United States Department of the Interior

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In Reply Refer To:
AESO/SE
22410-2009-F-0389

October 30, 2013

Mr. Jim Upchurch, Forest Supervisor
Coronado National Forest
300 West Congress Street
Tucson, Arizona 85701

RE: Final Biological and Conference Opinion for the Rosemont Copper Mine, Pima County, Arizona

Dear Mr. Upchurch:

Thank you for your request for formal consultation with the U.S. Fish and Wildlife Service (FWS) pursuant to section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), as amended (Act). Your initial request was dated June 6, 2012, and was received by us on June 8, 2012. A subsequent request for conference was dated October 19, 2012 and received by us on October 22, 2012. Additional consultation information dated February 8, 2013, was received by us on the same date. Further information regarding conference was transmitted to us via electronic mail on October 22, 2013. At issue are the effects that may result from your proposed approval of the Mine Plan of Operations for the Rosemont Copper Company Project in Pima County, Arizona.

Your June 6, 2012, October 19, 2012, and February 8, 2013, letters concluded that proposed mining activities associated with the Barrel Alternative (as modified; hereafter referred to as the proposed action for the purposes of this consultation) may affect, and will likely adversely affect, the endangered Gila chub (*Gila intermedia*) and its critical habitat, the endangered Gila topminnow (*Poeciliopsis occidentalis occidentalis*), the endangered Huachuca water umbel (*Lilaeopsis schaffneriana* var. *recurva*), the endangered southwestern willow flycatcher (*Empidonax traillii extimus*) and its critical habitat, the threatened Chiricahua leopard frog (*Lithobates chiricahuensis*), the endangered lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*), the endangered jaguar (*Panthera onca*), the endangered ocelot (*Felis pardalis*), the endangered Pima pineapple cactus (*Coryphantha scheeri* var. *robustispina*), and, via conference, proposed critical habitat for the jaguar and the candidate (at that time) yellow-billed cuckoo (*Coccyzus americanus*). Your letter also requested our concurrence with your determination that the proposed action may affect, but is not likely to adversely affect the threatened Mexican spotted owl (*Strix occidentalis lucida*). We concur with your determination and have provided our rationale in Appendix A.

We will conference, in response to your October 19, 2012, request, pursuant to section 7(a)(4) of the Act and its implementing regulations at 50 CFR §402.10(d), on proposed critical habitat for the jaguar. We issued a proposed rule to list the narrow-headed gartersnake (*Thamnophis rufipunctatus*) and northern Mexican gartersnake (*T. eques megalops*) as threatened species and a proposed rule to designate critical habitat (78 FR 41500 and 78 FR 41550, respectively) on July 10, 2013. We published a proposed rule (78 FR 61622) to list the yellow-billed cuckoo as a threatened species on October 3, 2013. These species (and the former's proposed critical habitat) occur within portions of the area that will be affected by the proposed action. In accordance with an October 22, 2013, communication from your agency, this document will not include conference on these species.

This draft biological and conference opinion is based on information provided in: (1) your September 2011 *Draft Environmental Impact Statement for the Rosemont Copper Project, a Proposed Mining Operation, Coronado National Forest, Pima County, Arizona* (Draft EIS); (2) your June 2012 *Biological Assessment, Rosemont Copper Company Project, Santa Rita Mountains, Nogales Ranger District* (BA); (3) your October 2012 *Supplement to the Biological Assessment, Proposed Rosemont Copper Mine, Santa Rita Mountains, Arizona, Coronado National Forest* (Supplemental BA); (4) your February 2013 *Supplement to the Biological Assessment – Proposed Rosemont Copper Mine - Santa Rita Mountains, Pima County, Arizona - Nogales Ranger District* (Second Supplemental BA); (5) your October 22, 2013, determination that that the proposed action would not jeopardize the proposed-threatened northern Mexican gartersnake or yellow-billed cuckoo nor adversely modify or destroy proposed critical habitat for the former; (6) the results of discussions and exchanges of scientific information between our respective agencies, other Federal, State, and local agencies, the Rosemont Copper Company, and consultants; and (7) other published and unpublished sources of information. Literature cited in this biological opinion is not a complete bibliography of all literature available on the species of concern, and its effects, or on other subjects considered in this opinion. A complete administrative record of this consultation is on file at this office.

Please note that this biological and conference opinion does not rely on the regulatory definition of "destruction or adverse modification" of critical habitat at 50 CFR 402.02. Instead, we have relied upon the statute and the August 6, 2004, Ninth Circuit Court of Appeals decision in *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service* (No. 03-35279) to complete our analysis with respect to critical habitat. Critical habitat is defined in section 3 of the ESA "as the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical and biological features essential to the conservation of the species and that may require special management considerations or protection; and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species." We have also relied upon the Consultation Handbook which provides guidance on determining adverse modification of critical habitat and jeopardy pursuant to the following: "Adverse effects on individuals of a species or constituent elements or segments of critical habitat generally do not result in jeopardy or adverse modification determinations unless that loss, when added to the environmental baseline, is likely to result in significant adverse effects throughout the species'

range, or appreciably diminish the capability of the critical habitat to satisfy essential requirements of the species" (FWS and NMFS 1998).

Also note that, in reaching our findings that there is a reasonable certainty that lesser long-nosed bat, Chiricahua leopard frog, Gila chub, Gila topminnow, and jaguar will be incidentally taken, we considered the following:

- Section 9 of the Act and our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17 prohibit the ``take" of fish or wildlife species listed as endangered or threatened.

- Take of listed fish or wildlife is defined under the Act as ``to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct".
- The term ``harass" is defined in the regulations as ``an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering" (50 CFR 17.3).
- The term ``harm" is defined in the regulations as ``an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering" (50 CFR 17.3).
- "Incidental take" refers to takings that result from, but are not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or applicant"(50 CFR 402.02).

Consultation History
(*most recent listed first***)**

October 28, 2013: We received a copy of an October 25, 2013, letter from the Arizona Game and Fish Department (AGFD) to the Forest Service (USFS). The letter described an agreement, in principle, for AGFD to work with and receive lands and funding from the Rosemont Copper Company to implement measures to mitigate the project's effects to State trust resources.

October 25, 2013*:* We received an updated version of the Mitigation and Monitoring Plan from SWCA, Inc., on behalf of the USFS. The plan, once finalized, will appear in the Final EIS as Appendix B. Appendix B will not be included in this Final BO, as it is subject to ongoing revisions, but we did consider its contents in our effects analyses.

October 24, 2013: We received your letter to AGFD stating that references to the State agency were to be removed from the Final Environmental Impact Statement (Final EIS). The FWS had already implemented the AGFD request.

October 23, 2013:
We received an electronic mail message from your staff stating that formal conference consultation for the yellow-billed cuckoo and northern Mexican gartersnake would not be pursued, as it had been determined that the proposed action would not jeopardize either proposed-threatened species nor adversely modify or destroy proposed critical habitat for the latter.

October 8, 2013:
We received an October 3, 2013, letter from AGFD requesting that the State agency be removed from all conservation measure and mitigation-related references in the Final EIS and Final BO.

October 3, 2013:
We published a proposed rule (78 FR 61622) to list the yellow-billed cuckoo as a threatened species.

September 26, 2013: We received a revised version of Appendix B, from SWCA, Inc., on behalf of the USFS. Also note that an earlier draft version of Appendix B was included in our July 3, 2013, Draft BO.

September 19 through October 22, 2013:
We received updated hydrologic criteria and conducted additional analyses to employ those data in the respective Amount or Extent of Take sections for the Gila chub and Gila topminnow.

September 18, 2013:
We received information on the number of additional Pima pineapple cactus and acreage of the species' habitat that will be affected by the rerouting of a utility right-of-way serving the project area.

September 13 and 14, 2013:
We received a series of comments and updated maps and graphics prepared by SWCA, Inc. on behalf of the Forest Service for incorporation into the final BO.

September 13, 2013:
We met with your staff to discuss outstanding issues related to transmitting a final BO. We agreed to revisit the Amount or Extent of Take subsections for the Gila chub and Gila topminnow, pending receipt of updated groundwater-based criteria. We also viewed maps describing a change in the alignment of the utility right-of-way.

August 27, 2013:
We received additional Draft BO comments from the U.S. Army Corps of Engineers (Corps) via electronic mail.

August 7, 2013:
We received input from your staff's and SWCA, regarding the use of monitoring wells to assist in tracking take of Gila chub and Gila topminnow via electronic mail.

August 5, 2013:
We received your and SWCA's review of Rosemont Copper Company's comments on the Draft BO.

July 24, 2013:
We received comments on the Draft BO from the U.S. Army Corps of Engineers (Corps) via electronic mail.

July 22, 2013:
We met with your staff, SWCA, representatives of the Rosemont Copper Company, WestLand Resources, Inc., and the Corps to discuss the Draft BO.

July 19, 2013:
We received your initial comments on the Draft BO via electronic mail.

July 18, 2013:
We received initial comments on the Draft BO, from your agency's legal counsel via electronic mail.

July 16, 2013:
We received AGFD's comments on the preliminary, administrative draft BO via electronic mail.

July 16, 2013:
We were forwarded the Bureau of Land Management's (BLM) July 15, 2013, comments on the Draft BO by your staff via electronic mail.

July 15, 2013:
We received the Rosemont Copper Company's comments on the Draft BO via electronic mail.

July 9, 2013:
We informed your staff in advance of the July 10, 2013, publication of a proposed rule (78 FR 41500) to designate the northern Mexican and narrow-headed gartersnakes as threatened species and to designate critical habitat (78 FR 41550) for the species.

July 3, 2013:
We transmitted a Draft Biological Opinion to you, and note that it did not include analyses based on revisions to proposed jaguar critical habitat (78 FR 39237) (see event of July 1, 2013, below).

July 1, 2013:
We announced: (1) revisions to our proposed designation of critical habitat for the jaguar; (2) the availability of a draft economic analysis; (3) the availability of a draft environmental assessment; (4) an amended required determinations section for the proposal; and (5) a reopening of the comment period.

June 26, 2013:
We received your comments on our June 21, 2013, preliminary, administrative draft analysis of the proposed action's effects to the jaguar and its critical habitat via electronic mail. You also forwarded the comments made by the Rosemont Copper Company.

June 25, 2013:
We received comments on our June 21, 2013, preliminary, administrative draft analysis of the proposed action's effects to the jaguar and its critical habitat from Rosemont Copper Company's counsel via electronic mail.

June 21, 2013:
We transmitted, via electronic mail, a preliminary, administrative draft analysis of the proposed action's effects to the jaguar and its critical habitat. This section was not included in our April 19, 2013, or May 20, 2013, transmittals.

May 30, 2013:
Our respective staffs as well as representatives of AGFD concluded negotiations regarding potential updates to the Proposed Conservation Measures for the Chiricahua leopard frog, finally determining that the measures would appear in the Draft BO as Terms and Conditions.

May 30, 2013:
Your staff transmitted to us, via electronic mail, four documents responding to our May 20, 2013, preliminary, administrative draft effects analyses for aquatic and riparian ecosystem and the southwestern willow flycatcher. The review documents included: (1) a package entitled Comments from Rosemont Copper on Preliminary Draft Biological Opinion Language Regarding Aquatic and Riparian Habitat, and Southwestern Willow Flycatcher authored by WestLand and incorporating additional SWCA reviews comments; (2) FS and SWCA reviews of the Effects to Aquatic Ecosystems, Effects to Riparian Ecosystems, and Effects to the Southwestern Willow Flycatcher.

May 20, 2013:
We transmitted, via electronic mail, preliminary, administrative draft analyses of the proposed action's effects to aquatic ecosystems, riparian ecosystems, and the southwestern willow flycatcher. These sections were not included in our April 19, 2013, transmittal.

May 17, 2013:
We received, via electronic mail, reviews of the Description of the Preferred Alternative and the Description of the Proposed Action conducted by SWCA Environmental Consultants (SWCA) on behalf of the Forest Service. The reviews were also accompanied by a brief description of the heretofore unknown Sycamore Connector Road component of the proposed action.

May 7, 2013:
Your staff transmitted, via electronic mail, additional comments on the preliminary, administrative draft BO.

May 6, 2013*:*
We received the Rosemont Copper Company's collected comments on the April 19, 2013, preliminary, administrative draft BO from WestLand Resources, Inc. (WestLand) via electronic mail.

April 19, 2013:
We transmitted a preliminary, administrative draft of this BO to you via electronic mail. The preliminary draft did not contain analyses of effects to aquatic ecosystems, riparian ecosystems, the southwestern willow flycatcher, and the jaguar.

April 12, 2013:
We received Rosemont Copper Company's comments on the April 1, 2013, draft narrative of the Description of the Proposed Action and Description of the Proposed Conservation Measures.

April 9, 2013:
We transmitted a letter to you stating that we would transmit the core findings of our eventual Draft BO to you during the week of April 15, 2013. The core findings would include, at a minimum, the respective affected species' Environmental Baseline and Conclusion section and, when applicable, an Incidental Take Statement including Reasonable and Prudent Measures (or a Reasonable and Prudent Alternative), and Terms and Conditions section.

April 8, 2013:
We received electronic mail messages from SWCA containing a review of the April 1, 2013, draft narrative of the Description of the Proposed Action and Description of the Proposed Conservation Measures and an updated mitigation and monitoring table.

April 1, 2013:
We transmitted a draft narrative of the Description of the Proposed Action and Description of the Proposed Conservation Measures to you. We received your response on April 8, 2013. We also participated in a conference call with your staff as well as representatives of Rosemont Copper Company, including their biological consultant, WestLand and counsel, Norm James.

March 29, 2013:
We participated in a conference call with your staff as well as representatives of Rosemont Copper Company, WestLand and Norm James.

March 14, 2013:
We received a copy of correspondence entitled *Clarification and Supplemental Information in Support of Supplemental Biological Assessment Prepared for the Coronado National Forest and SWCA, Inc., for the Rosemont Copper Project* sent from WestLand.

February 12, 2013:
We met with AGFD to discuss the consultation.

February 8, 2013:
We received your February 2013 *Supplement to the Biological Assessment – Proposed Rosemont Copper Mine - Santa Rita Mountains, Pima County, Arizona - Nogales Ranger District* (Second Supplemental BA).

January 31, 2013:
We met with your staff, the AGFD, and Westland Resources, Inc. to discuss further revisions to the proposed conservation measures.

January 23, 2013:
We met with your staff, biologists from SWCA, and representatives of the Rosemont Copper Company to assist in finalizing a second supplemental Biological Assessment.

January 9, 2013:
We transmitted a letter to you discussing the outcome of the January 3, 2012, meeting and addressing the concerns found in Norman D. James' December 19, 2012, letter.

January 3, 2013:
We met with your staff, biologists from SWCA, and representatives of the Rosemont Copper Company to discuss conservation measures and the content of an anticipated second supplemental Biological Assessment.

December 21, 2012:
We received a December 19, 2012, letter from Norman D. James of Fennemore Craig P.C., counsel for the Rosemont Copper Company, regarding our December 13, 2012, letter to you.

December 21, 2012:
We received documents entitled Rosemont Copper Project Biological Assessment Supplement - Cienega Creek Watershed Habitat Restoration And Enhancement Program, Rosemont Copper Project: Biological Assessment Supplement - Lesser Long-Nosed Bat Forage And Roost Conservation Measures, and Rosemont Copper Project: Section 7 Consultation Grazing Management Conservation Measures from Westland Resources, Inc.

December 13, 2012:
We transmitted a letter to you documenting outstanding information needs requesting additional time to complete formal consultation on the proposed action.

December 7, 2012:
We received a revised version of the *Rosemont Copper Project: Potential Effects of Lighting Associated with the Rosemont Project on Endangered Species* from Westland Resources, Inc.

December 5, 2012:
We received a document entitled *Rosemont Copper Project: Potential Effects of Lighting Associated with the Rosemont Project on Endangered Species* from Westland Resources, Inc.

November 18, 2012:
We met with your staff and staff from SWCA to receive information regarding the biological effects resulting from the groundwater impacts discussed at the aforementioned October 18, 2012, meeting.

November 14, 2012:
We received a documents entitled *Rosemont Copper Project: Conservation Measures – Water Features and Rosemont Copper Project: Potential Effects Of The Rosemont Project on Lower Cienega Creek* from Westland Resources, Inc.

November 13, 2012:
We met with your staff, biologists from SWCA, Inc., and representatives of the Rosemont Copper Company to discuss conservation measures and progress in the consultation. We received a document entitled *Rosemont Copper Project: Conservation Measures – Water Resources* from Westland Resources, Inc.

November 9, 2012:
We received documents entitled *Rosemont Copper Project: Conservation Measures Provided by Clean Water Act Section 404 Mitigation* and *Rosemont Copper Project: Potential Effects of the Rosemont Project to Jaguar and Proposed Jaguar Critical Habitat* from Westland Resources, Inc. via electronic mail.

