movement corridors and this will significantly disrupt animal dispersal and migration patterns for many species currently using these corridors.[56] Within the six impacted corridors, a total of 1,626 acres of habitat will be directly impacted (greater than the total size of Sonoita Creek Ranch), including the permanent filling of jurisdictional waters comprising the stream network at the mine site.[57] Thus, the discharge of fill material will result in the loss of corridors critical to animal movement and migration for numerous resident and transient wildlife species. The fragmentation of animal migration corridors has the potential to adversely disrupt populations of animals utilizing adjacent mountain ranges through restrictions to their natural dispersal routes. It is incongruous that the HMMP touts the importance of SCR as providing wildlife linkages to the Santa Rita Mountains and Las Cienegas Creek National Conservation Area when these very areas will be destroyed and degraded by the mine project.

**Mitigation at Sonoita Creek Ranch Will Not Contribute Water to Impacted Portions of the Cienega Creek Groundwater Basin.**

The HMMP implies that alleged improvements in groundwater recharge attributed to the SCR channel reconstruction and floodplain rehabilitation will benefit Cienega Creek groundwater supplies.[58] While it is true that SCR lies at the divide between the Cienega Creek groundwater basin boundaries, it is well documented that groundwater recharged into the Sonoita Creek channel and floodplain moves in a southwesterly direction toward Patagonia along the hydraulic gradient.[59] Recharged water actually enters the Santa Cruz groundwater basin. Thus, the SCR portion of the HMMP will provide no mitigation to offset significant water losses and environmental impacts to waters and wetlands from significant direct and secondary impacts from the mine within the Cienega Creek watershed.

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[54] HMMP, Section 4.2.1 Sonoita Creek Ranch, p. 13
[55] FEIS, Table 118, Figure 76
[56] FEIS, Table 129
[57] Ibid.
[58] Ibid, p. 15
[59] See Figure 3.3-6, Cienega Creek Basin Groundwater Conditions www.azwater.gov and Nassereddin, Muhamad. 1967. Hydrogeological analysis of groundwater flow in Sonoita Creek basin, Santa Cruz County, Arizona. Thesis. Department of Geology. University of Arizona http://hdl.handle.net/10150/191488

**There Appears to be No Sediment Supply Reach Assessment Conducted for Sonoita Creek.**

The design and success of any alluvial channel restoration project first needs to understand the existing sediment budget that is determined by the magnitude and frequency of all sediment transporting flows. The mean annual sediment load for a restored channel reaches (capacity) must match the mean annual sediment load in the supply upstream reach (supply). Without this analysis, it is not possible to confidently predict how the reestablished channels at SCR/RX Ranch will behave or function.

**Rehabilitation and Buffer Mitigation Credit for Fencing Functioning Ephemeral Streams and their Floodplains is Not Justified.**

The HMMP proposes and discusses the alleged benefits of the following mitigation measures as rehabilitation and buffer mitigation credit:

*In order to enhance the habitat connectivity function of the onsite ephemeral potential WOTUS (including the unaltered portions of Sonoita Creek) and associated 50-foot buffers, all portions of the mitigation parcel will be fenced in association with mitigation activities, to exclude domestic livestock while allowing wildlife movement into and through the parcel…Establishment of this fence will enhance wildlife habitat associated with existing potential WOTUS and associated buffer by facilitating wildlife movement into and out of Sonoita Creek Ranch. In addition, some degree of enhancement of forage resources for wildlife will be realized by removing the competing livestock…Establishment of this fence will enhance wildlife habitat associated with existing potential WOTUS and associated buffer by facilitating wildlife movement into and out of Sonoita Creek Ranch. In addition, some degree of enhancement of forage resources for wildlife will be realized by removing the competing livestock…The remaining drainages that cross the property boundary are not anticipated to generate enough flow to require swinging flood gates.* [60]

*Enhancement of all onsite ephemeral washes and riparian buffer (including the existing Sonoita Creek channel, Corral Canyon, and the other tributaries on the east side of the property) will be accomplished by the construction of wildlife-friendly fence and exclusion of livestock grazing. The functions to be enhanced within the potential WOTUS at Sonoita Creek Ranch as a result of the exclusion of grazing are wildlife connectivity (through the construction of wildlife-friendly fencing) and wildlife habitat (through the anticipated modest increase in forage production). As described above, the buffer width for mitigation credit is estimated at 50 feet.*[61]

When discussing the ecological performance standards for this proposed mitigation the HMMP states that ***Sonoita Creek Ranch has not been intensively grazed so a substantial response in vegetation resulting from the exclusion of grazing is not anticipated*** [emphasis added]. *However, it is anticipated that the buffer area adjacent to the ephemeral washes at the site will still experience recovery following livestock grazing exclusion, and these areas would be expected to* ***achieve performance criteria comparable to the Sonoita Creek floodplain*** *as these*

[60] HMMP, Section 6.1.6 Enhancement of Existing WOTUS and Buffers, p. 35-36

[61] HMMP, Section 7.1.2.4 Enhancement of Ephemeral Channels and Riparian Buffer, p. 43

*areas are both classified as Loamy Bottom or Loamy Swale ecological sites by NRCS.*[62] [emphasis added]. In addition, when discussing soil repositories the HMMP states, *Drainage density was determined by delineating an undisturbed reference watershed in the SCR Project site (**Tributary 3**)*.[63] [emphasis added]

It is unacceptable that the HMMP is proposing to receive 14.4 enhancement credits for ephemeral wash channels and buffers[64] by implementing exclusion fencing measures that by its own admission will not result in a significant or real improvement in vegetation condition, and in the case of Tributary 3 was used as *an undisturbed reference site*.[65] That the HMMP then goes on to state that it anticipates some unknown *recovery following livestock grazing exclusion*[66] is therefore inconsequential as a justification for receiving enhancement credit. In addition, the HMMP claims that fencing will somehow improve wildlife connectivity along tributaries that currently function as wildlife corridors. It is well known that *wildlife friendly fencing* is not as friendly as the *absence* of fencing in the context of wildlife movement corridors. Furthermore, it is baffling why existing, functioning, vegetated, small tributaries would be expected to achieve performance criteria comparable to those areas of the Sonoita Creek floodplain that are proposed to be filled and that will be initially unvegetated. In addition, there is no baseline condition assessment of Coral Canyon and the other ephemeral tributaries. Our field observations and review of photographs included in the HMMP[67] supports a conclusion that these tributaries likely already meet or exceed the proposed performance criteria.

**The Soil Repositories Will Result in Impacts that Have Not Been Adequately Assessed or Mitigated.**

Channel *reestablishment* on SCR/RX Ranch will require the excavation, filling and recontouring of almost 300,000 cubic yards of excavated floodplain soils. Six spoil repositories will be used. These repositories include the filling of two existing reaches of Sonoita Creek, spreading material onto the Sonoita Creek floodplain (agricultural fields), and piling and contouring material on undisturbed hill slopes to the east of the Sonoita Creek floodplain. Hill-slope repositories would be shaped to have swales or channels to carry runoff from the surface, evidently with the goal that the spoil piles would be "erosionally stable" without requiring riprap or other stabilization measures.

The creation of these spoil piles can be expected to have impacts in at least two significant ways. First, excavation of 300,000 cubic yards of spoil is a massive undertaking, with inevitable impacts of heavy equipment compacting sensitive soils, disrupting the existing topography, etc. Once the spoil piles are built and contoured, it is implausible that they would not be subject to some erosion, even with the contouring proposed. These would be significant piles of disturbed

[62] HMMP, Section 10.1.5 Enhanced Existing WUS and Riparian Buffer Habitat, p. 54

[63] HMMP, Appendix 2, Soil Repositories, p. 35

[64] HMMP, Table 3, Summary of Mitigation Credits Provided by All Mitigation, p. 47. Enhanced ephemeral washes = 5.2 acres + enhanced ephemeral was buffer = 9.2 acres = 14.4 acres. It is also noteworthy that these existing washes already support high-functioning channels and buffers.

[65] Ibid.

[66] Ibid.

[67] Attachment 3, Sonoita Creek Ranch Photos 12-40, Final Design of the Sonoita Creek Mitigation Project (September 8, 2017), prepared by Water and Earth Technologies

soil and alluvial sediment, lacking in geologic or soil structure, which would perched above the surrounding landscape and inherently prone to erosion. Moreover, such spoil piles inevitably experience differential settlement, so the constructed drainage pathways may not work as planned. The WET report does not present an analysis of the geomorphic, ecological, and visual impacts of the proposed spoil piles.

The HMMP proposes no mitigation for direct impacts from the placement of soil on existing floodplain and buffer habitats. Significant portions of the existing agricultural fields where spoils will be spread support reestablishing mesquite woodland. In addition, secondary impacts can be expected to ephemeral streams flowing from the eastern hills from sediment eroding from unstable slopes.

**Enhancement of Two Ponds at SCR.**

According to the HMMP, Rosemont is requesting 404 CWA mitigation credit for the enhancement of two ponds located at SCR. The two existing ponds will be renovated to support the recovery of sensitive aquatic species per the Endangered Species Act (ESA) Biological Opinion. The final designs have not been completed but will include passive flow.[68] Enhancement of the two ponds at SCR does not provide compensatory mitigation for the followings reasons:

- Enhancement credit requested to support recovery efforts of listed endangered species does not offset the physical loss of headwater streams at the mine site;
- Rosemont has failed to demonstrate there is sufficient water from Monkey Spring to support any enhancement or establishment of wetlands/waters;
- Performance standards used to determine whether the compensatory mitigation project is achieving its objectives are lacking; and
- The temporal loss of waters could be significant due to a lengthy and risky Arizona Department of Water Resources (ADWR) approval process.

**Monkey Spring Has Not Been Demonstrated as a Reliable Water Source**.

The HMMP states that Monkey Spring, a perennial spring located approximately 0.8 miles north of the ranch, provides a perennial water source to the interior of the ranch. Water is distributed via canal from Monkey Spring to a pair of ponds where it can then be diverted to the agriculture fields for irrigation or allowed to flow into the second pond for storage.

SCR has a certificated water right of approximately 590 acres per annum (AFA), associated with Certificate of Water Right for Monkey Spring. The certificated water right for SCR is 75 percent of 785 AFA based upon measured spring discharge at the time of the Certificate of Diversion.[69]

[68] HMMP, p. 7

[69]HMMP. P. 26-27. Specifically, the water right is broken down as 588.75 AFA for irrigation purposes and 657,000 gallons (approximately 2.02 AFA) for stock watering. Cumulatively, approximately 590.77 AFA of certificated water right is appurtenant to SCR.

The percentage of water right is determined by usage times and not actually a measurement of flow volume.[70]

Since 2014, EPA and the Corps have requested flow discharge measurements from Monkey Spring.[71] Rosemont has failed to provide the necessary information citing restricted site access. Alternately, in April 2015, Rosemont installed a flow monitoring station within the irrigation canal upstream of the two-onsite ponds. According to Rosemont, the flow monitoring indicates that Monkey Spring flows discharging to SCR continue to be 5 to 12 percent higher than that allocated by the Certificate of Water Right for the property (WestLand Resources Inc. 2017).[72]

Flow measurements at the source by a third-party certified water engineer are necessary in order to ensure the water allocation of 590 AFA is available. EPA understands that the flow has not been measured from Monkey Spring since approximately 1973. It is highly uncertain whether Monkey Spring currently produces the full water allocation as described in the Certificate of Water Right from ADWR, and whether available water is sufficient to support wetlands at SCR. An affidavit by a previous owner, Raymond Rich, stated Monkey Spring flowed at 1100 gallons/ minute = 1,774 AFA in 1966. The current estimate indicates a drastic decline in the amount of available water since 1966. Given natural drought, climate change, and potential future mining in the watershed, it is uncertain whether flows from Monkey Spring are sustainable. There are anecdotal accounts of local wells drying in the area in response to drier climatic conditions.

In addition, the HMMP states that an additional water source, Cottonwood Spring, located on another property to the north, can contribute flows to the monitored irrigation channel as well. The HMMP states that flows from Cottonwood Spring could be captured by the flow monitoring station and in the data reported.[73]

Without appropriate monitoring at the spring source, factors such as contributions from Cottonwood Spring, changing water use needs of the upstream owner, monsoonal rains, overland flows and flow sensor malfunctions prevents an accurate determination of the water allocation to SCR.[74]

**Enhancement Credit for 404 CWA Mitigation Has Not Been Demonstrated**.

The renovation of ponds proposed by Rosemont is designed to support recovery of endangered species. The HMMP describes the wetlands associated with the ponds as forested and emergent

[70]HMMP, p. 26-27. SCR has water delivered for 15 hours a day from Tuesdays through Fridays (morning and nights), 19 hours on Saturday, 21 hours on Mondays, and 24 hours on Sundays for a total of 124 hours a week. The time SCR receives water is slightly less than 75 percent of the hours per week (124 hours of 168 hours, or 74 percent of the time).
[71]See Corps comments to Rosemont dated April 6, 2014. See detailed EPA technical comments to the Corps on the proposed mitigation plans dated February 25, 2014, April 9, 2014, April 28, 2014 and April 21, 2015.
[72] HMMP, p. 25
[73] Ibid.
[74] *Monkey Spring Monitoring System Installation Report dated July 2, 2015, Monkey Spring Flow Monitoring Quarterly Report (Q1) dated April 11, 2017 and Monkey Spring Flow Monitoring Quarterly Report (Q2) dated July 14, 2017.*

vegetative components with high species diversity.[75] There is no information regarding the type or acreage of habitat being enhanced at the ponds or accurate current flow measurements from Monkey Spring to determine whether the ponds are sustainable.

Characterized as diverse and high functioning, the ponds do not provide 404 CWA enhancement mitigation. Pond modification to support endangered species will not provide compensation for the loss of headwater streams.[76] In addition, setting the completion of design construction as the 404 CWA performance standard does not meet the requirements of the Mitigation Rule.[77]

**Temporal Losses Due to Approvals From ADWR Could be Significant.**

The Certificate of Water Right identifies the locations of the place of beneficial use of this water. A sever and transfer will be necessary if ADWR determines the proposed project places the water at a different location on the property. An approved sever and transfer by ADWR would first require approval of the irrigation district, agricultural improvement district, or water user's association. Sever and transfer processes may take several years, especially if any parties protest the action. A recent sever and transfer took 11 years, two others are pending at 9 and 12 years.

The water rights are currently designated for irrigation and stock. Utilization of the water for ESA purposes in the ponds would likely constitute a change in beneficial use. Additionally, constructed channels through agricultural fields many not be considered irrigation and may also constitute a change in beneficial use. If so, then a "Change in Beneficial Use" application would need to be filed with the ADWR.

**Onsite Stock Tank Removal**

**The Proposed Stormwater Flow Mitigation Will Not Restore the Stated Volumes of Storm Flows to Stream Reaches Downstream from the Mine Site.**

The HMMP describes mitigation for losses of stormwater flows for impacts to 28.4 acres of waters downstream from the mine site that involves removing three impoundments within the project area and returning those flows to McCleary Canyon, and to downstream reaches of Barrel and Davidson canyons.[78]

Rosemont contracted with Tetra Tech to revise stormwater modeling in the FEIS because Rosemont believes those models overestimate the reductions in stormwater flows due to mine

[75] HMMP, p. 24-25. The HMMP describes the riparian vegetation surrounding the ponds as "robust." The forested areas generally occur on the wetland edges and include trees such as Arizona sycamore, velvet ash, and Gooding's willow. Commonly observed emergent vegetation included species such as barnyard grass, common cattail, fragrant flatsedge, common spikerush, cloaked bulrush, and swamp smartweed. Additionally, both wetlands have an open water component with submerged aquatic vegetation.

[76] The HMMP states these ponds are regionally rare habitat types and should qualify as mitigation. While the Mitigation Rule allows consideration of out-of-kind mitigation, these ponds do not serve the aquatic resource needs of the Cienega Creek watershed. Given the existing condition of the ponds, we do not believe Rosemont could demonstrate functional gain for 404 CWA purposes. p. 44.

[77] 30 CFR 332.5 Ecological performance standards. Federal Register. Department of the Army, Corps of Engineers and Environmental Protection Agency Compensatory Mitigation for Losses of Aquatic Resources; Final Rule dated April 10, 2008. (Mitigation Rule)

[78] HMMP, Section 2.2.3, Stormwater Flow Management, p. 9

construction.[79]

There are several problems with the Tetra Tech stormwater modeling that cast significant doubt on the accuracy of estimated average-annual runoff volumes reporting to stock ponds. Considered together these flawed assumptions and modeling deficiencies provide sufficient grounds for rejecting the stormwater runoff estimates as a basis for calculating mitigation credits.[80]

- The estimates of average-annual runoff rely on an inappropriate model/regression equation. The regression equation can only apply to the limits of the data. A continuous simulation model with daily time steps would be more appropriate. A regional model such as a SWAT-based model that is localized with smaller resolution girds is an example of such an approach.[81]
- The model unrealistically assumes that the stock ponds can store all the runoff from the watersheds. This serious modeling flaw is discussed in the Tetra Tech Technical Memorandum:

  *Lastly, the storage capacity of stock ponds was not considered in this analysis. Only potential "average-annual" runoff volumes that report to each stock pond were calculated. Whether the stock ponds can actually retain the calculated runoff values on a yearly basis was not considered. Therefore, loss factors such as infiltration, evaporation, and plant transpiration that occur at stock ponds; thus further decreasing the downstream quantity of annual runoff, were also not considered.*[82]

  The HMMP erroneously assumes and seeks mitigation credit for all modeled flows that are currently captured on-site, instead of only much smaller captured flows and held by the stock ponds. It is unclear then how an estimated 39.3 AFA of stormflows can be proffered as mitigation given the critical analytical limitations in the analysis.
- The stock ponds will initially intercept and store smaller flow volumes. Smaller flows in the absence of the stock ponds would not be expected to reach the downstream segments of Barrel and Davidson canyons. Larger flows, especially if stock ponds are near or at capacity, are much more likely reach Barrel and Davidson canyons. It is the larger flows that currently characterize site hydrology that would have the most significant effect on functioning of these waters.
- The model parameterization for average annual rainfall (*i.e.*, 18 inches) in Equation 2 is likely significantly less than values at the higher-elevation stock pond locations.

[79] HMMP, Section 2.1.4.2, Reduction of Stormwater Flow Downstream, pp. 6-7 and Tetra Tech. 2017. Rosemont Stock Ponds – Preliminary Potential Runoff Volumes Calculation, July 14, 2017, 7 pp.
[80] See also concerns expressed by Pima County in Letter from C.H. Huckelberry, Pima County Administrator, to R. Sherill, ADEQ, RE: 2017 Addendum to Water Quality Permit, Rosemont Copper Project, ACOE Application No. SPL-2008-00816-MB, dated November 17, 2017
[81] See also Attachments 1 and 2, Letter from C.H. Huckelberry Pima County Administrator to Alexis Strauss, EPA Region 9 Acting Regional Administrator and Col. D. Peter Helmlinger, Commander South Pacific Division, Corps of Engineers, RE: *Rosemont Copper Mine Section 404 of the Clean Water Act*, dated June 6, 2107
[82] Tetra Tech. 2017. Rosemont Stock Ponds – Preliminary Potential Runoff Volumes Calculation, July 14, 2017, p. 1

In addition, the HMMP proposes to replace the loss of stormwater flows to downstream waters based on an estimated post-mining reduction of 17.2%. Yet, during the 25-30-year active mining of the site, the proposed mine will reduce stormwater runoff by greater than 30-40%, reducing surface flow at the Davidson Canyon/Cienega Creek confluence by a minimum of 7.6 -10.2%.[83, 84] The proposal to remove stock tank impoundments will not replace the loss of wet water in downstream waters including the designated Outstanding Arizona Waters and prevent their degradation.

**In-Lieu Fee Project**

Rosemont states the proposed mitigation plan is more than adequate to compensate for unavoidable impacts to waters at the project site, but is prepared to submit a one-time payment to a Corps approved In-Lieu Fee (ILF) project. Specifically, Rosemont proposes to purchase any required credits from the Lower San Pedro River Wildlife Area (LSPRWA) ILF Project, sponsored by Arizona Game and Fish Department (AGFD).[85]

Purchasing advanced credits from the LSPRWA ILF Project will not provide any compensatory mitigation to offset project impacts. In summary:

- The LSPRWA site is dissimilar in the biotic, abiotic, terrestrial and aquatic ecosystem components compared to Rosemont mine site;
- The use of the ILF Program's HUC-4 geographic service area (SA) establishes a watershed scale too large to ensure that activities at the LSPRWA will effectively compensate for all aquatic resources within the HUC-4, including the Rosemont mine's environmental impacts;
- The Interagency Review Team (IRT) has not approved the LSPRWA Project site. Mitigation design, crediting and the project SA have not been approved; and
- The proposal to purchase advanced credits from AGFD transfers Rosemont's mitigation obligation to the state agency.

**Mitigation at LSPRWA Does Not Compensate for Project Impacts**.

***Ecoregions***. The LSPRWA and the proposed Rosemont Mine site are in different ecoregions. Located 70 miles apart and in different Level III ecoregions, the type, quality and quantity of environmental resources and their relative importance in these ecoregions are quite dissimilar. The proposed Rosemont mine site is located in the Madrean Archipelago. Known as the Sky Islands in the United States, this is a region of basins and ranges with medium to high local relief, typically 3000 to 5000 feet. Native vegetation in the region is mostly grama-tobosa shrub-steppe in the basins and oak-juniper woodlands on the ranges, except at higher elevations where ponderosa pine is predominant. The region has ecological significance as both a barrier and

[83] FEIS, Volume 2, Chapter 3, Table 66, Summary of effects and an email from Chris Garrett, SWCA to Robert Leidy, EPA dated September 15, 2015. We maintain the reduction in surface flow is underestimated.
[84] Letter from C.H. Huckelberry Pima County Administrator to Alexis Strauss, EPA Region 9 Acting Regional Administrator and Col. D. Peter Helmlinger, Commander South Pacific Division, Corps of Engineers, RE: *Rosemont Copper Mine Section 404 of the Clean Water Act*, dated June 6, 2107
[85] HMMP, ES-4. The AGFD ILF Program has a Service Area comprised of 8 HUC-4 watersheds within the state of Arizona. There are 50 advanced credits available for projects within each Program service area.

bridge between two major cordilleras of North America, the Rocky Mountains and the Sierra Madre Occidental. Its exceptional species richness and endemism are also influenced by both western desert and mid-continent prairie biogeography.[86]

Within this Level III ecoregion, the direct and secondary impacts from the proposed mine cover three different Level IV ecoregions in close proximity to each other, which underscores the diversity and importance of this ecosystem.[87]

Conversely, the LSPRWA is located in the Sonoran Basin and Range Level III ecoregion and Arizona Upland/Eastern Sonoran Basins Level IV ecoregion, which is quite dissimilar to the mine, project area.[88] The Sonoran Basin and Range has topography similar to the Mojave Basin and Range to the north and contains large areas of paloverde-cactus shrub and giant saguaro cactus. Other typical Sonoran plants include white bursage, ocotillo, brittlebush, creosote bush, catclaw acacia, cholla, desert saltbush, prickly pear, ironwood, and mesquite.

