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WESTERN MINING ACTION PROJECT

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Environmental Review Section

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May 23, 2017

Mr. Kerwin Dewberry
Supervisor, Coronado National Forest
300 W. Congress St.
Tucson, AZ 85701

Re: Rosemont Copper Project, Final EIS and Impending Final Record of Decision

Dear Supervisor Dewberry:

This letter is submitted on behalf of Save the Scenic Santa Ritas (SSSR) and the Center for Biological Diversity (the Center), by and through their undersigned counsel, and regards the U.S. Forest Service's (USFS's) stated intent to issue a Final Record of Decision (ROD) authorizing the Rosemont Copper Project, or Mine. According to the USFS' recent Federal Register Notice:

> The Forest Service, USDA, is issuing this notice to advise the public that the Coronado National Forest Supervisor is expected to sign the Record of Decision for the Rosemont Copper Project. **DATES:** The Record of Decision is expected to be signed in early June, 2017, by the Coronado National Forest Supervisor Kerwin Dewberry.

82 Fed. Reg. 21365-66 (May 8, 2017). *See also* 82 Fed. Reg. 21228 (May 5, 2017)(EPA notice that "The U.S. Forest Service is reopening the Review Period [on the Rosemont Final EIS] to end 06/05/2017.").

For the reasons stated by SSSR/Center (and other entities) in their Objections submitted to the Regional Forester in February, 2104, along with other submittals to the USFS, issuance of the Final ROD in this case would violate numerous federal and state laws, regulations, and policies. This letter incorporates by reference all previous comments, objections, and/or documents submitted by SSSR/Center, alone, together, or with other groups or entities to the USFS regarding the Rosemont Project.

In addition to the reasons/evidence presented to the USFS in the Objections and other submittals to the USFS over the years showing why issuance of a Final ROD (and its accompanying FEIS and other supporting documents) would violate these laws/regulations/policies, a number of other documents and reasons have arisen since the Objection and public review periods ended in 2013 and 2014, which further highlight why the Final ROD cannot be issued at this time and why the FEIS is inadequate.

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Chief among these reasons is the failure of the Project to comply with the Clean Water Act, Endangered Species Act, NEPA, federal public land laws such as the 1897 Organic Act, and other laws/regulations/policies. The attached documents are presented for your/USFS review, support a finding that the USFS cannot issue a Final ROD or approve a Plan of Operations for the Mine, and are incorporated into the administrative record for any Final ROD that may be issued (including the Final ROD noted by the agencies in the above-cited Federal Register notices). As can be seen from these documents and other documents in the record, the evidence before the USFS, U.S. Army Corps of Engineers, EPA, and other agencies shows that the Project violates the Clean Water Act, fails to protect listed species and their habitat under the ESA, fails to protect federal reserved water rights and the Las Cienegas National Conservation Area, and fails to protect Outstanding Waters, among other violations. As shown by the attached documents in particular, the massive groundwater pumping and drawdown/dewatering of local/regional ground and surface waters without adequate mitigation, coupled with the Project's other impacts, evidences a clear violation of federal and state law. This is in addition to the failure of the USFS to meet the public review and comment requirements of NEPA, both before and since the FEIS was issued.

In addition, recent on-the-ground and significant new events have occurred which require, at a minimum, a new round of full public review and comment under NEPA (and subsequent supplementation of the Final EIS and revision of the Draft ROD accordingly), and re-initiation of consultation with FWS under the ESA. Within the last month two wildfires (Sawmill and Mulberry) have caused considerable damage to a portion of the Santa Rita Mountains and the grasslands of the Sonoita Plain to the east. The two fires together have burned over 48,000 acres. The burned areas include large portions of the Rosemont Project area analyzed by the EIS, as well as areas outside the immediate Project site but which will be adversely impacted by Project activities (such as the Las Cienegas National Conservation Area).