November 8, 2012:
We received the draft *Rosemont Copper Company Habitat Mitigation and Monitoring Plan Permit No. SPL-2008-00816-MB* (HMMP) prepared by Westland Resources, Inc.

October 22, 2012:
We received, via electronic mail, your October 19, 2012, letter requesting formal conference on the proposed critical habitat for the jaguar and southwestern willow flycatcher. Your October 19, 2012, letter also transmitted your October 2012 *Supplement to the Biological Assessment, Proposed Rosemont Copper Mine, Santa Rita Mountains, Arizona, Coronado National Forest* (Supplemental BA).

October 18, 2012:
We attended a forum attended by your staff and well representatives of the U.S. Geological Survey (USGS), Bureau of Land Management (BLM), SWCA, Inc., the Rosemont Copper Company, Tetra Tech, Engineering Analysis, Inc., and SRK Consulting to discuss the validity and results of groundwater modeling efforts associated with proposed action. These analyses form part of the basis of the BA and Supplemental BA's analyses of effects to aquatic and riparian species.

September 13, 2012:
We received, via electronic mail, your September 12, 2012, granting of the 60-day extension we requested on August 29, 2012.

September 6, 2012:
We met with your staff, biologists from SWCA, and representatives of the Rosemont Copper Company to discuss conference consultation on proposed critical habitat for the jaguar (77 FR 50214).

August 29, 2012:
We transmitted a request for a 60-day extension to the consultation timeline, stating we would deliver a Draft BO by November 5, 2012 and, following timely receipt of your comments, a Final BO by December 20, 2012.

August 2, 2012:
My staff met with your staff and other Cooperating Agencies (as defined under the National Environmental Policy Act; NEPA) to discuss the biological outcomes of the proposed action's effects to surface and groundwater hydrology and to help develop conservation measures and monitoring programs for them. It should be noted that the FWS is not a formal Cooperating Agency.

July 24, 2012:
My staff participated in a meeting with your staff and the Cooperating Agencies to assist in the development of mitigation measures for the impacts of the propose action.

July 9, 2012:
My staff participated in a meeting with your staff and the Cooperating Agencies to assist in the development of mitigation measures for the impacts of the proposed action.

June 28, 2012:
My staff participated in a meeting with your staff and the Cooperating Agencies to assist in the development of protocols to verify impacts to riparian resources and monitor those effects for the life of the proposed action.

June 11, 2012:
My staff participated in a meeting with your staff and the Cooperating Agencies to assist in the development of mitigation measures for the impacts of the proposed action.

July 20, 2012:
We transmitted a letter to you indicating that we had received all of the information required of you to initiate formal consultation required by the regulations governing section 7(a)(2) interagency consultation at 50 CFR §402.14.

May 24, 2012:
My staff met with staff from the U.S. Geological Survey water resource and geology disciplines to discuss the hydrologic effects of the proposed action as well as the monitoring needed to measure them.

May 16, 2012:
We transmitted you a letter containing our review of the January 2012 deliberative *Draft Biological Assessment, Rosemont Copper Project, Santa Rita Mountains, Nogales Ranger District* (Draft BA), including recommended conservation measures.

April 9, 2012:
We met with AGFD staff to jointly develop conservation measures for our respective trust species.

March 8, 2012:
We met with your staff as well as representatives of the AGFD, Bureau of Land Management (BLM), SWCA, Inc., Rosemont Copper Company, and Westland Resources, Inc. to be presented with a groundwater model overview and to engage in continued discussions on the Draft BA.

March 5, 2012:
My staff transmitted comments regarding the Draft BA's effects analysis for the lesser long-nosed bat to your staff via electronic mail.

February 29, 2012:
My staff transmitted comments regarding the Draft BA's effects analysis for the Mexican spotted owl to your staff via electronic mail.

February 14, 2012:
We met with your staff as well as representatives of the AGFD,BLM, SWCA, Inc., Rosemont Copper Company, and Westland Resources, Inc. to engage in initial discussions on the content of the Draft BA.

January 25, 2012:
We received the electronic version of your Draft BA

January 19, 2012:
We transmitted a letter (File No. 02EAAZ00-2012-CPA-0015) to the U.S. Army Corps of Engineers (Corps), commenting on Public Notice 02EAAZ00-2012-CPA-0015. Our letter, a copy of which was provided to you, preliminarily identified our concerns with the proposed action's effects to threatened and endangered species.

October 11, 2011:
My staff met with representatives of the Rosemont Copper Company near the mine site to discuss the project and engage in early discussions on potential conservation measures.

August 24, 2011:
Our respective staffs met with representative of the Rosemont Copper Company and Westland Resources to discuss the potentially affected species and conceptual conservation measures.

January 11, 2011:
Our staff met with representative of the Rosemont Copper Company and Westland Resources to receive a project overview and visit the proposed mine site.

October 18, 2010:
We met with your staff to discuss the threatened and endangered species potentially affected by the proposed action.

December 10, 2009:
My staff participated in a field trip to examine issues related to the biological outcomes of the proposed action's hydrologic effects.

November 23, 2009:
My staff participated in a Karst formation and groundwater hydrology discussion with staff from Arizona State Parks and other agencies.

November 19, 2009:
My staff participated in a meeting with your staff and the Cooperating Agencies to discuss the potential for acquisition of off-site lands to mitigate the impacts of the proposed action.

October 13, 2009:
Staff from our agencies, AGFD, and representatives of the Rosemont Copper Company attended a site visit to examine habitat for bats, including lesser long-nosed bats.

September 18, 2009:
Staff from our agencies, AGFD, and representatives of the Rosemont Copper Company attended a site visit to examine habitat for talussnails (*Sonorella* spp.).

September 15, 2009:
My staff participated in a site visit to examine Chiricahua leopard frog habitat within the proposed mine site and on adjacent ranchlands.

September 1, 2009: –
Staff from our agencies, the AGFD, and representatives of the Rosemont Copper Company attended a site visit to examine habitat for Chiricahua leopard frogs.

August 5, 2009:
We met with your staff as well as representatives of, SWCA, Inc., Rosemont Copper Company, and Westland Resources, Inc. to begin discussions regarding the proposed action's effects to threatened and endangered species and the preparation of a BA to address those effects. This meeting also served as an initiation of early consultation pursuant to section 7(a)(3) of the Act and its implementing regulations at 50 CFR § 402.11.

BIOLOGICAL AND CONFERENCE OPINION

Description of the Proposed Action

Rosemont Copper Company (Rosemont) submitted a proposed mine plan of operations (MPO) to the Coronado National Forest, an administrative unit of the U.S. Department of Agriculture Forest Service (Forest Service), for development of the Rosemont ore deposit. The proposed mine site is located on the east side of the Santa Rita Mountains, approximately 30 miles south of Tucson, Arizona. Activity is proposed on approximately 995 acres of private land owned by Rosemont Copper, 3,670 acres of Coronado National Forest land, and 75 acres of land administered by the Arizona State Land Department. This area includes a utility corridor that is needed to provide power and water to the project area. The mine life, including construction, operation, reclamation, and closure, is approximately 25 to 30 years.

Two Federal agencies have authority regarding MPO approval: the Forest Service and U.S. Army Corps of Engineers. The Forest Service is responsible for administering Coronado National Forest land, including the approval of MPOs under that agency's surface management regulations. The Corps of Engineers is responsible for administering Section 404 of the Clean Water Act. Rosemont has applied for a permit from the Corps of Engineers to discharge tailings and waste rock into ephemeral drainages that are considered to be waters of the United States. The agency actions thus consist of approval of an MPO and a permit under Section 404 of the CWA.

The Forest Service, as the lead agency and land manager for the Coronado National Forest, prepared the *Draft Environmental Impact Statement for the Rosemont Copper Project, a Proposed Mining Operation, Coronado National Forest Pima County, Arizona* (Sept. 2011) (DEIS). In the DEIS, the Forest Service identified the Barrel Alternative as the preferred alternative (see Figure I-1).

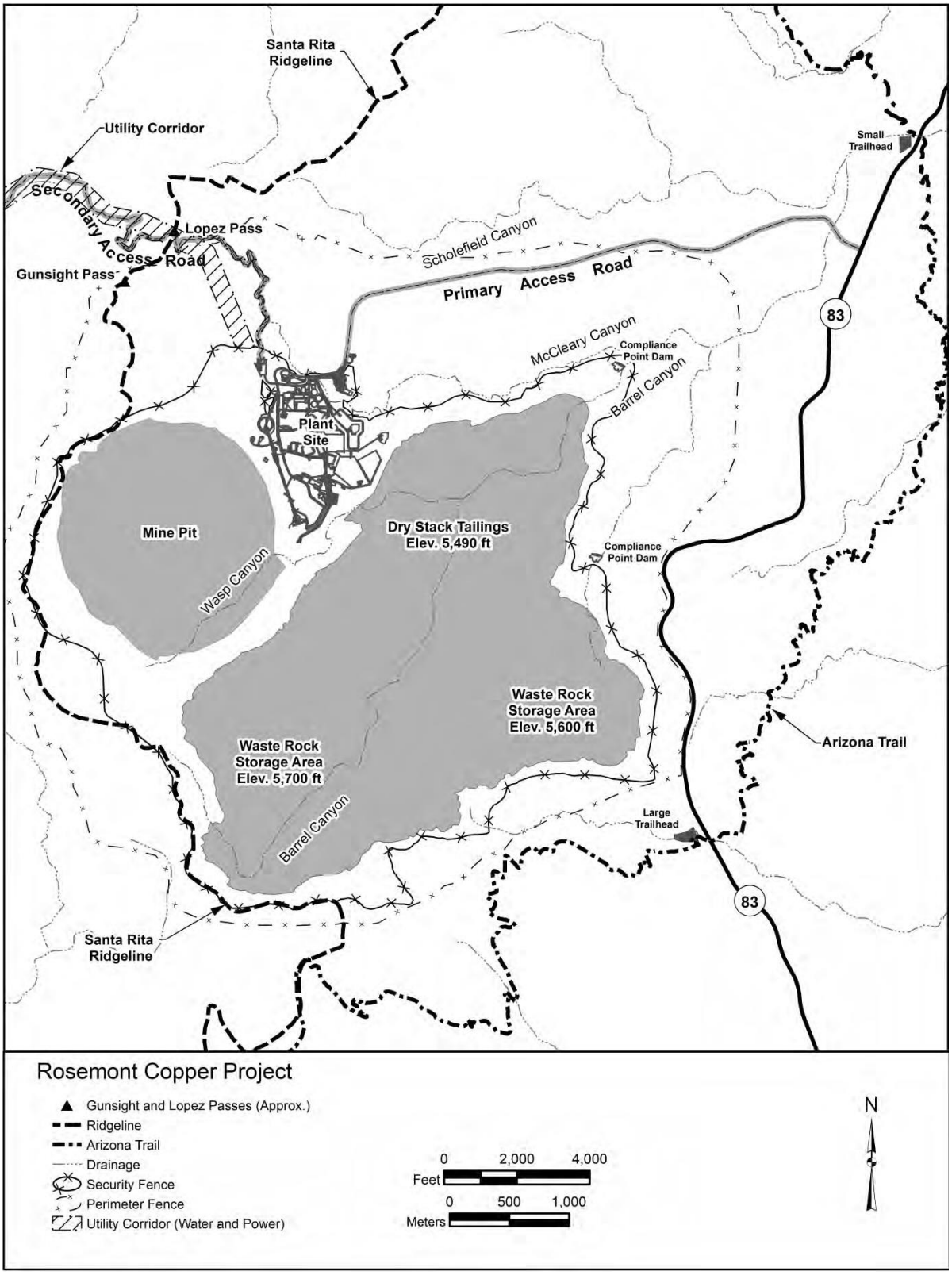


Figure I-1: The Barrel Alternative Footprint (Proposed Action)
(Note: This figure does not illustrate the proposed Sycamore Connector Road; see Figure I-2)

The Barrel Alternative, which places all of the tailings and waste rock in upper Barrel Canyon and the lower portion of Wasp Canyon, was developed during the NEPA process to respond to the significant issues regarding potential impacts on biological resources, cultural resources, and the surface water component of water resources. The Forest Service interdisciplinary team biologist determined this alternative to have the least impact on plant and animal resources because it avoids the McCleary Canyon drainage; it is the most physically and biologically diverse of the nearby canyons, and harbors the rare plant Coleman's coral-root (*Hexalectris colemanii*) (SWCA 2011). Prohibiting mine tailings or waste in McCleary Canyon permanently maintains its contribution of surface water flow to the Barrel Canyon drainage system. Stormwater flow through McCleary Canyon would be somewhat decreased during mine operations because runoff from the plant site would be retained. However, there are also increases to the drainage area that will be diverted through the McCleary Canyon channel, due to diversions from upstream of the pit and the plant site.

The Barrel Alternative incorporates a waste rock perimeter buttress that completely surrounds the dry-stack tailings. Heap leaching facilities are not included in the current iterations of alternative. In order to maintain concurrent reclamation of final outer slopes, waste rock will initially be placed in berms along the outside edge of the waste rock and tailings area, followed by waste rock or tailings placement behind the berms. The tailings conveyor system will be modified to accommodate the relocated tailings facility. Surface water management facilities include diversions around the facility to convey storm events upgradient of the pit, operating facilities, and waste rock and tailings storage areas and to place the water back into drains or other control structures. Diversion and stormwater control facilities include the following:

- Stormwater redesign, including removing the underdrains, eliminating storage on the top and benches of the tailings and waste rock facilities, and incorporating more stormwater routing downstream. The redesign reduced post-closure flow loss from 34 percent to 17 percent (compared to baseline conditions).
- The Barrel Alternative permits no storage of stormwater on the top or benches of the waste rock/tailings landform post-closure. Instead, waste rock and tailings facilities will shed runoff after closure. The tops of the facilities will be graded to discharge stormwater to the lower benches, which in turn are designed to move stormwater laterally along the benches until it reaches several concrete or natural stone drop structures. The runoff from these drop structures will either be discharged into the natural washes (Barrel Canyon or a tributary) or discharged into a diversion channel that will carry runoff along the toe of the waste rock and tailings facilities and then discharge that runoff into the natural washes. In this manner, as much water as possible will be allowed to flow downstream after reclamation is complete.

The flow-through drains beneath the tailings and waste rock facilities are not part of the Barrel Alternative because of concerns about intermingling of stormwater and tailings seepage and long-term maintenance. Post-closure, stormwater from the former plant site will instead be diverted to flow into McCleary Canyon via a surface channel.

- Modifying the process water temporary storage pond and adding a double liner with a leak collection and removal system to the process water containment to improve the containment of process water and separate stormwater from process water.
- Realigning the primary access road to avoid Scholefield Canyon, reduce its visibility, decrease stormwater runoff into the Barrel Canyon drainage system, and reduce impacts to riparian vegetation.

Extraction of ore will be from an open-pit mine located primarily on Rosemont private land (approximately 590 acres of the 955 acre site). Processing, waste management, and other support facilities are proposed to be located on the Coronado National Forest; project infrastructure, such as utilities, will be located on Coronado National Forest ASLD lands and Rosemont lands. Access to the mine site will originate on SR 83 east of the pit and facilities. The complete mine life, as described in the Supplemental BA, is as follows:

- Premining phase: 18 to 24 months. (Includes initial clearing vegetation, soil stockpiling, construction of facilities and roads, construction of electric and water lines, fence construction, decommissioning of forest roads, initial construction of pit, initial construction of the perimeter waste rock buttress, and construction of compliance wells).
- Active mining phase: 20 to 25 years. (Includes additional vegetation removal, continued pit development, continued construction of the perimeter waste rock buttress, placement of tailings, concurrent reclamation activities).
- Final reclamation and closure phase: 3 years. (Includes removal of plant site facilities, completion of reclamation, potential staining of pit walls, removal of perimeter fence, and removal of water and electrical lines on Coronado National Forest lands).
- Post-closure phase. Indeterminate amount of time. (Includes monitoring and maintenance).

Project-related activities that will be conducted over the aforementioned timeframe include the following:

- Construction and operation of an open-pit copper, molybdenum, and silver mine primarily on private land;
- Construction, operation, and reclamation of an ore processing plant, tailings, and waste rock facilities on National Forest System land adjacent to the pit;
- Construction and operation of infrastructure, such as utilities and their corridors, on State, private and National Forest System lands;
- Construction of a new access road, retention structures, wells, ore transportation systems, and reclamation test plots;
- Use of existing roads, new road construction, and maintenance of both;
- Labor requirements for construction, operation, processing, reclamation, and closure;

- Implementation of conservation measures for minimization and mitigation to avoid or minimize impacts;
- Reclamation, closure, and maintenance of the mine and related facilities; and
- Resource monitoring during construction, operation, reclamation, closure, and post-closure.