The aquatic resources at the proposed Rosemont mine site are exceptional and vital to the health of the Cienega Creek watershed. Therefore, the remote and out-of-kind mitigation proposed at the LSPRWA is not compensatory. The HMMP's assertion that habitats at the LSPRWA mitigation site "…are more rare within the regional landscape, have higher productivity, and possess higher wildlife values than the impacted xeroriparian habitats (Lowery, Stingelin, and Hofer 2016)" is baseless.[89] In addition, the HMMP errs when concluding the, "…xeroriparian and upland vegetation communities of the Project Area…are more common and provide less functional value when compared to the riparian areas along the Lower San Pedro River offered by this ILF."[90]

***Watershed Scale.*** The AGFD Program SA is comprised of ten watersheds defined by HUC-4 within the state. This SA was chosen due to AGFD's statewide jurisdiction as a wildlife

[86] https://www.epa.gov/eco-research/ecoregions. See *Environmental Consequences of the Proposed Rosemont Copper Mine: Significant Degradation to Waters of the United States - Destruction of Highly Diverse Assemblages of Animals and Their Habitats* dated October 5, 2017 (Revised November 30, 2017) pp. 4-5.

[87] Ibid. Level IV ecoregions include: 1) The Madrean Basin Grasslands ecoregion which includes those areas of remaining high-quality native grasslands that occur in the basins and on the low hills. Some native grassland also extends into the hills that are part of the Lower Madrean Woodlands. These semi-desert and plains grasslands are crucial for numerous bird, mammal, and endangered aquatic species; 2) The Lower Madrean Woodlands which occurs at intermediate elevations, generally above 4500 or 5000 feet. It is a mild winter/wet summer woodland that can be shrubby in places. Evergreen oak woodlands, understory grass and pinyon-juniper woodland occupies parts of the region. Riparian areas of cottonwood, sycamore, and willow are valuable to the neotropical birds and other wildlife of the area; and 3) The Madrean Pine-Oak and Mixed Conifer Forests occurs above 6500'. The region includes ponderosa pine-oak forests, ponderosa pine forests, montane fir forests, and mixed conifer forests.

[88] The Arizona Upland/Eastern Sonoran Basins ecoregion includes the broad alluvial plains, fans, and bajadas that occur between the higher relief mountain ranges. Elevations are mostly 1500 to 3000 feet, but are as low as 900 feet in the north and as high as 3600 feet on some upper slopes. Sediments filling the basins represent combinations of fluvial, colluvial, and alluvial deposits. In the plains and lower bajadas, creosote bush and bursage are still common, although here more thornscrub elements of the Sonoran Arizona Upland begin to occur.

[89] EPA could not find any statement in the *Lowery et. al. 2016* proposal comparing the value of the mitigation site with xeroriparian habitat.

[90] HMMP, p. 45. See EPA's *Environmental Consequences of the Proposed Rosemont Copper Mine: Significant Degradation to Waters of the United States* dated October 5, 2017 (revised November 30, 2017) describing the significant importance of Madrean Archipelago habitat in the Cienega Creek watershed.

management agency and their intention to implement ILF projects in all areas of the state where suitable projects are identified and approved.[91] Establishment of Program SA does not imply that ILF project sites located within the same Program SA can automatically serve as mitigation throughout the Program SA. The SA for the LSPRWA project site has not yet been determined since the LSPRWA proposal has not been approved by the IRT. The Public Notice for *Re-authorization of AGFD's Existing In-Lieu Fee Program* states, "Proposed service areas for individual ILF projects will be identified in site-specific mitigation plans, based on an analysis of the extent of ecologically similar areas…"[92] AGFD's First Amended ILF Instrument also requires ILF sponsors to include proposed service area information when adding ILF projects to their Program Enabling Instrument.[93]

The approach to establishing an appropriate SA for an ILF Project Site must be consistent with the 2008 Mitigation Rule.[94] The Mitigation Rule takes a watershed approach through the strategic selection of mitigation sites within watersheds in order to maintain and improve the quality of aquatic resources within a watershed. The rule requires that the size of watershed addressed using a watershed approach should not be larger than is appropriate to ensure that the aquatic resources provided through compensation activities will effectively compensate for adverse environmental impacts resulting from activities authorized by DA permits.[95]

The HUC-4 SA for the AGFD Program is not the appropriate SA for the LPSRWA site. Additionally, the First Amended ILF Instrument does not guarantee that Corps will accept use of the Program Credits for a specific project, and authority for approving use of the ILF Program for Compensatory Mitigation lies with the Corps.[96]

**The LSPRWA Has Not Been Approved by the IRT**.

The IRT has not approved the mitigation design, crediting or SA for the LSPRWA. Therefore, from a regulatory perspective, it would be inappropriate to assume this ILF project site would provide mitigation for the mine's project impacts. Given the significant differences between the ecosystems of the LSPRWA site and the Rosemont mine site, the LSPRWA would not be an appropriate ILF project site to offset project impacts. Any advance credits sold by the AGFD in anticipation of LSPRWA approval results in risk as the ILF sponsor assumes all legal responsibility for fulfilling Compensatory Mitigation requirements for USACE authorized activities for which fees have been accepted.[97] Should the IRT approve a LSPRWA SA located outside the boundaries of the mine's impacts, the AGFD would be required to find another suitable compensatory mitigation ILF project site and conduct land acquisition, initial physical and biological improvements by the third full growing season after the first advanced credit is

[91] *First Amended In-Lieu Fee Enabling Instrument Arizona Game and Fish Department In-Lieu Fee Program dated November 12, 2014.* (First Amended ILF Instrument)
[92] Public Notice SPL-2012-00541-MB dated October 15, 2012. pp. 5-6.
[93] *First Amended In-Lieu Fee Enabling Instrument Arizona Game and Fish Department In-Lieu Fee Program dated November 12, 2014. Exhibit C Instrument Modifications*
[94] Mitigation Rule.
[95] Ibid. 33 CFR 332.8(c)(4).
[96] *First Amended In-Lieu Fee Enabling Instrument Arizona Game and Fish Department In-Lieu Fee Program dated November 12, 2014.* p.14.
[97] Ibid. F.6 Transfer of Credits p.15.

secured by a permittee.[98] This effectively transfers mitigation responsibility from the Rosemont to AGFD for impacts to the Rosemont Mine.

**Rosemont Copper Company Should Mitigate for impacts to the AGFD ILF Cieneguita Wetlands Project Site from Construction of the Mine.**

In 2006, the AGFD developed an ILF project site at the Cieneguita Wetlands Legacy site. By September, 2007, the site sold 40 acres of wetland credits, which serve as compensatory mitigation. If constructed, the Rosemont Mine would cause groundwater drawdown resulting in the degradation of the Cieneguita wetlands at the AGFD ILF site.

According to the Supplemental Information Report (SIR), wetlands within Lower Empire Gulch, including the Cieneguita Wetlands will experience degradation of water quality, contraction of pool volume and surface area impacting aquatic vegetation and obligate plants. The SIR states that pools associated with the Cieneguita wetlands will be reduced in volume anywhere from 25-92% of their original volume.[99] In consideration of climate change, pool volume can reach as low as 8-37% of their original volume.[100]

The wetland areas adjacent to Cienega Creek were analyzed in the SIR due to their importance to biological resources and close proximity to Empire Gulch where higher levels of drawdown are predicted. In addition, the Cieneguita wetlands, located within the Empire Gulch floodplain upstream from the confluence with Cienega Creek, have been identified as a key reach.[101]

Analysis of the mine's impacts concludes a high likelihood the Cieneguita wetlands will be degraded by the mine, yet there has been no mitigation proposed to offset wetland losses at the ILF mitigation site. Rosemont Copper should be responsible for the degradation of any existing mitigation site caused by their mining activities.

**<u>Additional Questions and Comments</u>**

1. Was the basis for calculating the acreage of portions of Sonoita Creek to be filled based on the 5-year discharge? The 5-year discharge was used to identify the OHWM and thereby quantify the acreage of WOUS for purposes of determining reestablishment mitigation credit.
2. The HMMP proposes 12.1 acres of channel rehabilitation along lower Sonoita Creek beginning at the Sonoita Creek – SCR Channel confluence and continuing downstream for approximately 2,511 feet. These activities will require work below the existing OHWM (*i.e.*, areas the 5-year flow line). The proposal will excavate a bench out of the existing bank to accommodate the 2-year return flow. The work will also likely result in the discharge of excavated alluvial bank material into the existing channel. In addition, three existing ephemeral tributaries flowing to the agricultural field from the east will be

[98] Ibid. 33 CFR 332.8(n)(4)
[99] *Supplemental Information Report Rosemont Copper Project. USDA Forest Service Southwest Region. May 2015 (Rev. June 2015).* p. 139.
[100] SIR, p. 140.
[101] SIR, p. 67. Key reaches were selected because they represent core areas of biological importance.

extended to join the reconstructed Sonoita Creek. Design drawings in the HMMP depict channel reconstruction extending upstream beyond the floodplain along existing jurisdictional watercourses.[102] These activities will require authorization under Section 404 of the CWA and mitigation for direct and secondary impacts should be assessed and fully mitigated.

[102] Attachment 2, Tributary Channel Details, WET Drawing 17

**Environmental Consequences of the Proposed Rosemont Copper Mine: Significant Degradation to Waters of the United States**
**October 5, 2017 (Revised November 30, 2017)**

EPA's 404(b)(1) Guidelines (Guidelines) have been applied in the review of proposed discharges of dredged or fill material into waters of the U.S. (waters) from the proposed Rosemont Copper Mine (Rosemont Mine) in Pima County, Arizona. Following a comprehensive analysis of the impacts on the physical, chemical and biological components of the aquatic environment, EPA has concluded that the Rosemont Mine will result in significant degradation to waters. This document explains the basis for EPA's determination.

**The Rosemont Mine Will Cause or Contribute to Significant Degradation of Waters of the United States.**

Fundamental to the Guidelines is the precept that dredged or fill material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern.[1] Specifically, the Guidelines provide that discharges are not permitted if they will cause or contribute to significant degradation of waters (40 CFR 230.10(c)).[2]

EPA's findings of significant degradation to the physical, chemical and biological components of the aquatic ecosystem are based upon factual determinations required under the Guidelines by Subparts B and G, and consideration of Subparts C-F, with special emphasis on the persistence and permanence of the direct and secondary effects outlined in these subparts.

Construction of the Rosemont Mine will result in the permanent filling and loss of 40.4 acres of jurisdictional substrate of streams covering 18 linear miles. An additional 8.9 acres of Sonoita Creek will be filled at Sonoita Creek Ranch. This will result in a permanent and irrevocable significant adverse effect to the aquatic ecosystem by altering the substrate elevations and bottom contours of waters; jurisdictional waters will be permanently filled and all ecological functions associated with the jurisdictional substrate will be lost.[3]

The direct filling of the stream substrate will result in direct and secondary adverse effects to the ecological functions at the discharge sites and in adjoining downstream tributaries through changes in flow patterns, water circulation, sediment storage and transport and various water quality parameters. The discharge of fill material into jurisdictional streams, seeps and springs and the associated denuding, grading and re-contouring of adjacent contributing watershed landscapes will permanently and adversely alter all existing natural physical and chemical characteristics, and functions of the aquatic ecosystem at the project site. In addition, the project will result in permanent significant adverse effects to flows and normal surface and groundwater fluctuations of high functioning receiving waters through the direct discharge of fill material and through secondary impacts resulting from stormflow diversion, changes in

[1] Guidelines for the Specification of Disposal Sites for Dredged or Fill Material (40 CFR Part 230).
[2] As stated in Preamble to the Guidelines, Other Requirements for Discharge "significant" means more than trivial (p. 85343).
[3] See Appendix A: Environmental Setting and Significance and EPA Analysis dated November 30, 2017 of the *Final Habitat Mitigation and Monitoring Plan Permit NO. SPL-2008-00816-MB Rosemont Copper Project dated September 12,* 2017.

channel morphology through erosion, contamination and elevated levels of suspended sediment in the water column.

Secondary effects from increased scour will result in significant changes to water quality by increasing total suspended sediment and turbidity in surface water flows. Elevated levels of suspended sediment or moderate-to-high turbidity will have significant adverse effects on aquatic organisms in Barrel and Davidson Canyon Washes and Cienega Creek. Increased suspended sediment and turbidity will smother aquatic organisms as sediments settle out. Increases in turbidity can be expected to disrupt the feeding, movement, spawning, and rearing of aquatic organisms such as native fish and amphibians.

The discharge of fill material will permanently and significantly change the chemistry and the physical characteristics of the receiving water below the mine site through the introduction of heavy metals and constituents in suspended and dissolved forms. The addition of contaminants will reduce the suitability of downstream waters for populations of aquatic organisms. Decreases in surface (stormwater) discharges from the mine site will directly and permanently alter existing surface and baseflow hydrologic contributions to downstream receiving waters resulting in changes to the quantity and quality of existing high functioning waters. Thus, there will be adverse changes in the location, dimensions, structure, and dynamics of aquatic communities living in the receiving waters. Suitable living areas will be reduced and normal movement restricted for aquatic organisms. Normal water-level fluctuation patterns will be altered contributing to higher water temperatures and lower dissolved oxygen.

The discharge of fill material will result in direct and secondary effects on endangered species and other aquatic organisms and wildlife through the physical and chemical modification of the aquatic ecosystem. Exposure of aquatic food web organisms to elevated dissolved and suspended contaminants and suspended particulates and reductions in surface (stormwater) flows from the mine site will result in population declines or bioaccumulation in aquatic food web organisms at lower trophic levels, especially aquatic invertebrates consumed by other fish and wildlife. A reduction or elimination of food chain organism populations decreases the productivity and nutrient export capability of the aquatic ecosystem.

Three of the six Special Aquatic Site types described in Subpart E of the Guidelines occur on or adjacent to the proposed project and would be adversely affected by the Rosemont Mine. Because of their special ecological characteristics of high food-web productivity, physical habitat critical for all life stages of aquatic life, water quality functions, and other important and easily disrupted ecological functions, these aquatic resources are given special recognition under Clean Water Act (CWA) regulations.[4] Collectively, the Special Aquatic Sites in the project area play a regionally significant role in maintaining the existing, high quality functions and services in this watershed: sanctuaries and refuges; wetlands and riffle and pool complexes. The discharge of dredged and fill material at the mine site will disrupt breeding and migratory movement of resident and transient wildlife between designated sanctuaries and refuges. In addition, filling natural landscapes will create incompatible human uses and access, including the establishment of undesirable exotic plants adjacent to sanctuaries and refuges. Finally, the discharge of fill will change the balance of water supporting fish and wildlife habitat in downstream refuges.

Riffle and pool complexes are particularly valuable habitat for wildlife at the mine site. This is because flowing riffles and pools provide temporary breeding habitat for certain aquatic insects and amphibians, and provide sources of drinking water for organisms that persists following cessation of rainfall in an

[4] See Guidelines, Subpart E: Sanctuaries and refuges (40 CFR 230.40); wetlands (40 CFR 230.41) and riffle and pool complexes (40 CFR 230.45).

otherwise arid landscape. All pool and riffle complexes at the mine site receiving fill material will be permanently lost. Wetlands and riffle-pool complexes will also be adversely affected by the secondary effects of project-induced decreases in stormwater contributions to baseflow from the proposed project. Decreases in baseflow linked to decreased stormwater flows from the mine will change and disrupt breeding, spawning, rearing, and migratory movements, or other critical life history requirements of fish and wildlife resources.

For example, pools and riffles within the lower Cienega Creek used by Gila chub, Gila topminnow, and longfin dace would be especially vulnerable to desiccation during the typically driest months of May and June, and/or during droughts when these intermittent pools are embedded within long reaches of dry streambed. Seemingly small reductions in streamflow caused by the mine during critically dry months could cause portions of Cienega Creek to stop flowing.[5]

Desert springs, often the sole sources of water for wildlife, support wetland ecosystems including rare and endemic species.[6] Direct and secondary impacts to these seeps and springs because of the Rosemont Mine will adversely affect the aquatic biota dependent on the range of spring-associated water sources. Following mine construction, should springs continue to flow, the wetlands supported by the outflow would be truncated. The amount of area suitable to support wetland species would be greatly reduced and the species least tolerant of drying conditions would be extirpated first and eventually replaced by transition upland species.[7] Sixty-three springs are expected to be lost from direct disturbance or lowering of the groundwater table during construction and operation.[8]

Sanctuaries and refuges are areas designated under state and federal laws or local ordinances to be managed principally for the preservation and use of fish and wildlife resources. Portions of lower Davidson Canyon and Cienega Creek are designated by the State of Arizona as Outstanding National Resource Waters (ONRW) and are within the Cienega Creek Natural Preserve (CCNP), a 4,000 acre sanctuary along 12 stream miles noted for its ecological significance and natural beauty as a desert riparian oasis.[9,10] In addition, portions of Empire Gulch lie within the Las Cienegas National Conservation Area (LCNCA), administered by BLM, a 45,000 acre preserve set aside in large part to protect riparian wetlands and native aquatic organisms including endangered fish and amphibians.[11]

The Rosemont Mine will significantly degrade downstream reaches of Davidson Canyon and Cienega Creek. The state designation of Davidson Canyon and Cienega Creek as "Outstanding Arizona Waters" affords them special protection, prohibiting any lowering of water quality. Federal regulations for state-designated ONRWs similarly state, *Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.*[12]

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[5] DEIS, p. 387.
[6] Patten, P.T., Rouse, L., and Stromberg, J.C., 2007. Isolated spring wetlands in the Great Basin and Mojave Deserts, USA: potential response of vegetation to groundwater withdrawal. Environmental Management DOI 10.1007/s00267-007-9035-9. 16 pp.
[7] Ibid.
[8] DEIS, Table 108.
[9] Federal regulations for Outstanding National Resource Waters at 40 CFR 131.12(a)(3).
[10] http://rfcd.pima.gov/wrd/landmgt/cienegapreserve/
[11] https://www.gpo.gov/fdsys/pkg/PLAW-106publ538/pdf/PLAW-106publ538.pdf
[12] 40 CFR 131.12(a)(3).

The project will also have adverse effects on several human use characteristics of the site and surrounding natural landscapes.[13] A significant secondary adverse effect will result from the construction of the water conveyance pipeline to support mine operations. The pipeline will transport aquifer water to the mine that will cause significant reduction in the quantity of water and possibly the quality of water available for municipal and private water supplies.[14] In addition, the discharge of fill material associated with the mine will destroy and impair resources which support current recreational activities (*e.g.*, wildlife viewing, sightseeing, hiking, camping, hunting) at the mine site and on adjacent natural landscapes. The discharge of fill material will mar the beauty of the natural aquatic ecosystem for the public and property owners by degrading water quality, creating distracting activities, inducing inappropriate development, encouraging incompatible human access, and by destroying vital elements that contribute to constitutional harmony or unity. Finally, discharge of fill material will modify the aesthetic, educational, historical, recreational and scientific qualities of national forest lands and adjacent national and regional wildlife preserves.

**Discharges of Fill Material into Streams and Springs to Construct the Mine Site Will Cause Unacceptable Adverse Impacts to Wildlife and Wildlife Habitat.**[15]

**Destruction of Highly Diverse Assemblages of Animals and Their Habitats.**[16] The Rosemont Mine will result in the permanent loss or alteration of 5,431 acres of vegetation and will permanently fill 40.4 acres of waters, including an undisturbed hydrologic network of hundreds of headwater streams spanning over 18 linear miles. The mine will result in the direct loss of 5 springs and 15 stock tanks, with highly likely impacts to an additional 11 springs, and possible indirect impacts to another 60 springs.[17] These streams and associated springs and wetlands provide habitat for hundreds of species of native wildlife that will be either killed or displaced. The discharge of fill material will result in a permanent and irrevocable significant adverse effect to the aquatic ecosystem by altering the substrate elevations and bottom contours of waters; jurisdictional waters will be permanently filled and all ecological functions associated with the jurisdictional substrate will be lost. All immobile, sessile, or inactive organisms dwelling on the substrate at the discharge site will be smothered and killed, or mobile organisms will be forced to migrate to suitable habitat, if available. Immobile organisms will include plants, invertebrates, amphibians, reptiles, ground and nesting birds, and small mammals. Many other typically more mobile organisms will respond to the disturbance associated with land clearing and the discharges of fill material by seeking shelter in borrows or other cover at the disturbance site and will be smothered. The discharge of fill material will result in the loss of breeding and nesting areas, extensive overwintering and resting habitat for resident and migrating birds, escape cover, foraging habitat, critical migration corridors and habitat linkages, and preferred food sources for resident and transient wildlife species associated with the aquatic ecosystem.

Many plant and animal species depend on streams, riparian areas and adjacent terrestrial habitats at the mine site for their survival. Many plant and animal species will be directly impacted by the mine through the discharge of fill material into waters or from mine-related construction activities. Except for special status species, much of the information presented in the Final Environmental Impact Statement (FEIS) on species diversity within the mine project area is neither current nor comprehensive. This means that impacts to most plant and animal species at the mine site are underestimated. Vegetation

[13] See Guidelines, Subpart F (40 CFR 230.50-230.54).
[14] DEIS, pp. 329-338.
[15] See Guidelines, Subpart B (40 CFR 230.11(e)).
[16] See Guidelines, Subpart D (40 CFR 230.30-230.32).
[17] FEIS, Table 116, p. 583.

sampling in the project area in the early 1970s recorded 416 plant species and subsequent surveys of similar vegetation communities at the mine site in the northern Santa Rita Mountains during 1986-1987 collected 628 plant species.[18, 19] Based on this information the number of plant species impacted over the entire 5,481-acre site is likely 500-600 species. Russell et al. (1977) identified 138 species of birds known to occur in the project area.[20] A total of 287 bird species have been recorded in the Santa Rita Mountains Important Bird Area (IBI) which encompasses the mine site, including numerous special status species recognized by the Forest Service (USFS).[21] Of note, the proposed project will result in the loss of 3,634 acres within the IBI; a 2.6% loss of IBI habitat.[22] Direct impacts include loss of nesting, overwintering, foraging, roosting, and molt migration habitat for migratory and resident birds. The mine will result in a decrease in food and water availability for some migratory species and loss of nest sites and cover. At least 70 species of migratory birds will be impacted by the mine through direct mortality or the loss of suitable nest, feeding, watering and migratory habitat.[23] At least 50 species of mammals will be directly impacted by the mine. [24] The mine site supports habitat for several large predatory mammals including jaguar, mountain lion, ocelot, bobcat, and black bear; an indication of the sites high quality habitat and unfragmented landscape. Seven amphibian and 46 reptile species are either known or likely to occur within the mine site.[25, 26, 27]

Collectively, it is reasonable to conclude that the mine will directly impact at least 700-750 plant and animal species by killing and displacing individuals, or altering or destroying their habitats. A large majority of the invertebrate, bird, mammal, reptile and amphibian species that will be directly impacted preferentially use stream, seep, spring and riparian habitats at the mine site, for all or a portion of their life cycles. The great diversity of species within several plant and animal groups that will be directly impacted by the mine is highly significant.

**Endangered Species.**[28] According to the U.S. Fish and Wildlife Service (FWS) Amended Biological Opinion dated April 28, 2016, construction and operation of the Rosemont Mine will result in significant adverse effects to twelve endangered and threatened species through the permanent modification of habitats and ecological processes upon which they depend for survival; ten of which rely in whole, or in

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[18] McLaughlin, S. and W. Van Asdall, W. 1977. Flora and vegetation of the Rosemont area. In An environmental inventory of the Rosemont area in southern Arizona, vol. 1: The present environment, edited by R. Davis and J.R. Callahan, pp. 64-98. Tucson: University of Arizona.

[19] McLaughlin, S., and J.E. Bowers. 1990. A floristic analysis and checklist for the northern Santa Rita mountains, Pima Co., Arizona The Southwestern Naturalist 35(1):61-75.

