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ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

Douglas A. Ducey
Governor

Henry R. Darwin
Director

Received

JUN 24 2015

Environmental Review Section

June 12, 2015

Mr. Jared Blumenfeld, Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105-3901

Re: Letter to U.S. Army Corps of Engineers on State §401 certification for Rosemont Mine

Dear ~~Administrator~~ Jared Blumenfeld:

The Arizona Department of Environmental Quality (ADEQ) has reviewed EPA's recent letter to the U.S. Army Corps of Engineers (Corps) that asserts the State's §401 Certification for Rosemont Mine "lacks sufficient, specific preventative actions to avoid these adverse impacts to water quality, creating a substantial risk to designated beneficial use standards set by the state for Davidson Canyon and Cienega Creek." ADEQ disagrees with EPA's assessment of the State's Certification and is confident that the requirements put in place are protective of water quality in the area and fully enforceable by the Corps as conditions of the CWA 404 permit.

In the April 14, 2015 letter, EPA states that critical water quality aspects remain unaddressed including the need for "a specific and complete monitoring program… to ensure rapid detection of impacts…" In addition, EPA calls for "specification of, and enforcement commitment to, available and sufficient corrective measures…to offset mine-related reduction of assimilative capacity, changes in downstream sediment yield and other potential diminutions of water quality that may be detected."

ADEQ agrees that ongoing data collection is needed to further characterize current conditions in the Cienega Basin as well as during development, operation and closure of the mine and to have measures available to offset any predicted changes. To that end, a key component of the State's Certification was the requirement for Rosemont to develop a Surface Water Mitigation Plan[1] (Plan) which provides for the collection and analysis of water quality data and implementation of mitigation strategies to mitigate projected impacts prior to them occurring.

[1] CWA §401 Certification, Specific Condition #1, p. 6

This Plan is a comprehensive assemblage of water monitoring requirements from various regulatory programs to identify and evaluate changes and variability in groundwater quality and levels, stormwater runoff (quantity and quality), springs discharge, precipitation, stream geomorphology and sediment transport to downstream washes over time. These data will be evaluated to determine if any changes and/or variability are due to natural conditions, mining-related causes or other anthropogenic causes.

The Plan also requires Rosemont to develop a surface water model that will be used as a predictive tool to quantify potential changes from baseline conditions through the staged development of the project. Based on the model predictions, Rosemont, in consultation with ADEQ and other agencies, will determine which mitigation measures should be deployed to maintain water quality. The Plan outlines a number of mitigation measures that may be selected to offset predicted changes if attributable to the mine project. It is anticipated that the predictions and required responses may vary from year to year depending on weather, mining activity and other factors.

In our review, ADEQ considered that the Outstanding Arizona Waters are over 13 miles downstream from the project and there are a number of factors affecting water resources in the Cienega Creek watershed as evidenced by the dramatic decline in surface water flows and the reduced extent of flows in both Lower Cienega Creek and Davidson Canyon Wash since the early 1990s[2,3].

We share EPA's concern about potential impacts to water resources but we are confident that the requirements in the Certification, coupled with the protections of other regulatory programs including the Aquifer Protection Permit and the AZPDES Multi-Sector General Permit for Stormwater Discharge from Industrial Facilities, will ensure protection of Davidson Canyon Wash and Lower Cienega Creek. Through the Surface Water Mitigation Plan, Rosemont must analyze available data, quantify potential changes and select and implement mitigation measures that will protect and maintain water quality in the receiving waters.

Lastly, a number of issues EPA raised in its comment letters on the draft Certification are outside the scope of what ADEQ is legally authorized to consider under Arizona state law (A.R.S. 49-202(C) and (D)). ADEQ's review under §401 extends only to activities conducted within the ordinary high watermark of navigable waters. Therefore ADEQ is not able to address issues such as groundwater drawdown as a result of pit dewatering or well pumping or the recharge potential of subsurface supplies under the §401 program.

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[2] Powell, Brian, Pima County Office of Sustainability and Conservation, Water Resource Trends in Cienega Creek Natural Preserve, Pima County, AZ, August 2013
[3] FEIS, p. 420

Please do not hesitate to contact me if you have any questions or concerns, or have your Wetlands Section Supervisor contact Trevor Baggiore, Water Quality Division Director at (602) 771-2321.

Sincerely,

Henry R. Darwin
Director

cc: Jamie Kingsbury, Acting Supervisor, Coronado National Forest
Colonel Kim Colloton, District Engineer, LA District, U.S. Army Corps of Engineers