Calculation of Acres of Disturbance

The proposed mine will be surrounded by a perimeter fence within which public access will not be allowed. The October 2011 DEIS and June 2012 BA both assumed that any lands within the perimeter fence would be disturbed; however, upon further review, not all of those lands will undergo surface disturbance. Within the perimeter fence, a separate security fence/road that will be erected roughly 750 feet from the toe of the waste rock/tailings facilities. Except where specific features such as the primary access road, utility corridor, groundwater monitoring wells and compliance point dam are located, the land between the perimeter fence and the security fence will not be disturbed. This more focused and refined calculation has resulted in a reduced acreage of disturbance as compared to earlier estimates. The June 2012 BA indicated that 7,016 acres of land would be directly disturbed. Owing to the changes described above and in USFS (2013d), this acreage was refined to 5,421, which includes areas within the security fence (4,013 acres), the primary access road (226 acres), the utility line corridor (889 acres), decommissioned or new forest roads (59 acres), and the rerouted Arizona National Scenic Trail and trailheads (19 acres).

The facilities and activities described in this section are typical of open-pit mine sites. The descriptions below, however, are specific to the components for the proposed action . The mine pit is where blasting and drilling activities would occur. The waste rock and tailings will be transported and processed within the corresponding facilities. Lighting and waste disposal will take place at the plant site and support facilities. A perimeter fence will be constructed, encompassing the main mining and processing operations and excluding portions of the access roads, and some Coronado National Forest lands will be unavailable for public use during the 25 to 30-year mine life. A legal closure order will be issued by the Coronado National Forest, and notices will be posted along the fencing. Perimeter fencing will consist of a standard 4-strand barbed wire fence (with a smooth bottom wire, in accordance with BLM and AGFD fencing standards). Sections of the perimeter fence are expected to be removed following closure after considering grazing and safety needs. Portions of the site, including the mine pit, will likely remain fenced off and closed to the public indefinitely for safety reasons.

Pit

Preproduction stripping of overlying rock is expected to require 18 to 24 months to prepare for full-scale mining operations, train work crews, construct access and haul roads, and clear and grub the pit and waste rock storage areas that will be disturbed during the initial years of operation. Open-pit mining methods will be used to excavate ore to recover copper, molybdenum, and silver. The roughly circular open-pit mine will measure between 6,000 and 6,500 feet in diameter at the end of mine life, with a final depth of up to 3,000 feet (3,050 feet

above mean sea level). Pit slope angles between roads will be controlled by rock strength and will range between 33 and 50 degrees. The pit will disturb approximately 955 acres: 590 acres on private land and 365 acres on Coronado National Forest lands.

Blasting and Drilling

Blasting will be required prior to excavation of the ore and waste rock, and will generally be conducted daily. Explosives storage, transport, and use will adhere to all rules, regulations, and safety standards. Once a day on average, an ammonium nitrate and fuel oil explosive will be detonated in the mine pit. This will occur during daylight hours only, generally between 9 a.m. and 4 p.m. Dry bulk ammonium nitrate will be transported for use from storage silos at the adjacent plant site. Blasting detonators, such as caps, delays, cord, and boosters, will be stored in special magazines and transported to the pit in separate vehicles. If wet-hole blasting is necessary, an emulsion and/or slurry will be transported to the pit from onsite storage tanks. Mixed ammonium nitrate and fuel oil will be loaded and transported using trucks specifically designed for that purpose.

Ore Processing

Originally, Rosemont proposed two different types of ore processing methods: a conventional flotation method and a heap leach-solvent extraction-electrowinning method. Based on the proposed action selected by the Forest Service, which imposed engineering constraints that affect the operation of a heap leach pad, and comments on the DEIS, Rosemont Copper removed the heap leach-solution extraction circuit, and will process ore only by means of a conventional flotation method.

Ore will be sent through a circuit of crushers, grinding mills, and ball mills to reduce the rock size to a fine sand consistency. A flotation circuit will concentrate the copper and molybdenum minerals from the rest of the ore material. The concentrates will then be dewatered, thickened, filtered, and loaded for shipment. Water from the filtering and thickening process will be returned to the process and recycled.

Waste Rock and Tailings Placement

Waste rock, which consists largely of chemically basic limestone and other largely non-acid-generating rocks, will be placed in areas located outside the open pit. The tailing is the material remaining after the floatation process to recover the copper and molybdenum minerals are removed. These tailings are thickened and then further dewatered through filtering. The water from the dewatering process is returned to the mill for reuse. The tailings are transported via conveyor belt to the unlined dry-stack tailings disposal area, where the tailings will be deposited, stacked, and compacted as needed. Ultimately, the tailings will be placed behind a waste rock buttress and, ultimately, encapsulated, or covered completely by a layer of waste rock.

Transportation of ore, waste rock, and tailings will occur only in the mine area, which will be closed to the public for safety reasons. Ore and waste rock will be moved in large, off-highway

haul trucks. Roads for the haul trucks will be constructed both within the open pit and between the pit and the plant, tailings facility, and waste rock storage area. In accordance with Mine Safety and Health Administration (MSHA) regulations, haul roads will be approximately 125 feet wide, including safety berms and drainage ditches, and no steeper than 10% to 12%. Maximum truck speed will be 35 miles per hour. Haul roads are temporary and regularly move based on the locations of material placement.

Plant Site and Support Facilities

Facilities necessary to support Rosemont's mining and ore processing operations will be constructed during the premining phase, and removed during final reclamation and closure. These facilities include buildings and structures, such as administration buildings, change house, warehouse with laydown yards, analytical laboratory, light vehicle and process maintenance building, mine truck shop, mine truck wash and lube facility, powder magazines and ammonium nitrate storage, main guard shack with truck scale, and fuel and lubricant storage and dispensing facilities. The facilities are located generally in one centralized area near the open pit.

Lighting

The proposed action lies within an area of concern relative to the effects of light pollution (Monrad *et al.* 2012). Neither the existing 2006 Pima County Outdoor Lighting Code (PCOLC) nor the draft 2011 PCOLC have jurisdiction over the proposed action area; however, Rosemont will employ an advanced light pollution mitigation plan. The plan includes the use of state of the art lighting equipment and controls to minimize environmental impact to levels below the intent of the PCOLC, including other comparable modern light pollution control standards, while simultaneously complying with the proposed action's operation safety requirements prescribed by the Mine Safety and Health Administration (MSHA).

The proposed action is expected to generate approximately 10% to 15% of the amount of environmental light over the entire site that, under the PCOLC, would normally be allowed by a similar commercial development of the same scale in the same location using conventional lighting systems on a similarly sized parcel (Monrad *et al.* 2012). The proposed action is expected to produce approximately 6.4 million lumens, which takes into account all lighting sources, including equipment-mounted lighting systems.

Solid, Hazardous, and Sanitary Waste

Solid waste will be recycled as appropriate and feasible. Non-recyclable inert waste will be disposed of at a state licensed on-site landfill located on Rosemont's private property. The landfill will cover approximately 2 acres on Rosemont's private property and will be permitted and regulated by the Arizona Department of Environmental Quality (ADEQ). The excavated depth of the landfill will range from 5 to 43 feet, with a minimum excavation elevation of approximately 5,190 feet above mean sea level; maximum height of the landfill at closure will be no more than 5,280 feet above mean sea level. All putrescent materials or other items that cannot be appropriately disposed of in the solid waste facility will be transported of off-site by a

commercial vendor. Large (greater than 3 feet in diameter) equipment tires, such as those on the haul trucks, will be recycled if practicable, or otherwise disposed of on-site in specific tire burial cells located within the waste rock and tailings facility. The USFS has requested that the burial cells be situated on private lands. Hazardous waste will be handled and disposed of in accordance with applicable regulations, and no hazardous waste will be disposed of on-site. All hazardous waste will be transported by licensed haulers and disposed of at regulated facilities. Sanitary waste at the project site will be handled by septic systems, with leach fields located in the vicinity of each building. During the construction phase and where necessary during operations, portable toilets will be used in various locations throughout the plant and mine sites.

Electrical Power Supply

The total power requirement for the proposed action is 108 to 112 megawatts and will require a minimum transmission voltage of 138 kilovolts. Tucson Electric Power (TEP) has entered into an agreement with Rosemont to construct a transmission line to the mine site. All costs of the line will be borne by Rosemont. In addition to traditional electrical service from TEP, the proposed action will also generate energy on-site using solar technologies, such as solar technologies to partially power the administration buildings and potentially other areas.

On June 12, 2012, the Arizona Corporation Commission approved the Certificate of Environmental Compatibility authorizing the construction of an aboveground 138-kilovolt electrical transmission line and associated facilities from the proposed Toro Switchyard to the Rosemont Substation (Figure 2 in the October 2012 Supplemental BA and figure I-1 in this document). Following a hearing, the Certificate of Environmental Compatibility was issued by the Arizona Power Plant and Line Siting Committee, approving the preferred route. Thereafter the Arizona Corporation Commission approved the Certificate of Environmental Compatibility with certain modifications that included the issuance of the Record of Decision. The water supply (see Water Supply section) and secondary access road (see Utility Maintenance Road section) are co-located with the lines. The route generally parallels the existing South Santa Rita Road before entering private property held by Rosemont and crosses the ridgeline at Lopez Pass. The alignment then enters Coronado National Forest lands before entering the mine facility area.

Water Supply

During construction of the water supply pipeline, water would be drawn from existing wells in and around the project site in order to supply construction activities. It is estimated that approximately 600 to 900 gallons per minute would be necessary to support facility construction. The project is permitted by the Arizona Department of Water Resources (ADWR) to draw up to 6,000 acre-feet per annum (afa). However, it is currently estimated that the project would use between 4,700 and 5,400 afa of fresh water, for a total use over the mine life of approximately 100,000 acre-feet. Water would be pumped from four to six wells located on land owned or leased by Rosemont Copper near the community of Sahuarita in the Santa Cruz Valley at a maximum rate of 5,000 gallons per minute (total pumpage). The well locations, proposed pipeline route, and pipeline route are shown in Figures PPC-1 and PPC-2. Four booster stations would be needed to maintain waterflow in the line.

Total fresh water to be used during operation is estimated to be about 4.8 million gallons per day. Most of this would be supplied by groundwater wells in the Santa Cruz Valley. Much smaller quantities would be obtained from stormwater and pit dewatering on the mine site. Water would primarily be allocated to ore processing. Other water uses would include dust control, fire protection, drinking water, sanitary waste management, and other miscellaneous uses. It is estimated that up to 18,500 acre-feet could be obtained from pit dewatering over the life of the mine. Water acquired through pit dewatering would either be used in processing or dust control. Because the quality of the water supply is expected to approach potable standards, it would not require any additional processing to be used in various mining processes.

Where feasible, an estimated 37 million gallons of water per day would be reclaimed from a variety of uses on the mine and returned for use in processing. Water used to process ore (referred to as process water) and other water impacted by the project would be controlled as described below.

Water Supply Pipeline

A 20-inch carbon steel water pipeline would be constructed. While it is expected that most drainage crossings would only require backfill of the previously removed material, some crossings may require non-erosive material, such as concrete, below calculated scour depth where wash composition is soil and gravel. Where rock prohibits burial, the pipeline would be placed above the rock and covered with soil, as previously specified, depending on slope, topography, and the availability of cover material.

The pipe bedding requirements would follow the manufacturer's recommendations. Isolation valves would be installed in the pipeline at intervals of approximately 3,000 feet and at elevation changes of 250 feet. Construction of the pipeline would include up to four booster stations that would consist of a concrete sump, four vertical turbine pumps, and a pneumatic tank housed within secured buildings or structures and requiring power, as described above. The reservoirs and pump stations would be built outside jurisdictional Waters of the U.S.

Water Control

The primary water control objective is to reduce the risk of discharging potentially contaminated water into the environment. Three major areas of water contamination control are as follows: process water, groundwater, and stormwater that comes into contact with process facilities or tailings. Control of process water consists of containing the process water in engineered structures, such as tanks, pipes, sumps, lined ponds, and lined ditches, and maintaining the water content of the dry-stack tailings at a level that reduces seepage from the dry-stack tailings facility. The engineering design and performance of the various process water control facilities, including seepage and leakage monitoring and recovery, will meet or exceed the best available demonstrated control technology criteria used by the ADEQ and will be regulated under their permits issued pursuant to the State Aquifer Protection Permit issues for the project.

Groundwater control includes those activities and facilities intended to protect and monitor the quality of the groundwater in the area, as well as the investigation and modeling used to predict the response of the groundwater systems to both the withdrawal of groundwater and the influence of seepage and leakage from project facilities. Implementation of groundwater control requirements will be monitored as part of the aquifer protection permit that has been issued by the ADEQ. This includes monitoring of the seepage and leakage detection systems required to be designed into processing facilities by the aquifer protection permit.

Of particular importance to the long-term groundwater protection is the acid rock drainage protection and monitoring program. Monitoring to ensure that off-site groundwater quality is not impacted beyond the level allowed by the aquifer protection permit is accomplished through the installation and scheduled sampling and testing of specific groundwater monitoring wells as required by the aquifer protection permit and by applying best available demonstrated control technology (i.e., engineering controls and practices). Protection of groundwater quality following mine closure is achieved by the following: the closure and reclamation of the process facilities: elimination or reduction of acid rock drainage generation in the tailings and waste rock from the design and operation of the facilities; monitoring and testing required by the aquifer protection permit following mine closure; and capture of possible impacted mine site groundwater by localized groundwater flowing into the pit.

Stormwater management involves three basic ideas: (1) process water or stormwater that comes into contact with process areas cannot be discharged; (2) water that runs off of waste rock and tailings where process water is not present can be discharged downstream; and (3) water that is diverted around the process is merely runoff and not regulated. For the purposes of this document the water referred to in number one above is considered process or “contact” water while all other water is considered stormwater.

The general design concept for managing stormwater from the dry-stack tailings facility is to minimize infiltration of water in the tailings and prevent the discharge of stormwater that comes into contact with the tailings. The top surface of the dry-stack tailings will be exposed to precipitation only during operations. All tailings will be covered with waste rock at closure. Constructing uniform lifts of dry tailings that are buttressed by waste rock ensure containment and erosion control. The top of the tailings facility will be relatively impervious. That is, during operations, all precipitation will remain on top of the tailings facility to evaporate. If water ponds on top of the tailings facility, it will be pumped to the process water temporary storage pond to limit infiltration into the tailings facility. Diversion channels will be constructed to direct surface runoff from the outer waste rock shell slopes into either sediment ponds or adjacent drainages to a sediment control structure.

Stormwater from above the mine pit will be diverted around the pit and plant site. During operations, stormwater that falls within the mine pit and associated disturbed areas, and all stormwater that comes into contact with ore, will be contained onsite and used for mining and mineral processing purposes. Post-closure, any stormwater that enters the pit will contribute to the pit lake. The small ridge just east of the plant site will be eliminated post-closure in order to enable stormwater from the reclaimed plant site area to flow downstream into McCleary Canyon. Precipitation that comes into contact with waste rock does not need to be retained, but can be

released downstream. Regardless of this, much of the runoff from the waste rock facilities will be retained during operations, with the exception of the perimeter waste rock buttresses. For perimeter buttresses, concurrent reclamation and appropriate best management practices will progress up the outer slopes as the buttresses are constructed. This will limit erosion potential and allow stormwater runoff to discharge to down-gradient sediment ponds and eventually to the watershed.

Stormwater management at the waste rock facilities is similar to that for the dry-stack tailings facility. For the construction of the initial perimeter buttresses, concurrent reclamation and appropriate best management practices will progress up the outer slopes as the buttresses are constructed. This will limit erosion potential, while minor diversion channels will be used to direct non-contact runoff to downgradient sediment ponds. The sediment ponds at the toe of the outer slopes will be designed to store and release up to the 10-year, 24-hour storm event so that suspended sediment concentrations of discharged water are no greater than background conditions.

Stormwater from the waste rock and tailings facilities, including the waste rock buttresses that are not reclaimed or stabilized, will be routed to sediment control structures, where any overflow discharging off-site will be monitored for constituent and sediment content in accordance with ADEQ's Arizona Pollutant Discharge Elimination System Multi-Sector General Industrial Stormwater Permit.

General stormwater management structures are designed using a precipitation-runoff simulation computer program developed by the USACE. Two calculations have been evaluated (the peak flow and the runoff volumes) for Rosemont's selection of the most practical and protective methodology and criteria for use (Tetra Tech 2010a, 2010b).