[20] Russell, S.M., Mills, G.S., and Silliman. n.d. [1977]. An inventory of the birds of the Rosemont area. *In*: An Environmental Inventory of the Rosemont Area in Southern Arizona, Vol. 1: The Present Environment, edited by R. Davis and J.R. Callahan. Tucson, AZ: University of Arizona.

[21] http://ebird.org/content/ebird/

[22] SWCA. December 2013. Biologists' Report on the Affected Environment and Identification of Species for Disclosure of Effects, Rosemont Copper Mine Project, Pima County, Arizona, Table 13, p. 156.

[23] SWCA 2013, Migratory Bird Analysis

[24] Roth, E.L. n.d. [1977]. Mammals of the Rosemont Region. *In:* An Environmental Inventory of the Rosemont Area in Southern Arizona, Vol. 1: The Present Environment, edited by R. Davis and J.R. Callahan, pp. 195–217. Tucson, AZ: University of Arizona.

[25] FEIS, Chapter 3; SWCA 2013a, b

[26] Lowe, C.H. and T.B. Johnson. 1977. Fishes, amphibians, and reptiles of the Rosemont site. In: An Environmental Inventory of the Rosemont Area in Southern Arizona, Vol. 1: The Present Environment, R. Davis and J.R. Callahan, eds.

[27] http://eebweb.arizona.edu/collections/Herp/Amphibian.htm Accessed November-December 2015.

[28] See Guidelines, Subpart D (40 CFR 230.30)

significant part, for survival on the aquatic ecosystem (Table 1).[29] This includes corresponding critical habitat for seven of these listed species.

The FWS concluded the mine construction and operation will contribute to effects that will further diminish stream and spring surface flows, pool depths, sizes, and volumes, and reduce water quality, thereby…*resulting in significant degradation of the aquatic ecosystem on which the Gila Chub, Gila topminnow, desert pupfish, Huachuca water umbel, Chiricahua leopard frog, and northern Mexican gartersnake depend… Regardless of the ultimate determinations regarding the effects of the proposed action and its conservation measures on the affected species and critical habitats, the relatively minor mine drawdown-related effects (and mine effects plus the relatively greater climate change effects) in the main stem of Cienega Creek still represent* ***significant degradations*** **[emphasis added]** *of the aquatic ecosystem.*[30]

Impacts described EPA's Guidelines within Subpart D – Potential Impacts on Biological Characteristics of the Aquatic Ecosystem, including impacts to threatened and endangered species (§ 230.30) should be considered in making factual determinations and findings of compliance with Subpart B – Compliance with the Guidelines. The FWS Amended Biological Opinion findings support a finding under the Guidelines that the proposed mine will result in the significant adverse impairment and destruction of aquatic, wetland and riparian habitats upon which ten threatened and endangered species depend (Table 1). This includes, but is not limited to, significant adverse effects of the mine on elements of the aquatic environment which are particularly crucial to the health and survival of threatened and endangered species such as adequate quantities of good quality water, spawning and maturation (*e.g.*, rearing) and nesting areas, protective cover, adequate and reliable food supply, and resting areas for migratory species (Refer to 40 CFR §230.30(b)(2)).

[29] Amended Final Biological and Conference Opinion for the Rosemont Copper Mine, Pima County, Arizona dated April 28, 2016.

[30] Ibid. Summary of Effects to Aquatic Ecosystem, p. 60

**Table 1. Federally Listed Species and Critical Habitat Significantly Impacted by the Rosemont Mine and their Relationships to Aquatic Habitats**

| Species | Endangered Species Act Status[1] | Relationship to Aquatic Environment[3] | Will Degradation of Aquatic Habitat Adversely Affect Species?[4] |
|---|---|---|---|
| **Gila chub (*Gila intermedia*)** | **E, CH** | **All life stages depend on aquatic resources for survival.** | **Yes** |
| **Gila topminnow (*Poeciliopsis occidentalis occidentalis*)** | **E** | **All life stages depend on aquatic resources for survival.** | **Yes** |
| **Chiricahua leopard frog *(Lithobates chiricahuensis)*** | **T, CH** | **All life stages depend on aquatic resources for survival.** | **Yes** |
| **Desert pupfish (*Cyprinodon macularius*)** | **E** | **All life stages depend on aquatic resources for survival.** | **Yes** |
| **Northern Mexican gartersnake (*Thamnophis eques megalops*)** | **T, CH** | **Relies on aquatic resources for food and water supply** | **Yes** |
| **Huachuca water umbel (*Lilaeopsis schaffneriana var. recurva*)** | **E, CH** | **All life stages depend on aquatic resources for survival.** | **Yes** |
| **Jaguar (*Panthera onca*)** | **E, CH** | **Relies on aquatic resources for food and water supply, wildlife corridor movement** | **Yes** |
| **Ocelot (*Felis pardalis*)** | **E** | **Relies on aquatic resources for food and water supply, wildlife corridor movement** | **Yes** |
| **Southwestern willow flycatcher (*Empidonax traillii extimus*)** | **E, CH** | **Relies on aquatic resources for breeding, foraging and protective cover** | **Yes** |
| **Western yellow-billed cuckoo (*Coccyzus americanus*)** | **T, CH[2]** | **Relies on aquatic resources for breeding and foraging** | **Yes** |
| **Lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*)** | **E** | **N/A** | **N/A** |
| **Pima pineapple cactus (*Coryphantha scheeri var. robustispina*)** | **E** | **N/A** | **N/A** |

[1]E = Endangered, T = Threatened, CH = Critical Habitat

[2]Critical habitat designation pending

[3]See Guidelines at 40 CFR 230.10(c)(2) and 40 CFR 230.30

[4]In other words, will the proposed activity result in the impairment and destruction of aquatic habitats to which these species are limited? This includes, but is not limited to, significant adverse effects on the elements of the aquatic environment which are particularly crucial to the survival of some threatened and endangered species such as adequate good water quality, spawning and maturation (*e.g.*, rearing) and nesting areas, protective cover, adequate and reliable food supply, and resting areas for migratory species. Refer to 40 CFR 230.30(b)(2).

**Bird Overwintering Areas.**[31] The Rosemont Mine site contains critically important grassland, woodland, stream, wetland and riparian habitats that support populations of many species of overwintering birds and thus constitutes a "key wintering area."[32] Riparian woodlands in the Southwest Avifaunal Biome (which encompasses the project site), including those adjacent to non-perennial waters, support the highest diversity of land bird species and the highest vulnerability to population declines in the United States.[33] The findings of Rich *et al.* (2004) and Berlanga *et al.* (2010) are consistent with the research of other scientists with respect to biological diversity of breeding and overwintering migratory birds; the critical significance of semi-desert grasslands, oak woodlands, and xeroriparian or ephemeral wash areas during winter to the health and survival of migratory and resident birds.[34,35]

Of significance and per SWCA (2013):[36]

> *At the more local level, in the vicinity of the proposed* [Rosemont Mine] *project, Russell et al. (n.d. [1977]) recorded 45 overwintering bird species on their four transects, conducted between January 26 and February 10, 1976, when migratory movements were expected to be lowest; this is therefore a conservative estimate of the number of species that may use the habitats outside this narrow window. Other species were opportunistically observed outside of the survey transects. Nevertheless, their results confirm a high diversity of overwintering species, including short-range migratory species, long-range migratory species, and resident species. Overwintering bird species that occur in the Rosemont area (Russell et al. n.d. [1977]) include (but are not limited to) at least 5 raptors (not including the golden eagle, observed in winter 2009 [see the "Bald and Golden Eagles" section in this document]), 4 woodpeckers, 3 corvids, 3 wrens, and at least 12 species of sparrows. The most-detected species during their winter transects included mourning dove (Zenaida macroura), Mexican jay, Bewick's wren, ruby-crowned kinglet (Regulus calendula), house finch (Carpodacus mexicanus), canyon (or brown) towhee, rufous-crowned sparrow (Aimophila ruficeps), black-throated sparrow, Brewer's sparrow (Spizella breweri), dark-eyed junco (Junco hyemalis), and huge numbers of chipping sparrows (Spizella passerina). Some of the short-distance migrants that wintered in the adjacent valleys but were present during breeding season in the Rosemont area include Cassin's sparrow, lark sparrow, Botteri's sparrow, northern cardinal (Cardinalis cardinalis), and pyrrhuloxia (Cardinalis sinuatus). Additionally, approximately 180 species of birds have been documented within the Santa Rita Mountains Important Bird Area* [which encompasses the mine site] *during the months of December, January, and February from 1900 to 2013 (eBird 2013b).*

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[31] See Guidelines, Subpart C (40 CFR 230.22) and Subpart D (40 CFR 230.32)

[32] SWCA 2013, Migratory Bird Analysis

[33] Rich, T.D., Beardmore, C.J., Berlanga, H., Blancher, P.J., Bradstreet, M.S.W., Butcher, G.S., Demarest, D.W., Dunn, E.H., Hunter, W.C., Iñigo-Elias, E.E., Kennedy, J.A., Martell, A.M., Panjabi, A.O., Pashley, D.N., Rosenberg, K.V., Rustay, C.M., Wendt, J.S., and Will. T.C. 2004. Partners in Flight North American Landbird Conservation Plan. Ithaca, New York: Cornell Lab of Ornithology.

[34] Ibid.

[35] Berlanga, H., Kennedy, J.A., Rich, T.D., Arizmendi, M.C., Beardmore, C.J., Blancher, P.J., Butcher, G.S., Couturier, A.R., Dayer, A.A., Demarest, D.W., Easton, W.E., Gustafson, M., Iñigo-Elias, E., Krebs, E.A., Panjabi, A.O., Rodriguez Contreras, V., Rosenberg, K.V., Ruth, J.M., Santana Castellón, E., Vidal, R.M., and Will. T. 2010. Saving Our Shared Birds: Partners in Flight Tri-National Vision for Landbird Conservation. Ithaca, New York: Cornell Lab or Ornithology.

[36] Ibid. SWCA 2013. p. 50.

Specifically, there will be 5,431 acres of direct impacts to natural vegetation types from the Rosemont Mine, including direct habitat impacts to 585 acres of riparian, 2,557 acres of grassland, and 2,690 acres of Madrean evergreen scrub.[37] The Madrean pine-oak woodlands ecoregion is an internationally recognized biodiversity hotspot featuring significant levels of biodiversity that is under threat from humans.[38] Although the most biologically diverse wintering ground for short- and long-range bird migrants in the United States, southeastern Arizona is threatened by habitat fragmentation and degradation. The Rosemont Mine's direct disturbance of over 5,000 acres would contribute to significant degradation in habitat quality and quantity for overwintering birds within the mine site and southeastern Arizona. Additionally, since grass cover and grass-seed production are important in both habitat selection and overwinter survival of southwestern grassland birds, any disturbance of large expanses of grasslands at the mine would be expected to have negative impacts on any migratory bird species that would winter in the area, including birds moving between habitat types (*e.g.*, between ephemeral wash/xeroriparian and grassland habitats).[39] A direct consequence of construction of the Rosemont Mine will be a significant reduction in the carrying capacity of riparian and other associated habitat types at the mine site for overwintering and resident birds. The mine will fill over 18 linear miles of ephemeral stream and associated xero-, meso- and hydro-riparian habitat causing significant degradation of the aquatic ecosystem used as a preferred food source and resting area by resident and overwintering birds.[40] The discharge of fill material will lower overwintering bird abundance and diversity and disrupt normal functions of the aquatic ecosystem leading to significant reductions in overall biological diversity.

**Fragmentation of Critical Animal Migration Corridors.**[41] The Santa Rita Mountains provide several critical regional animal movement corridors or wildlife linkages.[42] The natural topography of the mine site will be irreversibly changed by the re-contouring of the site and the filling of the extensive stream network. The mine will result in significant fragmentation of six animal movement corridors and this will significantly disrupt animal dispersal and migration patterns for many species currently using these corridors.[43] Within the six impacted corridors, a total of 1,626 acres of habitat will be directly impacted, including the permanent filling of jurisdictional waters comprising the stream network at the mine site.[44] Thus, the discharge of fill material will result in the loss of corridors critical to animal movement and migration for numerous resident and transient wildlife species. The fragmentation of animal migration corridors has the potential to adversely disrupt populations of animals utilizing adjacent mountain ranges through restrictions to their natural dispersal routes.

**Reduction in Streamflow Will Cause Unacceptable Adverse Impacts to Waters in Barrel and Davidson Canyons and Lower Cienega Creek.**[45]

Ephemeral and intermittent streams in arid environments perform the same critical hydrologic functions as perennial streams in wetter environments by moving water, sediment and debris through the stream

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[37]FEIS, Table 2, p. 666.
[38] Myers, N., Mittermeier, R.A., Mittermeier, C.G., Gustavo, A., da Fonseca, B., and J. Kent. 2000. Biodiversity hotspots for conservation priorities. Nature 403: 853-858.
[39]Bock, C.E., Bock, J.H. 1998. Response of winter birds to drought and short-duration grazing in southeastern Arizona. Conservation Biology 13(5):1117-1123.
[40] See Guidelines, Subpart D (40 CFR 230.22).
[41] See Guidelines, Subpart D (40 CFR 230.32).
[42]FEIS, Table 118, Figure 76
[43]FEIS, Table 129.
[44] Ibid.
[45] See Guidelines, Subpart B (40 CFR 230.11 (b)).

network and providing connectivity within the watershed.[46] Streams in semi-arid regions are complex systems due to wide fluctuations in the distribution, amount and timing of precipitation. This hydrologic variability is reflected in the storm flow data for Barrel and Davidson canyons. Surface flow monitoring stations in Barrel and Davidson canyons provide detail on the current frequency, magnitude, duration and volume of flows.[47] During 2013, Barrel Canyon experienced a total of 23 days of storm flow, while Davidson Canyon had a total of 2 days of stormflow. In 2014, stormflow was 47 days for Barrel and 8 days for Davidson, respectively. Peak summer stormflows in 2014 in Barrel and Davidson canyons measured nearly 300 and 500 cfs, respectively, an indication that even relatively small washes in mountainous areas can generate very high discharges over short periods of time. For 2013-2014, Barrel Canyon contributed much greater total flow volume (as measured immediately downstream from the confluence of Davidson and Barrel canyons) than Davidson Canyon upstream of their confluence;[48] another indication of the significance of surface flow contributions from Barrel Canyon at the mine site to Davidson Canyon. That Barrel Canyon provides a disproportionally high amount of surface water within the Davidson Canyon watershed relative to its drainage area is because Barrel Canyon drains most of the higher elevations of the watershed where the orographic effect produces greater precipitation and runoff.[49, 50]

All stream channels in the Davidson Canyon watershed are variously connected by surface and shallow subsurface hydrologic pathways to downstream waters.[51] Runoff generated by greater amounts of precipitation falling over higher-elevation headwater streams at the mine site concentrates as stormflow and as these stormflows travel downstream some water is lost as recharge to the shallow alluvial aquifer. Barrel Canyon contributes surface and shallow alluvial water to Davidson Canyon and lower Cienega Creek. The additive contribution of stormwater and shallow subsurface flows from Barrel Canyon increases the total amount of storm and alluvial water available to downstream reaches of Davidson Canyon and lower Cienega Creek, including ONRW reaches.

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[46] Levick, L. D., Fonseca, J., Goodrich, D., Hernandez, M, Semmens, D., Stromberg, J., Leidy, R., Apodaca, M., Guertin, D.P., Tluczek, M., Kepner, W., 2008. The ecological and hydrological significance of ephemeral and intermittent streams in the arid and semi-arid American southwest. U.S. Environmental Protection Agency and USDA/ARS Southwest Watershed Research Center, EPA/600/R-08/134, ARS/233046, 116 pp.

[47] Letter to USFS from Hudbay dated January 22, 2015. Attachment: Water and Earth Technologies (January 6, 2014). Analysis of Barrel Canyon and Davidson Canyon Instrumentation Data December 1, 2013- December 31, 2013. Prepared for the Rosemont Copper Company.

[48] Ibid.

[49] Powell, B., Fonseca, J. and F. Postillion. 2015. New analysis of stormflow and groundwater data from Davidson Canyon: evidence for influence of stormwater recharge of groundwater. Memorandum prepared by and for the Pima County Office of Sustainability and Conservation and Pima County Regional Flood Control District. December 13, 2015. 9 pp.

[50] Letter to Colonel D. P. Helmlinger, Commander, South Pacific Division, Corps of Engineers and Alexis Strauss, Acting Regional Administrator, EPA, Region 9, from C.H. Huckelberry, Pima County Administrator, RE: *Rosemont Copper Mine, Section 404 Clean Water Act*, dates June 6, 2017.

[51] Rosemont Copper Integrated Watershed Summary June 2012. Rosemont clearly acknowledges that precipitation falling at higher elevations of the mine site results in aquifer recharge and flows by deep, shallow and alluvial stream channel pathways into Barrel and Davidson canyons and lower Cienega Creek resulting in groundwater discharging to the surface as baseflow. EPA rejects the conclusions in the FEIS arguing that stormwater flows originating in the higher-precipitation areas of the mine site (representing 13% of the total Davidson Canyon watershed) are somehow entirely hydrologically isolated from, or provide insignificant contributions to, the downstream ONRWs in Davidson Canyon and lower Cienega Creek. Such speculation ignores our current scientific understanding of how water moves through surface and sub-surface pathways along hydrologic gradients in the Cienega Creek watershed (See Letter from C.L. Huckelberry, Pima County Administrator, to William James, U.S. Army Corps of Engineers and Kerwin Dewberry, Forest Supervisor, Coronado National Forest, regarding *New Information: Rosemont Copper Mine, Section 404 Clean Water Act*, dated September 28, 2017). The scientific literature supports our understanding that for arid regions such as the Cienega Creek watershed, water originating as surface or stormflow in the wetter headwaters can infiltrate into the alluvial stream channel and reappear at great distances downstream as stream surface flow/baseflow (*e.g.*, Levick *et al.* 2008).

Sub-flow that originates from stormflows in Barrel and Davidson canyons follows a hydraulic gradient downstream as water perched above bedrock overlain by shallow alluvium. The shallow groundwater aquifer of Davidson canyon is highly responsive to pulses of baseflow or stormflow.[52] As shallow groundwater levels rise and fall so does the length of flow in Davidson Canyon increase and decrease.[53] Stormwater-generated shallow alluvial water eventually reappears within Davidson Canyon and lower Cienega Creek ONRWs supporting low-surface flow, which is especially important to sustaining aquatic organisms and their habitats during the drier portions of the year.[54] Low-surface flow is critical to maintaining riffles and pools and wetlands; Special Aquatic Sites used by a variety of sensitive plant and animal species in Davidson Canyon and lower Cienega Creek.[55]

**Effects of Rosemont Mine on Storm Flows.** The Rosemont Mine will result in alteration of the natural surface hydrology through the direct fill of waters, the loss of contributing watershed area, and the modification of natural flow from the construction of in-channel stormwater basins and diversions designed to retain, slow or convey storm water around mine areas. During the active 20-25 years of mining at the site, the proposed project will reduce stormwater runoff from the project area by greater than 30-40%, reducing surface flow at the Davidson Canyon/Cienega Creek confluence by a minimum of 7.6 – 10.2%.[56, 57, 58]

The Pima Association of Governments (PAG) has conducted 20 years of hydrologic monitoring along Cienega Creek, including documentation of the relative contribution of surface and shallow subsurface flows from Davidson Canyon Wash to base flows in Cienega Creek.[59] Davidson Canyon Wash, an intermittent stream upstream of its confluence with Cienega Creek, contributes significant flood flows to Cienega Creek. Through analysis of water chemistry and stable isotopes, PAG found that between 8 and 24% of perennial flows during the lowest flow period in Cienega Creek are attributable to Davidson Canyon Wash's underflow contributions. Any decreases in the surface flows of Barrel Canyon and Davidson Canyon resulting from the mine will significantly reduce the contribution of water that sustains the low-water surface flows of Davidson Canyon and lower Cienega Creek OAWs.[60, 61, 62] Even seeming small statistical changes in low-water surface flows of a few percent will cause or contribute to

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[52] Ibid. Powell, B., Fonseca, J., and F. Postillion. 2015.
[53] Ibid.
[54] Pima Association of Governments. 2003. Contribution of Davidson Canyon to Base Flows in Cienega Creek, 40pp.
[55] Powell, B.L., Orchard, L., Fonseca, J. and Postillion, F. 2014. Impacts of the Rosemont Mine on hydrology and threatened and endangered species of the Cienega Natural Preserve. Pima County, AZ.
[56] Email from Chris Garrett, SWCA to Robert Leidy, EPA dated September 15, 2015. We believe the reduction in surface flow is underestimated.
[57] The FEIS likely significantly underestimates the reduction in stormwater discharge from the mine because their modeling uses inappropriate precipitation values. We believe that this results in a significant underestimation of the estimated reduction in stormwater runoff from the project area. Refer to comments in a letter from Pima County to ADEQ, dated April 4, 2014.
[58] Letter from C.H. Huckelberry, Pima County Administrator, to Rosi Sherrill, ADEQ, regarding *2017 Addendum to Water Quality Permit, Rosemont Copper Project ACOE Application No. SPL – 2008-00816-MB.*
[59] Ibid. Pima Association of Governments 2003.
[60] Rosemont Copper acknowledges that the surface recharge supporting low-water surface flows along the length of Davidson Canyon would be reduced by the mine and this would reduce surface flow in Cienega Creek. Rosemont Copper estimates that the surface recharge supporting low-water surface flows along the length of Davidson Canyon would be reduced by the mine by approximately 10% and this would reduce low-water surface flows in Cienega Creek by 0.8 and 2.3%. Integrated Watershed Summary. June 2012. Rosemont Copper.
[61] The FEIS recognizes the hydrologic connectivity between surface flow and sub-flow and further acknowledges that the predicted reduction in surface flow could result in a reduction in recharge to the shallow alluvial aquifer and sub-flow supporting low-water surface from Davidson Canyon into Cienega Creek (p. 554).
[62] Ibid. Powell, B., Fonseca, J., and F. Postillion. 2015.

significant degradation of the aquatic ecosystem through loss of aquatic habitat and declines in water quality in Davidson Canyon and lower Cienega Creek, especially during the June when stream flows are at their lowest levels.

Several recent reports by Pima County clearly establishes the strong positive relationship between the amount of surface water flow and shallow subsurface flow in Davidson Canyon and Cienega Creek.[63] These Pima County studies conclude that any reductions in groundwater, which includes shallow subsurface alluvial groundwater originating from stormflows, from the mine will significantly reduce low-water surface flows, and that as low-water surface flows decrease the reach and extent of surface flow will decrease and fragmentation of remaining pools will increase in Davidson Canyon and lower Cienega Creek ONRWs. Smaller, shallower and more fragmented pools in Davidson Canyon and lower Cienega Creek will significantly reduce the extent of surface water and habitat critical for the survival for aquatic organisms, including Gila Chub.[64] The presence of three fish and one frog (*i.e.*, Gila chub, Gila topminnow, longfin dace) three of which are listed as endangered by the FWS, have been recently documented from pools at the confluence of Davidson Canyon and Cienega Creek.[65, 66] Decreases in low-water flow in lower Cienega Creek will result in increased water temperatures.[67, 68] Relatively small increases in water temperature in remaining pools in lower Cienega Creek will cause or contribute to significant reductions in the amount and quality of suitable habitat for fish and other aquatic organisms, including riparian wetlands.[69]

In summary, reductions in surface and delayed shallow subsurface water contributions to low-water or base flows will result in decreases in water levels, adversely affect the flow and circulation of water, increase water temperatures[70], potentially result in increased harmful algal blooms, reduce aquatic plant and animal species abundance and diversity, and disrupt the normal functions of the aquatic ecosystem leading to reductions in overall biological productivity.[71] Reductions in stormwater runoff reduces the available assimilative capacity of the downstream waters increasing the concentration or load of pollutants in suspension or solution in the aquatic environment, modifying sediment transport and the water availability for downstream use. This will result in unacceptable adverse impacts to water quality, riparian vegetation and wildlife use, including endangered, threatened and sensitive aquatic species. Therefore, mine-related reductions in the surface flow and surface flow contributions to low-water flow in Davidson Canyon and lower Cienega Creek ONRWs will result in significant degradation of the aquatic ecosystem.

