DEPARTMENT OF THE ARMY
SOUTH PACIFIC DIVISION, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94103-1399

REPLY TO
ATTENTION OF

28 DEC 2016

Commander, South Pacific Division

Mr. Patrick Merrin, Vice President
Hudbay – Arizona Business Unit
Rosemont Copper Company
5255 East Williams Circle
Suite 1065
Tucson, Arizona 85711

Dear Mr. Merrin:

Thank you for your letter dated November 17, 2016, concerning Rosemont Copper Company's ("Rosemont") application for a Department of the Army ("DA") permit to discharge dredged or fill material into waters of the United States associated with its proposed Rosemont Open Pit Copper Mine ("Rosemont Mine"). In the letter you asked for a phone call to discuss an opportunity to respond to Los Angeles District concerns, a confirmation of a site visit and the process for obtaining an approved Jurisdictional Determination ("AJD").

As you recall, we had a call on December 2, 2016. In that call I confirmed the December 6, 2016 site visit, provided a general list of Corps of Engineers ("Corps") concerns with the permit application, and said that an AJD could be requested at any time. I also stated that I planned on issuing a decision as soon as my assessment was complete. I stated that if my decision is to deny the permit, I would provide prior notification about the reasons the application does not meet regulatory requirements and would discuss any measures that could lead to a permit approval.

I also thank you for hosting the Corps on a site visit conducted on December 6, 2016. The opportunity to see the proposed site, the surrounding area and some of the potential mitigation pieces helped me form a clearer picture. As part of my review and evaluation of the documents supporting the District's recommendation, I agreed to schedule a follow-up technical meeting with you and your staff to discuss the application and to provide you an opportunity to address Corps concerns. My team will work with you to set a date for this meeting in January 2017.

In determining whether to issue a DA permit and, if so, in defining its terms, the Corps bases its decision upon the proposal contained in the permit application, including any mitigation plan, and analyses of the proposal prepared by the Corps, other agencies and the applicant itself. My decision will be based on compliance with the Clean Water Act ("CWA") 404(b)(1) guidelines and a determination of public interest factors.

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. Due to the contrary positions of the U.S.

Environmental Protection Agency ("EPA") and the Arizona Department of Environmental Quality, the District was required to make an independent judgement as to impacts of the proposed project on water quality. In this case, 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 concluded that mitigation proposed to offset project impacts would be inadequate. Specifically, while enhancement parcels would be appropriate and sufficient to mitigate indirect impacts to 123.5 acres of waters of the United States, the permanent loss of 40.4 acres of waters would not be mitigated by the proposed re-establishment at Sonoita Creek Ranch, along with proposed mitigation on Davidson Canyon parcels and on proposed mitigation parcels, located outside of the impacted watersheds. District Regulatory staff worked with Rosemont's team to provide advice about and review of Rosemont's compensatory mitigation efforts. District staff met with Rosemont's team approximately weekly for over a year and frequently throughout the multi-year federal environmental review process. It is my understanding that Rosemont submitted a mitigation plan in April 2014, and after further consultation with the District then submitted a revised final mitigation plan in September 2014. An amended biological opinion, based in part on the September 2014 mitigation plan, was issued by the U.S. Fish and Wildlife Service in April 2016. The final mitigation plan is being evaluated by the Corps in reaching a final permit decision.

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.

Your letter states that you would like the opportunity to respond to the District's concerns. If at any point you intend to modify, supplement or withdraw the proposal, please let me know promptly. Supplementation or any other changes should be in writing. If the proposal were to change, it may be sent back to the District Engineer so that District staff could evaluate the revised proposal and conduct any further analyses that the changes to the proposal might warrant, which may include consulting with other agencies and obtaining comments from the public.

Lastly, your letter raises the subject of the jurisdictional determination of the waters of the United States within the project's footprint. As you know, the Corps' current analysis of the permit application is based upon a preliminary JD that was developed by Rosemont's consultant and accepted by the Corps. Corps regulations at 33 C.F.R. § 320.1(a)(6) authorize district engineers to issue formal determinations of the applicability of the Clean Water Act to tracts of land. As stated in Regulatory Guidance Letter 16-1, the JD requester determines which form of JD, if any, is best for his/her particular circumstance. You may request an approved JD at any time, including before the final permit decision or during an administrative appeal. Depending on

the results of such an investigation, supplementation of the Environmental Impact Statement and a new CWA 401 water quality certification could be required.

As you may know, the U.S. Environmental Protection Agency is the final authority on CWA jurisdiction, but for all practical purposes the Corps makes thousands of JD's annually in executing its Regulatory Program mission. For EPA to make the final determination of the geographic jurisdictional scope of waters of the United States for purposes of section 404 CWA, they must designate a "special case" per our 1989 memorandum of agreement ("MOA") on jurisdiction and 404(f) exemptions. To do so, the EPA Regional Administrator would submit a request for designating a "special case" to EPA Headquarters for approval. If not approved for "special case" designation by EPA Headquarters, the Corps would make the final CWA JD.

In addition, since 2008 for approved JD's only involving a "significant nexus determination", the Corps provides EPA with the draft JD for review. EPA then has 15-days to exercise their "special case" authority per the 1989 MOA. If EPA does not respond within 15-days, the Corps would finalize the approved JD.

I appreciate the opportunity to meet with you and visit the site of the proposed project. Both the site visit and our discussions were helpful in facilitating my understanding of the proposed project. We look forward to addressing questions regarding our review and evaluation of this DA permit application in the technical meeting to be scheduled in January 2017. Mr. Stu Townsley, Chief, Operations and Regulatory Division, will contact you shortly to set the schedule and agenda for that meeting. If you have additional questions, he can be reached at (415) 503-6593.

BUILDING STRONG!

Sincerely,

D. Peter Helmlinger, P.E.
Colonel, U.S. Army
Commanding