ROSEMONT COPPER COMPANY

RESPONSE TO REQUEST FOR INFORMATION

EPA Docket No. CWA-308-9-22-032

September 30, 2022

I. Introduction

By letter signed August 3, 2022, EPA has requested that Mr. Javier Del Rio provide information about certain activities that Mr. Del Rio and "any other persons acting on behalf of HudBay Minerals, Inc. conducted at the Rosemont Copper World site" "since at least April 2022" ("the RFI"). The entity that owns and is responsible for the Copper World Project is Rosemont Copper Company ("Rosemont"). As explained below, Rosemont is an Arizona corporation and is a subsidiary of HudBay Minerals. The Copper World Project has been ongoing since 2020. Mr. Del Rio became HudBay Minerals' Vice President, South America and USA on January 4, 2022, and thus lacks personal knowledge of many of the activities undertaken by Rosemont. Rather than limiting the responses to the RFI to events that took place after Mr. Del Rio assumed his current position, the responses below are provided on behalf of Rosemont and cover work performed since 2020 and provide additional background information to give context for Rosemont's responses.

As a preliminary matter, Rosemont provides the following general objections to the RFI:

1. As written, many of the requests improperly assume that "waters of the United States" ("WOTUS") are present on the Copper World property when no determination that WOTUS exist has been made and, more importantly, there is no credible evidence supporting such a determination. Additionally, to the extent that the requests assume or imply the presence of WOTUS, it is uncertain what definition of the statutory term "WOTUS" is intended.

2. Many of the requests are vague and fail to clearly identify the specific features or areas on Rosemont's property to which the requests are directed. Because of the size of the property (over *4,500 acres*), the absence of any permanent waters and wetlands areas, and the requests' lack of detail, many of the requests are too vague to answer.

3. Many of the requests in the RFI use vague terms that are undefined or defined in a confusing manner. Examples include "Rosemont Copper World," "waters of the United States," "Project," "Site," and "the aquatic resource."

Specific objections are made below in the context of individual requests for information.

Documents that are responsive to the RIF are provided with this letter by means of a Box site. The link to this site is: https://fclaw.box.com/s/k22p8fc71cku5y5ohjda23cpg52urc37 The documents are Bates stamped and numbered consecutively, beginning with RCC-CW000001. They are cited and discussed below.

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II. Overview of Rosemont's Activities at Copper World.

Aspects of the RFI, such as the vague terminology used, suggest that EPA is unaware of the nature of Rosemont's mining activities in the northern Santa Rita Mountains. To help ensure that there is no confusion about Rosemont's activities, and to place Rosemont's responses to the RFI in proper context, Rosemont provides the following overview of the Copper World Project and its related activities in the northern Santa Rita Mountains.

A. Company Overview.

Rosemont is an Arizona corporation headquartered in Tucson, Arizona. Originally, Rosemont was a subsidiary of an entity called Augusta Resource Corporation ("Augusta"), which was a Canadian corporation. Augusta formed Rosemont in 2005 to advance the Rosemont Project (described below) through exploration, feasibility, and permitting. In mid-2014, HudBay Minerals, Inc., ("Hudbay") acquired the outstanding stock of Augusta, thereby assuming control of Rosemont. Since that time, Rosemont has been a subsidiary of Hudbay and under Hudbay's management and control. The real property and other interests described below are owned by Rosemont, and the activities are being undertaken by Rosemont.

B. The Copper World Project.

The Copper World Project is located on private land owned by Rosemont in the Santa Rita Mountains, approximately 12 miles southeast of Sahuarita, Arizona, in Pima County. A general map of the project area is provided. *See* RCC-CW005254.[1] The project area is semi-arid and receives limited rainfall. Annual average rainfall for the area based on data from the Helvetia Weather Station is 19.73 inches. Conversely, the average annual pan evaporation rate at the nearby Nogales 6N Weather Station is 91.20 inches per year. There are no permanent or intermittent streams in the area – only desert washes and other ephemeral drainage features that rarely contain water.

The Copper World Project contains approximately 4,500 acres of land. It lies within the Helvetia-Rosemont mining district, which has a long history of mining and mineral production. The district's mines were primarily underground operations with some localized quarries and waste rock and mine tailings that were placed on the surface. These mines produced copper, gold, silver, and related valuable minerals, with some operations continuing into the 1950s. A copper smelter and a narrow-gauge railroad also operated in the area, with their current surface remains limited to localized concrete foundations and mine slag piles. Additional information on the Helvetia-Rosemont mining district, including maps and information on specific mines in the area, is available at mindat.org, https://www.mindat.org/loc-31252.html.

Rosemont envisions developing the Copper World Project as a truck-and-shovel open pit mining operation. Four open pits will be mined in a general west-to-east progression. From west-to-east,

[1] Rosemont is providing three different maps that depict the location, ownership and other features of the Copper World Project. *See* RCC-CW005248-55. The map entitled "Copper World Current Status" and dated September 9, 2022, shows various roads, drill pads and sites, and other improvements. While the map is accurate, some of the roads and other features it shows were in existence prior to 2020 and were not constructed in the connection with Rosemont's current exploration program (described below).

these pits are identified as Peach-Elgin, West, Broadtop Butte, and East (formerly the Rosemont pit). All four pit areas contain historic mine workings. The Project will also include a sulfide concentrator and concentrate leach facility for sulfide ore along with conventional tailings disposal. A heap leach pad ("HLP") is planned for the recovery of copper from oxide ore. The pregnant leach solution from the concentrate leach facility will be combined with the solution from the HLP and treated in a solvent extraction and electrowinning ("SX/EW") facility to produce copper cathode. The processing facilities will be located on the west side of the Santa Rita Mountains along with tailings storage facilities ("TSFs") and the HLP. Waste rock storage will occur on both sides of the range in a waste rock facility ("WRF"). Utilities (power and water) will come from the west to serve the Project. Fresh water for the Project will come from well fields located near the Town of Sahuarita and potentially from pit dewatering wells. Additional information about the Project is set forth in Rosemont's Application for an Aquifer Protection Permit, filed with the Arizona Department of Environmental Quality ("ADEQ") on September 21, 2022 (the "APP Application"). A complete copy of the APP Application is being provided. *See* RCC-CW000001-5247.

Rosemont began drilling and other exploration work on its private land near Helvetia, in the vicinity of the district's historic mines, in mid-2020, after litigation in federal court halted the Rosemont Project (summarized below). The initial drilling program was designed to geologically condemn areas of Rosemont's private land while seeking alternative locations for potential waste rock and tailings disposal in connection with mining the Rosemont copper deposit. The condemnation program identified seven mineral deposits hosting both oxide and sulfide copper mineralization at shallow depth along an approximately four-mile strike. These new deposits are of similar grade or, in some cases, higher grade than the Rosemont deposit, and tend to occur at shallower depths, making them amenable to open pit mining with minimal waste stripping and other operational efficiencies.

