



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

MAR 12 2013

Mr. David Castanon  
U.S. Army Corps of Engineers  
Los Angeles District  
Attn: Regulatory Branch (SPL-2004-01399-MB)  
5205 E. Comanche Street  
Tucson, Arizona 85707

Subject: Rosemont Copper Project CWA Section 404(b)(1) Alternatives Analysis (AA)

Dear Mr. Castanon:

EPA has reviewed the *Rosemont Copper Project CWA Section 404(b)(1) Alternatives Analysis* as part of our agencies' ongoing partnership under our 1992 Memorandum of Agreement on CWA Section 404(q). The September 2012 AA was prepared by WestLand Resources, Inc. for Rosemont Copper Company (Rosemont). Please consider the following supplemental concerns in your pending decisions regarding the Least Environmentally Damaging Practicable Alternative (LEDPA), which supplement comments previously provided (attached). In summary, EPA continues to believe that the applicant has not provided the Corps with sufficient information to make a LEDPA determination at this time. Specifically, the AA does not demonstrate whether pit backfill, heap leach elimination, and stormwater management changes are practicable for all project alternatives, and whether such actions would result in fewer environmental impacts.

*Heap Leach Facility and Stormwater Conveyance Systems* - The 2012 AA evaluates new modifications to the proposed Barrel Alternative not analyzed in earlier versions of the alternatives analysis. Specifically, in a letter to the U.S. Forest Service dated July 10, 2012, Rosemont determined the operational sequencing required under the proposed Barrel Alternative does not allow Rosemont sufficient time to complete the leaching process and fully recover the copper from the oxide ore materials. Therefore, in the 2012 AA, Rosemont eliminated the heap leach facility from the Barrel Alternative and deemed this alternative practicable.

In addition, Rosemont made significant modifications to the stormwater conveyance systems at the proposed Barrel Alternative. They determined that regulatory concerns regarding the integrity of the underdrain system exceeded the system's geotechnical and environmental benefits. The new reclamation designs have been optimized to maximize downstream flows both during operations and post-closure. Annual average stormwater flows in Barrel Canyon at the SR 83 bridge will be reduced by 17.2 percent after approximately year 10 (p. 34).

Rosemont did not apply the heap leach facility and stormwater conveyance system modifications to all the alternatives in the 2012 AA. The AA states that the removal of the heap leach facility from the other alternatives would not result in reduced impacts to waters because, should the heap leach be removed, waste rock material would be located in its place and thus the same direct fill of waters would occur. The total volume and placement of material would remain largely unchanged in that the oxide ore that was to be heap leach material would now be tailings or waste rock (p. 38).

However, although the direct impacts may remain the same without heap leach facilities, it is unclear whether secondary impacts to waters could be reduced through site design modifications applied to the other alternatives. These potential impacts 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 (40 CFR 230.11(h)(1)). For purposes of the 404(b)(1) Guidelines (Guidelines), each alternative should be analyzed with the removal of the heap leach facility and modification of the stormwater conveyance systems. Furthermore, the AA does not account for the overall environmental risk presented by the heap leach facility, and thus the potential long term risk reduction offered by its removal, as our February 21, 2012 letter to the U.S. Forest Service on the Draft EIS described (attached).

*Pit Backfill* - Additional documentation is necessary to determine whether the pit backfill is a practicable action to minimize impacts. Rosemont proposes to keep the pit open for future exploitation of resources, which is not necessarily sufficient reason to remove the pit backfill from consideration under the Guidelines if doing so would reduce harm to the aquatic ecosystem. Rosemont references additional environmental effects and legal implications from the pit backfill, but they are not discussed in the 2012 AA (p. 28). Therefore, EPA cannot make the determination whether the pit backfill is less environmentally damaging and practicable.

Based on our review, Rosemont has not demonstrated compliance with EPA's Guidelines pursuant to 40 CFR 230.12(a)(3)(iv). The 2012 AA does not provide sufficient information to make a reasonable judgment as to whether the proposed project is the LEDPA, or adheres to any of the other restrictions on discharge under the Guidelines.

Thank you for the opportunity to comment on the 2012 AA. We look forward to continuing our work with your staff and the applicant on resolution of our environmental concerns and compliance with EPA's Guidelines. If you have any questions, please contact Elizabeth Goldmann of my staff at (415) 972-3398.

Sincerely,



Jason Brush

Supervisor, Wetlands Office

cc: Rosemont Copper Company  
USFS, CNF  
USFWS, Tucson  
ADEQ, Phoenix

Encl.

EPA 404 letters to the Corps dated January 5, 2012 and February 13, 2012; and EPA DEIS letter to the USFS dated February 21, 2012