Active stormwater management will continue after the mine closes, as required by the mining stormwater general permit and the erosion control provisions of the mine land reclamation plan, administered by the Arizona State Mine Inspector. The Arizona State Mine Inspector has jurisdiction for reclamation under Title 27 Arizona Revised Statutes (ARS Chapter 5; this is the Reclamation Act statute for reclamation of hardrock mining, which pertains to private lands with more than 5 acres of mining disturbance. In general, reclamation and closure is designed to shed all stormwater from the waste rock facility, the tailings facility (which will have been capped with waste rock), stormwater that is diverted around the northeast side of the pit, and the plant site. Post-closure precipitation falling in the pit itself and stormwater diverted around the northwest side of the pit will not discharge downstream.

Compliance Point Dam

A compliance point dam will serve as the final compliance point where stormwater can be monitored. Each of the two dams included in the Barrel alternative will be approximately 6 feet tall and approximately 100 to 200 feet wide, with a storage capacity of approximately 2 acre-feet. They will be constructed in year 0, prior to the commencement of mining, using inert waste rock, and be classified as an Arizona Department of Water Resources nonjurisdictional, unlined embankment. Normally, the area upstream of and behind the embankment will be empty. During storm events, water will be temporarily impounded and slowly released through the

porous rock-fill dam. Large storm events will overtop the dam and proceed downstream. The compliance point dam will be removed after closure of the proposed action facilities or if the facilities reach final stabilization through concurrent reclamation and sediment runoff is within acceptable limits.

Primary Access Road

A new 2-lane paved road, referred to as the "primary access road," will be constructed to provide access between SR 83 and the mine (see Figure 1 in the BA and Figure I-1 in this document). The primary access road will leave SR 83 along a straight section of the highway. At the intersection, SR 83 will be widened and provided with additional lanes. Public use will be restricted on portions of the primary access road during construction and operation of the mine because of safety considerations, but will be reopened to the public after closure. Segments of the primary access road will be added to the national forest system road inventory.

Utility Maintenance Road

Referred to as the "secondary access road" in the DEIS, a better understanding of this road and its function resulted in its being renamed the "utility maintenance road." This road would be located within the utility corridor to serve as access to the power supply line, water supply line, and water booster pump stations. The road would consist of two discrete segments: one from the plant site, over Lopez Pass, to a major wash on private land; and another from the supply well area near Sahuarita to the other side of the major wash, generally following the electrical transmission and water line location. Overall, this road would require more than 11.5 miles of new construction and 4.5 miles of reconstruction or upgrade to an existing road.

A gravel road would be constructed from the plant site to Lopez Pass to serve as a maintenance road for the utility supply lines. The existing road over Lopez Pass [National Forest System Road (NFSR) 505] is on National Forest System (NFS) land and private land. While NFSR 505 is considered a Forest Service system road, the Forest Service does not have legal access across private land. There are small portions of the new road construction that overlap existing NFSR 505, and those would be reconstructed as part of the utility maintenance road. However, most of the alignment would require new construction from the plant site to its western terminus. The rocky, hilly portion of the road would be reconstructed, and a new road would be created that would run west across private land. The road would intercept a major wash at its western terminus. There are no plans to construct a crossing of this wash, which would require an engineered structure. The second segment of the utility maintenance road would begin at the area of mine water supply wells near Sahuarita and follow the location of the electrical transmission and water lines. This road segment would cross land administered by the Arizona State Land Department (ASLD) and private lands and would generally parallel Country Club and Santa Rita Roads.

Where the water pipeline to the mine travels under Santa Rita Road, the utility maintenance road intersects the public roadway. It would be gated here to prevent unauthorized access. Because there are different mine water supply well locations, the utility maintenance road would include

spurs that extend to these locations as required. See Figure 5 in this chapter. The waterline segment to the northern most well will not require a new road and will use the existing adjacent Santa Rita Road for construction and maintenance until it intersects with Country Club Road. A right-of-way (ROW) permit from ASLD is required for the sections of the utility maintenance road and utility corridor on State land. A ROW application has been filed; the ROW permit itself will not be issued until approval of the project by the Forest Service. The sections of the road within the ASLD ROW would be new construction. ASLD will also decide at a later date whether they intend to require an additional fence between the Utility Maintenance Road and the rest of the Santa Rita Experimental Range. The Town of Sahuarita also signed an agreement with Rosemont allowing use of a portion of its current ROW alongside Santa Rita Road (Town of Sahuarita and Rosemont Copper Company 2013). This license agreement provides access to the northern most well via Santa Rita Road. Use of Santa Rita Road for construction, maintenance or crossing of the waterline, may require additional permitting by Pima County.

The utility maintenance road would be required to meet MSHA standards by including truck axle-high berms (anticipated to be about 3 feet high) on the sides of the section of roadway located on Rosemont Copper private lands. Some road reconstruction would be on NFS lands before the road intersects private lands, and the Coronado would negotiate with Mine Safety and Health Administration (MSHA) to accommodate safety while minimizing impacts to NFS surface resources. Otherwise, the segments on ASLD and would be a standard 14-foot-wide native surface road without any additional MSHA requirements.

The utility maintenance road would be closed to the public during construction and operation of the mine, and portions may be reopened to the public after closure, depending on safety concerns. It is the intent of the Coronado to restore public access over Lopez Pass. However, a section of this road crosses private land, and there is currently no legal right of public access. While the Coronado would work with the landowner to secure a permanent public easement for this segment of road, it is unknown at this time whether legal public access would be available postclosure. The portions of this road on private lands would remain after the pipeline and booster stations are removed. For sections on State land, ASLD would ultimately decide which portions would be retained, removed, or revegetated through their ROW permitting process.

Sycamore Connector Road

The Sycamore Connector Road is a new road that was identified by the Coronado National Forest. The perimeter fence will cut off legal public access to National Forest System Roads (NFSR) in the Sycamore Canyon area, north of the project area. The Sycamore Connector road would be a new road that would be constructed from a point on the primary access road outside the perimeter fence, to connect with NFSR 4050-0.36R-1 (which intersects NFSR 4050 about 0.3 mile farther west). For the Barrel alternative, the Sycamore Connector road is about 12,184 feet long (2.3 miles) and impacts about 26 acres.

The NFSRs in Sycamore Canyon currently connect to public roads out the bottom (north) end of the canyon. However, the roads cross numerous private ownerships, and a public easement for the road does not exist. Public access from this direction into Sycamore Canyon is thereby controlled by these private landowners. While public access is sometimes granted, it cannot be

guaranteed. Constructing the Sycamore Connector Road as a NFSR will continue to provide legal public access to the roads that currently exist on Coronado National Forest lands in this area.

Refer to Figures I-1, I-2, J-2, and J-7 for depictions of the Sycamore Canyon Connector road, as well as other roads being constructed and decommissioned as part of the Barrel alternative.

Other Area Roads – Including Decommissioned and New Forest Road Segments

Those NFSRs that are open to the public or have restricted public access and that enter the perimeter fence will either be decommissioned, rerouted to connect to another area road, or have a built-in turnaround area near the fenceline. The June 2012 BA did not explicitly recognize that changes will occur to the NFSRs that intersect the perimeter fence. The location of the roads to be decommissioned and segments to be constructed is shown in Figure I-2 below and Appendix 1, Figure 18 of the Supplemental BA. This and other new road segments designed to connect remnant NFSRs are shown in Figure I-2 below and Figure 18 in what will become chapter 2 of the FEIS (USFS 2013b). This includes the construction of a new road from the primary access road to NFSR 4050-0.36R-1 (which intersects NFSR 4050 about 0.3 mile farther west), in order to continue to provide public legal access to the Sycamore Canyon area. Because Open-Authorized-Restricted roads are typically used in the project area for access to adjoining grazing allotments, these will mostly remain intact to allow administrative and permitted use postclosure. During operations, Rosemont Copper will be responsible for providing access, in some form, to the grazing lease holders for management of their allotments and to the Forest Service for permit administration.

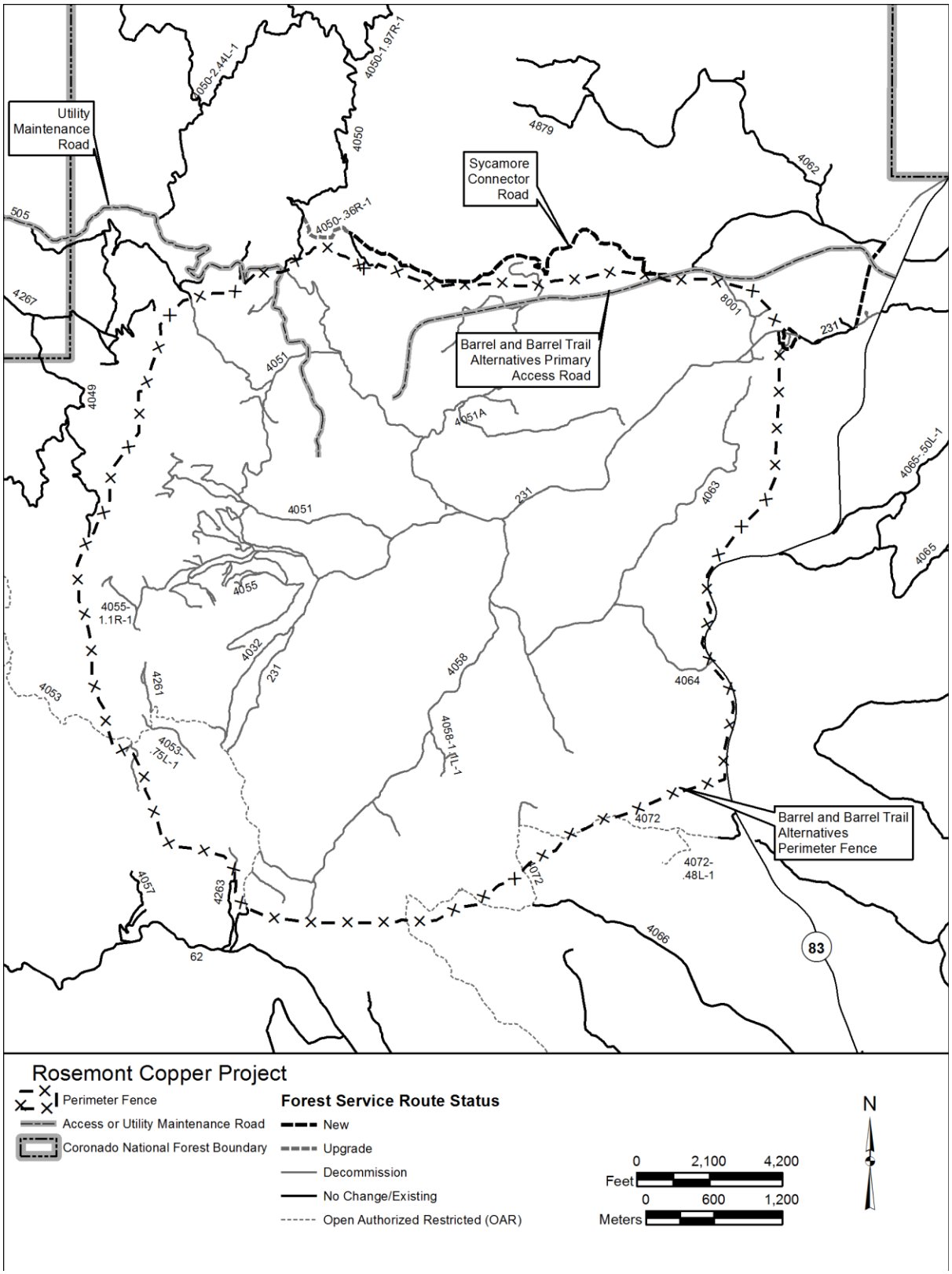


Figure I-2: Location of the roads to be decommissioned and segments to be constructed.

Transportation on State Route 83

Mine-related traffic on SR 83 during operations will primarily consist of trucks carrying supplies to the proposed action , trucks carrying concentrate from the proposed action , and employee traffic. Mine-related traffic on SR 83 during operations would primarily consist of trucks carrying supplies to the project area, trucks carrying concentrate from the project area, and employee traffic. Copper and molybdenum concentrate shipments would form the largest number of routine truck shipments, with approximately 50 round trips per day and 350 trips per week. The largest concentrated volume of mine traffic during a 24-hour period will occur during workforce shift change which will vary between 6 a.m. to 8 a.m. and 4 p.m. to 6 p.m. In addition, there will be equipment, construction material, and mining material deliveries to the project area. Major equipment arriving by rail will likely be received at the Port of Tucson, which is located near Vail, Arizona. Traffic during the pre-mining phase will use SR 83 and existing Forest Road 231 to access the project area until the new primary access road is constructed. This may require an upgrade to Forest Road 231 within the existing easement, in addition to an upgrade of the entrance to SR 83. Table 1 in the October 2012 Supplemental BA identified mine-related truck traffic and stated that there would be 470 trips per week and 69 per day; however these figures have been revised and the updated number of trips is 455 trips per week (55 on weekends, 69 on weekdays). This does not include other forms of vehicular access, such as by mine staff entering and leaving the site.

Although there have been no studies or indication of increased traffic on Box Canyon Road (Forest Road 62), it is possible that the road might receive increased traffic as an alternate around SR 83 to avoid slow mining traffic (i.e., a bypass from Tucson to Sonoita). This could be important because the road crosses the north-south spine of the Santa Rita Mountains, an area that might be important for resident or migrating animals (e.g., golden eagle, jaguar, Chiricahua leopard frog).

Arizona National Scenic Trail Location

The June 2012 BA did not explicitly recognize that approximately 10 miles of the Arizona National Scenic Trail would need to be rerouted, resulting in some additional surface disturbance, including several trailheads. The additional acreage of disturbance from the rerouting of the Arizona National Scenic Trail is included in the revised calculation of disturbance. The location of the rerouted trail is shown in Appendix 1, Figure 15 of the October 2012 Supplemental BA.

Reclamation and Closure/Concurrent Reclamation

Reclamation of the proposed action will be administered and regulated by the Coronado National Forest [36 Code of Federal Regulations (CFR) 228] on Coronado National Forest lands; and administered and regulated for the State of Arizona by the Arizona State Mine Inspector (Arizona Revised Statutes 27-901 through 27-1026; and Arizona Administrative Code 11-2-101 through 11-2-822), and the ADEQ (Arizona Revised Statutes 49-241 through 49-252; and Arizona Administrative Code 18-9-101 through 403).

The June 2012 BA did not include details of reclamation and closure activities specific to the Barrel alternative. A July 2012 *Preliminary Reclamation and Closure Plan for the Preferred Alternative* (CDM Smith 2012) was incorporated into the Supplemental BA. Appendix 2 of the Supplemental BA includes detailed descriptions of the reclamation activities, including locations and handling of stockpiled salvaged soils, detailed phasing of concurrent reclamation, and revegetation/reclamation procedures and techniques. Table I-1, below, shows a summary of concurrent reclamation phasing from the preliminary plan.

Table I-1: (Table 2 from Supplemental BA): Phasing of Concurrent Reclamation

Project Phase	**Total Acres Undergoing Reclamation**	**Total Acres Reclaimed**
End of year 1 of active mining	114	0
End of year 2 of active mining	169	114
End of year 3 of active mining	259	283
End of year 4 of active mining	75	542
End of year 5 of active mining	93	617
End of year 10 of active mining	390	710
End of year 15 of active mining	383	1,100
End of year 22 of active mining	1,764	1,483
Postclosure	0	3,589

Almost half of the reclamation to be done at Rosemont will have been completed by the end of year 15 of active mining (1,500 of 3,600 acres).

Soil Salvage Plans

Detailed plans for soil salvage have been identified for the proposed action (CDM Smith 2012 Soil Salvage Management Plan) as part of the preliminary reclamation and closure planning effort.

- Soil salvaging in specific areas will not take place until it is necessary to disturb those areas for mine activities.
- At soil salvage locations, pits will be dug to verify removal depth of salvage soils.
- Erosion and sediment controls will be installed, both upslope and downslope of soil removal areas. These controls are required under the stormwater pollution prevention plan that will be mandatory under the mine's Arizona Pollutant Discharge Elimination System Multi-sector General Permit for stormwater. Dust controls will also be implemented.
- Soil will be transported using haul trucks or other equipment to a stockpile location or directly to the waste rock/tailings facilities. If possible, transportation will be direct rather than incorporating long-term stockpiles. Stockpiles will be located in four different areas over the life of the mine.

