DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT
915 WILSHIRE BOULEVARD, SUITE 1109
LOS ANGELES, CALIFORNIA 90017-3409

April 6, 2022

SUBJECT: Hudbay Minerals, Inc.'s Proposed Rosemont Copper World Mine

Matt Bingham
Hudbay Minerals, Inc.
5255 E. Williams Circle Suite 1065
Tucson, Arizona 85711

Dear Mr. Bingham:

I am writing regarding your "Rosemont Copper Company ("Rosemont") Notice of Exempt Activities" ("Notice") sent to the Regional Flood Control District Board on March 10, 2022. The Notice states that Rosemont anticipates starting clearing, grading, stockpiling and other earthwork activities related to the construction of tailings and waste rock storage facilities on land owned by Rosemont in connection with Rosemont's future mining and metallurgical operations. It is unclear how the proposal described in the Notice overlaps with prior proposals. I request you provide information to Mr. David Castanon, Chief of my Regulatory Division, indicating the location of the current proposal in relation to the previously issued Preliminary Jurisdictional Determination and currently suspended Department of the Army permit issued to Rosemont for the Rosemont Copper Mine Project and associated utility corridor. Mr. Castanon can be reached at David.J.Castanon@usace.army.mil or at (805) 585-2141.

As you know, on March 24, 2021, the U.S. Army Corps of Engineers' Los Angeles District provided two approved jurisdictional determinations ("AJDs") to Hudbay Minerals, Inc. ("Hudbay") under the Navigable Waters Protection Rule (NWPR). Pursuant to Regulatory Guidance Letter ("RGL") 05-02, the March 2021 AJDs are valid for five years, "unless new information warrants revision of the determination before the expiration date." The Corps does not believe the NWPR vacatur, itself, satisfies "new information" threshold as envisioned by RGL 05-02.

In light of the U.S. District Court for the District of Arizona's August 30, 2021, order vacating and remanding the NWPR in the case of *Pascua Yaqui Tribe v. U.S. Environmental Protection Agency*, the Corps has halted implementation of the NWPR nationwide and is interpreting "waters of the United States" consistent with the pre-2015 regulatory regime until further notice. AJDs completed prior to the court's decision and not associated with a permit action (also known as "stand-alone" AJDs under RGL 16-01) will not be reopened until their expiration date, unless, as noted above, one of the criteria for revision is met under RGL 05-02. A NWPR AJD could also be reopened if the recipient of such an AJD requests a new AJD be provided pursuant to the pre-2015 regulatory regime. On January 6, 2022, Mr. Castanon called you to inform you of the

NWPR vacatur and advised that you cannot rely on the March 2021 NWPR AJDs as accurately delineating all jurisdictional waters under the current regulatory regime within each AJD's review area.

Additionally, the Corps reminds you that you were previously notified the March 2021 AJDs did not revoke, reinstate or modify the currently suspended March 8, 2019, Department of the Army permit associated with the Rosemont Copper Mine project (SPL-2008-0816-MB). Though the Department of the Army permit remains suspended, it is still a signed permit accepted by Rosemont, and Rosemont should not take any actions inconsistent with the existing permit. The point of contact for the permit at the Corps' South Pacific Division is Tori White, who can be reached at Tori.K.White@usace.army.mil or (415) 503-6530.

Sincerely,

JULIE A. BALTEN
Colonel, U.S. Army
Commanding

cc:

Tomás Torres, Director, Water Division, EPA Region IX