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January 23, 2019

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Brigadier General D. Peter Helmlinger
Commander, Northwestern Division
U.S. Army Corps of Engineers
P.O. Box 2870
Portland, OR 97208

Dear General Helmlinger:

We are writing to request information regarding the upcoming final decision on the Rosemont Mine Section 404 Clean Water Act permit application. We are concerned about the significant potential impacts of the proposed Rosemont Copper Mine on the riparian and water resources of the Coronado National Forest and Las Cienegas National Conservation Area. According to a Bureau of Land Management letter to the U.S. Forest Service in August 2013, the mine would be “detrimental to the purposes for which the Las Cienegas National Conservation Area has been established....”¹

Chief among these concerns is the Environmental Protection Agency’s (EPA) repeated assertion that Rosemont Copper Company’s parent company, Hudbay Minerals, Inc., has failed to provide a plan to adequately mitigate the environmental impacts of the mine on the aquatic ecosystem. EPA Region IX recommended denial of the Sec. 404 permit for the mine.²

According to published reports,³ the District Engineer within U.S. Army Corps’ Los Angeles District also recommended denial of the Sec. 404 permit in 2016 based at least partly on the mitigation concerns. However, former Arizona Governor Jan Brewer and Governor Doug Ducey have both supported the Rosemont Mine, thereby elevating the permit decision to your office.

¹ Letter from David Baker, Field Manager, Bureau of Land Management to Jim Upchurch, Forest Supervisor, Coronado National Forest (Aug. 15, 2013).

² Letter from Jane Diamond, Director, Water Division, Region IX, Environmental Protection Agency to Colonel Kimberly Colloton, District Engineer, Los Angeles District, U.S. Army Corps of Engineers (Nov. 7, 2013).

³ Tony Davis, *Unit of federal agency recommends denying Rosemont Mine permit*, ARIZONA DAILY STAR (Jul. 28, 2016), https://tucson.com/news/science/environment/unit-of-federal-agency-recommends-denying-key-rosemont-mine-permit/article_2595e9a7-7898-5021-828e-00b4f7119c33.html

In December 2016, in your role as Commander of the South Pacific Division, you wrote to Hudbay, “The key CWA 404(b)(1) factors identified by the District that support a permit denial are determinations that the proposed Rosemont Mine will cause or contribute to violations of state water quality standards and significant degradation of waters of the United States, including shortfalls in the proposed compensatory mitigation.”

Your letter also stated that, “The District concluded that implementation of the proposed project would cause or contribute to violations of state water quality standards, and that minimization and mitigation measures, along with proposed monitoring were inadequate to ensure that degradation did not occur. The District further concluded that implementation of the proposed project would result in significant degradation of waters of the United States, as a result of a substantial reduction of functions and services, and that the project would contribute to the degradation of Outstanding Arizona Waters. The District concluded that implementation of the proposed project would, among other things, adversely affect sediment delivery, hydrological functions, surface water quality, and use by humans and wildlife, including listed species. The District also included that mitigation proposed to offset project impacts would be inadequate. . . . Finally, the District concluded that implementation of the proposed project would be contrary to the public interest. Among the key public interest concerns are adverse effects to cultural resources and traditional cultural properties important to tribes.”⁴

Since that time, Hudbay Minerals, Inc. has not presented to the American people a legally and technically sound mitigation plan that addresses the massive destruction of wetlands, springs and seeps, and other important aquatic resources, including Cienega Creek and its tributaries.

To assist the Committee’s oversight of this issue, please provide Committee staff with the following documents as soon as possible, but no later than February 6, 2019:

1. Documents sufficient to show a recommendation for denial of the Rosemont Mine Sec. 404 Clean Water Act permit by the District Engineer in the Los Angeles District of the U.S. Army Corps of Engineers.
2. Changes or additions to the Final Habitat Mitigation and Monitoring Plan for the proposed Rosemont Mine that have been considered or are currently under consideration by the U.S. Army Corps of Engineers.
3. Documents sufficient to show when the public comment period will open and close on the most recent versions of the mitigation plan(s) for the proposed Rosemont Mine.
4. Documents sufficient to show the U.S. Army Corps of Engineers’ response to the following:

⁴ Letter from Colonel D. Peter Helmlinger, Commander, South Pacific Division, U.S. Army Corps of Engineers to Patrick Merrin, Vice President, Hudbay Minerals, Inc.