- Stockpile 1 is located immediately east of the phase 2 dry-stack tailings facility, with a footprint of approximately 18 acres and a capacity of 501,000 cubic yards. This stockpile will be used generally through the first 8 years of operation.
- Stockpile 2 is located south of stockpile 1 and will be used for years 8 through 14 of operations. Stockpile 2 has a footprint of approximately 39 acres and a capacity of 502,000 cubic yards.
- Stockpile 3 is located on the top of the waste rock storage area and will be used for years 14 through 22 of operations. Stockpile 3 has a footprint of 22 acres and a capacity of 335,000 cubic yards.
- Stockpile 4 is also located on the top of the waste rock storage area and will be used for years 14 through 22 of operations and during closure. Stockpile 4 has a footprint of 18 acres and a capacity of 283,000 cubic yards.
- Soil stockpiles will be managed to reduce potential erosion, designed to reduce potential for compaction to maintain air circulation and drainage, and if anticipated to be in existence for at least 1 year, will have vegetative cover using a broadcast seed mix and possibly stabilizers like straw mulch with tackifier

Revegetation and Expected Revegetation Success

Concurrent reclamation will take place over the life of the project, with initial reclamation beginning on the lowest levels of the waste rock buttresses when tailings are placed behind the buttress. The proposed acreage of reclamation activities over time is shown above, and in Appendix 2 of the October 2012 Supplemental BA and Table I-2, below.

Revegetation would only be considered complete when certain reclamation criteria have been met. It is the responsibility of the Coronado National Forest to determine these success criteria and the responsibility of Rosemont Copper to develop methodologies and techniques, including adaptive management that can meet the revegetation criteria. The final reclamation and closure plan would provide further detail on the techniques to be employed, as well as monitoring and success criteria required for approval by the Coronado National Forest. The long-term purpose of undertaking revegetation is to create a self-sustainable ecosystem that would promote site stability and repair hydrologic function.

Revegetation procedures will differ, depending on whether upland or riparian areas are being revegetated. Most of the landform, which consists of the waste rock and tailings facilities, will be covered with growth medium and revegetated with upland vegetation, as will the upper pit benches and the plant site. However, there may be limited areas along drainages where riparian revegetation would be appropriate. Upland revegetation will generally follow these steps: regrading, placement of salvage soils, ripping, transplantation of trees and shrubs, seed application, mulch and tackifier and maintenance/monitoring activities.

Areas will be regraded to obtain stable, permanent slope condition as designated in the final reclamation plans. Where possible, such as at the plant site, grading is intended to restore more natural slopes and minimize erosion. The potential for restoring natural slopes is limited with respect to the waste rock and tailings facility, but such shaping will be incorporated to the extent practicable, primarily on top of the facilities.

Soils will be salvaged onsite, as previously described, and will be used as surface cover for revegetation. Almost all slopes will receive either a cover of soil or a mixture of soil and rock cover. In the most recent reclamation closure plan developed for the Barrel Alternative, several steep slopes on the side of the landform adjacent to the pit will remain solely rock with no soil cover. Specific surface treatment locations for the waste rock and tailings facilities will be shown in the Soils and Revegetation section in Chapter 3 of the FEIS, which is in preparation (USFS 2013a). For shorter slope runs between benches (less than 300 feet), the surface treatment is likely to be primarily soil cover. For longer slope runs between benches (over 300 feet), the soil cover could be limited to the upper 300 feet of the slope to prevent erosion. The lower 300 feet may consist of rock or a combination of soil/rock. Other configurations may also be considered, such as the use of soil islands; these are small areas (probably less than 10 acres) in which soil of greater depth is placed to improve species' diversity and benefit planted trees and shrubs. Where present, the total depth of soil cover will vary, but is estimated to be approximately 12 inches. Mulched vegetation material available from site clearance could be used as a soil additive if appropriate.

After placement of salvage soil, the soil surface will be ripped or otherwise mechanically manipulated in order to create an optimal seedbed. Ripping and furrowing generally will follow contours to minimize erosion. The seed mix and application techniques could vary, depending on slope, aspect, elevation, and underlying growth media. The seed mix may also incorporate native plant species that are culturally important to tribes.

The native seed mix will be agreed upon and approved by the Coronado National Forest and will be informed by the greenhouse studies, test-plot data, reference sites and results from previously revegetated areas.

Appropriate site preparation may include lightly dragging the area after seed application, soil amendments, and/or application of certified weed-free straw mulch with a tackifier. Slow release fertilizer may be incorporated to promote plant growth.

Desired Condition

The Coronado National Forest has determined the general desired vegetation condition for the reclaimed waste rock and tailings facilities over time. The desired vegetation condition represents what can reasonably be expected on disturbed, reclaimed growth medium that would exhibit more xeric soil moisture conditions than those found on natural areas. Desired conditions are included in the FEIS as a somewhat general, qualitative description of what the reclaimed sites will support following revegetation, at different time periods. The desired conditions have

been developed through a review of the Natural Resources Conservation Service Ecological Site Descriptions, test plot data, and expertise of Coronado National Forest staff and others.

It should be noted that the desired condition is not the same as reclamation success criteria, which are more site specific and quantitative, and will be fully described in the revegetation plan currently being developed and to be approved with the final MPO. Most importantly, success criteria would be informed by data collection on the final reference sites once they are selected by the USFS. This process is underway, and these data will be available for incorporation into the revegatation plan in the final MPO. This plan will use the process described in the Adaptive Management Technical Guide developed by the U.S. Department of the Interior (Williams *et al.* 2009), and further detail is shown in the "Revegetation Success Criteria" part of this resource section. Desired vegetation condition varies across the site, influenced primarily by aspect and soil texture and chemistry. There are six revegetation site types that are considered for the reclaimed waste rock and tailings facilities, as summarized in Table I-2 below. The spatial distribution over time of these areas across the site is summarized in the Soils and Revegetation section of the EIS.

Table I-2: Desired vegetation condition over time

Revegetation Site Type	**Vegetation Type**	**Number of Species**	**Percent Canopy Cover – 5 Years after Planting**	**Percent Canopy Cover – 10 Years after Planting**	**Percent Canopy Cover – 15 Years after Planting**	**Percent Canopy Cover – 20 Years after Planting**
East-facing slopes	Grasses	5 to 10	10 to 30	10 to 30	10 to 30	10 to 30
	Shrubs	3 to 5	1 to 5	1 to 5	1 to 15	1 to 15
West-facing slopes	Grasses	5 to 10	10 to 20	10 to 30	10 to 30	10 to 30
	Shrubs	3 to 5	1 to 5	1 to 5	1 to 15	1 to 15
Slopes with increased rock cover	Grasses	3 to 7	5 to 20	10 to 20	10 to 20	10 to 20
	Shrubs	1 to 3	0 to 5	1 to 5	3 to 5	3 to 5
South-facing slopes	Grasses	5 to 10	5 to 15	10 to 20	10 to 20	10 to 30
	Shrubs	1 to 3	1 to 5	1 to 5	1 to 5	1 to 5
	Succulents	1 to 3	1 to 3	1 to 5	1 to 5	1 to 5
North-facing slopes	Grasses	5 to 10	10 to 30	10 to 30	15 to 45	15 to 45
	Shrubs	3 to 7 (<10 years after planting) 3 to 10 (>10 years after planting)	3 to 10	3 to 10	5 to 10	5 to 15
	Trees	1 to 2	0 to 3	1 to 5	1 to 5	2 to 5
Level areas	Grasses	5 to 10	10 to 30	10 to 30	15 to 40	15 to 40
	Shrubs	3 to 5	1 to 5	1 to 10	1 to 10	1 to 10
	Trees	1 to 2	0 to 3	0 to 3	1 to 3	1 to 3

As shown in Table I-2, while grasses and shrubs would occur across all revegetation site types, trees are likely only to consistently occur on north-facing slopes and level areas, and succulents are most likely to consistently occur on southern exposures. Note that succulents do not offer significant cover, so although the cover would not change over time, the density of these plants still would increase. Each revegetation site type is described below. Slope aspect influences soil moisture, with the greatest amount of soil moisture being retained on the north slopes and the least on south-facing slopes. More soil moisture is also retained on flat areas, compared with angled slopes such as on the sides of the waste rock and tailings facilities. Elevation also influences plant communities. The waste rock and tailings facilities fall roughly from 4,600 to 5,500 feet above mean sea level, with some areas extending as high as 5,700 feet above mean sea level.

East-facing slopes - Vegetation would be composed primarily of warm season perennial grasses, some forbs, and small shrubs. Small shrubs or sub-shrubs may be present but would not be clearly visible from a distance. Trees may be present but would be very widely distributed and would make up a small amount of the plant community. Long slope runs may require additional rock cover for soil stabilization.

West-facing slopes - Vegetation would be composed primarily of warm season perennial grasses, some forbs, and small shrubs. Small shrubs or sub-shrubs may be present but would not be clearly visible from a distance. Trees may be present, but would be very widely distributed and would make up a small amount of the plant community. West-facing aspects would look similar to east-facing aspects but may be composed of different species within the same functional groups.

Slopes with increased rock cover - Vegetation would be composed primarily of warm season perennial grasses, mixed forbs, and a minor component of small shrubs, compared with east- and west-facing slopes. Because of the steepness of these slopes, increased rock cover would be placed over the soil cap for erosion protection and increased stability. Species that favor rocky soils would be used. These areas are expected to be stable, even with relatively low amounts of vegetation cover; they would primarily be on the western side of the facilities and would not be visible from SR 83.

South-facing slopes - Vegetation would be composed primarily of warm season perennial grasses, some forbs, and small shrubs. Small shrubs or sub-shrubs may be present but would not be clearly visible from a distance. Trees may be present but would be very widely distributed and would make up a small amount of the plant community. Palmer's agaves (*Agave palmeri*) would be transplanted in clumps to mimic how they appear on undisturbed sites. Other culturally significant plans, such as sotol (*Dasylrion wheeleri*) and beargrass (*Nolina microcarpa*), may also be planted in clumped distribution on these portions of the facility. The greater amount of surface rock and less grass cover in these areas would be clearly visible.

North-facing slopes - Vegetation would be composed of warm season perennial grasses and forbs, mixed with shrubs and dispersed trees. A higher density of shrubs and trees would establish on these slopes, compared with savannas or level-ground grasslands. It would take a number of years for shrubs and trees to grow large enough to be visible from a distance. Some species of trees may be deciduous, losing their leaves during the winter.

Level areas - Vegetation would be composed primarily of warm season perennial grasses, mixed forbs, an increased amount of small shrubs, compared with east- and west-facing slopes, and widely dispersed trees. Shrubs and trees would give a savanna-like appearance and would be visible from a distance once the plant community matures, which would take a number of years.

Plant species - A variety of plant species would be incorporated into the seed mixes used for revegetation, informed in part by greenhouse and test plot studies conducted by Rosemont Copper, reference area vegetation, and the success of previously revegetated areas on the mine site, and the need to plant species of cultural importance. This seed mix would be expected to adaptively change over time based on the success of different species. In addition, other species not specifically seeded would be expected to opportunistically grow, including those that might be in the natural seed bed in the salvaged soil. It is important to note that the seed/planting mix and desired conditions do not account for mesquite, acacia, mimosa, or one-seed juniper. It is expected that these species would readily colonize the reclaimed sites and therefore would not be seeded. They are not included in desired condition estimates of species richness or canopy cover. Their presence would contribute additional species richness and cover beyond what is described here. The strategy for salvaging and using soil is intended to preserve the biological component within the soil to the extent practicable during the mining operation to promote the natural reestablishment of plant species native to the area. This strategy includes selectively stripping the upper soil layers and either directly placing that material on the reclaimed landform or storing that material in shallow stockpiles for as short a time as possible. This approach would be developed more fully in the final MPO.

The species currently proposed for the seed mix are summarized in Table I-3, below, along with a list of additional species that are being considered for seeding/planting.

Table I-3: Species expected to be present

Grasses		Forbs		Shrubs/Succulents		Trees	
Planned Seed Mix							
Scientific Name	**Common Name**	**Scientific Name**	**Common Name**	**Scientific Name**	**Common Name**	**Scientific Name**	**Common Name**
Bouteloua curtipendula	Sideoats grama	*Baileya multiradiata*	Desert marigold	*Agave palmeri*	Palmer's agave	*Juniperus deppeana*	Alligator juniper
Eragrostis intermedia	Plains lovegrass	*Eschscholzia minutiflora*	Mexican gold poppy	*Atriplex canescens*	Four-wing saltbush	*Quercus arizonica*	White oak
Bouteloua gracilis	Blue grama			*Calliandra eriophylla*	Fairy duster	*Quercus emoryi*	Emory oak
Elymus sp.	Bottlebrush squirreltail			*Celtis pallida*	Desert hackberry	*Quercus oblongifolia*	Mexican blue oak
Digitaria californica	Arizona cottontop			*Cercocarpus sp.*	Mountain mahogany		
Hilaria belangeri	Curly-mesquite			*Dasylirion wheeleri*	Desert spoon or sotol		
Leptochloa dubia	Green sprangletop			*Fouquieria splendens*	Ocotillo		

Grasses		Forbs		Shrubs/Succulents		Trees	
				Garrya wrightii	Wright's silktassel		
				Nolina microcarpa	Beargrass		
				Rhus trilobata	Skunkbush sumac		
				Rhus virens	Evergreen sumac		
				Yucca elata	Soaptree yucca		
				Yucca schottii	Schott's yucca		
Potential Additions							
Bothriochloa barbinodis	Cane beardgrass			*Dalea sp.*	Dalea		
Bouteloua hirsuta	Hairy grama			*Eriogonum spp.*	Buckwheat		
Bouteloua chondrosioides	Sprucetop grama			*Krameria sp.*	Range ratany		
Bouteloua repens	Slender grama			*Krascheninnikovia sp.*	Winterfat (on calcareous soils)		
Heteropogon contortus	Tanglehead			*Menodora sp.*	Menodora (on calcareous soils)		
Lycurus sp.	Wolfstail			*Parthenium incanum*	Mariola (on calcareous soils)		
Sporobolus cryptandrus	Sand dropseed			*Zinnia sp.*	Zinnia (on calcareous soils)		
				Lippia sp.	Lippia (on calcareous soils)		

Mine Closure

At closure, fence construction for the mine pit will be a minimum of three-strand barbed wire with warning signs. Arizona Administrative Code R11-2-401 specifies measures that include fencing and signage. Additionally, Rosemont will construct structures to provide additional safety protections if needed, such as berms around the pit, possible "tank traps" as necessary to restrict unauthorized road access, and upgraded fencing (i.e., chain link) if necessary on steeper slope areas above the pit or other areas. Operating facilities at the proposed action site will be demolished and removed, and building foundations will be demolished, covered with soil, and graded or removed. All areas will be investigated for contaminants, and any contaminated soils, reagents, or fuels will be disposed of off-site at licensed facilities. Post-mine land use on

Coronado National Forest lands will follow the direction in the forest plan that is in place at that time. Post-mining/closure reclamation objectives for Rosemont's private property could include dispersed recreation, wildlife habitat, and ranching.

Mitigation and Monitoring

Council on Environmental Quality (CEQ) regulations (40 CFR 1508.20) define mitigation measures as follows:

- Avoiding an impact by not taking a certain action or parts of an action;
- Minimizing an impact by limiting the degree or magnitude of the action and its implementation;
- Rectifying an impact by repairing, rehabilitating, or restoring the affected environment;
- Reducing or eliminating an impact over time, through preservation and maintenance operations during the life of the action; and
- Compensating for an impact by replacing or providing substitute resources or environments.

Mitigation measures can be an integral component in the design of a project [Council on Environmental Quality (CEQ) 2011]. The Rosemont project contains numerous measures designed to avoid, minimize, rectify, reduce or eliminate, or compensate for environmental impacts. Measures designed to mitigate impacts have been identified from a variety of sources, including the ID team, cooperating agencies, Rosemont Copper, and public comments.

In its regulations, the Forest Service is directed to minimize adverse environmental impacts to Coronado National Forest surface resources, where feasible (36 CFR 228.8). The Coronado National Forest has developed a mitigation and monitoring plan that meets the guidance and direction specified by the CEQ and applicable laws and regulations. The plan is to be incorporated into the Final EIS as Appendix B. The plan also appeared as Appendix B in our July 3, 2013, Draft BO. It is important to note that the full suite of mitigation and monitoring requirements will be finalized once all required permits have been issued, as they contain measures required by resource agencies (including FWS) to avoid, reduce, and monitor environmental effects. These measures will appear as a definitive version of Appendix B in the Final EIS. Several drafts of Appendix B were provided to FWS during consultation and were considered in our effects analyses, but will not be included in this Final BO due to the aforementioned ongoing revisions to the former's content.

Guidance provided to Federal agencies by the CEQ states that agencies should not commit to mitigation measures absent the authority or expectation of resources to ensure the mitigation is performed (CEQ 2011). All suggested mitigation measures were screened by the ID team and recommended measures reviewed by the responsible official. Part of that review involved determining whether the Forest Service has the authority to require certain mitigation; whether the proposed mitigation would effectively avoid, reduce, eliminate, or compensate for predicted

effects; and whether the Forest Service or another regulatory permitting agency can ensure that the mitigation will be implemented.