Given the success of this exploration work, Rosemont has been conducting further exploration within its private land footprint, which has included the improvement of existing roads in the area; the construction of new roads for access to drill sites and related activities as well as perimeter roads; the construction of drill pads and related improvements; and other ground-disturbing activities relating to this exploration program. A borrow pit was developed to obtain clean material for road and drill pad construction. Additional limestone-based waste rock has been obtained from the Imerys Marble Quarry, located a short distance northeast of Rosemont's property, and used for capping and stabilizing roads, berms, and related improvements.

Rosemont's exploration work includes gathering scientific data and information needed to understand key geotechnical and hydrologic parameters in the overall project design, while infill exploration drilling between previously drilled holes is being conducted to gain greater confidence in predicting mineralization grades. This work will also provide information needed to finalize project details and apply for required permits and approvals.

As stated, additional information regarding Rosemont's future operations, including figures depicting the project's basic layout and facilities as currently projected, are provided in Rosemont's APP Application.

C. The Rosemont Project.

In contrast, the Rosemont Project, as approved in 2019, was located on the eastern side of the Santa Rita Mountains and limited to developing and mining the Rosemont copper deposit. This large copper deposit was originally discovered in the 1950s, and was owned subsequently by several different mining companies. Ultimately, Augusta acquired the property in 2005, and formed Rosemont Copper Company to undertake development of the property's mineral resources. Rosemont also acquired some private property on the western side of the Santa Rita Mountains, including an area it called the Helvetia Ranch Annex, but intended to use that land for mitigation-related purposes. It did not explore the property for valuable minerals.

The land base for the Rosemont Project consisted of private fee land owned by Rosemont, including the patented mining claims that contain the bulk of the ore deposit, a large group of unpatented mining claims located in the Coronado National Forest, and a small amount of State land. Under the alternative approved by the U.S. Forest Service, the project would disturb about 5,400 acres, including an open pit mine, mineral processing facilities, tailings and waste rock storage areas, and related infrastructure and improvements needed to support operations. A utility corridor along Santa Rita Road, on the western side of the mountain range, was also planned, and would contain facilities to provide fresh water and power to the project. Additional background on the Rosemont Project is provided in the Forest Service's Final Record of Decision (June 2017), available at https://www.rosemonteis.us/final-eis.

After Hudbay acquired control of Rosemont in 2014, Rosemont continued to pursue the permits and other authorizations necessary for the Rosemont Project. These authorizations included a mine plan of operations ("MPO") from the Forest Service under the agency's surface use regulations at 36 C.F.R. Part 228, and a permit from the U.S. Army Corps of Engineers ("Corps") under Section 404 of the Clean Water Act ("CWA"). In 2017, the Forest Service issued its Record of Decision approving the MPO for the project. The Corps lagged behind the other agencies, however, and did not issue the Section 404 permit for the Rosemont Project until March 2019.

In 2017 and 2018, environmental groups and Indian tribes filed lawsuits in federal court challenging the approvals for the project. The district court ultimately held that the Forest Service had misapplied federal laws and the agency's regulations governing mining on National Forest lands in approving the project, and vacated the Forest Service's Record of Decision and its Environmental Impact Statement ("EIS"). *Ctr. for Biol. Diversity v. U.S. Fish and Wildlife Serv.*, 409 F. Supp. 3d 738 (D. Ariz. 2019). That ruling was affirmed on appeal earlier this year. The district court also issued a separate decision addressing certain challenges to the U.S. Fish and Wildlife Service's biological opinions for the project. The court identified certain errors and remanded the opinions back to the agency for reconsideration. *Ctr. for Biol. Diversity v. U.S. Fish and Wildlife Serv.*, 441 F. Supp. 3d 843 (D. Ariz. 2020). That decision was not appealed.

As a result of these court decisions, no mining activities have taken place in connection with the Rosemont Project. Moreover, the project's Section 404 permit was suspended by the Corps in 2019, and was never utilized by Rosemont . Thus, while Rosemont still intends to mine the Rosemont (now East) copper deposit, it would be as part of the Copper World Project, not the Rosemont Project.

The information requested by EPA apparently relates to Rosemont's recent activities on the western side of the Santa Rita Mountains in connection with the Copper World Project. Those activities are unrelated to the Rosemont Project. The Copper World Project has been planned to stand on its own. It is not interdependent with the Rosemont Project, and it is proceeding independently as a separate project.

III. Responses to EPA's Individual Requests for Information

1. *Please provide all Documents that granted you access (e.g., including ownership status) to the project site known as Rosemont Copper World located in Pima County, Arizona ("the Site"), including areas at Latitudes and Longitudes (31.877016, -110.805264), (31.869940, -110.799660), and (31.860868, -110.786564).*

Objection. This request seeks information that is irrelevant and is unreasonable in its breadth and scope. As explained, Rosemont holds legal title to over 4,500 acres of private land, which was acquired in various real estate transactions going back more than 12 years. Some these land acquisitions occurred before Hudbay acquired Rosemont in 2014.

In lieu of producing copies of all deeds to Rosemont's private property, a map generally depicting the private property currently owned by Rosemont is provided. *See* RCC-CW005254. In addition, the deeds by which Rosemont acquired title to the land at the three locations specifically identified in this RFI are provided. *See* RCC-CW005256-92. Additional maps depicting Rosemont's private property are provided in the APP Application. *See, e.g.,* RCC-CW000249, RCC-CW253-54. If EPA needs additional information about a particular parcel or specific area, Rosemont will be happy to discuss with the agency whether such information is available.

2. *Please describe, and provide Documents to show, the efforts you made to comply with section 404 of the Clean Water Act for any work resulting in the placement of dirt, rock or other materials in or near waters of the U.S. ("the Project") at the Site.*

Objection. The request improperly makes a legal conclusion that WOTUS are found "at the Site," and improperly assumes that discharge(s) of a pollutant into WOTUS took place, without any evidence to support these determinations. In addition, the term "Site" is vague and ambiguous. As explained above, Rosemont owns over 4,500 acres of land in the northern Santa Rita Mountains, and Rosemont has been conducting mineral exploration activities on that property since mid-2020. The location of and activities that constitute the "Project at the Site" are not defined. Consequently, the request is overbroad and unreasonable.

Without waiving the foregoing objections, Rosemont has carefully investigated whether surface drainage features that cross Rosemont's private land on the west side of the ridgeline of the Santa Rita Mountains are WOTUS. The following discussion summarizes the most important background facts concerning Rosemont's efforts to comply Section 404 of the CWA as it applies to Rosemont's land use activities. Rosemont is also providing documents, cited and discussed below, that are relevant to the company's investigation.

A. Previous JD Submittals for the Rosemont Project

1. The 2010 PJD and 2019 Section 404 Permit

As explained in Section II, above, the Rosemont Project differs from the Copper World Project in a number of respects, and was proceeding independently of the Copper World Project. However, certain activities relating to compliance with Section 404 of the CWA for the Rosemont Project are relevant to the Copper World Project.