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[63] Ibid. Powell *et al.* 2014, Powell *et al.* 2015, and Letter from C.L. Huckelberry, Pima County Administrator, to William James, U.S. Army Corps of Engineers and Kerwin Dewberry, Forest Supervisor, Coronado National Forest, regarding *New Information: Rosemont Copper Mine, Section 404 Clean Water Act*, dated September 28, 2017.

[64] Ibid. Powell *et al.* 2014.

[65] Leidy, R.A. 2013. Transcribed Field Notes pertaining to observations made within the Cienega Creek Watershed, including Davidson Canyon and Empire Gulch, Pima Co., AZ. San Francisco, California: U.S. Environmental Protection Agency. June 28.

[66] SIR (2015).

[67] Pima County. October 5, 2015. Memorandum to Dr. Robert A. Leidy, EPA, San Francisco. Cienega Creek base flow and its relationship to water temperature. 5 pp.

[68] Amended Final Biological and Conference Opinion for the Rosemont Copper Mine, Pima County, Arizona dated April 28, 2016.

[69] Ibid. Powell *et al.* 2014.

[70] Memorandum from Ian Murray, Pima County Office of Sustainability and Conservation to Dr. Robert A. Leidy, EPA, regarding *Cienega Creek Base Flow and its Relationship to Water Temperature*, dated October 5, 2015.

[71] See Guidelines, Subparts C and D (40 CFR 230.22-230.23 and 230.30-230.32).

**Reduction in Sediment Delivery Will Cause Unacceptable Adverse Impacts to Waters in Barrel and Davidson Canyons and Lower Cienega Creek.**[72]

At post mine conditions, the Rosemont Mine project will reduce sediment delivery by 32.4% from the project site, and by approximately 4% at the Davidson Canyon outlet.[73] These estimates were made based on average annual sediment delivery. Contrary to the conclusions made by the USFS, reduction in sediment delivery to downstream waters will result in unacceptable adverse impacts to waters, including ONRWs.[74]

Polyakov *et al.* (2010) analyzed 34 years of precipitation, runoff, and sediment data from eight watersheds in Arizona.[75] They found that runoff amount and runoff peak rate were the most important factors for explaining variation in sediment yield. Typical of ephemeral systems, large flows can move great quantities of sediment, and even smaller rainfall events can have notable contributions to sediment yield.[76] Material accumulated during drier periods is released downstream during large, infrequent storms.[77]

In addition, sediment is transported in suspension as well as bed load. Sediment may travel in suspension at steeper slopes (*e.g.*, Rosemont Mine site) and as bed-load at shallower slopes downstream.[78] Levick *et. al.* (2008) states, *Ultimately, as headwater streams equilibrate to the new flow regime and their importance as a sediment source declines, channel entrenchment will likely shift further and further downstream. The cumulative effect of many entrenching channels is a significant increase in sediment load in downstream waters.*[79]

Reductions in sediment delivery from the Rosemont Mine will degrade water quality by geomorphologically altering the stream bed, creating soil scour in some downstream areas and aggradation in others. Total suspended sediment will be increased in surface water flows in some reaches. Aggradation and scour will result in the filling and scouring of pools and riffles used by fish and other aquatic organisms. Elevated levels of suspended sediment or moderate-to-high turbidity will likely have significant adverse effects on aquatic organisms in Davidson Canyon Wash and Cienega Creek.

It has been suggested by the USFS that the presence of downstream bedrock grade control structures will prevent streambed degradation, and sediment transport capacity of flowing water will be maintained

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[72] See Guidelines, Subpart B (40 CFR 230.11(c)).
[73] FEIS, Table 104 and DEIS, Table 87.
[74] FEIS, p. 466- 467. The USFS concluded no change in the geomorphology of the channel is expected to occur because of the proposed Rosemont Mine. Their analysis evaluated average annual sediment delivery, underestimating sediment delivery during high intensity storm events, where runoff amounts and peak rates are key factors in sediment delivery. In addition, they did not use sediment transport models given the difficulty of applying models to ephemeral systems. The USFS' Patterson and Annandale (2012) technical memorandum made no reference to historic and recent flow data at the USGS gage in Barrel Creek at the time of the survey nor did it include any survey of Davidson Canyon Wash during their two-day observational field visit. See technical reports cited (Zeller 2010a, 2010b, 2012) and Technical Memorandum from Patterson and Annandale, Golder Associates, to Chris Garrett, SWCA Environmental Consultants, 2012.
[75] Polyakov, V.O., Nearing, M.A., Nichols, M.H, Scott, R.L., Stone, J.J., and McClaran, M.O., 2010. Long-term runoff and sediment yield from small semiarid watersheds in southern Arizona, Water Resource. Res. 46, W09512.
[76] Ibid.
[77] Ibid. Levick *et al.* 2008.
[78] Letter from C.H. Huckelberry, Pima County Administrator to ADEQ, dated April 4, 2014.
[79] Ibid, Levick *et al.* 2008. p. 34.

despite construction of the Rosemont Mine.[80] Although grade control structures may limit the upstream propagation of down-cutting, they do not correct downstream degradation. Downstream flows will adjust to new equilibrium conditions by increasing sediment discharge downstream of the grade control structure, thus increasing channel scour. This condition currently exists at Pantano Dam on Cienega Creek where, to date, there is ten feet of scour below the dam.

**Discharge of Contaminants from the Rosemont Mine Will Cause Unacceptable Adverse Impacts to Waters in Barrel and Davidson Canyons and Lower Cienega Creek.**[81]

Reduction in sediment transport and storm flow, and the predicted runoff of mine contaminants from the proposed Rosemont Mine will degrade water quality resulting in significant degradation to downstream waters, including ONRWs.

The Rosemont Mine, covering over 4,750 acres, will convert headwater streams which currently serve as sources of freshwater dilution into sources of pollution. This pollution, in the form of heavy metals and other constituents, will run off the mine site and degrade the water quality of downstream waters. The USFS speculates that the contamination coming off the mine will attenuate as it travels downstream to Davidson Canyon ONRW, but this is likely not case. In fact, contaminated mine runoff is additive; increasing concentrations of heavy metals to existing downstream waters and worsening water quality. Concentrations of heavy metals will increase more so, with the diversion of 30-40% of the stormwater that normally flows off the site during the life of the mine.

In the FEIS, the USFS stated that a screening-level analysis of runoff from waste rock indicated two constituents may be elevated in mine runoff at levels that could present antidegradation problems: total and dissolved molybdenum, and total and dissolved sulfate.[82] In the analysis of soil cover runoff, dissolved arsenic, dissolved iron, and dissolved sodium could present antidegradation problems.[83] Dissolved and total mercury is substantially higher than the water quality of downstream waters indicating a potential for degradation from stormwater interacting with soil cover.[84]

Based on our analysis of the water quality data, stormwater runoff from the mine's waste rock and soil cover contaminated with lead, mercury, molybdenum, selenium, silver, sodium and sulfate will degrade the water quality of Barrel Canyon, Davidson Canyon and Cienega Creek. As shown in Table 2, the water quality of predicted runoff from waste rock and soil cover exceeds the water quality of downstream waters. Mine runoff containing metals such as lead (dissolved) and mercury (dissolved and total) are predicted to be 1-2 orders of magnitude greater than the water quality of Davidson Canyon, an ONRW.[85]

EPA believes compliance point dams will exacerbate the unacceptable downstream water quality impacts. These dams will likely release contaminated runoff in concentrations exceeding predicted stormwater runoff water quality as shown in Table 2. Each dam would be approximately 6 feet tall and approximately 100-200 feet wide with a storage capacity of 2 acre-feet. The dam allows for the settling

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[80] FEIS, p. 466

[81] See Guidelines, Subpart B (40 CFR 230.11(d)).

[82] FEIS, p. 549.

[83] Ibid.

[84] Ibid. Most waste rock samples contained mercury concentrations below detection limit and therefore were not incorporated into the analysis (the detection limit is higher than surface water standard). One legitimate sample had a very high concentration of mercury (0.03 mg/L).

[85] Runoff from heavy metals, including mercury runoff, is significantly underestimated due to averaging of test samples.

of sediment, detains stormwater temporarily and is the final onsite location where stormwater will be monitored.[86] During storm events, water that has been in contact with waste rock and soil cover, would be temporarily impounded and slowly released through the porous rock-fill dam. Large storm events may overtop or destroy the dam and proceed downstream.[87] It is anticipated that localized storm events will blow out these storage zones resulting in discharges of concentrated sediment and water-soluble metals contaminating downstream waters.

Studies analyzing the patterns of storage, transfer and sediment-associated metal dilution in arid systems reveal the presence of metal contaminants downstream of mine sites. Ciszewski (2001) discusses high magnitude flood events on metal contamination patterns in surface bottom sediments. Sediment associated metals accumulate in the river during periods of low discharge and are suspended and transported during flood events especially during higher-magnitude floods where the risk of metal mobilization increases.[88] This study comports with Navarro *et al.* (2008) which found metal transfer from mines is strongly influenced by a semi-arid climate with heavy rainfall during short rainy seasons contributing largely to the dispersion of pollutants over an extensive area.[89]

Riverbank desiccation and the lack of vegetation in ephemeral channels during the dry season make these areas vulnerable to oxidation and transport during the wet season. Remobilization of metals within slack water channel environments via evaporation or during seasonal flooding presents a potential risk to remnant aquatic biota that utilize this aquatic resource.[90]

Heavy metals can cause significant harm to human health and the environment. Heavy metal contamination from the mine is persistent, impairs aquatic life use, and cannot be easily mitigated or removed from stream channels. A heavy metal such as mercury, can bioaccumulate, biomagnify in aquatic food chains causing significant toxicity in the aquatic environment.[91,92] Mobilization of mercury in an aqueous phase can be influenced by many processes primarily precipitation and dissolution of solids, complex formation and redox reactions. In semi-arid environments, dissolution of mercury and metal-sulfate salts results in their transport during episodic high intensity storm events. Per Navarro (2008), this is likely the case for other heavy metals such as iron, lead and zinc.[93]

Uptake of selenium by biota causes toxicity in aquatic organisms. Several studies have concluded that selenium expresses its' toxicity in mammals, birds and fish primarily through the food chain, with bioaccumulation of selenium in aquatic plants and invertebrates leading to toxicological impact and change in aquatic communities.[94] Maier *et al.* (1998) as cited in Hamilton (2004) found that short pulse

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[86] FEIS, p. 46-47.
[87] Ibid.
[88] Ciszewski, D., 2001. Flood-related changes in heavy metal concentrations within sediments of the Biala Przemsza River. Geomorphology 40: 205-218.
[89] Navarro, M.C., Perez-Sirvent, C., Martinex-Sanchez, M.J., Vidal, J., Tovar, P.J., Bech, J., 2008. Abandoned mine sites as a source of contamination by heavy metal: a case study in a semi-arid zone. Journal of Geochemical Exploration 96:183-193.
[90] Taylor, M.P., Hudson-Edwards, K.A., 2008. The dispersal and storage of sediment-associated metals in an arid river system: The Leichhardt River, Mount Isa, Queensland, Australia. Environmental Pollution 152:193-204.
[91] Navarro, A., 2008. Review of characteristics of mercury speciation and mobility from areas of mercury mining in semi-arid environments. Rev. Environ. Sci. Biotechnol. pp. 287-306.
[92] U.S. Environmental Protection Agency. 1997. Mercury study report to Congress: An ecological assessment for anthropogenic mercury emissions in the United States. Vol. 6. EPA-452/R-97-008. U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards and Office of Research and Development. December.
[93] Ibid. Navarro. 2008.
[94] Hamilton, S., 2004. Review of selenium toxicity in the aquatic food chain. Science of the Total Environment 326: 1-31.

precipitation events can quickly load selenium into an aquatic environment where it can remain in the ecosystem.[95]

**Downstream contamination of surface waters underestimated.** We believe impacts to downstream water quality resulting from the Rosemont Mine will be greater than estimated by USFS. Although Rosemont Copper Company proposes several design and mitigation measures to try to prevent release of mine influenced waters, the hydrological and geochemical analysis presented by the USFS underestimates the level of contamination to downstream waters including ONRWs, if the Rosemont Mine is constructed.[96, 97]

- ***Infiltration and seepage.*** While the mine is designed to retain runoff from the tailings facility, uncertainty remains regarding seepage of contaminants to downstream waters from both the tailings facility and the waste rock storage area. A technical review of the infiltration and seepage models by SRK Consulting found that estimates of infiltration and seepage in dry stack tailings facility have the potential to be underestimated annually or seasonally owing to the use of average daily precipitation in the model given that rain occurs year round with greater daily amounts during the winter months and late summer "monsoon" season.[98,99] In addition, SRK Consulting states, *SRK's experience shows that field construction errors are another source of seepage that is greater than expected or modeled* (pp. 2-4). A study by Kempton and Atkins (2000) found evaporation in unvegetated rock slows dramatically as the surface dries and only the top few centimeters in waste rock or pit benches are dry enough to slow oxidation.[100] Given that sulfide oxidation in waste rock is typically limited by oxygen transport and higher moisture content reduces the diffusivity of oxygen, it is suggested that sulfide oxidation rates in mine waste may be faster in dryer climates than in wet.[101]
- ***Averaging of waste rock types and sample results.*** Samples analyzing mine runoff were averaged by waste rock type and weighted based on the percentage of each waste rock type to be present in the waste rock facility. These values do not reflect the upper and lower bounds of

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[95] Ibid.

[96] A study on the predicted and actual water quality of 25 hard rock mines found 24% exhibited inadequacies in hydrologic characterization, 44% in geochemical characterization, 64% exhibited failures in mitigation (16% of the mines had ineffective waste rock mixing and segregation). Kuipers, J.R. Maest, A.S., MacHardy, K.A., Lawson, G. 2006. Comparison of Predicted and Actual Water Quality at Hardrock Mines: The reliability of predictions in Environmental Impact Statements.

[97] A 2012 study on 14 of 16 currently operating U.S. copper mines found 100% experienced pipeline spills or accidental releases, 92% had water collection and treatment systems fail, 28% had partial tailings impoundment failures and 64% had tailing spills. U.S. Copper Porphyry Mines: The track record of water quality impacts resulting from pipeline spills, tailings failures and water collection and treatment failures. Gestring. B. Earthworks. July 2012.

[98] SRK Consulting. Hoag, P.G., M. Sieber, J. Rasmussen. Memo to Chris Garrett, SWCA dated July 18, 2012. Rosemont Copper DEIS – Response to EPA Geochemistry Comments – Final.

[99] In a June 2012 Infiltration, Seepage, Fate and Transport Modeling Report by Tetra Tech, additional seepage and infiltration models were developed. In this analysis, average climate conditions were still used for the dry stack tailings facility. For the waste rock storage area, daily measured climate conditions utilizing rainfall data at the University of Arizona (UA) Tucson Meteorological Station (2,440' elevation) were used in the model. At a higher elevation of 5,350', the Rosemont Mine is susceptible to greater rainfall amounts and intensity due to the orthographic effects. Therefore, the UA daily climate measurements are not comparable. Pima County Regional Flood Control District (PCRFCD) found the storm water analysis unacceptable and provides detailed comments on the problems associated with using precipitation values not representative of the site (letter to ADEQ from PCRFCD dated February 2, 2012 regarding the Draft Aquifer Protection Permit).

[100] Kempton, H., Atkins, D., 2000. Delayed environmental impacts from mining in semi-arid environments. In Proceedings from the Fifth International Conference on Acid Rock Drainage 2:1299-1308. May 20-24, Denver, Colorado. Published by Society for Mining, Metallurgy, and Exploration, Inc.

[101] Ibid.

metal concentrations that would occur in runoff from the mine site.[102] For example, per the FEIS, predicted waste rock runoff for copper is 0.0085 mg/L, yet individual samples range from ND – 0.3 mg/L. Davidson Canyon stormwater water quality for copper ranges from 0.0029-0.017 mg/L. Therefore, some samples were over 17x greater than the highest concentration found in Davidson Canyon. In addition, the weighted average represents the mine over the entire life. However, a storm event resulting in significant runoff can occur at any given time throughout the project life. Depending upon what waste rock material is exposed in the waste rock pile, or other disturbed areas at the time of such an event, runoff water quality would be reflective of the rock types exposed, rather than the overall weighted average within the pit. Therefore, degradation of water quality downstream of the mine has the potential to be significantly greater than is presented in the FEIS and SIR for any given storm event.[103,104]

- ***Ability to segregate waste rock***. Rosemont Mine is proposing to segregate waste rock to mitigate the exceedance of the water quality standard for silver. There is great uncertainty in the ability to effectively segregate waste rock, particularly singular constituents. It is often dependent on whether the constituent is distinct (*i.e.,* clear boundaries) in the waste rock and whether the operator, based on methodology, is effective and committed to segregation.[105]
- ***Assumption that attenuation reduce downstream contamination***. The USFS predicted the water quality of mine runoff would be attenuated based on: 1) the assumption that the mine area covers 14% of the watershed; and 2) the remaining undisturbed portion of the watershed would attenuate contaminants contained in mine influenced runoff before reaching downstream ONRWs. These assumptions are incorrect. The impacts of the mine are not proportional to the catchment area. In addition, the analysis leading to this assumption does not consider the spatial and temporal nature of precipitation in the region or the additive effect of mine pollutants in downstream waters.[106]

**Contamination of the Mine Pit Lake Will Cause Unacceptable Wildlife Impacts.**[107]

The post-mine closure mine pit lake would have a volume of 96,000 acre feet, making it one of the largest water bodies in southern Arizona.[108] Surface water features such as lakes are an attractant to animals and their prey in arid environments. Invertebrates, birds, amphibians, reptiles and potentially small mammals would be able to either access or consume prey from the mine pit lake. Mine pit lake water quality will likely exceed wildlife standards for three contaminants that are known to bioaccumulate, including cadmium, mercury and selenium and for other contaminants as well (*i.e.*, copper, lead, zinc and ammonia)[109] As such, the mine pit lake water would serve as a chronic source of toxic heavy metals to wildlife species through consumption of contaminated water or food chains.[110]

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[102] Draft Memorandum Revised Analysis of Surface Water. Chris Garrett, SWCA. August 25, 2013 http://www.rosemonteis.us/files/references/045677.pdf

[103] FEIS, p. 472. For both the SPLP and MWMP samples analyzed, there were instances where laboratory detection limits were greater than the surface water quality standard (*e.g.*, silver).

[104] *The result is that actual water quality is literally always different than predicted, with the general expectation that it is generally consistent.* Mark A. Williamson, PhD, Geochemical Solutions, LLC to Kathy Arnold, Rosemont Copper Company dated December 23, 2011. *Perspectives on Uncertainty in Water Quality Predictions.*

[105] SIR, p. 34.

[106] SIR, p. 135.

[107] See Guidelines, Subpart B 40 CFR 230.11(d) and (e).

[108] Pima County letter dated March 21, 2014.

[109] SWCA Environmental Consultants. 2012. Memorandum: comparison of pit lake water quality to surface water quality standards. July 29, 2012., FEIS, p. 664.

[110] SIR, p. 28-29.

Of sixty-nine species of migratory birds listed by SWCA as potentially impacted by the mine, 53 species are identified as being susceptible to mine pit contamination primarily from eating invertebrates originating from the pit lake, including sixteen species listed by the Forest Service or BLM as special status.[111,112] In addition, two amphibian, three reptile and six mammal species listed as special status would be exposed to mine pit contaminants by ingesting prey items originating in the mine pit lake.[113] Bats are known to forage locally or travel considerable distances to drink or forage over water on aquatic and terrestrial insects.[114] Six sensitive bat species (*i.e.*, pale Townsend's big-eared bat, western red bat, western yellow bat, fringed myotis, cave myotis, pocketed free-tailed bat and big free-tailed bat) feed on insects, and because the mine pit water quality could exceed wildlife standards for the three contaminants known to bioaccumulate, secondary impacts will likely occur from bats eating aquatic contaminated invertebrates originating from the mine pit lake, thereby altering bat health and overall predator-prey relationships.[115] Some bats preferentially forage over waterbodies in arid environments.[116] Insectivorous bats require daily water and in arid Southwestern states artificial waterbodies may provide the nearest local source of surface water.[117] Given the large size of the pit lake and the tendency for many organisms to either breed within, or drink and acquire prey from large waterbodies, it is highly likely that various animal species will be adversely impacted by consuming contaminated invertebrates originating from the mine pit lake. It is also likely that many animals that ingest and bioaccumulate contaminated prey from the mine pit lake and subsequently disperse to other nearby aquatic habitats will be eaten by other predators in the food chain. For example, Chiricahua leopard frogs could be directly exposed to contaminants should individuals disperse to and occupy the pit lake. Effects to species could also occur from eating winged aquatic invertebrates originating from the mine pit lake site.[118]

**The Rosemont Mine Will Result in a Violation of Water Quality Standards in Barrel and Davidson Canyons and Lower Cienega Creek, Including the ONRWs.**

EPA has determined that contamination from the Rosemont Mine will lower existing water quality in Davidson Canyon and Cienega Creek ONRWs. Designated as Tier 3 waters, lowering of water quality is prohibited and therefore in violation of State Water Quality Standards.[119] Violation of water quality standards is also prohibited under the Guidelines (40 CFR 230.10(b)). EPA has discussed the analysis of the Rosemont Mine's impact on water quality with the Corps and ADEQ since 2012, concluding the state's CWA §401 certification lacks sufficient specific preventative actions to safeguard the water

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[111] SWCA Environmental Consultants. 2013. Migratory Bird Analysis. Proposed Rosemont Copper Mine, Nogales Ranger District, Coronado National Forest. Tucson, Arizona: SWCA Environmental Consultants. December.

[112] SWCA Environmental Consultants. 2013b. Biological Evaluation, Rosemont Copper Project, Santa Rita Mountains, Nogales Ranger District. Prepared for U.S. Forest Service, Coronado National Forest. Tucson, AZ: SWCA Environmental Consultants.

[113] FEIS, pp. 681-696.

[114] O'Shea, T.J., Clark, D.R., and Boyle, T.P., 2000. Impacts of mine-related contaminants on bats. pp. 276-292, *in* Proceedings of Bat Conservation and Mining: A Technical Forum. K.C. Vories and D. Throgmorton eds., St. Louis, MO.

[115] FEIS, p. 696.

[116] Ibid.

[117] Kurta, A., 2000. Bats on the surface: the need for shelter, food and water. pp. 264-275, *in* Proceedings of Bat Conservation and Mining: A Technical Forum. K.C. Vories and D. Throgmorton eds., St. Louis, MO.

[118] USFWS Amended Biological Opinion dated April 28, 2016. p. 152.

