DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
915 WILSHIRE BOULEVARD, SUITE 930
LOS ANGELES, CALIFORNIA 90017

REPLY TO
ATTENTION OF:

April 7, 2014

Regulatory Division

Mr. Robert Scalamera
Project Manager
Arizona Department of Environmental Quality
Surface Water Section, MC5415A-1
1110 West Washington Street
Phoenix, Arizona 85007

Dear Mr. Scalamera:

I am writing in response to the public notice issued February 21, 2014, regarding the Arizona Department of Environmental Quality's (ADEQ) draft Section 401 water quality certification for the proposed Rosemont Copper Mine located southeast of Tucson, Pima County, Arizona.

Our regulations at 33 C.F.R. § 320.4(d) state, "[c]ertification of compliance with applicable effluent limitations and water quality standards required under provisions of section 401 of the Clean Water Act will be considered conclusive with respect to water quality considerations unless the Regional Administrator, Environmental Protection Agency (EPA), advises of other water quality aspects to be taken into consideration."

The Corps' Regulatory Guidance Letter (RGL) 90-04 provides guidance with regard to 33 C.F.R. § 320.4(d), which states the district engineer (DE):

> "can usually presume that a state's water quality certification satisfies the requirements of Section 401 of the Clean Water Act, 40 CFR 230.10(b)(1), and 33 CFR 320.4(d). If, however, EPA disagrees with the state's conclusions or raises water quality concerns beyond the state certification's scope, the DE shall consider EPA's objections and concerns as "other water quality aspects," as provided by 33 CFR 320.4(d). "Other water quality aspects," therefore, include water quality concerns outside the scope of the state's Section 401 certification review, indirect impacts on water quality aspects that the state certification does not address, and matters addressed in the state certification which EPA has a different viewpoint".

On February, 13, 2012, the Regional Administrator stated, "[c]onsistent with Corps regulations and the October 29, 2009 Department of the Army Memorandum regarding Water Quality, the EPA believes the likely impacts to water quality detailed above constitute "other water quality aspects" under 33 CFR 320.4(d) that should be

specifically evaluated by the Corps during review of the application. This is particularly important given the potential impacts to OAW [Outstanding Arizona Water], which must be protected from any degradation in water quality."

The effect of the Regional Administrator's letter is to render any granted state Section 401 certification "not conclusive" regarding water quality considerations, and necessitates the DE to make "independent judgments regarding compliance with 40 CFR 230.10(b)(1) and the consideration of water quality issues in the public interest review process."

In addition, Section 401(d) of the Clean Water Act, 33 U.S.C. § 1341(d), requires that 401 certifications shall become a condition on any Federal license or permit. When a state certifying agency proposes conditions, the Corps is responsible for determining whether the 401 water quality conditions are acceptable and comply with the provisions of 33 C.F.R. § 325.4.

Because the Corps is required to further evaluate water quality issues as well as ensure the special conditions of the 401 certification are reasonable and appropriate, we would appreciate it if ADEQ could clarify Special Condition (1) under Section 5.2 "Specific Conditions."

It has been documented in the Final Environmental Impact Statement (FEIS) that, during the life of the mine (20-25 years), there will be as much as a 40% reduction in stormwater flow to portions of Davidson Canyon Wash. Special Condition (1) is unclear as to what level of surface water mitigation shall be required. In one sentence, the mitigation is required "to maintain aquatic and riparian resources at **pre-project levels** in Davidson Canyon and Lower Cienega Creek." However, this same special condition later references the 17.2% post closure stormwater reduction and states "The surface water mitigation program shall describe measures **that will offset the reduced runoff volume** should it occur." Is this a reference to the 17.2% post closure reduction or the reduction which occurs during active mine operations?

We are also unclear why there is a 180-day delay from date of issuance of a Section 404 permit to the required submittal of this surface water mitigation plan. The Corps believes it would be more prudent to require the submittal of the plan prior to issuance of a Section 404 permit.

We appreciate the opportunity to provide comments to this public notice. If you have any questions, please contact Ms. Marjorie Blaine, my Senior Regulatory Project Manager in Tucson at (520) 584-1684 or Marjorie.E.Blaine@usace.army.mil.

Sincerely,

David J. Castanon
Chief, Regulatory Division