Early in the permitting process for the Rosemont Project, Rosemont retained WestLand Resources, Inc., an environmental and engineering consulting firm based in Tucson, Arizona, to assist the company in ensuring compliance with the CWA, including obtaining any permits required under Section 404. This initial work predated Hudbay's acquisition of Rosemont. WestLand completed a *Preliminary* Jurisdictional Determination ("PJD") request for ephemeral drainages found in the main Rosemont Project site, on the east side of the Santa Rita Mountain range, and submitted the request to the Corps for review and concurrence in July 2009. A subsequent PJD request for ephemeral washes within the Rosemont Project's utility corridor on the west side of the mountain range was submitted to the Corps in March 2010. This request included washes in the Helvetia area. The Corps signed the concurrence for both PJDs on November 1, 2010.

The 2009 and 2010 PJDs were used to develop an application for a Section 404 permit for the Rosemont Project. Unfortunately, Rosemont encountered significant difficulties in completing the permitting process, including difficulties working with the Corps' local project manager, Marjorie Blaine (who is now retired). In any case, Corps' Section 404 permit SPL-2008-816-MB was not issued until March 8, 2019, roughly 10 years after Rosemont's initial application was filed, and only after the permitting decision was elevated to the Corps' South Pacific Division.

Rosemont's Section 404 permit was immediately challenged in federal court by opponents of the Rosemont Project. As explained above, in the lawsuits filed by the same project opponents that were already pending when the Section 404 permit was issued, the district court concluded that the EIS for the Rosemont Project was flawed and vacated the EIS and the Forest Service's Record of Decision. As a result of that ruling, the Corps suspended Rosemont's Section 404 permit on August 23, 2019, and the court stayed the lawsuit challenging the permit pending further action by the Corps. Consequently, Rosemont was never able to utilize the permit, despite spending more than a decade and incurring substantial costs to obtain it.

Given the status of the permit, including the uncertainty surrounding its reinstatement by the Corps and more recent evaluations of the jurisdictional status of the ephemeral drainages in the project area (discussed below), Rosemont decided to surrender the Section 404 permit earlier this year. Accordingly, by letter dated April 28, 2022, Mr. Del Rio, on behalf of Rosemont, formally notified the Corps that it surrendered the Section 404 permit. Although the Corps indicated that it must approve permit surrender (apparently because no agency rule specifically addresses a permittee's surrender of an unused permit), the district court issued an order confirming that Rosemont had validly surrendered the permit and dismissed the challenges to the permit as moot. Order at 7-8, *Save the Scenic Santa Ritas v. U.S. Army Corps of Eng'rs*, 4:19-cv-177 (May 23, 2022), ECF 160. A copy of this order is provided. *See* RCC-CW009966-81.

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Thus, the March 2019 Section 404 permit for the Rosemont Project no longer exists. It should be noted, however, that Rosemont avoided any work in the areas covered by the suspended permit, including the ephemeral washes crossing the utility corridor along Santa Rita Road on the western side of the Santa Rita Mountains. Although those washes are not WOTUS (the 2010 PJD only indicated that the washes are *potentially* jurisdictional), Rosemont wished to avoid any dispute with the Corps. Now that the district court has confirmed that the permit was surrendered, Rosemont notified the Corps on July 28, 2022, that it will no longer avoid the washes in the utility corridor.

2. The Corps' 2021 AJD for the Rosemont Project

Because of the difficulties Rosemont experienced obtaining a Section 404 permit, including agency delay, lawsuits challenging the permit, and the Corps' permit suspension order, on September 20, 2019, Rosemont submitted separate requests for an *Approved* Jurisdictional Determination ("AJD") for the ephemeral drainage features in the main project area on the east side of the Santa Rita Mountains and in the utility corridor on the west side of the mountain range. *See* RCC-CW009800-01. These requests were supported by detailed technical reports prepared by WestLand evaluating whether the onsite drainages qualify as WOTUS. This review was based on the 1986 regulatory definition of WOTUS as supplemented by more recent Supreme Court decisions and guidance issued by EPA and the Corps in 2007 and 2008 commonly referred to as the "Rapanos Guidance," which were in effect at that time and governed jurisdictional determinations.

a. WestLand's 2019 West Side AJD Evaluation

We are providing a copy of WestLand's evaluation for the West Side, entitled Jurisdictional Waters Determination for the Rosemont Copper Project Utility Corridor and West Side Operations (Sept. 20, 2019). *See* RCC-CW009932-65.[2] In this evaluation, WestLand concluded that all of the West Side drainage features consist solely of ephemeral drainages that flow only in direct response to storm events. No perennial (year-round flow) or intermittent (seasonal flow) streams were identified within the project area. Similarly, no wetlands or other special aquatic sites were identified within the project area.

WestLand evaluated the location of the nearest downstream traditional navigable water ("TNW") to which the West Side drainage features may be tributary. WestLand concluded that the nearest downstream TNW is the Colorado River, which is more 300 river miles from Rosemont's West Side property. WestLand, however, also considered two other waterways that are closer to the project area, "Study Reach B" of the Santa Cruz River, the base flow of which consists of discharges from wastewater treatment plants in northwest Tucson, and the segment of the Gila River from Powers Butte to Gillespie Dam, located west of Phoenix. The WestLand report explains that neither stream segment meets the judicial test for navigability-in-fact, as set forth in Supreme Court decisions such as *PPL Montana LLC v. Montana*, 565 U.S. 576, 591-92 (2012).

[2] EPA may access Attachments 1 (interactive map) and 2 (photographs) to the WestLand report at https://rosemontgeohub.maps.arcgis.com/apps/webappviewer/index.html?id=eef05d5100db4c14b8e719f495441514 (user name: EPA_Rosemont, password: Rosemont2022). These materials show the ephemeral drainage features believed to exhibit an ordinary high water mark ("OHWM"), as that term is applied by the Corps, that cross the utility corridor.

In short, there is no evidence that either stream segment has been used, or is capable of being used, as a highway for water-borne interstate commerce.

WestLand also noted that, in response to a prior lawsuit challenging the designation of Study Reaches A and B on the Santa Cruz River as TNW, EPA and the Corps had represented to the federal court that the Santa Cruz River TNW designation does not determine any legal rights or obligations and has no legal consequences. The court accepted the agencies' characterization of the effect of the TNW designation, and explained that the designation is merely advisory and is not legally binding. *National Ass'n of Home Builders v. U. S. Environmental Protection Agency*, 956 F. Supp. 2d 198 (D.D.C. 2013), *aff'd on other grounds*, 786 F.3d 34 (D.C. Cir. 2015).

