EARTHJUSTICE

Via Email

March 23, 2022

Mr. Michael Connor
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Re: Letter on Clean Water Act Section 404 Permit No. SPL-2008-0816-MB Approved Jurisdictional Determinations for the Rosemont Copper Mine

Dear Mr. Connor, Mr. Pinkham, and Ms. Jensen:

The Tohono O'odham Nation, Pascua Yaqui Tribe, and Hopi Tribe (collectively, the Tribes) respectfully request an immediate response to their letter urging the U.S. Army Corps of Engineers (Corps) to rescind the Approved Jurisdictional Determinations (AJDs) for the Rosemont Copper Mine.[1] Yesterday, the Tribes learned that Hudbay Minerals, Inc. (Hudbay) plans to start "clearing, grading, stockpiling, and other earthwork activities" on the West Side of the Santa Rita Mountains.[2] Hudbay will commence construction on April 1st and apparently

[1] *See* Letter from Stuart Gillespie, Sr. Att'y, Earthjustice, and Caitlin Miller, Assoc. Att'y, Earthjustice, to Michael Connor, Asst. Secretary of the Army (Civil Works), Department of Army, et al. (Mar. 9, 2022) (attached as Ex. 1).

[2] Letter from Javier Del Rio, Vice President, Hudbay Minerals, Inc., to Pima County Regional Flood Control District (March 10, 2022) (attached as Exhibits 2 and 3). These ground-clearing activities are part of Hudbay's attempt to expand the Rosemont Mine to encompass a series of open-pit mines on the west side of the Santa Rita Mountains, known collectively as the Copper World Expansion. The Copper World Expansion would create at least 64 million tons of

intends to destroy the jurisdictional waters of the United States on the site without a Clean Water Act permit.

Hudbay's operations would cause significant, if not catastrophic harm, to our Nation's waters. Hudbay would destroy the network of ephemeral streams on the site, causing "irreparable harm to the environment"[3] and degrading downstream waters.[4] Hudbay would then construct a massive open-pit mine in or on top of those waterways, disregarding sound engineering in a contrived attempt to evade bedrock environmental laws.[5] The resultant tailings piles, waste rock dumps, and mine pits would increase the risk of downstream contamination due to heavy metal runoff and/or catastrophic tailings-dam failure.[6]

In light of the foregoing, there is a renewed sense of urgency in ensuring Hudbay complies with the Clean Water Act. Yet, the Tribes have not received any response from the Corps to their March 9th letter. The Tribes thus renew their request that the Corps immediately revoke the Approved Jurisdictional Determinations issued in March 2021 and instruct Hudbay to seek an accurate jurisdictional determination before proceeding with any ground-disturbing activities. If the Corps has not or will not require Hudbay to obtain a new jurisdictional determination restoring Clean Water Act protections, we need to know as our Nation's waters, environment, and cultural history are at stake. We request your prompt response by **Monday, March 28th**.

Sincerely,

/s/ Stu Gillespie
STUART C. GILLESPIE
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additional waste rock (on top of the 1.9 billion tons of waste rock and tailings for the Rosemont pit). *See* Rosemont Copper World Reclamation Plan (August 2021) (attached as Exhibit 4).

[3] *See Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1124 (9th Cir. 2005) ("[O]nce the desert is disturbed, it can never be restored.").

[4] EPA documented the critical functions provided by ephemeral streams in the Santa Rita Mountains, which Hudbay would fill and bury under waste rock and tailings. *See* Letter from Nancy Woo, Assoc. Dir., Water Div., U.S. Envtl. Prot. Agency, to Edwin S. Townsley, Operations and Regulatory Div. Chief, S. Pac. Div., U.S. Army Corps of Eng'rs, Environmental Consequences of the Proposed Rosemont Copper Mine: Significant Degradation to Waters of the United States at 9-18 (Nov. 30, 2017) [hereinafter "EPA 2017 Significant Degradation Letter"].

[5] *See* Letter from David Chambers, Center for Science in Public Participation, to Gayle Hartman, President, Save the Scenic Santa Ritas (Oct. 13, 2021), at 2 (attached as Exhibit 5) [hereinafter "Chambers Letter"].

[6] *Id.* at 2-3; *See also* EPA 2017 Significant Degradation Letter at 14-16 (explaining how mining activities at the Rosemont site would discharge contaminants, such as heavy metals, causing unacceptable adverse downstream impacts).

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