While most of mitigation measures specified in this FEIS will be required as a condition of the ROD, Rosemont Copper has proposed to implement a number of mitigation measures that are beyond the scope of authority of the Forest Service or other regulatory permitting agencies. The listing and description of mitigation measures and monitoring in this BO indicate which measures are mandated by either the Forest Service or other regulatory agencies and which are being proposed by Rosemont Copper. It is important to note that mitigation measures that are proposed by Rosemont Copper are addressed separately from mitigation that is within the authority of the Forest Service or other regulatory and permitting agencies, with the understanding that measures proposed by Rosemont Copper may or may not be implemented.

A description of mitigation and monitoring has appeared in drafts of Appendix B, which were considered by FWS during our effects analyses. A definitive version will appear in the Final EIS. The discussion that follows provides information pertaining to specific resource topics that provide a context for the specific mitigation and monitoring items.

Air Resources

An air quality permit is a requirement under the Clean Air Act, whose regulatory authority has been delegated from the EPA to the Arizona Department of Environmental Quality to implement and enforce applicable federal air quality standards. The Arizona Department of Environmental Quality issued an Air Quality Permit to Rosemont Copper on January 31, 2013. It is the responsibility of the mine owner/operator to maintain compliance with their air permit, which contains conditions to limit fugitive dust and other potential emissions.

The Barrel alternative contains a number of mitigation and monitoring measures designed to reduce potential impacts to air quality and to meet federal National Ambient Air Quality Standards (NAAQS). These are described in the Mitigation and Monitoring – Other Regulatory and Permitting Agencies in Appendix B, which will be included in the Final EIS. Air quality modeling indicates that the Barrel alternative will meet NAAQS for air quality at the location of the perimeter fence. Further details can be found within the January 31, 2013 Air Quality Permit (ADEQ, Air Quality Permit Number 55223).

Hazardous Materials

In order to reduce potential human health and environmental risks, hazardous materials and substances would be managed and contained within facilities that are designed, constructed, and maintained to meet applicable laws and regulations. These facilities will include leak containment and recovery systems as required and adequate stormwater management and drainage systems to prevent contamination outside containment areas.

Specific mitigation and monitoring related to hazardous materials are described in the Mitigation and Monitoring – Forest Service section of Appendix B, which will be included in the Final EIS.

Land Impact

The design of the project includes efforts to restrict mine activities within a mine footprint that is substantially smaller than conventional mines with similar production capacity. This is achieved through the use of dry-stack tailings technology, which will have an overall crest-to-toe slope of 3.5:1 (horizontal: vertical) on the outer surface of the dry-stack tailings facility and waste rock facilities; and concurrent revegetation requirements. Slopes will be 3:1 between benches. The use of dry-stack tailings facilities will avoid impacts to cultural sites; wildlife habitat; soils; waters of the United States; and surface water due to its smaller footprint. It will also reduce impacts related to water use; reduced seepage resulting from lower moisture content of the tailings would avoid or reduce impacts to potential groundwater contamination; and reduced evaporation would reduce water use. Reclamation can begin earlier, improving vegetative recovery. Filtered tailings will be transported, spread, and compacted to form an unsaturated, dense, stable tailings stack that will include a surrounding rock and soil buttress that will be seeded for revegetation during operations. These design features are a combination of requirements by the Forest Service and permit requirements under the Aquifer Protection Permit, issued by the Arizona Department of Environmental Quality on April 3, 2012.

Specific mitigation and monitoring related to design features that will reduce land impact are described in both the Mitigation and Monitoring – Forest Service, and Mitigation and Monitoring – Other Regulatory and Permitting Agencies sections of Appendix B, which will be included in the Final EIS.

Noise

Rosemont will use noise management techniques and operational tools to minimize noise generated during mine operations. Blasting only during daylight hours and sequenced blasting using time-delay technology have been incorporated into the proposed action design. Another tool to be used is attenuated back-up alarms on trucks and similar equipment that are electronically modulated to meet federal requirements.

Specific mitigation and monitoring related to noise are described in the Mitigation and Monitoring – Forest Service section of Appendix B, which will be included in the Final EIS.

Night Lighting

To the extent allowed under MSHA regulations, all exterior and access route lighting will be designed and operated with the intent to reduce nighttime light pollution. Rosemont has developed a revised lighting plan that identified steps that will be taken to achieve the goals of the 2006 City of Tucson and Pima County Outdoor Lighting Code while also protecting the safety of the workers and visitors to the proposed action facilities (Monrad *et al.* 2012). The revised lighting plan reduces the amount of light proposed for the site by at least 75% and incorporates additional mitigation measures. Where safety requirements allow, outdoor lighting design incorporated the following: appropriate shields; dimmers and/or full cutoff lighting fixtures; timers; motion detectors; directional lighting; limited spectrum technologies; and

production of the minimum lumens practicable. In addition, structures are to be designed and painted to be non-reflective to reduce glare and are to incorporate strategic placement of lighting fixtures.

The light pollution mitigation recommendation report identifies the six principal mitigation strategies that were used to develop a lighting design plan (Monrad *et al.* 2012):

1. Employ twenty-first century light sources (e.g., light emitting diodes [LED], induction, organic LED, or plasma) and use strategies such as adaptive lighting and on-demand lighting
2. Employ very well shielded and aimed light sources
3. Employ spectral control with the ability to manage the emission of certain wavelengths
4. Use the smallest necessary light source (i.e., "lumen package")
5. Address the environmental concerns of native flora and fauna
6. Use solid-state lighting for vehicular-mounted task lighting to impart less stray light and direct more useful light to critical task and operation areas

The primary mitigation strategy that specifically addresses the environmental concerns relative to native flora and fauna includes the use of specific LED lighting solutions (Monrad *et al.* 2012). This strategy includes limitations on the use of sub-500 nanometer lighting spectra (generally blue light) that will be applied to minimize the impact to the night environment. The control of sub-500 nanometer wavelengths is a known factor in minimizing artificial lighting effects on nighttime insects and their predators.

Specific mitigation and monitoring related to artificial night lighting are described in the Mitigation and Monitoring – Forest Service section of Appendix B (the definitive version of which will be included in the Final EIS) under both the Dark Skies and Biological Resources headings.

Plants and Animals

Rosemont will revegetate disturbed areas with native vegetation, excluding the pit area. A preliminary site seed mix has been developed from tests with native plant species that can be used to reclaim the proposed project site (Fehmi 2007; Fehmi *et al.* 2008). Seed mixes and methodology for revegetation will be determined in a Final Reclamation and Closure Plan currently under development to include the most recent changes to stormwater design, and ongoing investigation into revegetation potential. The selected seed mix would be informed by the greenhouse studies, test-plot data, reference sites, and results from previously revegetated areas. The Final Reclamation and Closure Plan will be completed after approval of the Record of Decision, but prior to approval of the final MPO. Linear features such as utilities and pipelines would be reclaimed to avoid fragmentation of native biological communities. Specifications are anticipated to be the same as those for other disturbed sites. Specific mitigation and monitoring related to revegetation are described in the Mitigation and Monitoring – Forest Service section of Appendix B (the definitive version of which will be included in the Final EIS), under the Soils and Revegetation heading.

Process water ponds or chemical or fuel storage areas will be enclosed, covered, or otherwise managed to protect wildlife, livestock, and public safety. Location and construction criteria for the proposed action facilities will prevent deleterious exposure of livestock, wildlife, and birds to toxic chemicals or hazardous conditions created by, used in, or resulting from processing operations. Mitigation and monitoring related to enclosing or covering these facilities are described in the Mitigation and Monitoring – Forest Service section of Appendix B (the definitive version of which will be included in the Final EIS), under the Biological Resources heading. Additional requirements are contained in measures listed in the Mitigation and Monitoring – Other Regulatory and Permitting Agencies, under Air Quality.

In order to reduce or avoid impacts to habitat specific to rocky slopes on the east side of the Santa Rita Mountains, construction of the electrical power line that provides electricity to the pit will be located on the west-side of pit operations and within the disturbance perimeter of the pit and diversion structures. This will reduce disturbance to talus slopes and talussnail habitat, as well as reducing impacts to visual resources by avoiding construction on the ridgeline. This measure is described in the Mitigation and Monitoring – Forest Service section of Appendix B (the definitive version of which will be included in the Final EIS), under the Biological Resources heading.

Invasive Species Control Plan

Invasive species must be addressed as directed by Executive Order 13112, "Invasive Species." Rosemont has prepared a preliminary invasive species control plan which will be updated prior to approval of the final MPO. Mitigation and monitoring requirements are contained in measures described in the Mitigation and Monitoring – Forest Service section of Appendix B (the definitive version of which will be included in the Final EIS), under the Soils and Revegetation and Biological Resources headings.

Transportation Plan

Rosemont has agreed to develop a comprehensive Transportation Plan for all project related roads on Coronado National Forest lands. The transportation plan will address maintenance standards; levels of appropriate use; methods to maintain the roadways sufficiently to prevent washboard, rutting, and drainage problems; commitment to replace surfacing lost to drainage; commitment to repair roads damaged by use; commitment to restore temporary roads to pre-operation conditions during reclamation/closure; and installation and maintenance of wildlife crossing structures (e.g., corrugated metal pipes) under the primary access road at locations of known wildlife concentration. The transportation plan would be developed after approval of the Record of Decision and prior to approval of the final MPO.

These measures are described in the Mitigation and Monitoring – Forest Service section of Appendix B (the definitive version of which will be included in the Final EIS), under the Transportation and Access heading.

Water Resources

In order to conserve water, Rosemont has committed to filter the tailings and maximize water conservation, as detailed in the preliminary MPO (WestLand 2007). The filtered tailings will reduce Rosemont Copper Company's consumption of water by 50% to 60% over traditional industry designs. This is a primary component of dry stack tailings previously described.

In addition to filtering the tailings, Rosemont has also included in their facility designs a number of ways in which they will maximize the reuse of process water and stormwater. These measures are primarily required by the Aquifer Protection Permit, and are described in the Mitigation and Monitoring – Other Regulatory and Permitting Agencies section of Appendix B (the definitive version of which will be included in the Final EIS), under the Groundwater Quantity and Quality heading. Further detail can be found in the Aquifer Protection Permit.

Rosemont has voluntarily committed to implement regional groundwater mitigation measures within the Tucson Active Management Area that will use available Central Arizona Project water as a source to conduct recharge within the Tucson Active Management Area. To date, Rosemont has recharged 45,000 acre-feet of water within the Tucson Active Management Area. Note that this compensatory mitigation is dependent on Central Arizona Water Project water's being available to Rosemont. Further details are contained in a measures described in the Mitigation and Monitoring – Rosemont Copper Company section of Appendix B (the definitive version of which will be included in the Final EIS), under the Groundwater Quantity and Quality heading.

Rosemont has stated they will annually fund the U.S. Geological Survey (USGS) to operate and maintain the existing surface water flow measurement gage at Barrel Canyon. After 5 years post-mining, the USGS may fund the gage or remove it at their discretion. Further details are contained in measures described in the Mitigation and Monitoring – Rosemont Copper Company section of Appendix B (the definitive version of which will be included in the Final EIS), under the Groundwater Quantity and Quality heading.

Rosemont will manage water on the tailings storage and waste rock facilities to avoid or reduce erosion as previously described. Where mine facilities remain over the long term, specific dam safety permit limits require Rosemont to install permanent water control structures that may exist beyond the life of the mine. Specific permit conditions provide for periodic monitoring and maintenance of spillways, diversions, and other permanent facilities. Specific information is contained in a variety of measures, including those described as follows: Mitigation and Monitoring – Forest Service section of Appendix B (the definitive version of which will be included in the Final EIS), under the Surface Water Quantity and Quality heading; Mitigation and Monitoring – Other Regulatory and Permitting Agencies section of Appendix B (the definitive version of which will also be included in the Final EIS), under the Groundwater Quantity and Quality and Surface Water Quantity and Quality headings. Further details are contained in the Aquifer Protection Permit, and will be contained in the Stormwater Pollution Prevention Plan (developed after approval of the Record of Decision but prior to approval of the final MPO).

In addition to monitoring required under the Aquifer Protection Permit (described below) Rosemont will monitor water quality in up to 10 springs and 16 wells located in the vicinity of the mine, will monitor the waste rock pile for potential seepage, and during operations will conduct additional waste rock characterization tests not required by ADEQ through the Aquifer Protection Permit. Specific information is contained in the Mitigation and Monitoring – Forest Service section of Appendix B (the definitive version of which will be included in the Final EIS), under the Groundwater Quantity and Quality heading.

Water Source Enhancement and Mitigation

Rosemont will construct, manage and maintain water features to reduce potential impacts to wildlife and livestock from reduced flow in seeps, springs, surface water and groundwater. Existing water features, including stock ponds, will be enhanced, and additional water features added as needed. Seven water features will be managed for sustainability of surface water. Up to 30 water features will be managed or constructed if needed for threatened and endangered species. This is further described in a measure in Mitigation and Monitoring – Forest Service section of Appendix B (the definitive version of which will be included in the Final EIS), under the Biological Resources heading.

Aquifer Protection Permit

On April 3, 2012, ADEQ issued its decision granting Aquifer Protection Permit No. P-106100 to Rosemont. Among other things, the aquifer protection plan requires Rosemont to manage discharges from its facilities so that they do not cause or contribute to a violation of aquifer water quality standards at the point of compliance; or, if the ambient groundwater quality already exceeds aquifer water quality standards at the time of permit issuance, then the discharges must be managed so that they do not cause further degradation of the water quality.

Under the aquifer protection permit, Rosemont will implement a Waste Rock Segregation Plan, to identify and manage materials using geochemical analysis and acid-base accounting methods. This plan requires that a geologist or trained technician will inspect each pile of blasted and broken rock before removal from the active mining face and any rock that is identified as potentially acid-generating will be isolated from other waste rock.

The aquifer protection permit also requires Rosemont to install monitoring wells (called “point of compliance” or “POC” wells) at locations around the project area approved by ADEQ. Rosemont is required to sample and test the groundwater in these wells on a quarterly basis and to report the results to ADEQ. A baseline monitoring program has been implemented as part of the monitoring plan in the aquifer protection permit in order to establish ambient groundwater conditions prior to operations. This program is in place to determine the amount of chemical constituents, such as sulfate and chloride, already in the aquifer. Ambient groundwater quality will be established before aquifer protection permit regulated facilities begin operation. A contingency plan is addressed in the APP.

Stormwater Pollution Prevention Plan

This plan is required by the ADEQ as part of the process for obtaining coverage under the Multisector General Permit, which is also required under Section 402 of the CWA. This permit requires the preparation of a stormwater pollution prevention plan and implementation of control measures, as outlined by the ADEQ's Arizona Pollutant Discharge Elimination System Multi-sector General Permit program. Coverage under this program was obtained from ADEQ by Rosemont Copper on February 7, 2013. The use of best management practices is an integral part of these plans and permits. The stormwater pollution prevention plan was prepared and the permit issued by ADEQ on February 7, 2013. ADEQ will review a copy of the updated SWPPP prior to construction.

Mitigation and Monitoring – Evaluation and Reporting

Rosemont Copper will fund the monitoring to which the Forest Service commits in the ROD and that will be defined in the final MPO. Other monitoring activities may be associated with the regulatory authority of Federal and State agencies and would be funded by permit fees or the agencies themselves as part of their normal activities. Title 36 CFR 219.11(d) states:

Use of monitoring information. Where monitoring and evaluation is required by the plan monitoring strategy, the responsible official must ensure that monitoring information is used to determine one or more of the following:

1. If site-specific actions are completed as specified in applicable decision documents;
2. If the aggregated outcomes and effects of completed and ongoing actions are achieving or contributing to the desired conditions;
3. If key assumptions identified for monitoring in plan decisions remain valid; and/or
4. If plan or site-specific decisions need to be modified.

Monitoring and evaluation activities will be prescribed, conducted, and/or reviewed by Rosemont, the Coronado National Forest, the Army Corps of Engineers, and other agencies and groups participating in a multiagency monitoring and evaluation task force. The Coronado Forest Supervisor will invite County, State, and Federal agencies with permitting or other regulatory authority, Rosemont Copper, and additional agencies and groups who would bring expertise to monitoring efforts to participate on this task force. The task force will meet at least annually to review and evaluate monitoring results and make recommendations to the forest supervisor. Evaluation will indicate: (1) whether monitoring requirements have been completed according to the final monitoring plan; (2) whether monitoring results indicate that the effects and results of mining and related activities are within the range of those predicted in the eventual FEIS and ROD (USFS 2013b; (3) whether monitoring activities and methods remain valid and whether continued monitoring is warranted going forward; and (4) whether changed conditions, if any, dictate modification of the final MPO and/or ROD.