Further, on appeal to the District of Columbia Court of Appeals, EPA and the Corps represented to that court that the Santa Cruz River "TNW Determination is not a final agency action because it is not an action that determines legal rights or obligations or from which legal consequences flow." Resp. Brief for the Federal Appellees at 44, *National Ass'n of Home Builders v. U. S. Environmental Protection Agency*, Case No. 13-5290 (D.C. Cir. filed April 30, 2014). The agencies also told the court:

> Holding that the [Santa Cruz River] TNW Determination is not a final agency action does not impair Home Builders' ability to challenge it when it does have legal consequences for their members. . . . [T]he fact that [EPA and the Corps] previously issued such a determination will have no independent legal consequences. To the contrary, the reviewing court will review the issue of regulatory jurisdiction, including the status of the Santa Cruz River reaches as TNWs, under normal standards of APA review. . . .
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> Alternatively, a potential discharger can proceed to discharge pollutants without applying for a permit. Again, the fact that [EPA and the Corps] previously issued the TNW Determination would have no legal effect.

Id. at 48. Thus, the location of the nearest downstream TNW remains an open question.

Despite the status of the Corps' TNW determinations, WestLand considered all three waterways, including Study Reach B of the Santa Cruz River, in determining whether a "significant nexus" exists under the Rapanos Guidance. Study Reach B is between 28 and 46 miles downstream of the ephemeral washes in the West Side project area. WestLand concluded that none of these drainage features has more than an insubstantial or speculative effect on the physical, chemical, or biological integrity of Study Reach B. And as a consequence, none of the washes possesses a significant nexus to the Gila River at Powers Butte or to the Colorado River either, because both waters are much farther downstream.

WestLand also explained that, by 2019, the Corps had signed a number of AJDs in Arizona that relied on the Rapanos Guidance, several of which supported a "no jurisdiction" determination. For example, the Corps had approved AJDs for the ASARCO Mission Mine and portions of the Sierrita Open Pit Copper Mine, which are located near the Santa Cruz River south of Tucson. Copies of documents relating to these AJDs and other recently issued AJDs in the Santa Cruz River Valley are provided. *See* RCC-CW005681-9783. In each case, the Corps made findings of "no significant

nexus" between the ephemeral drainage features and Study Reach B. Further, under the Rapanos Guidance, each of these determinations would have been subject to EPA Region IX review prior to issuance.

The Corps' "no jurisdiction" determinations were based at least partially on the distance to Study Reach B (25 to greater than 30 river miles) and the intervening deep, sandy, alluvial bed within the Santa Cruz River. In comparison, the ephemeral washes in the Rosemont West Side project area are of similar to greater distance from Study Reach B of the Santa Cruz River – approximately 36 miles – and share the same flow path within the Santa Cruz River almost entirely, including the same intervening deep, sandy, alluvial bed. It would be inconsistent, and therefore arbitrary and capricious, for the Corps to have concluded that the washes that cross Rosemont's property have a significant nexus, given these prior determinations.

b. Rosemont's Supplemental Analysis of the Navigability of Study Reach B and the Gila River West of Phoenix.

Rosemont conducted additional analysis of the navigability of Study Reach B of the Santa Cruz River and the Gila River west of Phoenix and, in October 2019, supplemented its AJD requests by providing a white paper with numerous attachments and website links that discuss in more detail the status of those watercourses. A copy of this paper is provided. *See* RCC-CW009784-9799. The white paper discussed in detail the judicial test for determining whether a watercourse may be considered navigable-in-fact and therefore serve as the basis for regulating non-navigable tributaries as WOTUS under the "significant nexus" test.

In addition, the white paper discussed the recent decisions of the Arizona Navigable Stream Adjudication Commission ("ANSAC") regarding the navigability of the Santa Cruz River and the Gila River at the date of statehood for the purpose of determining ownership of the beds of those waterbodies. The decisions of ANSAC and the evidentiary record developed in support of those decisions are relevant to a TNW determination by the Corps, and provide further evidence that the Santa Cruz River and the Gila River are not navigable-in-fact waterways, either currently or historically. Copies of ANSAC's Final Reports on the navigability of the Santa Cruz River, dated October 18, 2018, and the Gila River, dated June 28, 2018, are provided. *See* RCC-CW005345-97; RCC-CW005398-512. Additional information, including links to the evidence presented to ANSAC and transcripts of the hearings are available on the ANSAC's website at https://www.ansac.az.gov/SupplementalEvidence.asp and is incorporated herein.[3]

Ten months later, in June 2020 and prior to the Corps' approval of the AJD request, the Navigable Waters Protection Rule ("NWPR") went into effect. In contrast to the Rapanos Guidance, the NWPR's definition of WOTUS categorically excluded ephemeral washes from federal jurisdiction, consistent with the Supreme Court's plurality opinion in *Rapanos v. United States*, 547 U.S. 715 (2006). The Corps subsequently approved the AJD request on March 24, 2021, but did so based on the NWPR, concluding that because all of the drainage features in the analysis

[3] The Commission's Final Report for the Gila River is currently on appeal. The Final Report for the Santa Cruz River was not appealed by any of the advocates for navigability, reflecting the fact that the small size and limited flows of that river, including extensive reaches with no natural flow most of the year, cannot support a navigability finding.

area are ephemeral, none of them are WOTUS. As a consequence, the Corps did not address Rosemont's 2019 AJD requests under the Rapanos Guidance. Copies of the Corps' approval and related agency documents are enclosed. *See* RCC-CW005513-5680; RCC-CW005322-44 (West Side approved maps).[4] Nonetheless, the Corps was provided extensive documentation showing that the washes found in the West Side utility corridor and adjoining areas are not WOTUS and, in addition, that Study Reach B of the Santa Cruz River is not a navigable-in-fact waterway. And the Corps never indicated that it disagreed with Rosemont's analysis, which would have been very surprising given the other AJDs the agency approved under the Rapanos Guidance for projects in the Santa Cruz River Valley.

Following a federal district court decision issued in August 2021, EPA and the Corps ceased use of the NWPR's definition of WOTUS. This ruling did not set aside Rosemont's AJDs, however, and under long-standing Corps' policy, the AJDs will remain valid for a period of five years. *See* Regulatory Guidance Letter No. 16-01 (Oct. 2016). The AJDs superseded the PJDs Rosemont had obtained in 2010. Moreover, the extensive analysis and supporting materials provided to the Corps by Rosemont and its consultants remain in the possession of the Corps and apply today because they are based on the Rapanos Guidance, which is the current regulatory standard for determining whether an ephemeral water feature is WOTUS.