In addition to destroying hundred-year-old oaks, hackberries, mesquite and hillsides of native grasses, the fires damaged the watersheds of Empire Gulch, Davidson Canyon, and Barrel Canyon. All of these streams feed into Cienega Creek, which is the center piece of Las Cienegas National Conservation Area. A portion of the Conservation Area also burned. Cienega Creek is a perennial riparian stream that provides habitat for endangered fish and other endangered or threatened species. Cienega Creek feeds into Pantano Creek and then into the urban Tucson Basin providing 20% of the drinking water of a city of about 450,000 inhabitants. These fires have quite likely diminished the quality of the riparian and woodland habitats as well as damaging the water-absorbing capability of the land. Each of these impacts must be thoroughly analyzed, with full public and agency review and comment. As well, due to these new events, the baseline conditions of these areas that were analyzed in the Final EIS have now changed, requiring new analysis/consultation under NEPA and the ESA.

Thank you for considering these comments and for reviewing the enclosed documents (see below list of documents). Due to the size of these documents, they are provided for inclusion into the record on a computer flashdrive. Please do not hesitate to contact me if you have any questions.

Sincerely,

Roger Flynn
Counsel for Save the Scenic Santa Ritas and the Center for Biological Diversity

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Index of Rosemont documents – included with May 23, 2017 letter from SSSR and the Center for Biological Diversity to Coronado Forest Supervisor Kerwin Dewberry.

December 30, 2013: In a letter to the Army Corps, Pima County stated that the Rosemont mitigation proposal fails because it cannot produce the necessary mitigation credits due to an unpredictable and insufficient long-term water supply.
(Letter from Pima County to the Army Corps – 12/30/2013)

February 28, 2014: The Army Corps sent a letter to Rosemont Copper Company stating that Rosemont failed to provide a mitigation plan that focuses on restoration and enhancement of watersheds to compensate for the destruction of about 70 acres of wetlands that would occur by construction of the mine. The letter gave Rosemont a specific deadline to submit such a plan.
(Letter from Army Corps to Rosemont Copper – 2/28/2014)

April 4, 2014: Pima County wrote the Arizona Department of Environmental Quality regarding ADEQ's certification that Rosemont would not violate the Clean Water Act. The County said the certification was based on "faulty information" in the Coronado National Forest's (CNF) Final Environmental Impact Statement (FEIS) and "unsubstantiated opinions in documents provided by Rosemont Copper Company."
(Letter from Pima County to ADEQ - 4/4/2014)

April 4, 2014 Letter from the Arizona Game and Fish Department to the Arizona Department of Environmental Quality raising 16 concerns about the mine's potential impact on Davidson Canyon and Cienega Creek and the current lack of detailed water quality analyses of the waterways in the context of the Section 401 water quality certification for the proposed Rosemont Copper Mine.
(Letter from the Arizona Game and Fish Department to ADEQ – 4/4/2014)

April 7, 2014 Letter from the Army Corps of Engineers to the Arizona Department of Environmental Quality raising significant questions about the adequacy of the agency's draft Section 401 water quality certification for the proposed Rosemont Copper Mine.
(Letter from Army Corps of Engineers to the Arizona Department of Environmental Quality – 4/7/2014)

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April 7, 2014:

EPA similarly wrote to ADEQ regarding the certification issued by the state agency stating that it "believes the draft...certification and supporting information provide an insufficient basis from which to conclude existing water quality will be maintained", that ADEQ's proposal would not "prevent water quality degradation in Davidson Wash and Cienega Creek," and that "the risk of water quality degradation remains high."

(Letter from EPA to ADEQ – 4/7/2014)

May 13, 2014:

The Army Corps once again put Rosemont on notice that its plan to mitigate the impacts to southern Arizona's water resources from the proposed mine fall short. The Army Corps stated, "that the proposed compensatory mitigation would not fully compensate for the unavoidable adverse impacts that would remain after all appropriate and practicable avoidance and minimization measures have been achieved."

(Letter from Army Corps to Rosemont Copper – 5/13/2014)

August 1, 2014

Congressman Raul Grijalva sent a letter to the Assistant Secretary of Army sharing his concerns regarding Rosemont's application for a Clean Water Act Section 404 permit and the resulting adverse impacts that would occur to southern Arizona's water resources.

