HUDBAY

USFS Certified Letter
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November 17, 2016

Colonel D. Peter Helmlinger, Division Commander
South Pacific Division
U.S. Army Corps of Engineers
1455 Market Street
San Francisco, CA 94103-1398

Dear Colonel Helmlinger:

Thank you for your letter dated September 23, 2016, and for your staff's work to date on the 404 Permit application for the discharge of fill material in connection with the Rosemont Copper Project. You indicated in your letter that your staff will have completed their review of the record as of November 1st. Corps' regulations specify that you, as the Division Engineer, must now "review and evaluate" the permit application and make your own decision on whether to issue or deny the permit. Given Governor Ducey's support for the Rosemont Copper Project, we believe that the regulations clearly require you to make an independent decision in this matter and not simply review whether the District's decision is defensible or to treat this process like an appeal of a decision by the District Engineer.

In order to have a strong administrative record and provide a defensible basis for your decision, we believe that your review must be well-informed and consistent with the Project's Final Environmental Impact Statement (FEIS) that the Corps assisted in preparing as a cooperating agency. An open process with us is the best way to ensure that you, as the decision-maker, are relying on the best and most accurate information possible and that there are no defects in the record that might open your decision up to challenge. Accordingly, I am requesting a call with you on November 28th or 29th or December 1st or 2nd to discuss the following:

- An opportunity for Hudbay to respond to the Los Angeles District's concerns. Unfortunately, after nearly four months, we still do not know the basis for the District's referral of our permit application to your office. We have received virtually no explanation of this action and have not been given an opportunity to respond to the District's underlying concerns. As you are aware, we submitted our updated mitigation package to the Los Angeles District in September of 2014. Since that time, I have personally made eight written and numerous oral requests seeking to understand the Corps' concerns and indicating a strong desire and ability to remedy those concerns. Those requests have been ignored. My understanding is that the type of collaboration I am requesting is standard practice throughout your Division and the rest of the Corps' offices.

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Based on the portions of the record that we have received through Freedom of Information Act requests, we are concerned that the District's recommendation was not based upon a comprehensive record, did not properly assess the Project's impacts and mitigation, and may have considered perceived issues that were beyond the scope of the Corps' mandate. We think we have a right to be treated fairly and transparently and we request that the Corps give us a formal opportunity to meet with your staff to present our project and discuss any concerns that your staff or the District has raised. We are confident that once you and your staff understand our project, including its unique modern design and its extensive mitigation plan that has been created to minimize adverse impacts while allowing for significant local economic benefits, you will be in a position to properly assess our application.

- To confirm your attendance at a site visit. Your prior letter mentioned the "possibility" of a site visit following the Division's initial review of the record. We believe you visiting the site is imperative for a proper review and evaluation of our permit application. We understand that a site visit is being scheduled for December, and we look forward to you getting a better understanding of the site, project, and nature of the resources at issue.

- The process for obtaining an Approved Jurisdictional Determination. Finally, I would appreciate understanding your plans with respect to preparing an Approved Jurisdictional Determination (AJD) for our project site. In our view, there is significant uncertainty as to whether the Corps' has jurisdiction over the onsite drainages. In the event of an adverse final decision on our application, we anticipate that jurisdictional arguments will be a key element of our appeal and that an AJD will be necessary. However, the Corps' position on the availability of an AJD once a final determination has been made is not clear. While we are not formally requesting an AJD at this time, we would like to understand when we should do so in a permit denial scenario and to confirm that we will have the opportunity challenge jurisdiction during any appeal.

Your decision to issue or deny the permit for the discharge of fill material in connection with the Rosemont Project will come after more than nine years of environmental analysis and ongoing collaboration with federal, state, and local authorities. During this time we have successfully obtained every necessary permit or certification from other regulatory agencies, with the exception of our final Record of Decision from the Forest Service which is ready to issue but remains pending as the Corps' continues processing our 404 Permit application. The 404 Permit for the fill of ephemeral drainages at site is the last remaining permit required to begin construction and operations.

The significant economic benefits of the Rosemont Copper Project to one of the poorest jurisdictions in the US are indisputable. In addition, the work done to date has helped us design a mine that minimizes associated impacts and meets or exceeds the regulatory standards for air, water, and biological impacts. The result of these efforts is a project that both the current and former governors of Arizona concluded would be a net benefit to the State. It is also worthy to note that the State of Arizona has issued 14 separate environmental and operating permits and approvals for this project requiring thousands of hours of collaborative effort. The Governors' position was initially expressed to the Corps in a letter from Governor Brewer dated March 4, 2014 and was confirmed by letters from Governor Ducey on May 28, 2015 and October 3, 2016. I am attaching all three of these letters for your consideration.

Throughout this process, we have consistently stated our position that the permitting agencies should be given an appropriate amount of time to evaluate our project and complete their work. We support your efforts to conduct a comprehensive review of our application and look forward to answering any of your questions or to respond to any of your concerns. We are simply asking for the process to be applied fairly and transparently. I look forward to your response regarding our requests and questions and to speaking with you in the upcoming days. I sincerely hope that our offer to work with the Corps to resolve your concerns is accepted.

Sincerely,

Patrick Merrin
Vice President
Hudbay - Arizona Business Unit

cc: Senator John McCain, US Senate
Senator Jeff Flake, US Senate
Representative Martha McSally, US House of Representatives
Governor Doug Ducey, State of Arizona
Stu Townsley, U.S. Army Corps of Engineers

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