Rosemont Copper will be required to compile monitoring results into a monitoring report that will be provided to the Forest Service on a quarterly basis. Any monitoring result that is not in compliance with the effectiveness criteria will be reported to the Forest Service within 72 hours. After reviewing the results of these reporting requirements, the Forest Service will notify

members of the multiagency monitoring group should conditions warrant interim or emergency meetings.

In addition to quarterly monitoring reports, Rosemont Copper will submit an annual report to the Coronado National Forest and the multiagency monitoring group that contains a description of all activities conducted during the previous year and a summary of applicable information as approved by the Forest Service, along with annual results of all monitoring plans in a format approved by the Forest Service, including a complete data summary and any data trends, a mining status plan, and plans for the coming year. Significant changes will be incorporated into the final MPO and reflected in financial assurance. Past, ongoing, or projected impacts on the environment may also require amendment of the final MPO, ROD, and/or financial assurance held for the project.

Rosemont Copper will fund work performed by Coronado National Forest employees, consultants, and/or cooperators assigned to administer and monitor the project. This includes a minerals administrator and a biological monitor, whose role in overseeing monitoring activities is described in this Biological Opinion within the Description of the Proposed Conservation Measures. Details regarding other Coronado National Forest positions that will be necessary for administering the project and overseeing monitoring are still being developed.

Postclosure Monitoring

While the Rosemont Copper Project has been designed with the intent of minimizing long-term maintenance and monitoring, it is recognized that the potential exists for continued monitoring of postmine conditions. To that end, all reclaimed sites will be monitored a minimum of twice a year for a period to be determined, in order to evaluate the success of reclamation work. Any areas not meeting reclamation goals will be analyzed to determine the underlying problems, which would be addressed with a modified plan.

In addition, groundwater will be monitored for a specific period of time to be decided by ADEQ closure requirements under the Aquifer Protection Permit, as well as at other well and spring locations determined by the Forest. Surface water will be monitored as required in the Arizona Pollutant Discharge Elimination System program following cessation of mining operations. Final monitoring details and locations will be decided when the ADEQ reviews the Stormwater Pollution Prevention Plan (SWPPP). Results of this monitoring will be used to evaluate the success of the measures taken to protect the water resources. Any changes in water quality will be evaluated to determine whether the changes are related to the reclaimed mining features, and appropriate steps will be taken to address the problem. Financial assurance will be adjusted to the extent allowed by law and regulation related to these ongoing activities.

Conservation Measures

These conservation measures appear in the February 2013 Supplemental BA and are additive to, or help clarify those in, the initial and the October 2012 Supplemental BA.

On behalf of the Coronado National Forest, Rosemont agrees to implement the following conservation measures for the Rosemont Copper project.

A. General Monitoring and Reporting Requirements

1. The Coronado National Forest shall identify a Coronado National Forest journey-level biologist (GS-9 or higher grade), the Biological Monitor, to provide oversight and assess compliance with these conservation measures and any Reasonable and Prudent Measures and Terms and Conditions. Rosemont shall reimburse the Coronado National Forest for work performed by the Biological Monitor, along with necessary overhead and supervisory support to the extent necessary to perform the duties as outlined below.

1.1. The Biological Monitor shall support biological monitoring for listed and non-listed species and biological resources, as well as other mitigation and monitoring measures that may be required by the Coronado National Forest.

1.2. The Biological Monitor will coordinate directly with Rosemont and Rosemont's consultants on behalf of the Forest Service, as well as the Coronado National Forest Project Implementation Monitor, and shall be responsible for reviewing and approving submitted reports and analyses.

1.3. Initially, the level of effort anticipated to perform the role outlined above (specifically for ESA commitments) is estimated at approximately 20 percent of a full-time employee position. Additional cost recovery for the Biological Monitor may also be needed for oversight on reclamation, invasive species management, and mitigation measures for migratory birds and sensitive species. The funding requirements will be reviewed and updated annually, and shall continue through the life of the project and for five years following mine closure. Monitoring activities, unless specifically stated otherwise in the conservation measures described below, are anticipated to occur throughout the life of the project and for 5 years following mine closure. Rosemont and the Biological Monitor, with the FWS, shall review the monitoring results annually. If appropriate, monitoring requirements and methods may be reduced or eliminated.

1.4. The Biological Monitor shall be Rosemont's primary point of contact with the Coronado National Forest for all activities related to biological resources. The Biological Monitor will be the principal liaison with all other stakeholder agencies. Rosemont shall report significant findings, its reports, etc., to the Biological Monitor first, rather than providing such information directly to FWS, AGFD, or BLM. This requirement shall not prohibit or limit the reporting obligations established in Rosemont's consultant's or biological contractor's scientific collecting permits. The Biological Monitor will coordinate biological monitoring activities with the Rosemont Environmental Manager or other designated representative as identified by Rosemont.

2. Rosemont shall be responsible for all monitoring and reporting. The Biological Monitor will assess compliance with conservation measures through field visits and inspection and by review of an Annual Report. This conservation measure is augmented by Term and Condition 2 for the Chiricahua leopard frog which also requires the monitoring of suitable habitat on National Forest System and Rosemont-owned land within one mile of the active operations area, including on-site stormwater ponds, twice monthly from July 1 through September 30, while the mine is in operation. If Chiricahua leopard frogs are

detected on site or within a mile of the active operations area, they will be relocated to suitable habitat within the management area under close coordination with the local recovery group.

3. Rosemont shall prepare an Annual Conservation Measure Implementation and Monitoring Report ("Annual Report") at the end of each calendar year. The Annual Report shall be due to Coronado National Forest by January 31 of the next calendar year throughout the life of the project and for five years post- closure. This report will include, but is not limited to, the following:

3.1. A brief narrative or tabular description of the specific actions accomplished with regard to each specific conservation measure (and Reasonable and Prudent Measures' Terms and Conditions, also a condition of reporting).

3.2. A brief narrative or tabular description/summary of the objective of each of the conservation measures and whether the objective of that conservation measure was or was not met.

3.3. A brief narrative or tabular description/summary of the status of concurrent reclamation efforts.

3.4. A brief narrative or tabular description on the status of invasive species management.

3.5. For each conservation measure description and summary a change in baseline (e.g., number of water features with breeding Chiricahua Leopard Frogs CLF) from previous years' surveys) condition will be provided.

3.6. Amount of take of threatened and endangered species

3.7. A brief narrative or tabular summary of any problems, issues, or opportunities encountered in the prior calendar year with regard to the implementation of the conservation measures, Reasonable and Prudent Measures and Terms and Conditions that may be authorized by the FWS, or other biological mitigation and monitoring measures.

3.8. A brief narrative or summary of any adaptive management actions taken, and recommendations for future adaptive management actions to be considered by Rosemont, Coronado National Forest, and the FWS.

3.9. Along with hard-copy reports, Rosemont will provide editable electronic files, including GIS files, in a format that can be used by Coronado National Forest. The Coronado National Forest will convert editable files to uneditable files before sharing outside the agency.

4. Rosemont will ensure that anyone dealing directly with threatened and endangered species (e.g., surveys, salvage, translocation, etc.) for the Project has valid state and federal scientific collecting permits, or are agents on Coronado National Forest's or other suitable permits. Surveyors must send copies of permits with the year-end reports to the Biological Monitor as proof of compliance.

5. The Coronado National Forest will reinitiate section 7 consultation pursuant to the Act if the Coronado National Forest and FWS determine that Conservation Measures and/or Reasonable and Prudent Measures' Terms and Conditions have not been met.

B. Sonoita Creek Ranch:

Please note that Sonoita Creek Ranch Conservation Measures appearing below have been revised based on the input of the U.S. Army Corps of Engineers, with additional clarifying text subsequently added by FWS.

1. Rosemont has acquired the right to purchase Sonoita Creek Ranch, which contains approximately 1,200 acres of land along Sonoita Creek with an estimated 590 acre-feet of certificated surface water rights from Monkey Spring along Sonoita Creek. The Sonoita Creek Ranch parcel is part of the Conservation Measures for the Chiricahua leopard frog, Gila chub, Gila topminnow, Huachuca water umbel, lesser long-nosed bat, jaguar, ocelot, and the candidate yellow-billed cuckoo. The Sonoita Creek Ranch lands will be made available to a suitable agency, land trust or conservation organization via the in-lieu fee (ILF) mitigation program, which may be used to mitigate for impacts to waters of the U.S., in conformance with the Corps' 2008 mitigation rule (73 FR 19594). The ILF mitigation program allows a project proponent (e.g. Rosemont) to transfer funding to a governmental or non-profit natural resource management entity with which the Corps has an approved enabling instrument (the agreement entered into between the Corps and the management entity allowing the latter to be an ILF sponsor and to accept and expend funds for mitigation projects). If an ILF mitigation program is not able to be developed, Rosemont will be responsible for either implementing conservation measures and/or any mitigation activities required as part of the Section 404 permit on Sonoita Creek Ranch, or finding a conservation partner to implement such conservation measures and mitigation activities. Whether an ILF program is developed or other conservation arrangements are made by Rosemont, Sonoita Creek Ranch will be managed for conservation purposes, as stated below.

2. In the event that the property is used for an ILF program, it is not anticipated that the wildlife conservation benefits described below will be affected. If modification to any conservation measures is ultimately determined to be required, the Corps will work with USFS, FWS, and Rosemont to modify the conservation measures in a manner that would not change the evaluation for each species and which would result in the same benefits for each species but would not conflict with Section 404 mitigation requirements.

3. Rosemont will record a restrictive covenant or conservation easement on the Sonoita Creek Ranch property that precludes real estate development and similar land use activities and livestock grazing and other agricultural uses subject to the limitations outlined below. This restrictive covenant shall not restrict access for recreational or traditional cultural purposes to these lands provided that these uses are not incompatible with the conservation uses of the property as determined by the Land Manager and the FWS. If ILF program is not employed and the Sonoita Creek Ranch property is instead used for permittee responsible Section 404 mitigation (meaning that the Rosemont Copper Company will implement mitigative measures rather than funding an ILF

sponsor), the Corps shall determine the type of site protection instrument (a conservation easement or similar land encumbrance) for the property and the stipulations required for protection giving consideration to access for traditional cultural purposes. In the event that the Sonoita Creek Ranch will serve as an ILF project, the site protection instrument shall be as described in the enabling instrument of the Corps-approved ILF sponsor. For example, if the site is developed by an entity as an ILF project, the site protection instrument shall be a conservation agreement in accordance with that entities' Corps-approved ILF enabling instrument.

4. Rosemont anticipates transferring ownership of Sonoita Creek Ranch, including the appurtenant water rights, to a suitable owner for conservation purposes consistent with the conservation and public benefits contemplated by these conservation measures.

5. Unless the property is used for an ILF program, funding for long-term management will be provided by Rosemont to a conservation partner via a payment of $150,000 per year to a management account for a period of 10 years commencing with the production of copper concentrates at the project. Under an ILF program, funding for the approved mitigation plan (which will include long term maintenance and adaptive management) shall be developed through the sale of mitigation credits.

6. Surface water rights will be used to support the existing ponds that will be managed for threatened and endangered species. Water available after the needs of the existing ponds have been met will be discharged onto the floodplain terrace of Sonoita Creek that is currently an agricultural field to facilitate the restoration of wetland and/or riparian habitat.

   The two perennial ponds, adjacent wetland habitat, and earthen-lined channel between the ponds on Sonoita Creek Ranch will be renovated to provide habitat for the threatened and endangered species. Requirements for specific recovery activities pertaining to Chiricahua leopard frogs are set forth in Term and Condition 4 for Chiricahua leopard frog. We anticipate that an approved conservation partner will implement the proposed renovation efforts. In addition to the payments described in #5 above, Rosemont will provide a total of $100,000 in support of these renovation efforts. Funding for this effort will be provided by Rosemont via a payment of $20,000 per year to a management account for a period of 5 years commencing with the production of copper concentrates at the Project. If the pond renovation is incorporated into a Corps-approved ILF project, funding for the pond renovation shall be developed through the sale of mitigation credits.

7. Sonoita Creek Ranch will be managed for conservation purposes to provide habitat and connectivity for the Jaguar and Ocelot between the Canelo Hills/Patagonia Mountains and the Santa Rita Mountains, slightly over a mile away to the west of the ranch, in perpetuity. The southern portion of the ranch has been identified by the Arizona Wildlife

Linkages Workgroup and the Arizona Missing Linkages Corridor design as a likely corridor between these two Coronado National Forest land blocks.

8. Management actions in Sonoita Creek Ranch will not compromise the ability to manage for threatened and endangered species. This includes species that are not currently present, but could recolonize the area if habitat were improved.

9. Wildlife-friendly fencing will be installed to discourage use by cattle and encourage use by threatened and endangered species. If an ILF program is not developed, Rosemont will construct wildlife fence along the west boundary of the property to enhance the utilization of the SR 82 crossing of Big Casa Blanca Canyon and Smith Canyon. The balance of fence repaired or replaced at Sonoita Creek Ranch will be wildlife-friendly for-strand wire fence built in accordance with AGFD standards. Under an ILF program, fencing would be designed to exclude cattle and be wildlife friendly, but details for the fencing would be finalized by the Corps and the ILF sponsor.

C. Davidson Canyon Watershed Parcels

1. Rosemont owns six parcels of land on the eastern side of the Santa Rita Mountains, containing approximately 574 acres of land with semidesert grassland and riparian habitat.
2. Rosemont will record a restrictive covenant or conservation easement on the Davidson Canyon Watershed Parcels that precludes real estate development and similar land use activities and restricts grazing.
3. The Davidson Canyon Watershed Parcels will be included as available land for the establishment of water features beneficial to listed species and to provide general wildlife benefits.
4. Portions of the Davidson Canyon Watershed Parcels have been identified as culturally important by Native Americans. None of the conservation actions outlined for the Davidson Canyon Watershed Parcels will preclude reasonable access to these parcels by interested Native American groups.

D. Helvetia Ranch Annex North Parcels

1. Rosemont will record a restrictive covenant or conservation easement on the Helvetia Ranch Annex North Parcels that precludes real estate development and similar land use activities.
2. The Helvetia Ranch Annex North Parcels will be included as available land for the establishment of water features beneficial to listed species such as the Chiricahua Leopard Frog, jaguar, and ocelot and to provide general wildlife benefits. See elements of Conservation Measures G, H, and I.

E. Cienega Creek Watershed

Rosemont has acquired the right to purchase approximately 1,122 ac-ft of surface water rights held by the Del Lago Golf Course. These surface water rights will be used to enhance aquatic habitat values in the Cienega Creek Watershed. The acquired rights are:

• 1908 Right (ADWR Certificate 610.0002) of 597.755 ac-ft per annum,
• 1933 Right (ADWR Certificate 665.0003) of 477.545 ac-ft per annum, and
• 1935 Right (ADWR Certificate 617.0002) of 46.455 ac-ft per annum.

1. Rosemont will provide funding for stream renovation and restoration projects to increase water flows and enhance wetlands in the Cienega Creek watershed. The location and design of these projects will be determined by the Bureau of Land Management (BLM) and other necessary agencies, with input from other key stakeholders in the watershed, including the Coronado National Forest and the FWS.

1.1. Rosemont will provide funding for these projects by establishing a $2,000,000 fund (the Conservation Fund). The Conservation Fund will be established through the annual payment of $200,000 for 10 years to an escrow or other suitable account managed and controlled by a suitable entity (the Conservation Partner). Payments to the fund will commence beginning on April 1 of the year following the year in which copper concentrates are initially produced at the Rosemont Copper Project and will be made on that same day in each succeeding calendar year until a total of $2,000,000 has been contributed to the Conservation Fund. Not more than 15 percent of this fund may be used by the Conservation Partner for fund administration, with the balance used for direct project execution.

1.2. The Conservation Partner shall work cooperatively and in consultation with FWS, Coronado National Forest, the BLM, agencies, organizations, and other landowners in the watershed to fund the development and implementation of conservation measures designed to preserve and enhance aquatic and riparian ecosystems and protect and maintain habitat for federally listed aquatic and riparian species in the watershed. These projects may include surveys for and removal of bullfrogs, crayfish and other nonnative species in the watershed. The funds can be used to support approved management efforts by Pima County to control invasive aquatic species in the Cienega Creek Nature Preserve below and above the Pantano Dam. Project funds are not to be used for remediation of unanticipated issues associated with the Rosemont Project, such as waste rock slope failure. Funds can be used for initial restoration activities and adaptive management. It is recommended that some funds be reserved in anticipation of unforeseen issues (e.g., new invasive species) and adaptive management.

2. Rosemont will transfer 150 acre-feet of the 1933 water right to a suitable entity authorized under Arizona law to hold a surface water right for recreation and wildlife purposes, subject to the conditions described in C-5 below. This water right must be used to preserve and enhance the aquatic and riparian ecosystem in the upper Cienega Creek

watershed for the benefit of federally listed species and other native species of fish, wildlife and plants.