[119] Federal antidegradation policy prohibits any degradation of Tier 3 waters, regardless of economic or social development needs (40 CFR 131.2(a)). Arizona's antidegradation rules reinforce this prohibition (ACC R118-11-107). Minor, short-term impacts are considered if they do not interfere with the character of the ONRW. The temporary exception is limited to an impact of 6 months or less. If constructed, the Rosemont Mine will cause persistent, permanent significant impact to the biological, chemical and physical integrity of the ONRWs.

quality of Tier 3 waters in the Cienega Creek watershed.[120] We recognize there are water quality aspects which may be outside the scope of the state's §401 review. These aspects must be considered in determining compliance with the Guidelines. In Mingo Logan v. EPA, the court ruled that under 401, *the CWA has identified state requirements as a floor that must be met, not a limit on federal authority.*[121] The ruling goes on to state there is nothing in the statute that forecloses EPA from imposing stricter requirements than those required by the state standards.[122]

Our determination of significant degradation to the existing water quality of the ONRWs is based upon the following considerations:

- Change in ambient concentrations predicted at the appropriate critical flow condition(s);
- Change in pollutant loadings;
- Reduction in available assimilative capacity;
- Nature, persistence and potential effects; and
- Potential for cumulative effects.

As shown in Table 2, mine runoff consisting of heavy metals such as mercury, lead, molybdenum, selenium and silver as well as sulfate will be released in concentrations exceeding the stormwater quality for Davidson Canyon ONRW. These heavy metals and other constituents will be transported downstream through stormwater and lower the water quality of Davidson Canyon and Cienega Creek in violation of water quality standards.[123] Changes in stream hydrogeomorphology from the mine will result in increases in total dissolved solids, suspended sediments, lowering of dissolved oxygen and increases in temperature from declining pool levels resulting lower water quality in lower Cienega Creek, in violation of water quality standards.[124] In the amended Biological Opinion, the FWS analyzed the effect of the Rosemont Mine on water quality examining the significant relationship between reductions in stream flow, increases in temperature, and decreases in dissolved oxygen. The FWS concluded that reduced stream flow in lower Cienega Creek, *will increase the incidence of poorer water quality that adversely affects aquatic life in Pima County, CCNP.*[125]

Accordingly, Section 131.12(a)(1) of the antidegradation policy is not satisfied regarding fills in wetlands or other waters if the discharge results in "significant degradation" to the aquatic ecosystem as defined under Section 230.10(c) of the 404(b)(1) Guidelines.[126]

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[120] ADEQ issued the §401 CWA certification to Hudbay on February 3, 2015. See EPA letter to ADEQ dated April 7, 2014 and EPA letter to the Corps dated April 14, 2015 regarding the mine's ability to comply with §401 CWA.

[121] Mingo Logan Coal Company v. U.S. Environmental Protection Agency. Memorandum Opinion, U.S. District Court for the District of Columbia. September 30, 2014. p. 56.

[122] This ruling is consistent with the August 15, 1979 legal opinion of the Office of General Counsel on the designation and protection of ONRW. They concluded, "if a State voluntarily designates an ONRW, EPA can take whatever action is necessary (against point sources) to protect the ONRW."

[123]Designated uses in the OAW section for Davidson Canyon include Aquatic and Wildlife (ephemeral) and Partial Body Contact. The designated uses in the OAW section for lower Cienega Creek are Aquatic and Wildlife (warm water) and Partial Body Contact. http://www.azdeq.gov/environ/water/standards/download/SWQ_Standards-1-09-unofficial.pdf

[124] The Arizona Water Quality Standards narrative biological criteria (WQS) (R118-11-108) for lower Cienega Creek is: A wadable, perennial stream shall support and maintain a community of organisms having a taxa richness, species composition, tolerance, and functional organization comparable to that of a stream with reference conditions in Arizona. ADEQ doesn't have a temperature WQS, but temperature is a pollutant and the designated use of A&W must be protected. Raising a temperature to a level that harms the organisms in the waterbody would be in violation of the standard.

[125] Amended Biological Opinion dated April 28, 2016. p. 48.

[126]See. Questions and Answers on: Antidegradation, Question #13, EPA, Office of Water Regulations and Standards, August 1985.

Table 2. Predicted contaminant runoff from Rosemont Mine compared to existing downstream water quality for Davidson Canyon and Barrel Canyon

| Metals and other constituents | Predicted Runoff Water Quality from Waste Rock (mg/L)[1] | Predicted Runoff Water Quality from Soil Cover (mg/L)[1] | Davidson Canyon Stormwater Water Quality Data (mg/L)[2] | Barrel Canyon Stormwater Water Quality Data (mg/L)[3] | Surface Water Standard for Aquatic and Wildlife Ephemeral -Acute (mg/L) | Surface Water Standard for Partial Body Contact (mg/L) |
|---|---|---|---|---|---|---|
| Lead (total) | 0.0048 | 0.0151 | 0.011-0.266 | ND-6.5 (0.01-0.1) | No Standard | 0.015 |
| Lead (dissolved) | 0.0048 | 0.0151 | <0.00059-<0.00099 | ND-1.2 (0.002-0.15) | 0.05657 | No Standard |
| Mercury (total) | 0.0002 | 0.0101 | <0.001 | ND-0.0029 (0.0001-0.01) | No Standard | 0.28 |
| Mercury (dissolved) | 0.0002 | 0.0101 | <0.001 | ND (0-0.002) | 0.005 | No Standard |
| Molybdenum (total) | 0.0405 | 0.0117 | <0.01 | ND-0.024 (0.01-0.1) | No Standard | No Standard |
| Molybdenum (dissolved) | 0.0405 | 0.0117 | ND | ND-0.095 (0.01-0.1) | No Standard | No Standard |
| Selenium (total) | 0.0200 | 0.0200 | 0.006-0.018 | ND-19.1 (0.002-0.25) | 0.033 | 4.667 |
| Silver (dissolved) | 0.0025 | 0.0025 | <0.00082-<0.0014 | ND-0.0341 (0.001-0.05) | 0.00081 | No Standard |
| Sulfate (total recoverable) | 33.13 | 1.98 | <5.0-5.5 | ND-66 (3-5) | No Standard | No Standard |
| Sodium (dissolved) | 4.167 | 6.1 | Not recorded | 2.518 | | |
| Sodium (total) | 4.167 | 6.1 | <5.0 | 7.008 | No Standard | No Standard |

[1]Predicted runoff water quality (mg/L) from the mine. Red denotes concentrations exceeding water quality of Davidson Canyon at upstream end of OAW reach. Results reflect the average of the test samples (FEIS, Table 105, pp. 475-477 and SIR, p. 33-34).

[2]Water quality data for Davidson Canyon (4 dates). Memo of Water Quality/Water Level Data for USFS from Karen Herther, Hudbay, to file dated January 16, 2015. ND=Not Detected.

[3]Barrel Canyon range of results (8 locations on 15 dates). Lab detection limits in parentheses (FEIS, Table 105).

**Mitigation Proposed for the Rosemont Mine Will not Prevent Water Quality Degradation of ONRWs.**

The State's Certification relies on a requirement for Rosemont Mine to develop a Surface Water Mitigation Plan (SWMP).[127] The SWMP lacks detailed measures demonstrating Rosemont Mine's ability to arrest and reverse the heavy metal contamination in stormwater which will degrade downstream water quality. In summary:

- The SWMP relies on voluntary monitoring which will not prevent the contamination of downstream waters;
- The surface model used as a predictive tool to quantify changes in surface water runoff from the mine has not been developed; and
- Rosemont Copper Company has not demonstrated a measurable water supply and delivery to mitigate reduction in surface flow caused by the mine.[128]

**The Rosemont Mine Will Cause Unacceptable Adverse Effects to Municipal and Private Water Supplies.**[129]

**Municipal and private water supplies.** The Guidelines require consideration of the potential effects of the project on municipal and private water supplies. Effects to the quality and quantity of surface water and ground water supplies must be evaluated. EPA has determined the proposed Rosemont Mine will result in unacceptable adverse impacts on municipal and private water supplies through reduction in water quantity and the degradation of water quality.

The proposed Rosemont Mine is located within the Tucson Active Management Area (AMA). The AMA was established to manage the state's finite groundwater resources.[130] As of 2013, water use within the AMA consists of 47.7% groundwater and 37.9% Central Arizona Project (CAP) along with 4.6% effluent and 9.3% in lieu groundwater.[131] Although the AMA has a statutory goal of achieving and maintaining safe-yield by 2025, the ability to attain safe yield is uneven.[132] Some basins achieve safe yield while other wide areas continue to experience significant overdraft.[133] The impact of mining

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[127] CWA§401 Certification, Specific Condition dated February 3, 2015, #1, p. 6

[128] See EPA letter to the Corps dated April 14, 2015. A predictive tool is highly questionable given the asynchronous nature of precipitation in the semi-arid region and in consideration of climate change and drought.

[129] See Guidelines at Subpart F (40 CFR 230.50).

[130] http://www.azwater.gov/AzDWR/WaterManagement/AMAs/default.htm. To establish an AMA, at least 1 criteria must be met: 1) preserve existing groundwater for future use; 2) land subsidence is endangering property or groundwater storage; or 3) actual or threatened water quality degradation due to groundwater use.

[131] Email dated November 5, 2015 from Pam Muse, Supervisor, AMA Planning and Data Department, ADWR to Elizabeth Goldmann, EPA.
http://www.azwater.gov/azdwr/StatewidePlanning/WaterAtlas/ActiveManagementAreas/documents/Volume_8_final.pdf, p. 46.

[132] http://www.azwater.gov/azdwr/WaterManagement/AMAs/TucsonAMA/TAMAOverview.htm. Safe yield means that the amount of groundwater pumped from the AMA on an average annual basis does not exceed the amount that is recharged.

[133] Cabello, V., N. Hernandez-Mora, A. Serrat-Capdevila, L. Del Moral, E. Curley. 2016. Water use and sustainability in the Tucson basin: Implications of spatially neutral groundwater management. In Gupta H., Gupta M., Poupeau F., Serrat-Capdevila A., (Eds) Water Banruptcy in the land of plenty. Steps towards a transatlantic and transdisciplinary assessment of water scarcity in Southern Arizona, pp. 289-316.

on local water table levels is very significant.[134] Significant ground water pumping for projects like the Rosemont Mine may further jeopardize the ability of the AMA to achieve a "safe yield" by 2025.

Two groundwater basins within the AMA would be impacted by the proposed mine, adversely affecting overall groundwater availability.[135] Rosemont Mine proposes to pump water supply for the mine from wells located in the Santa Cruz Valley near Sahuarita in the Upper Santa Cruz Subbasin.[136] In addition, active pumping of the mine pit within the Cienega Basin would remove groundwater from the regional aquifer. Groundwater declines can lead to increased pumping costs, decrease in water quality, riparian damage, land subsidence and land fissuring and permanent compaction of the aquifer all of which have occurred in the AMA.[137]

***Upper Santa Cruz Subbasin.*** Groundwater levels in the Upper Santa Cruz Subbasin have historically decreased by 1 to 3.5 feet per year and are projected to decrease by 3.5 to 6.5 feet per year.[138] It is estimated that water supply pumping for the mine over the 20-year active mine period will result in an increase in the rate of groundwater drawdown to a total decrease of 5 to 8 feet in groundwater levels per year. This represents a 6 to 7% increase over the current pumpage demand.[139] With the Upper Santa Cruz Subbasin already in decline, pumping of water from the regional aquifer for the operation of the proposed mine would lower groundwater levels, which would reduce groundwater availability to existing wells and water users. Because of pumping water supply for the mine, an estimated 500-550 private and municipal wells would be significantly impacted by drawdown in groundwater levels.[140] Groundwater-level drawdown is estimated to be as great as 90 feet immediately adjacent to the pumping locations and 10 feet or less approximately 3-4 miles (42 square miles) from the Rosemont Copper properties during active mining.[141] The cone of depression will not stop expanding until 100-140 years after pumping ceases. The 10-foot drawdown is projected to expand an additional 1 to 2 miles laterally before it stops expanding, encompassing approximately 78 square miles.[142] When pumping ceases, recovery would not occur unless water levels in the regional aquifer begin increasing.[143,144]

***Davidson Canyon/Cienega basin.*** The watershed where the Rosemont Mine is located provides 20% of the groundwater recharge in the Tucson basin.[145] Water originating from Cienega Creek can be

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[134] Ibid. "Disconnection of recovery from recharge sites entails local impacts over water table levels driven by mines and new developments." P. 1.
[135] FEIS, p. 338.
[136]During the life of the proposed Rosemont Mine, total water use pumped from the Upper Santa Cruz Subbasin is estimated at 100,000 acre-feet. This averages 5,000 acre feet per year (afy) of fresh water during operations. The water would be pumped from 4-6 wells near Sahuarita in the Santa Cruz Valley at 5,000 gallons per minute. FEIS, p. A-11.
[137] http://www.azwater.gov/azdwr/StatewidePlanning/WaterAtlas/ActiveManagementAreas/documents/Volume_8_final.pdf. p. 54.
[138] By 2030, projected water deliveries of groundwater in the Sahaurita area will almost double, and private wells will likewise double their groundwater withdrawal. FEIS, p. 356.
[139] FEIS, p. 338 and p. 356.
[140] Shallow wells are not assessed. Drawdowns could occur but the model is not able to predict these specific impacts.
[141] If active mining is extended to 25 years (estimated upper range), the additional drawdown due to the mine water supply pumping would range from 7.5 to 17.5 feet. FEIS p. 336.
[142] FEIS, p. 336.
[143]FEIS, p. 330.
[144]FEIS, Table 58, p. 337.
[145]Letter to ADEQ from Pima County Administrator, Chuck Huckelberry dated March 21, 2014. Eastoe, C., A. Gu and A. Long. 2003. *Stable Isotope Tracers Reveal Flow Paths*. Geoscience News. 2 pp.

identified in the groundwater of the Tucson basin.[146] According to the FEIS, the mine pit would create a permanent drawdown of the water table. During active mining, groundwater would be pumped directly from the mine pit or from dewatering wells next to the mine pit. After closure, the pit will gradually fill with groundwater, forming a mine pit lake. The mine pit lake is expected to act as a permanent regional hydraulic sink, resulting in long-term impact on groundwater hydrology in the vicinity of the mine.[147,148] During active mining, estimates of pit dewatering are as high as 650 gallons per minute, resulting in approximately 13,000 – 18,500 acre-feet of water removed from the aquifer.[149,150] Groundwater drawdown from the mine's pit within the Davidson Canyon/Cienega Basin, would significantly impact an estimated 360-370 well owners with water level declines over 10 feet.[151] If mine contamination of groundwater occurred, water supplies for Tucson and Vail could be at risk.[152]

***Water quality impacts from groundwater depletion in wells.*** In addition to a reduction in well water quantity for owners and users, groundwater depletion in wells may adversely impact water quality. Withdrawal of good quality water from the upper parts of inland aquifers can allow underlying natural or manmade pollutants to concentrate in the remaining groundwater degrading water quality.[153,154]

**Mitigation Proposed by Rosemont Copper Will Not Offset Significant Adverse Impact to Municipal and Private Water Supplies.**

To address the impacts to groundwater from the mine, Rosemont proposes measures to mitigate impacts to well owners and the aquifer of the AMA, but these measures will not offset significant impact to the quantity and quality of private and public water supplies.

**Residential Well Protection Program**. Rosemont Copper Company offered a voluntary Well Protection Program for private residential well owners against the risk of mine-associated groundwater drawdown. These agreements were offered to well owners in "well protection areas" identified by the Rosemont Copper Company that may be subject to well draw down from operation of the proposed mine. The program is two-fold: 1) a pump warranty program for well components; and 2) a water well deepening program to deepen a well that has failed.[155] An In Lieu Cash payment of $5000.00 and

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[146] Eastoe, C.J., Ailang, G. 2016. Groundwater depletion beneath downtown Tucson, Arizona, a 240-year record. Universities Council on Water Resources Journal of Contemporary Water Research and Education. Issue 159, pp. 62-77.

[147] After 150 years, the area within the 5-foot contour encompasses approximately 50,000 acres.

[148] Once mining has ceased, water lost to evaporation in the mine pit would be partially offset by groundwater flowing into the mine pit lake, perpetuating the aquifer drawdown caused by the mine pit dewatering. Models estimate equilibrium would not be reached until 700 to 7,000 years after mine closure. FEIS, p. 291 and p. 329.

[149] FEIS, p. 353.

[150] SIR, p. 24.

[151] Some well owners may experience up to 85 feet of water level decline if the wells are connected to the regional aquifer. FEIS, p. 350- 352.

[152] Letter from C.L. Huckelberry, Pima County Administrator, to William James, U.S. Army Corps of Engineers and Kerwin Dewberry, Forest Supervisor, Coronado National Forest, regarding *New Information: Rosemont Copper Mine, Section 404 Clean Water Act*, dated September 28, 2017.

[153] http://wrrc.arizona.edu/sites/wrrc.arizona.edu/files/USGS_Groundwater%20Depletion%20Across%20the%20Nation.pdf

[154] http://waterinthewest,standord.edu/groundwater/overdraft/

[155] Rosemont Copper Company decides whether the decline in water levels is greater than the natural annual or seasonal fluctuations experienced in the area because of monitoring at key monitoring sites chosen by the company. Deepening is limited to the existing registered well depth plus 50%, or a maximum of 600 feet below land surface, whichever is less and is limited to one attempt to deepen the well. This does not include wells for irrigation. Well owners entering this contract waive all claims against Rosemont Copper Company for interference with the water levels in the area. In addition, this contract does not include protection from any water quality degradation. There is no protection for well owners who choose not enter into this legally binding agreement. *Rosemont Copper Company Eastside Well Protection Program.*

$15,000.00, respectively, is also offered.[156] Pump damage or well depletion is determined solely by Rosemont Copper Company. The length of the warranty is unclear. Property owners have voiced concerns to EPA regarding the threat to a clean and reliable water source, and economic hardship should the mine be constructed.[157,158]

**Groundwater Recharge.** Rosemont Copper Company has committed to recharging 105 percent of water pumped from the Santa Cruz Basin (105,000 acre feet).[159] As of 2009, 45,000 acre-feet have been recharged by the company, yet only 600 acre feet of that total have been recharged within the Upper Santa Cruz Subbasin where impacts to private well owners will occur. Given the uncertain location where water would be recharged in the future, it is unknown whether actual drawdown in the Upper Santa Cruz Subbasin would be offset.[160] Also, groundwater recharge is a voluntary measure and given the likely water shortages in the Colorado River over the next few decades, it is unlikely Rosemont Copper Company will be able to meet their commitment to recharge with excess water from CAP. Arizona Department of Water Resources is currently negotiating cuts on Colorado River water deliveries.[161,162] If necessary, excess water deliveries, such as those utilized by Rosemont Copper Company would be reduced and portions of CAP recharge operations would cease. If further reductions are required, CAP would even recover water stored to meet Arizona's obligations.[163]

The adverse effect of the Rosemont Mine on private and municipal water supplies is significant. Groundwater pumping for the mine will reduce available groundwater supply, possibly degrade water quality and cause significant economic hardship for private and municipal water users. Voluntary measures proposed by the Rosemont Copper Company to mitigate for impacts to water supplies are unreliable and unenforceable and will not offset the significant impacts to water users in the AMA.

**The Rosemont Mine Will Cause Unacceptable Adverse Effects to Water-Related Recreation and Aesthetics.**[164]

**Water-related Recreation.** Several water-related recreational opportunities exist on lands within and adjacent to the Rosemont Mine. These include wildlife observation, bird watching, camping, biking, and hiking along streams within the Cienega Creek watershed. The Rosemont Mine would alter and destroy aquatic resources which support these recreational activities, as well as restrict use adversely affecting recreationists.

Per the FEIS, Rosemont Mine will result in a loss of 6,177 acres of National Forest Service (NFS) lands available for recreational use. Currently, commercial outfitter and guides operate throughout the forest,

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[156] It is not known how many private well owners signed up for the program.
[157] Letter from property owners, Gregory and Carol Shinsky to EPA, February, 2012.
[158] As depth to water increases, power costs to drive the pump increases with the yield of the well declining below usable rates.
http://wrrc.arizona.edu/sites/wrrc.arizona.edu/files/USGS_Groundwater%20Depletion%20Across%20the%20Nation.pdf
[159] This is a voluntary measure in a License for a Right-of-way Encroachment agreement with the Town of Sahuarita. Recharging would be based on "available" CAP water. FEIS, p. 360.
[160] FEIS, p. 360.
[161] http://www.cap-az.com/public/blog/508-arizona-is-rising-up-to-meet-the-challenges-of-falling-water-levels-at-lake-mead, http://tucson.com/news/local/big-cap-cuts-coming-as--state-water-agreement-nears/article_876e3aa6-6cf0-53ec-bd0c-95be8c6468ae.html
[162] Central Arizona Project Issue Brief Strategic Initiatives and Public Policy dated October, 2014.
[163] http://www.cap-az.com/documents/public-information/Shortage-Issue-Brief.pdf and http://www.azwater.gov/azdwr/ColoradoRiverShortagePreparedness.htm
[164] See Guidelines, Subpart F (40 CFR 230.52 and 40 CFR 230.53)

including 20 different birdwatching guides.[165] Bird-watching and hiking would be restricted in the Cienega Creek watershed due to exclusion of public access from the area within the perimeter fence.[166] In addition, 7.3 miles of Arizona National Scenic Trail would need to be relocated. Activities affecting birding in and adjacent to the project area include direct loss of habitat, noise, dust, lighting, increased traffic, changes to springs, riparian vegetation and pit lake water quality.[167] Industrial noise would be noticed near the perimeter fence and along much of the Arizona National Scenic Trail.

***Economics.*** Construction of the mine will adversely affect outdoor recreation and quality of life enjoyed by the public and private property owners. The loss of values for consideration include impairment of natural resources (*e.g.*, degradation of habitat) which support recreation activities such as birdwatching, hiking and sightseeing. Arizona Game and Fish Department noted the mine's impacts would, "render the northern portion of the Santa Rita Mountains…worthless for wildlife recreation.[168] A study conducted by the Sonoran Institute shows that approximately 2.95 billion is spent annually for tourism and outdoor recreational activities in Pima and Santa Cruz Counties. Their analysis states that if the proposed project displaces only one percent of travel and tourism-related spending in the region, the economic loss would be greater than the entire annual payroll of the mine.[169] According to the USFS, the change in tourism ranges from a $1.0 million to $3.6 million dollar annual reduction in visitor spending, and a 15 -50% decrease in nature-based tourism from 0 to 10 miles from the mine per year.[170] The FEIS estimated the total annual economic losses in the greater Tucson area from reduced tourism at $1.2 million to $6.5 million.[171] Increase in sky brightness as a result of the proposed project will impair observatories near the project area which could result in a decrease in state revenues generated from astronomy, space, and planetary resource and tourism.[172]

**Aesthetics.** The Rosemont Mine would impact regional visibility resulting in adverse scenic quality well beyond the mine footprint.

The Coronado National Forest's (CNF) mountain ranges known as "sky islands" reach elevations exceeding 10,000 feet providing high quality scenery and a diverse range of habitats.[173] A national Forest Service survey showed more than 67% of visitors to CNF participate in viewing nature; affirming the importance of the aesthetics of the area. Twenty-five percent of CNF visitors travel on a forest scenic byway.[174] Per the FEIS, *Approval of the forest plan amendment would allow actions that would result in impacts to visual resources. With all action alternatives, the proposed mine would result in permanent detrimental impacts to visual quality. While design features and mitigation measures would result in minor reductions in negative impacts to scenic quality, they would not be sufficient to obscure the impacts or visibility of residents, visitors, and travelers in the planning area.*[175]

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[165] FEIS, p. 851.
[166] SIR, p. 233.
[167] FEIS, p. 853.
[168] Letter from Joan E. Scott, Habitat Manager, AZGFD to Beverly Everson, CNF dated July 8, 2008.
[169] Marlow, J.E., 2007. Mining's potential economic impacts in the Santa Rita and Patagonia mountains region of southeastern Arizona. Sonoran Institute Study.
[170] SIR, p. 262.
[171] FEIS, p. 1113.
[172] SIR, p. 262.
[173] FEIS, p. 767.
[174]FEIS, p. 767.
[175] FEIS, p. 833.