B. Rosemont's Investigation of the Copper World Area

As explained in Section II, above, in 2020 Rosemont initiated a drilling program on its private land in the Helvetia mining district on the west side of the Santa Rita Mountains. In conducting this work, Rosemont avoided washes and other ephemeral drainage features. The company identified a series of shallow mineral deposits hosting both oxide and sulfide copper mineralization associated with the district's historic mines. These favorable results led to expanded exploration activities in that area, which Rosemont calls the Copper World Project. As explained below, Rosemont's subsequent exploration work on the west side of the Santa Rita Mountains has proceeded in stages based on Rosemont's investigation of the jurisdictional status of the washes under the CWA and related legal requirements.[5]

1. The 2019 West Side AJD Request

As a preliminary matter, the extensive analysis supporting Rosemont's 2019 West Side AJD request, discussed above, indicated that the washes and other ephemeral drainages that cross the Copper World Project area are not WOTUS. First, a portion of the West Side utility corridor crosses Rosemont's private land near Helvetia, and those washes are covered by the "no jurisdiction" AJD issued by the Corps in 2021 under the NWPR. Second, the extensive analysis submitted in support of the AJD request in 2019 would apply to washes that cross Rosemont's private property, both within and outside the utility corridor. The washes are in the same area,

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[4] Copies of the East Side AJD maps as approved by the Corps are also provided as background information. *See* RCC-CW005293-321.

[5] As noted in Section II, Rosemont is providing a site map that generally depicts the drill pads, roads, and other improvements on Rosemont's private land. *See* RCC-CW005248-53. As explained, some of the roads and other improvements were constructed prior to 2019, including some of the features depicted in the Rosemont pit area, and were not part of Rosemont's recent exploration activities.

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have similar characteristics, and are many miles from a legitimate TNW. Thus, under the Rapanos Guidance, these washes lack a "significant nexus" to a TNW.

2. Rosemont's 2021 Investigations of the West Side Washes

Notwithstanding the substantial guidance provided by the 2019 West Side AJD request, Rosemont initially avoided placing fill in washes and other drainage features that might be considered WOTUS, including the washes in the utility corridor, in conducting exploration activities in the Copper World Project area. By mid-2021, the drilling program had indicated the potential for significant mineralization, which triggered the need for more extensive exploration activities to delineate the ore bodies. At that point, Rosemont conducted an additional evaluation of the jurisdictional status of the project area's washes and other ephemeral drainage features to confirm that a Section 404 permit would not be needed.

a. WestLand's WOTUS Evaluations for the West Side Properties

In June 2021, Rosemont engaged WestLand to complete separate WOTUS evaluations for two 200-foot wide corridors on the "F Block" and "Helvetia Block" private land parcels on the west side of the Santa Rita Mountains. The analysis area corridors occurred on the west and north sides, i.e., the downgradient boundaries, of Rosemont's blocks of private land. WestLand completed the WOTUS evaluations in separate memoranda utilizing the pre-NWPR rule and Rapanos Guidance, including a "significant nexus" analysis ("SNA"). Copies of these technical memoranda are provided. *See* RCC-CW009836-72 (F Block parcel); RCC-CW009873-9897.

In support of the WOTUS evaluations, WestLand staff visited the analysis areas and took pictures of the ephemeral wash features, delineated an OHWM as that term is applied by the Corps, using recent aerial photography, and completed an SNA for the subject drainages. The SNAs completed for the F Block and Helvetia Block parcels were informed by the SNA that was done for the Rosemont Project West Side AJD request in 2019, discussed above, given the proximity of the respective analysis areas and locations in the watershed. As in the West Side AJD analysis, WestLand determined that the washes lack a significant nexus with a downstream TNW.

WestLand again found that there is no evidence that Study Reach B of the Santa Cruz River and the Gila River segment between Powers Butte and Gillespie Dam are navigable-in-fact waterways. WestLand also noted again that, in recent litigation in which the designation of Study Reach B of the Santa Cruz River as a TNW was challenged, EPA and the Corps represented to federal courts that the TNW designation was advisory in nature and had no legal consequences. Based on relevant stream characteristics, the Colorado River would likely be the nearest TNW, and it is more than 300 river miles downstream from the Copper World Project area. Regardless, WestLand conducted an SNA assuming that Study Reach B and the Gila River segment are navigable-in-fact waterways, and concluded that a significant nexus is not present under the Rapanos Guidance criteria.

Finally, WestLand again noted that the Corps has recently issued other AJDs under the Rapanos Guidance, including AJDs for projects with ephemeral drainages closer to the Santa Cruz River and a more direct path to Study Reach B than Copper World. These include AJDs for the ASARCO Mission Mine (Corps File No. SPL-2015-00520-MWL), and portions of the Sierrita

Open Pit Copper Mine (Corps File No. SPL-2011-00160-MWL). Documents concerning these AJDs are provided. *See* RCC-CW005681-9783. The AJDs covered drainage features similar to those found at Copper World that are tributary to the Santa Cruz River and had findings of "no significant nexus" between the ephemeral drainage features and Study Reach B.

b. Rosemont's 2021 In-house Studies.

Rosemont also conducted an in-house study to determine how far limestone silt from the Imerys Marble Quarry is transported downstream by means of the ephemeral washes that also cross Rosemont's private land.[6] This study was completed in October 2021 and is documented in a Technical Memorandum dated October 11, 2021. EPA already has a copy of this memorandum, which was attached as Exhibit 1.2 to the RFI. Supporting documents are being provided in response to RFI Request 9, below.

The purpose of this study, in brief, was to determine the potential for materials from Rosemont's mining activities in the Copper World area to be carried downstream to the Santa Cruz River. The limestone material released by the quarry is very white in color and easily distinguished from other native materials. The conclusion of this study was that material does not travel more than eight miles downgradient and is unlikely to actually reach the Santa Cruz River, much less travel all the way to Study Reach B.

In addition, Rosemont conducted an extensive field inspection/sampling program to examine the physical, chemical, and biological connection, if any, between the washes in the Copper World area and Study Reach B. This program collected soil, stormwater, and plant samples from washes on Rosemont's private land and off-site through five separate flow paths to the Santa Cruz River and, ultimately, to Study Reach B. EPA has a copy of the report that documents this study, called the Connectivity Report, which was completed in December 2021. It was attached as Exhibit 1.3 to the RFI. Supporting documents are being provided in response to RFI Request 8, below.

The Connectivity Study indicated that it is unlikely that surface flow from storm events would actually reach the Santa Cruz River from Rosemont's private land. There was also no evidence that chemical constituents likely to be released from historic slag and waste rock piles at Copper World had traveled downstream far enough to reach the river. Finally, the evaluation of biological connectivity indicated that plant uptake of available contaminants from historic mining activities does not persist beyond four miles from the Copper World Project area and that the downstream soil is devoid of organic material and has poor biotic integrity. In short, there is no evidence of a significant relationship between the ephemeral drainages on the Copper World Project area and the Santa Cruz River, much less any actual downstream TNW.

C. Conclusion: Summary of Rosemont's Work at Copper World and Its Efforts to Comply with Section 404 of the CWA.

As summarized in the overview provided in Section II and above, the work Rosemont has been doing on its private land in the Copper World Project area since mid-2020 has consisted of:

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[6] The Imerys Marble Mine is located in the Santa Rita Mountains, a short distance from Copper World. For additional information on this mine, *see* https://www.mindat.org/loc-36150.html.