(Letter from Rep. Grijalva to the Department of Army, 8/1/2014)

August 26, 2014

The LA District Engineers sent Hudbay a letter acknowledging the change in ownership from Augusta to Hudbay. The letter also noted that Rosemont's concept of using a In-Lieu Fee (ILF) project would likely not be able to be done within the timeframe of regulatory consideration for the Rosemont 404 permit application.

(Letter from Army Corps to Hudbay – August 26, 2014)

April 14, 2015

EPA Region IX sent the Arizona Department of Environmental Quality (ADEQ) a letter highlighting concerns with the state's 401 water quality certification of the proposed Rosemont Mine.

(Letter from EPA to ADEQ – 4/14/2015)

July 27, 2015

The EPA contracted with Dr. G. Mathias Kondolf, a noted expert on Hydrology, environmental geology, environmental impact assessment, and riparian zone management, to prepare a report that concluded that the Rosemont mitigation plan once again falls short of what's legally required under the Clean Water Act and Section 404.

(Report from Dr. Mathias Kondolf Reviewing Hudbay's Conceptual Design for Sonoita Creek – July 27, 2015)

October 28, 2015

Save the Scenic Santa Ritas sent a letter/documents to the LA District Engineer of the US Army Corps of Engineers providing technical information showing that the project cannot be sufficiently mitigated, among other legal problems.

(Letter from SSSR to the Army Corps – 10/28/2015)

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May 16, 2016	The Center for Biological Diversity (CBD) commissioned Integrated Hydro Systems, LLC and requested that Robert Prucha, PhD, review available studies and evaluate/assess potential impacts of the proposed Rosemont Mine to the Las Cienegas National Conservation Area (LCNA). The Study concluded that there are a number of significant concerns with the hydrological modeling upon which the Forest Service relied to support its conclusion that the pumping will have only limited impacts on water resources within the LCNCA. (Report from Integrated Hydro Systems, LLC – 5/16/2016)
September 23, 2016	The Commander of the South Pacific Division of the Army Corps of Engineers sent Hudbay a letter indicating that he was going to review the Rosemont 404 application in light of the fact that the Arizona Governor objected to the LA District Engineer's recommendation for denial. (Letter from the Army Corps to Hudbay – 9/23/2016)
October 21, 2016	Pima County sent a letter to the U.S. Army Corps of Engineers San Francisco regional office urging it to uphold the Corps' Los Angeles district recommendation to deny Rosemont Copper's Clean Water Act permit request. (Letter from Pima County to the Army Corp – October 21, 2016)
December 28, 2016	The Commander of the US Army Corps of Engineers' South Pacific Division sent a letter to Hudbay Minerals reiterating the agency's reasons for recommending denial of the Sec. 404 permit for the proposed Rosemont Mine. Additionally, in this letter the Corps addressed Hudbay's recently raised questions about regulatory jurisdiction noting that jurisdiction was initially asserted by Rosemont's own consultants and accepted by the Corps. (Letter from the South Pacific Division to Hudbay Minerals – December 28, 2016)
May 5, 2017	Letter from Pima County Administrator Chuck Huckelberry to the Corps of Engineers and EPA Region IX requesting that the federal government not issue Rosemont a 404 permit that is based on a "legally and technically flawed" 401 certification issued by the state of Arizona. (Letter from Pima County Administrator Chuck Huckelberry to the Corps of Engineers and EPA Region IX – May 5, 2017)
May 5, 2017	On May 5, Pima County filed an appeal of the Arizona Department of Environmental Quality's (ADEQ) administrative decision to issue a Section 401 Water Quality Certification in Maricopa County Superior Court. The suit asserts that ADEQ violated state law in 2015 when it issued this certification. (Copy of Pima County's pleading in Maricopa County Superior Court, 5/5/2017)

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May 9, 2017

Letter from Pima County Administrator Chuck Huckelberry to the CNF Supervisor Kerwin Dewberry stating it was "premature" to issue the Final ROD until after the Army Corps decides on whether to issue the 404 permit and further requesting a review of the impacts by two wildfires that swept through 48,000 acres including portions of the Rosemont project area including the Empire Gulch, Barrel Canyon and Davidson Canyon watersheds.

(Letter from Pima County Administrator Chuck Huckelberry to CNF Supervisor Kerwin Dewberry – May 9, 2017)