The proposed project, when added to past, present and future actions and combined with trends that impact visual quality, would result in cumulatively adverse, permanent impacts on scenic quality within the region because of the surface disturbances and landscape contrasts associated with these activities. Additionally, fugitive dust production from the mine would increase the adverse impacts to long-distance scenic viewing of the Santa Rita Mountains and other scenic mountain ranges within the region in the short and long term.[176]

The USFS uses a Forest Service Scenery Management System to apply a systematic and consistent method to analyze impacts to forest scenic quality. This methodology was applied to the proposed Rosemont Copper Project.[177] The proposed Rosemont Mine would create significant changes to the landscape in perpetuity as follows:[178]

- 186,893 acres will have visibility of the mine area;
- 2.8 miles of Arizona National Scenic Trail will have direct line-of-sight views of the mine area;
- Permanent, major adverse impacts from highly visible waste rock and tailings piles; and
- Strong contrasts and adverse impacts from highly visible pit face and diversion channel.

In summary, the Rosemont Mine would impact regional visibility and would result in adverse scenic quality well beyond the mine footprint. Visual impacts would be significant and adverse.[179] The proposed Rosemont Mine project would mar the beauty of natural aquatic ecosystem by degrading water quality, creating distracting disposal sites, inducing inappropriate development, and destroying vital elements that contribute to the compositional harmony or unity, visual distinctiveness, or diversity of an area.

**The Rosemont Mine Will Cause Unacceptable Adverse Effects to Parks, National and Historic Monuments, National Seashores, Wilderness Areas, Research Sites and Similar Preserves.**[180]

The Rosemont Mine would significantly degrade the following national and regional conservation lands.

**Las Cienegas National Conservation Area.** BLM's Las Cienegas National Conservation Area (NCA) was established by Congress, in large part, to conserve, protect and enhance the unique and nationally important aquatic, wildlife, vegetation and riparian resources of the Cienega Creek watershed. Six types of rare ecosystems are protected within the NCA, including aquatic ecosystems such as cienegas (marshlands), cottonwood-willow riparian wetlands, and mesquite bosques. Because of its ecological significance, Congress and the President designated the NCA as part of BLM's National Landscape Conservation System. The National Landscape Conservation System was established to protect some of the most remarkable public lands in the American West. Additionally, a 10.5 mile stretch of Cienega Creek has been rated eligible for national wild and scenic river designation (BLM 2003).[181]

At its nearest point, the mine site lies only 3 to 4 miles from the NCA boundary. The consequence of the groundwater drawdown from the mine pit is the secondary loss or conversion of hundreds of acres of

[176] FEIS, p. 867
[177] FEIS, p. 770- 771.
[178] FEIS, Table 148. Summary of Effects.
[179] FEIS p. 833.
[180] See Guidelines, Subpart F (40 CFR 230.54)
[181] FEIS, p. 839.

riparian vegetation, including wetlands, and the drying of streams currently characterized by permanent flow. These impacts are permanent and persistent resulting in significant degradation and loss of rare and largely intact mosaics of some of the highest quality stream and wetland ecosystems in Arizona; adversely affecting federally listed endangered and threatened species[182,183] The proposed mine project will degrade and destroy the resources Congress sought to protect.

**Pima County Cienega Creek Natural Preserve.** Pima County has identified the Cienega Creek Natural Preserve as the "crown jewel" of their natural resource conservation lands.[184] The approximately 4,000-acre preserve was established in 1986 and contains some of the region's most significant aquatic and riparian habitat extending a length of 12 miles along Cienega Creek. Surrounded by the arid environment of the Sonoran Desert, the Cienega Creek riverine wetlands provide shelter and foraging habitat for wildlife species. Within the Preserve, portions of Cienega Creek run perennially providing habitat for federally listed as endangered, Gila topminnow, Gila chub, and the Huachuca water umbel. The Preserve also provides a corridor link for movement of larger wildlife between the Santa Rita, Whetstone and Rincon Mountain Ranges.

The Preserve was established for the "purposes of preservation and protection of the natural scenic resources of the property…for the benefit and protection of the County, its resources, residents, and visitors."[185] Construction of the proposed Rosemont Mine through the filling of Cienega Creek's headwater streams, diversion of streamflow and groundwater drawdown will dramatically alter in perpetuity the surface and subsurface hydrology of the Cienega Creek watershed causing stress and degradation of aquatic habitat resulting in dramatic and persistent changes to the preserve.

**Bar V Ranch Preserve.** Pima County's 14,400-acre Bar V Ranch Preserve is a located adjacent to the County's Cienega Creek Natural Preserve in the Cienega Creek watershed. It includes significant portions of Davidson Canyon. It is designated as Biological Core and Important Riparian Area within Pima County's Conservation Lands System, supporting habitat for 34 Priority Vulnerable Species identified in the Sonora Desert Conservation Plan and is a vital wildlife corridor link in Cienega Valley.[186]

Construction of the proposed Rosemont Mine through the filling of Cienega Creek's headwater streams, diversion of streamflow and groundwater drawdown will dramatically alter in perpetuity the surface and subsurface hydrology of the Cienega Creek watershed causing stress and degradation of aquatic habitat resulting in dramatic and persistent changes to the Bar V Ranch Preserve.

**Coronado National Forest**. The Rosemont Mine would result in the direct removal of up to 6,990 acres (5.1 percent of NFS lands within the Santa Rita Ecosystem Management Area) from public entry.[187] The national forest is located within the Sky Island region of southeastern Arizona, southwestern New Mexico and northwestern Mexico. Elevations within the national forest range from 3000 feet to 10,720 feet in widely scattered mountain ranges or "sky islands." These mountain forested ranges separated by

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[182] FEIS, Chapter 3, Seeps, Springs and Riparian Areas

[183] Per the B.O., these species and/or their critical habitat include the: Chiricahua leopard frog, northern Mexican gartersnake, Gila chub, Gila topminnow, desert pupfish, Huachuca water umbel, yellow-billed cuckoo, and southwestern willow flycatcher.

[184] Brian Powell, Pima County Office of Sustainability and Conservation, Water Resource Trends in the Cienega Creek Natural Preserve, Pima County, Arizona dated August 2013.

[185] Ibid.

[186] http://www.sonorandesert.org/properties/barv/

[187] FEIS, p. 862.

vast expanses of desert and grassland plains, are among the most diverse ecosystems in the world because of their great topographic complexity.[188, 189]

Construction of the Rosemont Mine would change the existing undeveloped, semi primitive recreation setting on lands surrounding the project area to a developed, industrialized setting.[190] Restricted public access due to the perimeter fence would result in a reduction of recreational activities with indirect effects such as increased noise, vibration, artificial lighting, traffic, loss of native vegetation and general industrial activities.[191] The mine would exclude hunters from access to approximately 4 to 5 percent of NFS lands resulting in the loss of 775 hunter days annually.[192] A 12.8 mile section of the Arizona National Scenic Trail would be relocated and increased traffic on the Patagonia-Sonoita Scenic Road will likely result in a reduction in use for cyclists and pedestrians.[193]

**Outstanding National Resource Waters (ONRW).** The State of Arizona has designated reaches of both Davidson Canyon and Cienega Creek as ONRWs due to, among other factors, their exceptional ecological and recreational significance and the presence of federally endangered and threatened species. This state designation affords them special protection, prohibiting any lowering of water quality. Federal regulations for state-designated outstanding waters similarly state "Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected" (40 CFR 131.12(a)(3)).

The proposed mine will result in the lowering of water quality in the ONRW through: 1) heavy metal contamination; 2) increasing total sediment in surface water flow; and 3) alteration of the physical, chemical and biological integrity of the stream. These adverse water quality impacts to downstream ONRWs will be permanent.

**The Rosemont Mine Will Result in Unacceptable Adverse Cumulative Effects on the Aquatic Ecosystem.**[194]

The USFS evaluated the cumulative effects on biological resources from the Rosemont Mine and concluded; *When considered together, these foreseeable actions, when combined with the expected impacts from the proposed project (no matter which action alternative is selected), and with climate change and human population growth and associated development, would cumulatively contribute to impacts such as loss of fragmentation of habitat, vibration, noise, dust and air pollutants, and artificial lighting. The overall result would be a continuation of the long-occurring trend of reduced habitat quantity, and quality; distribution of movement and genetic flow; and continued increase in risk and threat to sensitive species.*[195]

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[188] www.fs.usda.gov/coronado
[189] Skyislandalliance.org
[190] FEIS, p. 862.
[191] Recreational activities include; birding, scenic touring, solitude, hunting, off-highway vehicle use, camping, hiking, horseback riding, and mountain biking. Restricted access would result in a direct loss of acres to the Santa Rita Backcountry Touring Area and National Forest roads. FEIS, p. 853 and p. 862.
[192] FEIS, p. 853.
[193] As many as 88 roundtrip truck traffic shipments would occur per day. FEIS, p. 856.
[194] See Guidelines, Subpart B (40 CFR 230.11(g)).
[195] FEIS, p. 712.

The USFS conclusion underscores the significance of the cumulative effects on the aquatic ecosystem attributable from the Rosemont Mine. In evaluating the cumulative impacts, one must consider the additive nature of the mine's effects on the Cienega Creek watershed, the effects of drought and climate change, as well as the environmental impacts from future mining in the Cienega Creek watershed. Cumulative impacts on the aquatic ecosystem include those associated with past, present, and reasonably foreseeable discharges to waters of the U.S. The cumulative impacts stemming from the Rosemont Mine alone, without even considering foreseeable impacts associated with other activities in the watershed, would be severely damaging to the aquatic ecosystem.

Less than 1 percent of Arizona's landscape has wetlands. Since the late 1800's, streams and wetlands throughout Arizona have been modified or drained, resulting in the loss of more than one-third of the State's original wetlands.[196] The proposed project will contribute to the significant cumulative loss of wetlands in Arizona. At a regional level, changes in the aquatic ecosystem of the Cienega Creek watershed from the Rosemont Mine and other cumulative effects will result in a significant impairment of the water resources, including the productivity and water quality of existing aquatic ecosystems.

**Mining.** The Rosemont Mine has a predicted life of 25-30 years. The cumulative effects of this mine are significant as impacts from reduce stormflow, reduced sediment delivery and contaminated mine runoff are additive and will persist long after mining has ceased. Metal contaminated sediments are sources of future contamination and pose ongoing long term risk to the environment.[197] This mine will cause wide and pervasive changes to the ecosystem through a reduction in the diversity and spatial distribution of waters over large geographic areas and will cause habitat fragmentation, water quality degradation and risk to federally listed endangered and threatened species.

Rosemont Copper Company currently has three mineral deposits near the Rosemont Mine: Broad Top Butte, Copper World, and Peach-Elgin with potential mineral resources of 8.8 million tons for Broad Top Butte and 23.4 million tons for Peach-Elgin.[198] These deposits are located on the northwest corner of the proposed Rosemont Mine. It is Rosemont Copper Company's intention to conduct further work at these sites to evaluate the mineral potential, stating that these deposits have potential as satellite areas of production.[199] Mining of these areas would expand and prolong the significant degradation of the Cienega Creek watershed.[200] Additional mining would further deplete groundwater levels currently experiencing overdraft conditions threatening municipal and private water supplies. For example, extending the Rosemont Mine life alone from 20 to 25 years will require additional mine water supply pumping resulting in an additional drawdown of 7.5 to 17.5 feet.[201]

**Drought and Climate Change**. The adverse effects of the project's changes to the regional hydrological regime would be further exacerbated by drought and projected climate change. The long-term trend in surface flows in Cienega Creek is one of steep, continuing decline due to several factors including increasing domestic groundwater pumping and persistent natural drought. Long-term ground and surface water monitoring within the Cienega Creek watershed indicates that the duration and extent of streamflow is very susceptible to drought; the length of stream segments that support perennial flow

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[196] http://pubs.usgs.gov/wsp2425/state_highlights_summary.html

[197] Taylor and Hudson-Edwards. 2008.

[198] Rosemont Copper Project CWA Section 404(b)(1) Alternatives Analysis (SPL-2008-00816-MB) prepared by WestLand Resources dated September 2013 pp. 23-26. No information was available on size of mineral resource for Copper World.

[199] Ibid.

[200] Additional potential future mining has been identified in the FEIS including the Charles Seel leases and Andrada Mine in Davidson Canyon and the Twins Buttes Mine near Sahuarita (FEIS, p. 437).

[201] FEIS, p. 336.

have been reduced beginning with the drought of the 1980s.[202] Between 1990 and 2011, surface water discharge in Cienega Creek declined 83%, while stream flow extent declined by 88 percent.[203] Davidson Canyon has also exhibited a drying trend.[204] Evaluation of baseline trends in temperature and precipitation in Tucson, Green Valley and Vale show a statistically significant trend toward lower precipitation, and a statistically significant relationship between reductions in stream flow, increases in temperature and decreases in dissolved oxygen.[205]

Climate change research and modeling predict a 10-20 percent reduction in precipitation in the desert southwest within the next 75 years, resulting in more arid conditions.[206] Changes in rainfall and runoff will result not only in increasing dryness, but also more frequent flood events. Change in storm intensity is particularly significant in areas containing erodible metal-bearing sediment increasing the flux of metals from alluvial storage further degrading downstream aquatic resources.[207,208]

The USFS states predicted changes in weather patterns could influence the quantity of stormwater that is stored at the surface and available for beneficial use by riparian vegetation. Increased temperatures and reduced precipitation will increase the vulnerability of springs and riparian systems relying on the groundwater system whether regional or local.[209] The potential cumulative effect of drought, aridity from climate change, and projected reductions in surface water flows and groundwater drawdown attributable to the Rosemont Mine proposed will result in significant adverse impacts to the aquatic environment.

**The Mitigation Proposed by the Rosemont Mine Will Not Offset Impacts to Waters of the U.S. Below the Level of Significant Degradation.**

The Rosemont Copper Company's compensatory mitigation plan, *Final Habitat Mitigation and Monitoring Plan Permit No. SPL-2008-00816-MB Rosemont Copper Project Revised September 12, 2017* (HMMP), does not prevent or replace the impacts that give rise to the significant degradation finding.[210]

For compensatory mitigation to bring a project into compliance with the significant test of the Guidelines, it must satisfy two conditions: it must prevent or replace the impacts that give rise to the significant degradation finding, and it must provide reasonable assurance of success. Without a reasonable assurance that the mitigation will function as intended, it cannot be fairly relied upon to reach a finding that otherwise significant adverse impacts would no longer be so.

The environmental scale of the HMMP plan is not commensurate with the environmental scale of its project impacts. What is lacking is a clear nexus between the impacts of the project and the proposed

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[202] http://www.pagnet.org/tabid/912/default.aspx
[203] Powell, B. F. 2013. Water resource trends in the Cienega Creek Natural Preserve, Pima County, Arizona. An unpublished report to the Pima County Flood Control District, Tucson, AZ.
[204] FEIS, p. 420.
[205] SIR, p. 50-53.
[206] Letter from Pima County to US Army Corps of Engineers, RE: SPL-2008-00816 Rosemont Mine, dated January 19, 2012.
[207] Longfield, S.A., Macklin, M.G. 2008. The influence of recent environmental change on flooding and sediment fluxes in Yorkshire Ouse basin. Hydrological Processes 13:1050-1066.
[208] Walsh, K., Cai, W., Hennessy, K., Jones, R., McInnes, K., Nguyen, K., Page, C., Whetton, P., 2002. Climate Change in Queensland under Enhanced Greenhouse Conditions, CSIRO, Australia, 83 pp. cited in Taylor and Hudson-Edwards. 2008.
[209] FEIS, p. 565-566.
[210] See *EPA Analysis of the Final Habitat Mitigation and Monitoring Plan Permit NO. SPL-2008-00816-MB Rosemont Copper Project. September 12, 2017* dated November 30, 2017.

mitigation. The mitigation, located outside of the watershed where the impacts occur, cannot offset significant degradation within the Cienega Creek watershed itself or account for the loss of ecological services arising from the interrelationship of the headwater streams and the surrounding terrestrial ecology at a regional scale. In fact, the HMMP effectually reduces the diversity of ecosystem types and results in a loss of hydrologic function and the biological communities the ecosystem supports.

There is high risk and uncertainty associated with the proposed mitigation. The mitigation proposed at Sonoita Creek Ranch involves significant and risky hydrologic modifications and long term maintenance, thereby posing an extremely high risk of failure.[211] The proposed engineered channels are not designed as self-sustaining, unconstrained or naturally functioning floodplain channels, so they will not provide significant and lasting ecological benefits to the aquatic ecosystem. Highly questionable modeled predictions put the ecological benefits of the proposed constructed channels in question. As designed, it is highly questionable whether these constructed channels will flow at a frequency and duration sufficient to offset many of the stream functions directly and indirectly lost at the proposed mine site.[212] In addition, the proposed mitigation itself will result in the filling of 8.9 acres of Sonoita Creek.

EPA has reviewed the *Final Habitat Mitigation and Monitoring Plan Permit NO. SPL-2008-00816-MB Rosemont Copper Project dated September 12, 2017* (HMMP). The mitigation proposed in the final HMMP includes two components: the Sonoita Creek Ranch (SCR) project and the onsite stock tank removal. Rosemont submitted the mitigation package to compensate for impacts to waters of the United States by the proposed Rosemont Copper Mine. EPA comments on this HMMP are reviewed in an analysis dated November 30, 2017.

Our review of the HMMP affirms our position that the mitigation does not comply with EPA's 404(b)(1) Guidelines and the requirements of the Mitigation Rule. The HMMP proposed by Rosemont fails to offset the proposed mine's impacts to aquatic resources in the Cienega Creek watershed:

- The SCR mitigation does not offset any of the pervasive damage to aquatic resources in the Cienega Creek watershed;
- Rosemont's qualitative methodology comparing functional loss associated with the mine's impact site and the functional gain at the mitigation sites is scientifically flawed and unsupportable and therefore, not valid;
- Rosemont's application of the mitigation terminology to the HMMP erroneously inflates the credit value of the mitigation;
- The onsite stock tank removal relies on erroneous assumptions on stormflow, is not scientifically valid and fails to offset 28.4 acres of secondary impact to Cienega Creek and its' downstream Outstanding Arizona Waters; and
- The Lower San Pedro In-Lieu Fee Project Site has not been approved by the Interagency Review Team and would not compensate impacts at the remote mine site.

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[211] Technical Memorandum on the Conceptual Design for Sonoita Creek, AZ from Dr. Mathias Kondolf, UC Berkeley and James Ashby, PG Environmental to Dr. Robert Leidy, USEPA dated February 18, 2015.

[212] In a Corps Memorandum to the Field dated October 29. 2003, the Corps provides compensatory mitigation guidance as part of the implementation of the National Wetlands Mitigation Action Plan. The purpose of the Guidelines is to identify the basic requirements for mitigation success and to assist in mitigation site selection. This guidance identifies: 1) restoration over creation; 2) avoiding over-engineered structures in the wetland's designs; 3) restoring or developing naturally variable hydrologic conditions; 4) considering the hydrogeomorphic and ecological landscape and climate; and 5) attention to subsurface conditions, including soil and sediment geochemistry and physics, all of which the RM mitigation plan fails to do.

**Conclusions and Basis for Finding of Significant Degradation**

The Rosemont Mine will degrade and destroy waters in the Cienega Creek watershed containing regionally rare, largely intact mosaics of some of the highest quality stream and wetland ecosystems in Arizona. These environmental consequences are substantial and unacceptable and contrary to the goals of the CWA. Mitigation proposed by Rosemont Copper Company will not prevent unacceptable adverse effects to these waters from the proposed mine. Therefore, EPA Region IX maintains that impacts associated with this project will result in significant degradation (40 CFR 230.10(c)) of our Nation's waters.[213]

The environmentally-damaging nature of the Rosemont Mine (*i.e.*, large-scale, long-lasting, extractive mineral mine) will cause or contribute to significant persistent degradation of the aquatic environment. As a direct consequence of the § 404 CWA permit action, direct and secondary impacts from the proposed project will result in the loss, conversion and functional habitat degradation/destruction of aquatic, wetland and terrestrial habitats supporting 12 federally listed endangered or threatened species. This region includes vast areas of the Coronado National Forest, the Las Cienegas National Conservation Area, Pima County preservation areas and state-designate ONRWs recognized as being of regional and national importance.

EPA has determined the Rosemont Mine will result in the following effects which individually and cumulatively contribute or cause significant degradation:

1) Significantly adverse effects of the discharge of pollutants on human health or welfare, including but not limited to effects on municipal water supplies, plankton, fish, wildlife and special aquatic sites;
2) Significantly adverse effects of the discharge of pollutants on life stages of aquatic life and other wildlife dependent on aquatic ecosystems, including the transfer, concentration, and spread of pollutants or their byproducts outside of the disposal site through biological, physical and chemical processes;
3) Significantly adverse effects of the discharge of pollutants on aquatic ecosystem diversity, productivity, and stability; and
4) Significantly adverse effects of the discharge of pollutants on recreational, aesthetic, and economic values.

[213] Jim Upchurch, Forest Supervisor, Coronado National Forest, stated in the Draft Record of Decision for the FEIS, *I recognize that each of the action alternatives would result in significant environmental and social impacts and that the no action alternative is the environmentally preferable alternative...* (p. 11).

## APPENDIX A

### Project Description and Environmental Setting and Significance

**Project Description**

The Rosemont Copper Company proposes to develop the Rosemont Mine within the Cienega Creek watershed in Pima County, AZ, approximately 30 miles south of the city of Tucson. The mine would occupy ~4,750 acres of National Forest Service, Bureau of Land Management and some privately-owned lands, with the primary land holding being Coronado National Forest. The mine is projected to produce ~4.7 billion pounds of copper, 90 million pounds of molybdenum and 54 million pounds of silver over the proposed 25-30-year mine life.

Mining will be conducted using conventional open-pit techniques. The mine pit would measure between 6,000 – 6,500 feet in diameter, with a final depth of 1,800-2,000 feet. The mine would produce a total of approximately 550 million tons of ore and 1,288 million tons of waste rock. Waste rock will be blasted and transported by haul truck to a storage area. Ore will be blasted, crushed and loaded onto a conveyor for conventional sulfide milling (sulfide ore). Tailings will be stored using a dry stack tailings technique. The placement of waste rock will include perimeter buttresses, with placement of the perimeter of the dry stack tailings storage areas to provide structural and erosional stability of the tailings pile. The copper concentrate from the milling operations will be shipped off site to a smelter.

The proposed project includes a 950-acre mine pit, 1,460-acre waste rock storage areas, 987 acre dry-stack tailings facility, ancillary facilities and structures, access and haul roads, and off site water and power and transmission lines.[214]

**Environmental Setting and Significance**

We considered several additional environmental factors in our evaluation of the significance of the aquatic resources that will be impacted by the Rosemont Mine. These include the landscape setting, quality and rarity of the aquatic resources that will be impacted, and the severity, permanence and persistence of project impacts. These considerations include the status of the aquatic resources as Aquatic Resources of National Importance (ARNI) and Special Aquatic Sites.