1. clearing and creating drill pads for exploratory drilling,

2. clearing and creating roads for access to drill pads and other locations within the project area (including sometimes crossing washes),

3. building elevated roads around the perimeter of Rosemont's private property, which provide perimeter access to the property and function as fire breaks,

4. excavating a borrow pit to provide clean fill material for all of the preceding purposes, and

5. trucking in limestone-based waste rock from the Imerys Marble Quarry to use as inert cover to stabilize roads and other dirt structures that could be exposed to stormwater flows.

As stated, Rosemont has proceeded cautiously with this work, avoiding the washes in the Copper World Project area until it could be reasonably certain that the washes are not WOTUS under either the Rapanos Guidance or the NWPR. The steps followed by Rosemont, in short, were as follows:

1. Initially, Rosemont avoided filling or working in any washes that were potentially WOTUS or designated as a regulated floodplain or a riparian area under Pima County's Floodplain Ordinance.

2. In 2021, Rosemont completed an multi-faceted analysis of whether the washes at Copper World are WOTUS, which included, as discussed, reports from WestLand summarizing its evaluation under the Rapanos Guidance and internal studies addressing the transportation of fugitive limestone silt and the physical, chemical, and biological connectivity between the washes and the Santa Cruz River.

3. Following the completion of the last of these reports in late 2021, Rosemont began placing fill materials in washes in connection with its Copper World exploration program, but continued to avoid work in (i) regulated floodplain and riparian areas under Pima County's Floodplain Ordinance and (ii) the washes in the utility corridor covered by the then-existing (but suspended) Section 404 permit.

4. On March 10, 2022, Rosemont notified the Pima County Regional Flood Control District that it intended to start work relating to the construction of tailings and waste rock facilities within regulated floodplains in accordance with A.R.S. § 48-3613 and the Pima County Code; following some additional communications about the project, Rosemont notified the District that it was proceeding with this work on April 12, 2022.

5. Rosemont continued to avoid work in regulated floodplains, in other, non-exempt areas, and in the washes in the utility corridor covered by the then-existing (but suspended) Section 404 permit.

6. Rosemont surrendered the Section 404 permit on April 28, 2022, and, after the district court confirmed that the surrender was effective, notified the Corp on July

27, 2022 that it would no longer avoid the washes covered by the permit. Work in those areas commenced one week later, on August 3, 2022.

7. Rosemont continues to avoid designated county floodplain and riparian areas that are in areas where Rosemont's planned facilities are not exempt from floodplain permitting (e.g., the plant site area) under A.R.S. § 48-3613.

As the foregoing shows, Rosemont has proceeded cautiously, avoiding washes on its property until their status as WOTUS was investigated and the lack of a "significant nexus" under the Rapanos Guidance was confirmed.

The only deviation from these steps occurred as a result of an accident. On May 16, 2022, Rosemont discovered that at a location on Rosemont's private land within the utility corridor, materials had sloughed from the side of a drill pad and filled a wash that was covered by Rosemont's Section 404 permit. This event occurred sometime in early 2022. Following discovery, Rosemont removed the fill, restored the wash's natural contours, and disclosed the incident to the Corps. Corps representatives inspected the area on May 24, 2022, and appeared to be satisfied with this corrective action. Rosemont has not heard anything further from the agency about this incident.

3. Please describe and provide all Documents related to the Project at the Site including, but not limited to:

Objection. The definition of the term "Project," which is used throughout this request and its subparts, improperly assumes that "dirt, rock or other materials" were placed in WOTUS "at the Site." This assumption is improper, both legally and factually, as there is no credible evidence that WOTUS are found "at the Site." In addition, the term "Site" is vague and ambiguous. As explained above, Rosemont owns over 4,500 acres of land in the northern Santa Rita Mountains, and Rosemont has been conducting mineral exploration activities on its Copper World Property since mid-2020. The location of and activities that constitute the "Project at the Site" are not defined. Consequently, the request is overbroad and unreasonable. Without waiving the objections, Rosemont incorporates the discussion of its mining activities set forth in Section II and the response to Request 2 of this RFI, above, and all documents enclosed herewith.

a. The date and time the Project began and ended;

Rosemont incorporates the General Objections and the Objection to Request 3, above. Without waiving the objections, Rosemont incorporates the discussion of its mining activities set forth in Section II and in the response to Request 2 of this RFI, above.

b. The Project's location and size;

Rosemont incorporates the General Objections and the Objection to Request 3, above. Without waiving the objections, Rosemont incorporates the discussion of its mining activities set forth in Section II and in the response to Request 2 of this RFI, above.

c. The Project's nature and purpose, including:

Rosemont incorporates the General Objections and the Objection to Request 3, above. Without waiving the objections, Rosemont incorporates the discussion of its mining activities set forth in Section II and in the response to Request 2 of this RFI, above.

i. The Project proposal and any related Documents. If no such proposal exists, describe the nature and purpose of the project. If you developed the proposal in coordination with another entity, provide the name of that entity and describe its relationship to You;

Rosemont incorporates the General Objections and the Objection to Request 3, above. Without waiving the objections, Rosemont incorporates the discussion of its mining activities set forth in Section II and in the response to Request 2 of this RFI, above.

ii. Any Documents relating to the funding of the Project;

Rosemont incorporates the General Objections and the Objection to Request 3, above, and also objects to this subpart as unreasonable, overbroad, not reasonably related to CWA compliance issues, and outside the scope of the EPA's information-gathering authority.

iii. A description of all alternatives that were considered or evaluated, as well as any associated Documents;

Rosemont incorporates the General Objections and the Objection to Request 3, above. Without waiving the objections, Rosemont incorporates the discussion of its mining activities set forth in Section II and in the response to Request 2 of this RFI, above.

d. The identity of all persons involved in approving the Project;

Rosemont incorporates the General Objections and the Objection to Request 3, above. Without waiving the objections, Rosemont incorporates the discussion of its mining activities set forth in Section II and in the response to Request 2 of this RFI, above.

e. The identity of all persons involved in conducting the Project;

Rosemont incorporates the General Objections and the Objection to Request 3, above. Without waiving the objections, Rosemont incorporates the discussion of its mining activities set forth in Section II and in the response to Request 2 of this RFI, above.

f. The type of equipment used for the Project;

Rosemont incorporates the General Objections and the Objection to Request 3, above. Without waiving the objections, Rosemont incorporates the discussion of its mining activities set forth in Section II and in the response to Request 2 of this RFI, above.

g. A list of all materials (e.g. dirt, rock, cement, culverts) used for the Project and where they originated from. Identify the type, volume, and location(s);

Rosemont incorporates the General Objections and the Objection to Request 3, above. Without waiving the objections, Rosemont incorporates the discussion of its mining activities set forth in Section II and in the response to Request 2 of this RFI, above.