- a. July 27, 2015 technical memorandum titled, "Conceptual Design for Sonoita Creek, AZ, Technical Review Support (Order Number EP-G149-00241)" authored by Dr. G. Mathias Kondolf and James Ashby,
 - b. December 29, 2017 report titled, "Review of the Sonoita Creek Mitigation Project Proposal for the Proposed Rosemont Copper Mine" authored by Dr. G. Mathias Kondolf,
 - c. Dr. G. Mathias Kondolf's September 25, 2018 comments on Water & Earth Technologies' "Response to Kondolf (2017) 'Review of the Sonoita Creek Mitigation Project Proposal for the Proposed Rosemont Copper Mine.'"
5. Documents sufficient to show whether a Supplemental Environmental Impact Statement (SEIS) on the most recent version of the mitigation plan(s) for Rosemont Mine is planned, and when it will be initiated.
 6. If an SEIS is not planned, documents sufficient to show the justification for not planning an SEIS.
 7. Documents sufficient to show potential reasons for a failure of the mine tailings containment and how those failures would be avoided.
 8. Documents sufficient to show there will be no adverse effects of the mine drawdown or the proposed mitigation plan on water rights of private property owners and reserved federal water rights in the affected project area.

In addition, please arrange for a briefing with both of us before a decision on the Sec. 404 permit is announced. Please contact my personal office staff at (202) 225-2435 to schedule the briefing or the Natural Resources Committee staff at (202) 225-6065 with any questions about this request. Thank you for your assistance.

Sincerely,



Raúl M. Grijalva
Chairman
Committee on Natural Resources



Ann Kirkpatrick
Member of Congress

Responding to Committee Document Requests

In responding to document requests from the Committee on Natural Resources, please apply the instructions and definitions set forth below:

Instructions

1. In complying with the request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data, or information should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization, or individual denoted in this request has been, or is currently, known by any other name than that herein denoted, the request should be read also to include them under that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., memory stick or thumb drive) in lieu of paper productions. Documents produced in electronic format should also be organized, identified, and indexed electronically. Consult with the Committee to determine the appropriate format in which to produce the information.
4. Each document produced should be produced in a form that renders the document capable of being copied.
5. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box, or folder is produced, each CD, hard drive, memory stick, thumb drive, box, or folder should contain an index describing its contents.
6. Documents produced in response to this request should be produced together with copies of file labels, dividers or identifying markers with which they were associated when this request was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they should be organized into separate folders by subject matter prior to production.
7. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
8. It shall not be a basis for refusal to produce documents that any other person or entity also possesses a non-identical or identical copy of the same documents.
9. If compliance with the request cannot be made in full, compliance should be made to the extent possible and should include an explanation of why full compliance is not possible.

10. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
11. If any document responsive to this request was, but no longer is, in your possession, custody, or control, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
12. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
13. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
14. All documents should be Bates-stamped sequentially and produced sequentially.
15. Documents produced to the Committee in response to this request should be delivered to majority staff in Room 1324 of the Longworth House Office Building.

Definitions

1. The term "**document**" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone calls, text messages, MMS or SMS messages, other mobile-to-mobile messages, instant messages or online chat messages, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), and electronic and mechanical records or representations of

any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "**documents in your possession, custody, or control**" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.
3. The term "**communication**" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, facsimile, mail, e-mail (desktop or mobile device), text message, MMS or SMS message, other mobile-to-mobile message, instant message or online chat, telexes, releases, personal delivery, or otherwise.
4. The terms "**and**" and "**or**" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms "**person**" or "**persons**" means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.
6. The term "**identify**," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
7. The terms "**referring or relating**," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is in any manner whatsoever pertinent to that subject.
8. The term "**employee**" means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.