**Geographic Scope- Landscape Setting.** Essential to evaluation of the environmental effects of the Rosemont Mine is the geographic scope, or landscape setting, of the project within the Cienega Creek watershed.[215] The proposed Rosemont Mine lies on the eastern slopes of the Santa Rita Mountains and is bisected by an intricate network of 154 individual ephemeral and intermittent drainages that encompass over 18 linear stream miles. The mine footprint would cover 13% of the uppermost Barrel/Davidson Canyon watershed where annual precipitation ranges between 13-23 inches, amounts of rainfall comparable to more mesic regions near San Francisco, California.[216] At the proposed mine site the stream network functions as an important headwater source area for stormwater runoff and mountain-front recharge. Significantly, water falling as precipitation at the mine site is directly linked through

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[214] For more detailed description of the proposed mine, see FEIS, Volume 1.

[215] *The Corps will fully consider comments regarding the site from a watershed or landscape scale, including an evaluation of the potential cumulative and secondary impacts.* Regulatory Guidance Letter 92-01.

[216] FEIS, Table 31

surface and subsurface hydrologic pathways to surface flows in nearby downstream waters. In addition to serving as a water source area for streams and wetlands, and their associated fish and wildlife, the site contributes a significant amount of water to municipal and residential users' water through surface and sub-surface hydrologic pathways. The ecological significance of this setting is best understood from a landscape-scale, hydrologic accounting unit perspective. As such, the sites' water yielding drainages and groundwater aquifers distribute water through interconnected surface and subsurface pathways to support the functioning of down-gradient streams, riparian forests, springs, seeps, wetlands and human users. The persistence and health of aquatic resources associated with Cienega Creek and its major tributaries of Barrel Canyon, Davidson Canyon, Empire Gulch, and Gardner Canyon are dependent on contributions of abundant and clean surface water originating as overland and stream flow from the proposed mine site.

**Quality of Resource – Ecological Health.** The Cienega Creek watershed is the most intact natural major valley bottom aquatic wetland ecosystem in Arizona.[217] It is an aquatic resource of conservation value exceeding or equal to any other in the American Southwest. The aquatic ecosystem of the Cienega Creek watershed functions as the lifeblood that sustains a near pristine landscape rich in biodiversity.

The mine site lies within the Madrean sky islands which is part of the Madrean pine-oak woodlands ecoregion; an internationally recognized biodiversity hotspot featuring significant levels of biodiversity that is under threat from humans.[218] Several major drainages occur within the project assessment area: Wasp, McCleary, Scholefield, Barrel, and Box canyons; Empire Gulch; Gardner Canyon; and Ciengea Creek. Scholefield, Wasp and McCleary canyons drain to Barrel Canyon which joins Davidson Canyon approximately 4 miles east of the site. The site also supports ninety-five seeps and springs that are critical to the survival of many wildlife species. Almost all the drainages support xero-, meso-, or hydroriparian riparian habitats. Empire Gulch, Gardner Canyon, and Cienega Creek contain perennial stream reaches and support hundreds of acres of high quality riparian and palustrine emergent wetlands, many of which would qualify as jurisdictional waters.

***Special aquatic sites*** - Three of the six Special Aquatic Site types described in Subpart E of the Guidelines occur on or adjacent to the proposed project. Because of their special ecological characteristics of high food-web productivity, physical habitat critical for all life stages of aquatic life, water quality functions, and other important and easily disrupted ecological functions, these aquatic resources are given special recognition under CWA regulations. Collectively, the Special Aquatic Sites in the project area play a regionally significant role in maintaining the existing, high quality functions and services in this watershed.

The project will adversely affect three types of "Special Aquatic Sites" including wetlands, sanctuaries and refuges, and riffle and pool complexes (40 CFR 230.40 – 45)), as well as Tier 3 "unique" waters (portions of Davidson Canyon and Cienega Creek that are designated by the State of Arizona as ONRWs). These aquatic resources and adjoining habitat support ten federally listed endangered or threatened species

[217] Rosen, P.C. and D.J. Caldwell. 2004. Aquatic and Riparian Herpetofauna of Las Cienegas national Conservation Area, Empire-Cienega Ranch, Pima County, Arizona. Prepared for Bureau of Land Management, Tucson Office, September 1, 2004.

[218] Myers, N., Mittermeier, R.A. Mittermeier, C.G., Gustavo, A., da Fonseca, B., and J. Kent. 2000. Biodiversity hotspots for conservation priorities. Nature 403: 853-858.

Sanctuaries and refuges are areas designated under state and federal laws or local ordinances to be managed principally for the preservation and use of fish and wildlife resources. [219] Portions of lower Davison Canyon and Cienega Creek are designated by the State of Arizona as ONRWs (see discussion, below) and are within the Cienega Creek Natural Preserve (CCNP), a 4,000 acre sanctuary along 12 stream miles noted for its ecological significance and natural beauty as a desert riparian oasis.[220] In addition, portions of Empire Gulch lie within the Las Cienegas National Conservation Area (LCNCA), administered by BLM, a 45,000 acre preserve set aside in large part to protect riparian wetlands and native aquatic organisms including endangered fish and amphibians.

Wetlands and riffle-pool complexes are also Special Aquatic Sites that will be affected directly through the discharge of fill material at the mine site and by the secondary effects of reductions in surface water, changes in sediment delivery, and groundwater drawdown from the proposed project.[221] Riffle and pool complexes are especially valuable as habitat for fish and wildlife, supporting important feeding, spawning, rearing, and refuge functions for aquatic and life-cycle dependent terrestrial species.

***Outstanding Arizona Waters.*** The state of Arizona has designated reaches of both Davidson Canyon and Cienega Creek as ONRWs due to, among other factors, their exceptional ecological and recreational significance and the presence of federally threatened or endangered species.[222] Davidson Canyon Wash is a rare, spring-fed, low elevation desert stream, supporting a variety of uncommon flora and fauna. Cienega Creek contributes flows to the Santa Cruz River via Pantano Wash, and contains remnants of a historically extensive cienega system, defined by springs and marsh areas supporting habitat for wildlife and plant species, included threatened and endangered species. As ONRWs, their water quality meets or exceeds applicable water quality standards and lowering of water quality is prohibited.

***Aquatic Resources of National Importance.*** The EPA has determined that Cienega Creek and its major tributary, Davidson Canyon Wash, are aquatic resources of national importance for the purposes of Part IV of the August 1992 Memorandum of Agreement between the EPA and the Department of the Army regarding Section 404(q) of the Clean Water Act. These aquatic resources are extraordinary, rare and intact ecosystems in a desert environment, and their protection is an explicit priority of local, state and federal agencies, environmental organizations, and the public.[223]

***Important riparian areas.*** In December 2001, Pima County incorporated the Sonoran Desert Conservation Plan into its comprehensive land use plan by establishing the Conservation Lands System as the regional environmental vision. This system classifies lands into a variety of designations to reflect their relative value and importance in maintaining the biological diversity of Pima County. Davidson Canyon is identified under the plan as Biological Core area, and, along with Cienega Creek, an Important Riparian Area. By connecting the Empire, Santa Rita, and Rincon Mountain ranges—a network identified by the Arizona Department of Game and Fish, BLM and Pima County as critical wildlife movement corridor-Davidson Canyon, Cienega Creek and other riparian areas provide a natural habitat mosaic for the wide dispersal and migration of many species (*e.g.*, black bear, mountain lions, bobcats, coyotes).[224]

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[219] See Guidelines, Subpart E (40 CFR 230.40).
[220] http://rfcd.pima.gov/wrd/landmgt/cienegapreserve/
[221] Wetlands are defined at 40 CFR § 230.41. Riffle-pool complexes are defined at 40 CFR § 230.45.
[222] There are only 22 OAWs in the state of Arizona. http://www.azdeq.gov/environ/water/permits/download/oaw.pdf
[223] See EPA 3(a) and 3(b) letters to the Corps dated January 5, 2012 and February 13, 2012.
[224] DEIS, p. 370.

***Extent of Resource – Rarity.*** Less than one percent of Arizona's landscape supports wetlands. Since the late 1800's, streams and wetlands throughout Arizona have been modified or drained, resulting in the loss of more than one-third of the State's original wetlands.[225]

***Desert springs.*** Often the sole sources of water for wildlife, desert springs support wetland ecosystems including rare and endemic species.[226] Human changes to groundwater are one of the greatest threats to long-term sustainability of groundwater dependent ecosystems in arid and semi-arid regions.[227]

***Cienegas.*** Desert wetlands also called Cienegas are located within the impact zone of the mine. They are high in biodiversity and provide habitat for migratory birds and wildlife, which is critical in an arid environment. Nineteen percent of federally listed endangered or threatened species in Arizona are directly associated with cienegas.[228] Endangered species, such as the jaguar and ocelot utilize this habitat, as well. Cienegas have been reduced or degraded since the late 19th and 20th century and are provided little protection. On US Forest Service Lands in the Apache Highlands Ecoregion, all cienegas are extant, while only two remain on BLM lands.[229] Minckley *et al.* (2013) found near-surface water availability as the limiting factor for the persistence of the Cienega. Given the rarity of these resources, Minckley *et al.* (2013) identifies conservation of this habitat as beneficial to the maintenance of global biodiversity.[230]

**Severity of Impacts – Functional Loss.** Rosemont Mine is a large scale (*i.e.*, 4,750-acre footprint), long lasting (*i.e.*, >25 years of active mining with significant impacts lasting in perpetuity), high water consumption, extractive mineral mine anchored within a vast, interconnected, high-functioning, and undisturbed landscape. Thus, there will be significantly adverse direct and secondary project impacts to waters that will amplify throughout the watershed well beyond the immediate area of the project footprint. The environmental effects of direct and secondary impacts merge at the landscape scale of assessment through a break in the connectivity of aquatic resources (*e.g.*, stream networks) caused by a direct discharge of fill material resulting in significant adverse ecological effects. Sustaining important landscape-scale functions is not possible if supporting headwater streams are significantly degraded.[231] The filling of streams, the construction of a massive mine pit 2,000 feet in depth, and associated land clearing and related disturbances will dramatically alter in perpetuity project site topography, and surface and subsurface hydrology within the greater Cienega Creek and Santa Cruz River watersheds.[232]

**Temporal Scope of Impacts –Permanence and Persistence.** All the direct and most the secondary impacts to the aquatic ecosystem would be permanent and would persist in perpetuity. The construction of the mine would permanently fill 40 acres of waters and in doing so, would result in the fragmentation

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[225] http://pubs.usgs.gov/wsp2425/state_highlights_summary.html

[226] Patten, P.T., Rouse, L., and Stromberg, J.C., 2007. Isolated spring wetlands in the Great Basin and Mojave Deserts, USA: potential response of vegetation to groundwater withdrawal. Environmental Management DOI 10.1007/s00267-007-9035-9. 16pp.

[227] Ibid.

[228] Minckley, T.A., Turner, D.S., Weinstein, S.R., 2013. The relevance of wetland conservation in arid regions: a re-examination of vanishing communities in the American southwest. Journal of Arid Environments. p. 216.

[229] Ibid.

[230] Ibid.

[231] Ibid. Levick *et al.* 2008.

[232] Using Figure 58 of the PAFEIS and USEPA's NEPAssist mapping tool, EPA calculates that 1,000 years after active mining, the 5-foot drawdown contour will extend across approximately 42,000 acres of Cienega Creek watershed based on the Tetra Tech model and 64,000 acres based on the Montgomery model.

of a vast, intact, hydrologic landscape unit composed of hundreds of drainages covering many linear miles. The placement of fill would result in the loss of breeding and nesting areas, escape cover, movement corridors, and food sources for wildlife associated with existing waters on the mine site. Wildlife species and communities that depend on large, intact habitat blocks would be irreparably harmed by the mine project.

Secondary impacts will cause serious degradation or complete destruction of special and regionally unique aquatic resource areas downstream of the project. Many of those aquatic resources are unique because of their ecological diversity, and because they are difficult to restore once lost or degraded. Impacts from the mine would be irreversible.

**Significant and Irreversible Environmental Consequences of Groundwater Drawdown from the Proposed Rosemont Mine**

**October 5, 2017 (Revised November 30, 2017)**

EPA's 404(b)(1) Guidelines (Guidelines) are applied in the review of discharges of dredged or fill material into waters of the U.S. (waters) from the proposed Rosemont Copper Mine (Rosemont Mine) in Pima County, Arizona. Following a comprehensive analysis of the impacts on the physical, chemical and biological components of the aquatic environment, EPA has concluded that the Rosemont Mine will result in significant degradation to waters.[1] This document explains the secondary effects of groundwater drawdown from the proposed Rosemont Mine, which causes or contributes to a significant degradation of waters.

**Project Description and Environmental Setting**

The Rosemont Copper Company proposes to develop the Rosemont Mine within the Cienega Creek watershed in Pima County, Arizona. The mine would occupy approximately 4,750 acres of National Forest Service, Bureau of Land Management and some privately-owned lands, with the primary land holding being Coronado National Forest. The mine is projected to produce over 4.7 billion pounds of copper, 90 million pounds of molybdenum and 54 million pounds of silver over the proposed 25-30 year mine life.

Essential to an evaluation of the environmental effects of the Rosemont Mine is consideration of the geographic scope or landscape setting of the project within the Cienega Creek watershed. The Cienega Creek watershed functions as the lifeblood that sustains a near pristine landscape rich in biodiversity.[2] Several major drainages occur within the project area: Wasp, McCleary, Scholefield, Barrel and Box Canyons, Davidson Canyon, Empire Gulch, Gardner Canyon; and Cienega Creek. The watershed also supports riparian, seeps and springs critical to the survival of many wildlife species.[3]

The upstream tributaries of Cienega Creek, including Davidson and Barrel Canyons, Empire Gulch and its headwaters, provide a wide range of functions critical to aquatic ecosystem health and stability. Empire Gulch, Gardner Canyon, Barrel and Davidson Canyons and Cienega Creek contain intermittent and perennial stream reaches and springs supporting hundreds of acres of

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[1] See, *Environmental Consequences of the Proposed Rosemont Copper Mine: Significant Degradation to Waters of the United States*. Prepared by EPA Region IX dated October 5, 2017 (Revised November 30, 2017). 39 pp.

[2] The Cienega Creek watershed includes waters identified by EPA as Aquatic Resources of National Importance (ARNI) pursuant to §404(q) CWA as well as State of Arizona Outstanding National Resource Waters (ONRW). A portion of the watershed is located within the Cienega Creek Natural Preserve and the Las Cienegas National Conservation Area (LCNCA). Cienega Creek and its tributaries in the LCNCA support approximately 20 linear miles of riparian forest and marshland, which is often flanked by sacaton (*Sporobolus wrightii*) flats or mesquite (*Prosopis velutina*) bosque vegetation communities; additionally, many miles of xeroriparian and shrub communities occur (Bodner and Simms 2008). *Supplemental Information Report Rosemont Copper Project. USDA Forest Service Southwest Region. May 2015 (Rev. June 2015)* (SIR), p. 55.

[3] See the U.S. Fish and Wildlife Service *Amended Final Reinitiated Biological and Conference Opinion for the Rosemont Copper Mine, Pima County, Arizona* dated April 28, 2016 (BO).

high quality riparian and palustrine emergent wetlands.[4] These tributaries provide hydrologic connectivity within the watershed, facilitating the movement of water, sediment, nutrients, wildlife, and plant propagules. The ephemeral and intermittent streams are responsible for a large portion of basin groundwater recharge in this semi-arid region through channel infiltration. These streams contribute to the biogeochemical functions of waters within their watershed by storing, cycling, transforming and transporting elements and compounds, while facilitating the movement of sediment and debris and dissipating energy as part of the natural fluvial adjustment.[5]

**Groundwater Drawdown from the Proposed Rosemont Mine**

According to the FEIS, the mine pit would be actively pumped or dewatered during active mining creating a hydraulic sink near the mine site and drawdown of the water table near the mine water supply wells due to pumping.[6] The total dewatering loss near the mine site during active mining ranges from 13,000-18,500 acre-feet.[7] There is an estimated annual water loss in perpetuity of 170-370 acre-feet due to the presence of the mine pit lake, which is equivalent to 3 percent of basin recharge.[8] Annual water use of 5,400 acre-feet during the first eight years of mining represents an increase of 6.7 percent in area pumping.[9] Once groundwater begins to be removed from the aquifer by the mine, either by pumping and dewatering during active mining, or through evaporation from the pit lake after closure, groundwater drawdown in the aquifer continues steadily over time, eventually reaching equilibrium. Equilibrium would be reached based on model estimates between 700-7000 years after the closing of the mine.[10]

**Analysis used to Assess Impacts from Groundwater Drawdown**

To analyze impacts to groundwater quantity from the proposed Rosemont Mine, the U.S. Forest Service (USFS) utilized four numerical groundwater models. These models were used as the basis for conclusions presented in the FEIS and SIR on the impacts from the mine's groundwater drawdown on wetlands, seeps and springs, and streams, including ONRWs, federally listed endangered and threatened species and critical habitat. The USFS determined that the conclusions in the SIR are similar to those in the FEIS and therefore, the analysis disclosed in the FEIS remains valid.[11]

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[4] See United States Forest Service Final Environmental Impact Statement for the Rosemont Copper Project dated December 2013 (FEIS). See letter from Pima County Administrator C.H. Huckelberry to Mr. William James, U.S. Army Corps of Engineers (Corps) and Mr. Kerwin Dewberry, USFS dated September 28, 2017 and another letter to Mr. William James, US Army Corps of Engineers dated November 6, 2017 Re: *New information on the Intermittent Status of Barrel and Davidson Canyons.*

[5] See Levick, L., J. Fonseca, D. Goodrich, M. Hernandez, D. Semmens, J. Stromberg, R. Leidy, M. Scianni, D.P. Guertin, M. Tluczek, and W. Kepner. 2008. *The Ecological and Hydrological Significance of Ephemeral and Intermittent Streams in the Arid and Semi-arid American Southwest*. U.S. EPA and USDA/ARS Southwest Watershed Research Center, EPA/600/R-08/134, ARS/233046, 116 pp.

[6] FEIS, p. 353

[7] Ibid.

[8] SIR, p. 24.

[9] Ibid., p. 24.

[10] FEIS, p. 503.

[11] SIR, p. 141 and p. 267.

Measurement factors considered in the groundwater analysis included the:

- Direction and change (feet) of the water table level, including the annual average, range and rate of drawdown, compared with background;
- Extent of impairment to mountain-front recharge;
- Geographic extent in which water resources would be impacted;
- Duration of the effect (years); and
- Potential reduction in subsurface groundwater outflow from Davidson Canyon to Cienega Creek.[12]

Per the USFS, the groundwater modeling used in the FEIS and SIR cannot predict the magnitude or timing of the mine's impacts on distant waters such as Cienega Creek, Davidson Canyon, and Gardner Canyon. The threshold of accuracy for the available models (about 5 feet) renders the analysis of groundwater drawdown on distant surface waters highly uncertain.[13] Therefore, the FEIS and SIR analyses present a range of modeling scenarios as possible outcomes.[14] The USFS chose a single "best-fit" modeling scenario as the best calibrated to real-world conditions and the most likely outcome from the models.[15, 16] This does not change the overall uncertainty of the models and their inability to detect significant impacts that occur from relatively small amounts (*i.e.*, <5 feet) of groundwater drawdown.

Small changes in groundwater levels will have profound adverse effects on surface, and shallow subsurface (*i.e.*, groundwater and hyporheic) flows. The wetted surface area of many aquatic habitats in the arid Southwest during the driest portions of the year (April-early July), including the Cienega Creek watershed, is characterized by shallow surface water depths (*e.g.*, << than a few inches). As such, they are extremely susceptible to drying from small changes in surface depths linked to decreasing groundwater levels. Typically, there is a nonlinear relationship between groundwater-stream interactions such that changes in groundwater levels and stream flow are rarely a simple 1:1 relationship.[17] A consequence is that relatively small drawdown of groundwater levels can result in significant declines in groundwater contributions to stream base flows; one such study by Knox (2006) demonstrated that decreases in groundwater storage of about 3-5% resulted in a decline of stream base flow of 31% and total stream flow of 35%.[18]

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[12] SIR, p. 24.

[13] *The conclusion of groundwater experts consulted by the Coronado is that such small drawdowns are beyond the ability of these groundwater models, or any groundwater model, to accurately predict . . .*. SIR, p. 60.

[14] FEIS, p. 290 and SIR, p. 43.

[15] SIR, p. 44.

[16] Following issuance of the FEIS, additional review was conducted and presented in the SIR on the relationship between groundwater levels and flow conditions on Lower Cienega Creek and the predictions on stream flow impacts on Empire Gulch and Cienega Creek. Although significant issues regarding the groundwater models were raised, the USFS found the process undertaken was sufficient to rely upon the groundwater modeling results. The USFS concluded that the models prepared are the most appropriate tools for predicting impacts in the FEIS, if their associated uncertainty is fully disclosed. SIR, pp. 37-42.

[17] Earman and Dettinger, 2011. *Potential impacts of climate change on groundwater resources – a global review. Journal of Water and Climate Change* 24: 213-229).

[18] As presented in Earman and Dettinger 2011.

Significant changes to stream base flow are possible because typically inflow to streams originates from the uppermost portions of the subsidizing aquifer; small declines in the water table can significantly reduce groundwater contributions that sustain stream flow. [19]

All USFS models predict eventual groundwater drawdown in the assessment area.[20] If we accept the output of the modeling and sensitivity analyses, the probability of occurrence of some level of more than trivial ground- and surface-water drawdown at sensitive waters remains very high. The vulnerability of springs, seeps, stream flows, wetlands and riparian areas in the study area to groundwater drawdown is great; these aquatic habitats are regionally rare, small in area and fragmented, and are currently shrinking in response to the ongoing drought. Projected climate change will also result in further significant groundwater drawdown and the drying of surface waters in the assessment area.[21] Climate change and the high probability of ground and surface water drawdown from the Rosemont Mine combined with the high vulnerability of these aquatic resources to the projected changes means that the environmental risk to aquatic resources and wetlands, and the organisms they support is high.[22]

**Secondary Impacts to Waters of the United States**

Groundwater drawdown from the Rosemont Mine will cause unacceptable adverse impacts to surface waters, including wetlands of the Cienega Creek watershed.[23] Groundwater drawdown from the mine pit will place stress directly on the regional aquifer. The SIR analysis assumes for many key reaches that there is a complete hydraulic connection between the regional aquifer, the shallow alluvial aquifer, and surface flow in the stream channel.[24] The USFS expects that the stress placed on the regional aquifer by the mine pit will result in drawdown, which will, in turn, result in drawdown in the shallow alluvial aquifer, and reduced stream flows.[25]

Per the FEIS, because of the proposed mine, streams would change from intermittent/perennial flow status to ephemeral flow status as follows: Empire Gulch: 3 miles impacted, Cienega Creek: 20 miles, and Gardner Canyon: 1 mile. Also, Sycamore Canyon north and south, Box Canyon, and Mulberry canyon would be subject to drying effects.[26]

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[19] Earman and Dettinger, 2011.

[20] SIR, p. 24. Four numerical groundwater models were used: three were conducted around the mine site itself and one was conducted around the mine water supply pumping site west of the Santa Rita Mountains.

[21] FEIS, p. 565-566.

[22] Evaluating the gradation and strength of evidence through a risk assessment builds an understanding of the likely environmental outcomes from the proposed project. A risk assessment evaluates various lines of evidence and allows for a balanced consideration and merging of different types of information to make an informed decision on the impacts from the proposed project. Although a risk assessment was recommended by EPA, the USFS chose not to conduct one.