h. A list of all persons who operated equipment in completing the Project, including the vehicles that transported the material to the Project area;

Rosemont incorporates the General Objections and the Objection to Request 3, above, and also objects to this subpart as unreasonable and overbroad.

i. Copies of all invoices or work orders related in any way to earth disturbance, blasting, and/or construction conducted since April 1, 2022 associated with the Project;

Rosemont incorporates the Objection to Request 3, above, and also objects to this subpart as unreasonable and overbroad.

j. All reports, evaluations, and/or Site plans that relate to the Site, including soil reports, surveys, farm plans, engineering, and construction reports prepared at any time. If you are not in possession of any of the reports listed above, please indicate the names, addresses, and telephone numbers of the parties who you believe may be, have been, or are in possession of such documents; and

Rosemont incorporates the General Objections and the Objection to Request 3, above, and also objects to this subpart as unreasonable and overbroad. Without waiving the objections, Rosemont incorporates the discussion of its mining activities set forth in Section II and in the response to Request 2 of this RFI, above.

k. All photographs, videos, and other visual Documents depicting the area before, during, and after work at the Project.

Rosemont incorporates the General Objections and the Objection to Request 3, above, and also objects to this subpart as unreasonable and overbroad. Without waiving the objections, Rosemont incorporates the discussion of its mining activities set forth in Section II and in the response to Request 2 of this RFI, above.

4. Please describe and provide all Documents related to the aquatic resource at the Site, including but not limited to:

Objection. The terms "aquatic resource" and "aquatic resources" as used in this request are undefined, vague and overbroad in breadth and scope. The ordinary meaning of the word "aquatic" is "growing or living in or frequenting water." *See* Merriam-Webster's Collegiate Dictionary (10th ed. 1998). It is uncertain whether "aquatic resource" and "aquatic resources" as used in this request and its subparts are limited to resources that grow or live in water, or whether something broader is intended. As explained previously in responding to this RFI, no permanent or intermittent water

features are present on Rosemont's property in the Copper World Project area. No fish, shellfish or aquatic plants are present.

In addition, the term "the Site" is vague and overbroad. As explained above, Rosemont owns over 4,500 acres of land in the northern Santa Rita Mountains, and Rosemont has been conducting mineral exploration activities in this area since mid-2020. Consequently, the location of "the Site" is overbroad, uncertain and vague.

a. All information describing the aquatic resources at the Site, including:

Rosemont incorporates the General Objections and the Objection to Request 4, above. Without waiving the objections, Rosemont incorporates the discussion of its mining activities set forth in Section II and in response to Request 2 of this RFI, above.

i. any maps, aerial photos, or diagrams used to identify waters or wetlands including washes, streams, and drainages.

Rosemont incorporates the Objection to Request 4, above. Subject to the objections, Rosemont believes that there are no "waters or wetlands" present on Rosemont's property, only certain ephemeral drainage features. Rosemont also incorporates the response to Request 2 of this RFI, above, and provides a map that generally depicts the location of washes and other ephemeral drainages features that are present on the property owned by Rosemont. *See* RCC-CW005255. In addition, washes are shown WestLand's technical reports, discussed previously.

ii. any wetland mapping or delineations, Ordinary High Water Mark mapping or delineations, and/or description of streams, waters or wetlands for the Site, including Site photos and datasheets.

Rosemont incorporates the General Objections and the Objection to Request 4, above. Subject to the objections, Rosemont believes that there are no "streams, waters or wetlands" present on Rosemont's property, only certain ephemeral drainage features. To the best of Rosemont's knowledge, none of the ephemeral drainage features has an OHWM because these features rarely contain any water and, therefore, are ordinarily dry.

Without waiving the objections, Rosemont is providing copies of documents submitted to the Corps in connection with its request for an AJD in 2019, the maps signed by the Corps in 2021, and WestLand's 2021 technical reports, which depict washes that may have an OHWM, as that term is applied by the Corps

iii. any upland background chemistry data including metals (including calcium) concentrations collected from the Site and west side of the Santa Rita Mountains and areas downstream to and including the Santa Cruz River.

Rosemont incorporates the General Objections and the Objection to Request 4, above. Without waiving the objections, Rosemont incorporates the response to Request 2 of this RFI, above, and the information provided in the Connectivity Report for the Rosemont Copper World Project (Dec. 2021) (*see* response to RFI Request 8) and the Technical Memorandum (Oct. 11, 2021) that

describes the use of fugitive limestone silt from the Imerys Marble Quarry to extrapolate the potential range of transport from the Rosemont Copper World Project site via ephemeral washes (*see* response to Request 9).

> *iv. any reports describing the biological, physical, or chemical characteristics of waters or wetlands on the Site and downstream to the Santa Cruz River.*

Rosemont incorporates the General Objections and the Objection to Request 4, above. Subject to the objections, Rosemont believes that no "waters or wetlands" are found within Rosemont's property, only certain ephemeral drainage features that rarely contain any water.

Without waiving the objections, Rosemont is providing copies of WestLand's 2019 application for an AJD, and 2021 WOTUS evaluations for Rosemont's F Block and Helvetia parcels, and the information provided in the Connectivity Report for the Rosemont Copper World Project (Dec. 2021) (*see* response to RFI Request 8) and the Technical Memorandum (Oct. 11, 2021) that describes the use of fugitive limestone silt from the Imerys Marble Quarry to extrapolate the potential range of transport from the Rosemont Copper World Project site via ephemeral washes (*see* response to Request 9). These materials provide background on the ephemeral drainage features in the Copper World Project area.

> *v. any information on flow, rainfall, stormwater, surface hydrology, and subsurface hydrology from the Site and downstream to the Santa Cruz River.*

Rosemont incorporates the General Objections and the Objection to Request 4, above. Without waiving the objections, Rosemont is providing copies of WestLand's 2019 application for an AJD, and 2021 WOTUS evaluations for Rosemont's F Block and Helvetia parcels, and the information provided in the Connectivity Report for the Rosemont Copper World Project (Dec. 2021) (*see* response to RFI Request 8) and the Technical Memorandum (Oct. 11, 2021) that describes the use of fugitive limestone silt from the Imerys Marble Quarry to extrapolate the potential range of transport from the Rosemont Copper World Project site via ephemeral washes (*see* response to Request 9). Additional background information on the Copper World Project is provided in Rosemont's APP Application, a copy of which is also provided.

5. Provide all Documents related to any Clean Water Act permits or authorizations for the Project and all efforts you made to inquire about or obtain authorization and/or permits for the Project, including but not limited to:

Objection: The definition of the term "Project" improperly assumes that "dirt, rock or other materials" were placed in WOTUS "at the Site." This improperly makes a legal conclusion that WOTUS are found "at the Site" and that the discharge of a pollutant took place. The request improperly implies that CWA permits or authorizations were required for Rosemont to use its property for mineral exploration and related activities, which also improperly makes a legal conclusion. Without waiving the objection, Rosemont incorporates its response to Request 2.

