B5

- Based on the evidence presented and referenced in the FEIS, and after consideration of comments received from cooperating federal, state, and local agencies, EPA believes that the weight-of-evidence supports a conclusion that the proposed Rosemont Mine would result in unacceptable (i.e., significantly large) adverse effects on aquatic and wetland resources and their dependent fish and wildlife species, as well as recreational and preserve areas created principally to protect nationally unique aquatic resources.[1] The FEIS lacks appropriate disclosure of the nature and magnitude of the impacts and the mitigation that would be a requirement of the CWA 404 permit.
- EPA believes that the conceptual mitigation proposal that is summarized generally in the FEIS and is currently before the Corps for review is seriously deficient.[2] The environmental scale of the mitigation proposal is not commensurate with the scale of assessed project impacts and represents only a fraction of the mitigation that EPA believes will be necessary for final permitting under CWA 404. In the absence of an appropriate mitigation package for WUS impacts, the project cannot be granted a CWA 404 permit. The USACE intends to adopt the USFS' FEIS to satisfy its NEPA obligations; however, due to the lack of disclosure of the full range of mitigation necessary to meet the CWA 404, the USFS' FEIS may not represent an adequate document for the USACE's NEPA compliance needs.

---

[1] The FEIS shows with high probability that there would be substantial impacts to distant sensitive aquatic resources, but lacks a scientifically valid representation of the long term impacts to these distant waters. The groundwater modeling employed for the purposes of projecting this impact is highly speculative and lacks adequate sensitivity for impacts at depths shallower than 5 feet. To move beyond a weight-of-evidence assessment, EPA has suggested that a scientifically supportable risk-based analysis of probable aquatic resource impacts would be appropriate. This would allow the project impacts to be considered holistically in conjunction with cumulative declines in water availability.

[2] The current conceptual mitigation proposal : 1) is currently aimed at enhancing just a few stream reaches (corridors) located downstream from the project area, and possibly in other watersheds; 2) does not account for the loss of ecological services arising from the interrelationship of the headwater streams and the surrounding terriestrial ecology; 3) fails to account for the ecological uncertainty associated with the described stream corridor enhancement, proposes no mitigation goals or performance targets (standards), and does not document the amount of development risk attributed to proposals that emphasize aquatic resource preservation; and 4) is not supported by information gained from a functional/condition assessment of streams, springs, and wetlands directly and indirectly impacted by the project. While the FEIS incorporates some consideration of functional values impaired, a full functional assessment would have included the collection of data at reference sites, establishment of reference criteria, determination of functional values in various settings and, overall, would have provided a far more complete and comprehensive picture of the project's environmental consequences regarding aquatic and riparian resources.