[23] See Guidelines, 40 CFR Part 230 Subparts B-F.

[24] The SIR uses the term "key reaches" as a technique meant to focus the analysis on critical locations, but acknowledges that impacts could occur elsewhere in the system. SIR, p. 67. See letter from Pima County Administrator C. H. Huckelberry to Robert Leidy, EPA dated December 17, 2015 Re: *Rosemont Mine – Surface Water Impacts, Davidson Canyon and Cienega Creek*. See also letter to Colonel D. Peter Helmlinger and Ms. Alexis Straus dated June 6, 2017 Re*: Rosemont Copper Mine, Section 404 Clean Water Act*.

[25] Ibid., p. 76.

[26] FEIS, Table 108.

As described in the FEIS and the SIR, the impacts from mine-related groundwater drawdown to Empire Gulch are more certain. Most scenarios indicate that effects will be seen within 50 years of the closure of the mine with one model estimating the time to first impacts to Empire Gulch at 19 years.[27] An increase in the risk of drying due to groundwater drawdown indicates dry spells would occur with regularity, thereby shifting the stream from perennial to intermittent.[28] The analysis in the FEIS does not imply that impacts from groundwater drawdown occur only at specific modeled time intervals of 50, 150, and 1,000 years, but rather these impacts would develop steadily over time before reaching the levels predicted in the models.[29] By the time this transition occurs, major shifts in riparian vegetation in reaches of Empire Gulch would be expected to be well underway, with complete loss of the hydroriparian corridor and transition to xeroriparian vegetation regardless of climate change stresses. This change in riparian vegetation density and health would be likely to trigger negative feedback loops, resulting in head cuts, erosion, and downstream sedimentation.[30]

Wetlands within Lower Empire Gulch, including the Cieneguita Wetlands, will experience degradation of water quality, contraction of pool volume and surface area impacting aquatic vegetation and obligate plants. Lower Empire Gulch can expect a decrease in pool volume to 67 percent of the original volume from mine drawdown alone.[31] When combined with climate change, pool volumes are projected to decrease to 42-57% of their original volume.[32] The SIR states that pools associated with the Cieneguita wetlands will be reduced anywhere from 25-92% of their original volume.[33] In consideration of climate change, pool volume can reach as low as 8-37% of their original volume.[34] The SIR only analyzed the Cieneguita Wetlands, but Bureau of Land Management has identified more than 30 perennial or seasonal wetlands in the LCNCA, and various impacts to these wetlands are expected.[35]

***Riparian*** – The SIR affirms the conclusions presented in the FEIS for impacts to riparian wetlands. Groundwater drawdown and a decrease in stream flow permanence will cause impacts to riparian vegetation.[36, 37] The high end of the model sensitivity analyses predicts that shift may occur as early as 20 years after mine closure. At this threshold, willows experience canopy

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[27] FEIS, Table 65.
[28] FEIS, p. 538. One model estimated the time to first modeled impacts for Upper Empire Gulch and Cienega Creek is 19 and 27 years, respectively (Table 65).
[29] FEIS, p. 503.
[30] SIR, p. 131.
[31] SIR, p. 139.
[32] Ibid.
[33] Ibid.
[34] SIR, p. 140.
[35] The USFS stated the groundwater drawdown impacts of stream flow and pools is directly applicable to other wetland areas along the stream channel itself. SIR, p. 67.
[36] Ibid., pp. 131-132.
[37] Based field observation by EPA, a significant portion of these riparian communities are jurisdictional in the areas mapped as hydroriparian and mesoriparian community types. A jurisdictional delineation of all waters potentially impacted by the proposed project was not conducted.

dieback, reductions in overall plant density, and reductions in stem density and basal area of young cottonwood and willow.[38]

In evaluating the impact of the Rosemont Mine on riparian habitat, the U.S. Fish and Wildlife Service (FWS) finds that increasing depths to groundwater will eventually result in changes in the species composition of a given site's riparian community (*i.e.*, hydroriparian communities would suffer decreased vigor and extent, eventually transitioning to a xeroriparian community).[39] They note the possibility that groundwater declines resulting from the proposed actions, while seemingly minor, will increase current or future levels of hydrologic variation to the point that present-day riparian communities cannot perpetuate themselves.[40] Noting that the hydrologic modeling in the SIR and Supplemental Biological Assessment does not address future temperatures, rainfall patterns or other factors, they based riparian related effects on endangered/ threatened species and related critical habitat from mine-only drawdown. The FWS states a reasonable assessment is to assume that negative trends in woody riparian habitat observed during the current drought are likely to continue due to climate change.[41] The FWS anticipates appreciable reductions in the representation of cottonwood/willow dominated communities along Cienega Creek and Empire Gulch. Mine drawdown will precipitate an earlier onset and exacerbation of these effects.[42]

Degradation of the riparian vegetation within the Cienega Creek watershed can increase susceptibility to pests and allow for the spread of invasive species. Degradation can create an increase in fuel load and fire risk. Also, degradation of riparian habitat can impact surface flow characteristics like retention and removal of sediment and dissipation of flood flows.[43]

*Empire Gulch* - Per the FEIS, an estimated 407 acres of hydroriparian habitat may be affected by changes in stormwater or changes in groundwater levels in Empire Gulch.[44] Based on the high estimate of model predictions, groundwater drawdown would cause widespread mortality or transition from hydroriparian to xeroriparian, with cottonwood/willow experiencing the greatest stress. Wetland complexes within the hydroriparian zone would experience drying and widespread mortality of obligate wetland plants and aquatic vegetation.[45]

The FWS supports these conclusions stating Upper Empire Gulch is almost certain to experience major shifts in riparian vegetation due to mine drawdown, regardless of climate changes stresses. They note the 95th percentile analysis predicts the rapid onset of adverse effects (10 years post-mining) followed by a steady progression through drying conditions until total dewatering (zero

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[38] SIR, p. 131.
[39] U.S. Fish and Wildlife Service Amended Final Biological and Conference Opinion for the Rosemont Copper Mine, Pima County, Arizona dated April 28, 2016 (BO). p. 62.
[40] Ibid.
[41] Ibid., p. 65
[42] Ibid., p. 71.
[43] FEIS, p. 500 and SIR, p. 131.
[44] FEIS, p. 541. Estimates were based on model predictions.
[45] FEIS, p. 542.

flow) occurs at 150 years post-mining. The FWS anticipate these effects to result in losses of broadleaf woody riparian species and extirpation of aquatic and emergent vegetation.[46]

*Davidson Canyon* - Mesoriparian habitat in Davidson Canyon (Reach 2) may experience reduced recruitment, increased mortality rates, and decreased canopy height.[47] Impacts to recently documented hydroriparian habitat in Davidson Canyon, have not been assessed in the FEIS.[48] Forty-nine riparian areas associated with springs will be adversely impacted due to groundwater drawdown, according to the FEIS.[49]

*Cienega Creek* - Within Cienega Creek (Reaches 1 through 5) and Gardner Canyon (Reaches 1and 2), high model estimates predict a contraction of the hydroriparian area, with conversion occurring at the transitional margins of the habitat.[50]

*Impacts to the biotic community* - Project-related groundwater drawdown impacts the biotic community by disrupting breeding, spawning, rearing, and migratory movements, or other critical life history requirements of fish and wildlife resources. Decline in riparian habitat (*e.g.*, reduced plant regeneration, herbaceous and shrub growth, tree survival, foliar cover, woodland width) will adversely affect species such as the threatened yellow-billed cuckoo and its critical habitat.[51] The FWS estimates over the next 150 years; individual stream reaches within the Cienega Creek watershed will experience from 10% - 100% loss of riparian breeding, foraging and prey habitat for the cuckoo.[52] Climate change will exacerbate these effects.[53]

Similarly, there are anticipated adverse effects to the federally endangered southwestern willow flycatcher.[54] Impacts will occur in parts of Empire Gulch and Upper Cienega Creek, because this species relies primarily hydroriparian habitat.[55] The FWS concluded that the effects of groundwater drawdown and related reduced stream flow will likely result in extirpation of breeding pair southwestern willow flycatchers at the Empire Cienega site and will increase the likelihood of extirpation at the locations within the Cienega Creek site.[56]

***Pools and Riffles*** - Pools and riffles would be especially vulnerable to desiccation during the typically driest months of May and June, and during droughts when intermittent pools characterize Cienega Creek embedded within long reaches of a dry streambed. Seemingly small reductions in stream flow caused by mine groundwater drawdown during crucially dry months

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[46] BO, p. 69.
[47] FEIS, p. 543.
[48] R.A. Leidy, EPA. Personal Observation April 20, 2016.
[49] The FEIS estimates impacts to 494 acres of Important Riparian Areas. These areas are designated by Pima County for their highest value and function; providing landscape linkages and high biological productivity. FEIS, p. 501 and Table 108, p. 509.
[50] FEIS, p. 542.
[51] BO, p. 232. The FWS notes that while xeroriparian is less sensitive to reduction in surface flow compared to hydroriparian, it can experience reduced vigor, regeneration and survival of young trees. A sustained reduction in surface flow will result in a decline in cuckoo habitat.
[52] Ibid., p. 242.
[53] Ibid., p. 242-243.
[54] Ibid., p. 265. Federal listed as endangered and critical habitat designation.
[55] Ibid., p. 270.
[56] Ibid., p. 281.

could cause portions of Cienega Creek to stop flowing.[57] Significant changes to stream base flow are possible because, typically, inflow to streams originates from the topmost portions of the subsidizing aquifer; small declines in the water table can significantly reduce the groundwater contributions that sustain stream flow. Upon review of the new analysis of impacts to refugia pools, the SIR concludes: *Therefore, the contribution to these pools from groundwater is likely the most critical aspect to their continued presence as refugia for threatened and endangered species.*[58]

This conclusion supports the findings in the BO. Water quality typically decreases as the volume of pools and riffles decrease from increases in temperature and dissolved solid concentrations and decreases in dissolved oxygen. These changes can result in increased algal blooms that further reduce the availability of dissolved oxygen.[59] Water quality changes in desiccating pools and riffles can be expected to adversely affect aquatic organism's dependent on these habitats. In the Biological Opinion, the FWS concludes that *the proposed action* [Rosemont Mine] *contributes incremental effects that will, at varying levels, further diminish surface flows, the dimensions of pool habitat, and reduce water quality, resulting in significant degradation of the aquatic ecosystem upon which Gila chub, Gila topminnow, desert pupfish, Huachuca water umbel, Chiricahua leopard frog, and northern Mexican gartersnake depend.*[60] In addition, Pima County concluded that Rosemont Mine would reduce stream flow and groundwater inputs to Cienega Creek and this will reduce the length of pool and riffle habitat.[61]

***Desert Springs*** - Desert springs, often the sole sources of water for wildlife, support wetland ecosystems including rare and endemic species.[62] Human changes to groundwater are one of the greatest threats to long-term sustainability of groundwater dependent ecosystems in arid and semi-arid regions.[63] Following groundwater withdrawal, should a spring continue to flow, the wetlands supported by the outflow would be truncated. The amount of area suitable to support wetland species would be greatly reduced, and the species least tolerant of drying conditions would be extirpated first and eventually replaced by transition upland species.[64] Lowering of the groundwater table during construction and operation will degrade or destroy seventy-six

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[57] DEIS, p. 387 and SIR, p. 63.
[58] SIR, p. 63.
[59] BLM monitored temperature and dissolved oxygen along with stream flow at their locations on Empire Gulch and Cienega Creek and monitoring results showed a relationship between reductions in stream flow, increases in temperature, and decreases in dissolved oxygen. SIR, p. 53. Temperature increases with reductions in stream flow by about 0.36 to 0.77 degrees Celsius (°C) for every 10-gallon-per-minute (gpm) reduction (see appendix C, figures C15 and C17). Dissolved oxygen decreases with reductions in stream flow by about 0.28 parts per million (ppm) for every 10-gpm reduction.
[60] U.S. Fish and Wildlife Service Amended Final Biological and Conference Opinion for the Rosemont Copper Mine, Pima County, Arizona dated April 28, 2016. p. 60.
[61] Powell, B., L. Orchard, J. Fonseca and F. Postillion 2014. *Impacts of the Rosemont Mine on Hydrology and Threatened and Endangered Species of the Cienega Creek Natural Preserve.* Report prepared by Pima County.
[62] Patten, P.T., L. Rouse and J.C. Stromberg. 2007. *Isolated Spring wetlands in the Great basin and Mojave Deserts, USA: Potential Response of Vegetation to groundwater Withdrawal.* Environmental Management DOI 10.1007/s00267-007-9035-9. 16 pp.
[63] Ibid.
[64] Ibid.

springs.[65] Impacts to Scholefield No. 1 and Fig Tree springs are likely to occur within the active life of the mine because of drawdown in the regional aquifer.[66]

**Climate Change**

While the USFS maintains the overall conclusions in the FEIS are still valid, they attempted to further evaluate climate change effects by analyzing trends over the past decade and incorporating additional groundwater drawdown due to expected future changes in temperature.[67] The USFS Change did not include change in precipitation claiming the trend analysis indicated that the hydrographs analyzed already reflect precipitation conditions similar to those expected in the future. Climate change effects should be additive to current temperature and precipitation.

Evaluating the project impacts considering climate change and drought, the USFS concluded the project would exacerbate the effects of climate change, which would add to cumulative impacts to biological resources. Climate change stressor effects of the project could significantly shorten the time intervals to modeled effects or increase groundwater drawdown and decrease surface water flow.[68]

**Groundwater Drawdown is a Regulated Secondary Effect Under § 404 Clean Water Act**

Regarding the Rosemont Mine, the Rosemont Copper Company seeks §404 CWA authorization to discharge dredged or fill material into waters associated with the mine pit, tailings, waste rock and ancillary facilities. In addition to the direct impacts, the secondary impacts to waters based on the activities conducted on the "fast land" created by the discharge must be evaluated. Construction of the mine pit requires a §404 CWA permit and the secondary effects of groundwater drawdown from the mine pit is a secondary impact regulated under §404 CWA.

The Guidelines (40 CFR Part 230) support an interpretation of secondary effects to include those surface effects to aquatic resources induced by hydrological modifications associated with the discharge of dredged material authorized.

*(1) Secondary effects are effects on an aquatic ecosystem that are associated with a discharge of dredged or fill materials, but do not result from the actual placement of the dredged or fill material.*[69]

*(2) Some examples of secondary effects on an aquatic ecosystem are fluctuating water levels in an impoundment and downstream associated with the operation of a dam, septic tank leaching and surface runoff from residential or commercial developments on fill, and leachate and runoff*

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[65] FEIS, Table 108, p. 510.
[66] FEIS, Table 60.
[67] SIR, pp. 218-220.
[68] SIR, p. 216.
[69] The Corps does not currently dispute that secondary effects on aquatic ecosystems are to be considered as part of the Guidelines factual determination for issuance of a CWA 404 permit. Similarly, the Corps continues to agree that surface water effects because of the operation of facilities associated with the discharge of dredged or fill material are to be considered in the Guidelines analysis and mitigated (*i.e.*, Yazoo Backwater Area, New Madrid Floodway).

*from a sanitary landfill located in waters of the U.S. Activities to be conducted on fast land created by the discharge of dredged or fill material in waters of the United States may have secondary impacts within those waters which should be considered in evaluating the impact of creating those fast lands.*[70]

*Consideration shall also be given to the potential diversion or obstruction of flow, alterations of bottom contours, or other significant changes in the hydrologic regime.*[71]

In addition, the Preamble to the Guidelines states, *"However, in authorizing a discharge which will create fast lands, the permitting authority should consider in addition to the direct effects of the fill itself, the effects on the aquatic environment of any reasonably foreseeable activities to be conducted on that fast land."* The Preamble affirms that the analysis of impacts is not to be limited to consideration of only direct impacts but, to consider the effects from any reasonably foreseeable impact. Regarding the Rosemont Mine, it has been established that there is a hydrologic connection (via groundwater) of surface aquatic resources to a 404- permitted area where groundwater pumping would occur. The activity of groundwater pumping is reasonably foreseeable since the Rosemont Copper Company has stated that such pumping is necessary for construction and/or operation of the mine.[72] The hydrological modification- induced (*e.g,* groundwater drawdown) secondary impacts to aquatic resources would occur because of the §404 permit and associated activities that occur on the permitted area.

To better understand secondary effects, EPA's Office of General Counsel (OGC) issued an Opinion on how "secondary impacts" are defined pursuant to the Guidelines.[73] In the Opinion, OGC states that, *Some impacts that may be caused by the subsequent operation of a project or by associated development may be considered, depending on the directness of the casual connection, the predictability of such impacts, and a general rule of reason.*[74] OGC notes that Congress extended CWA jurisdiction recognizing that effects of pollution move through the aquatic system. Therefore, Congress did not intend to exclude consideration of adverse impacts simply because they were secondary.[75]

In the case of the Rosemont Mine, subsurface drawdown clearly constitutes a significant change in the hydrologic regime affecting surface water. These operational affects are strongly "associated" with the discharge of dredged and fill materials, since they would not occur in the absence of a §404 CWA permit.

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[70] Guidelines at 40 CFR 230.11(h) *Determination of secondary effects on the aquatic ecosystem*. These examples are used for instructional purposes regarding secondary effects assessed under the Guidelines. They should not be construed as the only activities that have secondary effects regulated under §404 CWA.

[71] Guidelines at 40 CFR 230.11(b) *Water circulation, fluctuation, and salinity determinations*.

[72] In addition to groundwater pumping, the water lost to evaporation in the mine pit will perpetuate the aquifer drawdown caused by mine pit dewatering. Models estimate equilibrium would not be reached until 700 to 7000 years after mine closure. FEIS, p. 291 and p. 329.

[73] General Counsel Opinions from the Office of General Counsel United States Environmental Protection Act dated January 31. 1980, Through June 7, 1985.

[74] Ibid., p. 128.

[75] Ibid.

**§404 CWA permit decisions regulating the secondary effects of groundwater drawdown**

Evaluating the secondary effects of groundwater drawdown under §404 CWA is not precedential. The following §404 CWA permit decisions by the Corps of Engineers (and in one case, the Department of the Army) considered hydrological modification- induced secondary impacts to waters within the scope of the Corps' §404 CWA analysis.

***Cucumber Gulch*** - On January 19, 2001, pursuant to the 1992 CWA 404(q) Memorandum of Agreement between the Department of the Army and EPA, EPA requested higher level review of the proposed permit for a commercial/residential/recreational development (Breckenridge Ski Area) in the Cucumber Gulch watershed located in Summit County, Colorado. A primary concern expressed by EPA was the construction of large buildings facilitated only by a new access road (the regulated 404 discharge), and the subsequent installation of extensive foundation drains will likely intercept groundwater flow supporting rare slope fen wetland complexes down-gradient of the project. [76]

On February 5, 2001, Deputy Assistant Secretary of the Army, Claudia L Tomblom, responded to EPA's request for higher level review, and acknowledged that the Sacramento Corps District would include Special Conditions in the §404 permit. The permit conditions required the applicant submit a plan prior to construction documenting that neither the proposed buildings nor the associated infrastructure would affect the hydrology of the down-gradient wetlands or, if there would be effects, detail how any impacts would be remediated or mitigated.

***Dos Pobres/San Juan Copper Mine*** - In 2004, the Los Angeles Corps District issued a §404 CWA permit to Phelps Dodge authorizing the Dos Pobres/San Juan Copper Mine located in Safford, Graham County, Arizona. The §404 permit authorized direct impacts to 21.4 acres of waters and secondary impacts to 93.2 acres of waters.[77] The mitigation plan included mitigation for secondary impacts from groundwater drawdown to the Gila River, located 8 miles downstream from the project site. Deed restrictions requiring alternative year fallowing of farm land to mitigate for groundwater drawdown was a condition of the §404 permit and thereby, enforceable by the Corps District.

***Adam's Rib*** - In 1992, the Sacramento Corps District considered impacts of groundwater drawdown caused by underground parking with associated subsurface drains for the Adam's Rib Recreation Area project near Eagle, Colorado and the resulting "indirect adverse impacts" (secondary impacts) on nearby wetlands when it evaluated alternatives under the Guidelines. The

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[76] For past development projects in or near slope wetlands in montane environments in Colorado, the Sacramento Corps District had acknowledged the potential adverse effects to groundwater hydrology from subsurface structures and drains (*i.e.*, geotechnical studies performed for the Adam's Rib project, near Eagle, Colorado -Review of Technical Engineering Documents - Memorandum by Thomas W. Fea and Darrell J. Anderson, U.S. Amy Corps of Engineers, Sacramento District, October 1, 1992) and evaluated less environmentally damaging alternatives prior to a permit decision.

[77] Through groundwater modeling, it was determined that, over time, almost the entire amount of the mine's total pumpage that is lost to evaporation at the mine will be subtracted from the flow of the Gila River. Due to the distance between the mine and the river, the large amount of groundwater flow in the system, and the effects of faults on the flow system, this extraction is expected to be spread over many years. The present calibration of the 2002 model is projecting a peak impact to the Gila River of 34 af/yr at about model year 450.

applicant proposed to place fill in 45.81 acres of wetlands in the development of over 5000 housing units. The Corps determined that without the proposed buildings' subsurface foundation drains, the areas would persist as viable wetlands. Because engineering techniques existed to avoid these impacts, the Corps denied the §404 permit.

***Lakebelt Limestone Mines*** - The Jacksonville Corps District issued §404 CWA permits to several limestone mining companies (2010-2011) in the Miami-Dade County, Florida. Hydrological modeling of the proposed limestone quarry mining expansions indicated that additional mining was expected to result in adverse drainage effects on higher quality wetlands to the west of the expansion area. As a requirement of the issued §404 permits (specific conditions) the mining companies must construct and operate groundwater seepage management facilities that eliminate all future adverse secondary wetland drainage impacts associated with permitted mining on high quality Everglades wetlands to the west (adjacent) of the permitted mining area.

***Platte West Water Production Facilities*** - In May 2003, the Omaha Corps District, issued a §404 CWA permit to Omaha, NE's Metropolitan Utilities District for construction of a new well field. Project facilities include two new groundwater well fields, a new water treatment plant, water transmission pipelines and other appurtenant facilities. The two well fields, located west of Omaha in Saunders and Douglas Counties, will provide water to be used by rapidly developing western suburbs. Conditions in the §404 Permit stipulated that up to 30 years of wetland monitoring may be needed for the two well fields and cones of depression in Douglas and Saunders Counties. Monitoring is designed to determine if project operation adversely affects wetlands through the drawdown of the existing groundwater table. Mitigation for impacts to wetlands and streams were conditions of the Corps permit.

***Savannah Landfill*** - The Savannah Corps District pursued compensatory mitigation for wetlands that are now drained and non-jurisdictional due to dredging activities in adjacent upland areas conducted at a solid waste landfill outside of Savannah, GA. In this case, the material excavated from the upland areas was used as cover material for the landfill, the construction of which required a §404 permit. The landfill applicant sought to expand into the excavation area which would require a §404 permit for ancillary activities on the property. The Corps requested compensatory mitigation for the secondary impacts which resulted from the original §404 permit.

## Conclusion

The Rosemont Mine will degrade and destroy waters in the Cienega Creek watershed containing regionally rare, largely intact mosaics of some of the highest quality stream and wetland ecosystems in Arizona. The environmental consequences are substantial and unacceptable and contrary to the goals of the CWA. There is no mitigation to prevent the unacceptable adverse secondary effects to these waters from the proposed mine. EPA maintains the secondary impacts associated with this project will cause of contribute to significant degradation of our Nation's waters (40 CFR 230.10(c)).