> *a. Any communication between You (and any other parties that were involved in the Project's development and implementation) and any federal, state, or local*

government agencies, including the U.S. Army Corps of Engineers, Arizona Department of Environmental Quality, relating to the Project.

Rosemont incorporates the General Objections and the Objection to Request 5, above. No communications took place relating to "the Project" because "the Project," as defined in the RFI, improperly assumes the discharge of pollutants into WOTUS and, to the best of Rosemont's knowledge, no such discharge occurred.

Without waiving the objections, Rosemont is providing copies of correspondence with Corps, ADEQ, and the Pima County Regional Flood Control District that relate to its activities at Copper World. *See* RCC-CW009982-10153.

b. *Any application for National Pollutant Discharge Elimination System permit coverage, including associated Stormwater Pollution Prevention Plan.*

Rosemont incorporates the General Objections and the Objection to Request 5, above. Without waiving the objections, Rosemont states that it has never applied for a National Pollutant Discharge Elimination System permit for any activities at Copper World. Out of an abundance of caution, Rosemont sought coverage under the AZPDES Stormwater Construction General Permit for its exploration-related activities in 2020 and submitted a Stormwater Pollution Prevention Plan to ADEQ. Copies of these documents are provided. *See* RCC-CW010154-297. See Section II of this response for a summary of Rosemont's exploration activities at Copper World.

When responding to the questions below, please see the referenced documents.

6. *Referring to Figures 2, 3, 4, and 5 in the March 10, 2022 Letter from HudBay to Pima County, provide the following information:*

As discussed in the response to Request 2, above, the March 10, 2022 letter to the Pima County Regional Flood Control District was submitted in accordance with the notice requirements of A.R.S. § 48-3613. The figures attached to the letter were preliminary drafts of future mining and mineral processing facilities. The draft figures were prepared in connection with developing Rosemont's APP Application (a copy of which is being provided). The project facilities depicted in the figures have not been constructed.

a. *A description of any work activities that have occurred in any type of intermittent or ephemeral wash or drainage.*

Rosemont objects to this request because it is unreasonable, overbroad and vague. As explained above, Rosemont owns more 4,500 acres of private land, and has been conducting mineral exploration and related activities on this land since 2020. As explained in Rosemont's response to Request 2 of this RFI, Rosemont avoided impacting any ephemeral washes or drainages until the company had completed a thorough analysis of whether the ephemeral features are WOTUS. A general map of Copper World that shows

drill pads, roads and other the areas that have been disturbed is also provided. *See* RCC-CW005248-53.[7]

There are no intermittent streams or drainage features found on Rosemont's private land.

b. Photographs of the work areas from 2021 and 2022.

Rosemont objects to this request because it is unreasonable, overbroad and vague. As explained above, Rosemont owns more 4,500 acres of private land, and has been conducting mineral exploration and related activities on this land since 2020. As explained in Rosemont's response to Request 2 of this RFI, Rosemont avoided impacting any ephemeral washes or drainages until the company completed a thorough analysis of whether the ephemeral features are WOTUS. A general map of Copper World that shows drill pads, roads and other the areas that have been disturbed is also provided. *See* RCC-CW005248-53.[8]

c. Aerial photos and remote sensing information of the work areas from 2021 and 2022.

Rosemont objects to this request because it is unreasonable, overbroad and vague. As explained above, Rosemont owns more 4,500 acres of private land, and has been conducting mineral exploration and related activities on this land since 2020. As explained in Rosemont's response to Request 2 of this RFI, Rosemont avoided impacting any ephemeral washes or drainages until the company completed a thorough analysis of whether the ephemeral features are WOTUS. A general map of Copper World that shows drill pads, roads and other the areas that have been disturbed is also provided. *See* RCC-CW005248-53.[9]

d. Any engineering plans and drawings including grading, road construction, culvert placement, and work pads.

Rosemont objects to this request because it is unreasonable, overbroad and vague. As explained above, Rosemont owns more 4,500 acres of private land, and has been conducting mineral exploration and related activities on this land since 2020. As explained in Rosemont's response to Request 2 of this RFI, Rosemont avoided impacting any ephemeral washes or drainages until the company had completed a thorough analysis of whether the ephemeral features are WOTUS. Engineering plans and drawings of these activities are found Rosemont's APP Application, a copy of which is being provided.

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[7] As noted above, some of the roads and other disturbed areas shown on the map were constructed prior to 2019, including certain features depicted in the Rosemont pit area, and were not part of Rosemont's recent exploration activities.

[8] *See* previous footnote.

[9] *See* footnote 7, above.

7. *Referring to Figure 6. Site Water Management – Closure from the March 10, 2022 Letter from HudBay to Pima County, identify the location and description of any work associated with stormwater facilities related to the Project.*

As discussed in the response to Request 2, the March 10, 2022 letter to the District was submitted in accordance with the notice requirements of A.R.S. § 48-3613. The figures attached to the letter were preliminary drafts showing future mining and mineral processing facilities. The draft figures were prepared in connection with developing Rosemont's APP Application.

Figure 6 is a draft figure that relates to the closure of waste rock and tailings facilities after mining has ended. At this time, the facilities shown in the figure have not been constructed.

8. *Referring to the Connectivity Report attached as Exhibit 1.3 to Rosemont Copper Company's Response to Tribes' Motion for Temporary Restraining Order and Tribes' Memorandum in Support of Motion for Temporary Restraining Order (Case 4:19-cv-00177-JAS, Document 129-5, Filed 04/29/22) provide the following:*

Documents in Rosemont's possession or control that are responsive to this request and any of its subparts are provided. *See* RCC-CW0010298-012845 (field data and photographs), RCC-CW012846-14093 (soil and plant lab reports); RCC-CW014094-17785 (stormwater lab reports).

a. *Data collection field sheets or logbooks*

b. *Raw data collected during the biological, physical and chemical sampling, including chemical concentrations used to develop longitudinal plots shown in above at pages 12-24.*

c. *Analysis reports for soil and plant samples*

d. *Analysis reports for water samples*

e. *Field photographs*

9. *Referring to the Transport Analysis attached as Exhibit 1.2 to Rosemont Copper Company's Response to Tribes' Motion for Temporary Restraining Order and Tribes' Memorandum in Support of Motion for Temporary Restraining Order (Case 4:19-cv-00177-JAS, Document 129-4, Filed 04/29/22) provide the following:*

Documents in Rosemont's possession or control that are responsive to this request and any of its subparts are provided. *See* RCC-CW017786-875.

a. *Data collection field sheets or logbooks*

b. *Raw data collected during the biological, physical and chemical sampling*

c. *Analysis reports for soil and plant samples*

d. *Analysis reports for water samples*

e. Field photographs

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