3. Rosemont will transfer 100 acre-feet of the 1933 water right to Pima County (or to another entity authorized under Arizona law to hold a surface water right for recreation and wildlife purposes), subject to the conditions described in C-5 below. Following transfer, these water rights must be used to preserve and enhance the aquatic and riparian ecosystem the County's Cienega Creek Natural Preserve, for the benefit of federally listed species and other native species of fish, wildlife and plants.
4. Rosemont will transfer all of the 1935 water right to Pima County (or to another entity authorized under Arizona law to hold a surface water right for recreation and wildlife purposes), subject to the conditions described in C-5 below to the lower reach of Davidson Wash within the Cienega Creek Nature Preserve that has also been designated an Outstanding Arizona Water. Following transfer, these water rights must be used to enhance and maintain the aquatic and riparian ecosystem in the lower reach of Davidson Canyon within the County's Cienega Creek Natural Preserve, for the benefit of federally listed species and other native species of fish, wildlife and plants.
5. To facilitate the transfer, Rosemont will file an application to sever 250 acre-feet of the 1933 water right and all of the 1935 water right and transfer the place of diversion and beneficial use to the Cienega Creek watershed, at such location(s) as may be determined in coordination and consultation Pima County and other entities. Such application will be filed with the Arizona Department of Water Resources (ADWR) within 30 days of issuance of the ROD or Section 404 permit, whichever is issued later. The severance and transfer of the water right is subject to approval by ADWR. It is anticipated that it will take approximately two years for ADWR to review and approve the application. It is also possible that irrigation districts and other water rights holders will object to the severance and transfer application, which may delay the approval process and could cause ADWR to deny the application in whole or in part. In addition, due to the nature of Rosemont's agreement with the current owner of the water right, the transfer of the water right may be delayed until January 1, 2016. Rosemont will work diligently and in good faith to prepare and prosecute the severance and transfer application and will bear all costs associated with the application.
6. The balance of the surface water rights, approximately 825 ac-ft per annum, will be used for aquifer recharge below Pantano Dam. To accomplish this, a "managed underground storage facility" (MUSF) will be permitted through the Arizona Department of Water Resources (ADWR). This will allow surface water flows currently diverted for golf course irrigation to be captured and discharged back to the stream bed below the Pantano Dam within the Cienega Creek Nature Preserve. In the event that an ILF program is established in this area, a portion of this water right may not be directly discharged to the MUSF, but instead used for irrigation of floodplain habitat. Regardless, the entirety of

the 825 ac-ft per annum will be discharged to the Pantano Wash system downstream of the Pantano Dam.

6.1. Additional benefits may be realized beyond the benefits associated with CWA Section 404 mitigation for the Rosemont project. Pima County, the Pima County Regional Flood Control District and the Tucson Audubon Society may, at their discretion develop an ILF mitigation program in reliance on the waters discharged to the MUSF in excess of the benefits expected to support in part, Rosemont's CWA Section 404 mitigation requirements. These potential future ILF mitigation credits that may or may not be developed here are not considered part of Rosemont's proposed conservation measures. A groundwater well is located on lands associated with the Pantano Dam. Rosemont will acquire and retire this well to so that any potential effects of that well on the surface water of Cienega Creek and the Pantano Wash from its use and operation do not occur.

F. Water Features and Grazing Management

1. Rosemont's Allotments (Thurber, Debaud, Greaterville, and Rosemont) are subject to the requirements of the Federal Land Management and Policy Act, 43 U.S.C. § 1752, and the Forest Service's regulations governing grazing management, codified at 36 C.F.R. Part 222. In accordance with those requirements, Rosemont will prepare and submit to the Coronado National Forest a request to modify the Allotment Management Plans (AMP) for the allotments within one year after the issuance of the ROD. The modifications will be developed in consultation, cooperation and coordination with the Coronado National Forest range staff and the Biological Monitor, with input from other entities.

2. Rosemont will request modification of the AMPs specifying that to compensate for the permanent loss of flowering agaves for lesser long-nosed bats (LLNB) due the proposed mine (security fence and roads; 4,013) acres, grazing by cattle will be restricted during the April 1 to June 15 period through rotation to alternative pastures on approximately 8,000 acres of portions of the Debaud, Greaterville and Rosemont allotments that currently are permitted to be grazed during the agave bolting period.

3. Portions of the pastures within Coronado National Forest grazing allotments leased to Rosemont will be put on a winter rotation to limit grazing during the growing season within riparian areas.

4. Key pastures will be rested for extended periods of time and made available for grazing when forage production on active pastures is reduced because of drought or other factors. This "grass bank" element within the modified AMP is similarly expected to enhance overall forage production within the Allotments without a reduction in current cattle stocking rates.

5. Rosemont will enhance existing water features, including stock ponds, and add additional water features throughout the allotments to mitigate for potential project impacts to seeps and springs on their grazing allotments. Up to 30 potential water features will be

managed or constructed, if needed, for metapopulation management (persistence) of CLF, and to meet the minimum requirements of Jaguar proposed/designated critical habitat PCEs. This Conservation Measure (5.1 through 5.3) is augmented in part by Term and Condition 5 for Chiricahua leopard frog which requires coordination with the local recovery group with respect to locations and design specifications for water features intended to benefit Chiricahua leopard frogs.

5.1 Water feature enhancements and construction proposed to support a CLF metapopulation will be implemented within one year from the start of mining activities. A summary of the water features and proposed mitigation measures is provided in section for CLF Conservation Measures.

5.2. Additional water features proposed for construction within the Rosemont-controlled grazing allotments will be implemented as needed and based on the findings of ongoing groundwater and seep and spring monitoring activities. [See CLF and Aquatic Species conservation measures for description of monitoring activities.] Rosemont will work cooperatively with the Biological Monitor to identify specific springs and seeps impacted by the proposed action and will construct water features to mitigate for those losses.

5.3. Rosemont will establish a long-term management and maintenance fund to maintain the water features constructed in furtherance of this conservation measure.

G. Chiricahua Leopard Frog

1. Conservation measures included for Sonoita Creek Ranch, Cienega Creek Watershed, and the section on Water Features and Grazing that benefit CLF are incorporated here by reference.

2. Rosemont will conduct pre-disturbance surveys, following AGFD/FWS survey protocols, of suitable habitat within the footprint of the proposed construction area and a ¼ mile buffer of the security fence prior to construction.

2.1. Surveys will be conducted in the survey season prior to the initiation of construction activities.

2.2. Surveyors shall use the latest version of standard disinfection techniques to guard against spread of disease between surveyed tanks and other water features.

2.3. If CLF are found in the survey area, Rosemont will contact the Biological Monitor to facilitate capture and relocation of CLF or otherwise determine their fate. Prior to relocation, captured frogs will be tested for chytridiomycosis.

2.4. Surveyors will swab dead and dying frogs to test for chytridiomycosis. Periodic swabbing of live frogs will also be required. Rosemont will pay for testing on up to ten frogs. Alternatively, environmental DNA testing may be useful for advanced testing, when methods are refined, and cost effective, and may be substituted for testing of individual frogs.

2.5. The Biological Monitor shall approve the list of vendors where samples will be sent for chytridiomycosis testing.

3. Rosemont will conduct annual monitoring for CLF. This Conservation Measure (G-3.1 – G-3.6) is augmented in part by Term and Condition 2 for Chiricahua leopard frog which requires a specific monitoring strategy and corrective action for potential Chiricahua leopard frog habitat within one mile (overland) of the project area.

3.1. Surveys will be conducted annually commencing from the first spring survey period after construction activities begins through closure.

3.2. Surveys will be conducted using established survey protocols.

3.3. Surveys will be conducted in suitable habitat within the perimeter fence area and within suitable habitat within one mile of the perimeter fence area.

3.4. Any dead or dying frog encountered during annual monitoring surveys will be swabbed to test for chytridiomycosis.

3.5. During annual monitoring surveys, periodic swabbing of live, healthy appearing frogs will be required to test for the presence of chytridiomycosis. Up to 10 samples will be collected during each annual survey effort. Alternatively, environmental DNA testing may be useful for advanced testing, when methods are refined, and cost effect, and may be substituted for testing of individual frogs.

3.6. Surveyors will note any American Bullfrogs and other non-native, invasive aquatic species encountered during survey.

4. Tank/water feature construction will be implemented, if needed, to support maintenance of the metapopulation in the Greaterville area (see Water Feature and Grazing Conservation Measures for additional discussion). This Conservation Measure (G-4.1 through G-4.6) is replaced in part by Term and Condition 5 for Chiricahua leopard frog which does not call for specific tanks to be renovated but rather requires coordination with the local recovery group with respect to locations and design specifications for water features intended to benefit Chiricahua leopard frogs.

4.1. The following tanks will be renovated to increase the reliability of water features available to support the CLF Greaterville metapopulation

Table I-4: Excerpt from February 2013 Supplemental BA Table entitled Tanks within the Greaterville Chiricahua Leopard Frog metapopulation that will be renovated to enhance the reliability of the tanks to support the species

Tank Name	Proposed Improvements
Bowman Tank	Renovations and improvements to earthen stock tanks to increase water holding capacity and duration. Renovations to stock tanks would involve removal of sediments to increase their volume, compaction of substrates (i.e., fines, if available) in the tank basin and berm to decrease infiltration, and/or installation of impervious liners to impede infiltration in all or part of the basin. Design consideration will be given to installation of structures (e.g., gabions, silt traps) for erosion and sediment control. Supplement surface
California Gulch Tank East	
California Gulch Tank West	
Enzenberg Canyon Tank	
Granite Mountain Tank	

Granite Tank	waters with structure for breeding, thermoregulation, and hiding. Examples of structure include submergent and emergent vegetation, bank vegetation, shrub branches above and below the surface.
North Greaterville Tank	

4.2. Renovation activities will commence within one year of initiation of construction activities to develop the Project. We presume this to mean that renovation activities will commence within one year of the implementation of water feature enhancements and construction proposed to support a CLF metapopulation (see Conservation Measure F. 5(1), above), which itself is to be implemented within one year of the initiation of the proposed action.

4.3. Rosemont will monitor the integrity of the seven renovated tanks listed above annually during the life of the mine and for five years post closure.

4.4. Rosemont will participate in CLF recovery team meetings for the Southeastern Arizona Working Group and Recovery Unit 2 to find opportunities and solutions toward species recovery in Recovery Unit 2.

5. To the extent determined necessary by the Biological Monitor, Rosemont will create up to 23 new water features to support CLF in the northern Santa Rita Mountains, in the area within the 5-ft, 150-year drawdown area, mapped by WestLand (2012a). This Conservation Measure (G-5.1 through G-5.3) is augmented in part by Term and Condition 5 for Chiricahua leopard frog which requires coordination with the local recovery group with respect to locations and design specifications for water features intended to benefit Chiricahua leopard frogs.

5.1 The water features will be constructed within Rosemont-controlled grazing allotments, the Helvetia Ranch Parcels, and the Davidson Watershed Parcels.

5.2 They will generally follow the conceptual designs and locations provided in WestLand (2012a). The selection of the appropriate design and location shall be made in consultation with the Biological Monitor.

5.3 The new structures are intended to enhance metapopulation dynamics, but not at the expense of encouraging rapid colonization between recovery unit populations, dispersal of invasive aquatic species, or spread of chytridiomycosis.

6.0. As part of the Invasive Species Management Plan, Rosemont will implement control measures to remove invasive aquatic species that have the potential to negatively affect CLF such as American Bullfrog, crayfish, and spiny-rayed, warm water fish species. Methods for implementation of this program will be outlined in an updated Invasive Species Management Plan.

6.1. The program will be implemented beginning in the first year copper is produced.

6.2 The program will include the seven tanks renovated as part of the CLF conservation measures near Greaterville, new tanks constructed as part of these conservation measures during the life of the Project, and at other suitable CLF habitats within the perimeter fence.

7. Up to four of the stormwater ponds located along the perimeter of the reclamation footprint and included in the reclamation plan will be designed in a fashion that will

facilitate their use by CLF following the general principals outlined in WestLand (2012a). The timing of construction of these features will be dictated by the timing of concurrent reclamation programs, in coordination with the Biological Monitor. This conservation measure is superseded by Term and Condition 3 for Chiricahua leopard frog.

8. If it is determined that CLF are or may be exposed to process water harmful to CLF, Rosemont will construct barriers to exclude CLF from these areas. This work will be conducted in coordination with the Biological Monitor.

H. Aquatic Species: Gila Chub, Gila Topminnow, Huachuca Water Umbel

1. Conservation measures included for Sonoita Creek Ranch and Cienega Creek Watershed that benefit these species are incorporated here by reference.
2. Rosemont will implement the conceptual monitoring plan prepared by Water and Earth Technologies (2012) to evaluate impacts of groundwater drawdown to surface water features to the extent that authorization to install and access proposed monitoring sites are obtained. Two of the sites identified in this report have been installed and monitoring is being conducted at these sites. Application for the other monitoring locations has been made to the Arizona State Land Department. As authorizations for these sites are obtained, monitoring will commence at these sites.
3. Groundwater monitoring wells constructed and being constructed for the Aquifer Protection Permit (APP) will be monitored on quarterly basis for depth to ground water and water quality as prescribed by the APP. These data will be provided to the FS for comparison to the model predicted impacts to groundwater elevation changes. In addition, a suite of 21 existing wells and one new well within and beyond the footprint of the proposed mine will be monitored for depth to ground water over the long term. Certain of these existing wells are placed and will allow monitoring of water levels between the project area and:
   - Lower Cienega Creek
   - Upper Cienega Creek
   - Empire Gulch
   - Lower Davidson Canyon
   - Box Canyon
4. Should groundwater quality data reach alert or compliance standards Rosemont will comply with the requirements of the APP.
5. The stormwater permit for the project imposes specific requirements for surface water sampling and it will be implemented in accordance with the requirements of ADEQ as specified by EPA. Should impacts over and above the levels predicted in the EIS be anticipated by monitoring efforts, the funding provided by the Cienega Creek Watershed Conservation Fund will be used to implement adaptive management strategies to offset unanticipated effects.
6. Monitor geomorphic changes to Davidson Canyon.

6.1 Initial monitoring will begin at the start of construction and then conducted at the same monitoring sites every five years until five years after closure.

6.2 Four sample sites will be established by Rosemont. The Biological Monitor will approve site location.

6.3 Geomorphic monitoring will be conducted using the Forest Service Protocol or an agreed upon alternative approved by the Biological Monitor.

7. If monitoring shows the Cienega Creek Watershed is being affected, the Cienega Creek Watershed Conservation Fund should be used as a resource to fund mitigation projects.

8. The Cienega Creek Watershed Conservation Fund cannot be used outside of the Cienega Creek Watershed or to implement other conservation measures proposed by Rosemont (WestLand 2013a).

I. Southwestern Willow Flycatcher

1. Conservation measures included in sections for Cienega Creek Watershed, CLF, and Aquatic Species that benefit Southwestern Willow Flycatcher are incorporated here by reference.

J. Jaguar and Ocelot

1. Conservation measures included in sections for Sonoita Creek Ranch, Cienega Creek Watershed, Davidson Watershed Parcels, Helvetia Ranch Annex North Parcels, Water Features and Grazing, and Aquatic Species (particularly monitoring aspects within the current configuration of proposed Jaguar critical habitat) that benefit Jaguar and Ocelot are incorporated here by reference.

2. Rosemont will ensure that restored or replaced springs (see Water Features Conservation Measures, above) within Jaguar critical habitat (most current delineation) are constructed in accordance with Jaguar PCEs for surface water.

3. As part of the concurrent reclamation program Rosemont will establish a percentage of woody vegetation cover consistent with the elements of jaguar critical habitat (note that the relevant PCE is from >1 to 50 percent) as averaged over reclamation area, excluding the pit. This shall be established as a prescriptive obligation of the concurrent reclamation program in appropriate areas as determined in conjunction with the Biological Monitor during project development.

4. Monitor road-kill weekly on SR 83, adjacent to mine site, from the northern extent of currently proposed critical habitat to Gardner Canyon Road, to assess loss of Jaguar, Ocelot, or Jaguar prey base (white-tailed and mule deer, collared peccary, white-nosed coati, in particular). Monitoring will begin at the commencement of mine construction and continue through the second year of mine operation, a total of four years. After the initial four years of monitoring, the Biological Monitor, working with Rosemont, FWS, and other entities, will determine if additional field data collection is necessary to inform determination of crossing need and location. Report road-kill in the annual report.

Smaller Ocelot prey (lagomorphs, rodents) do not need to be reported. Mortality of any FS and BLM sensitive species should also be reported. This work may be conducted by the Biological Monitor as part of their regular site visits funded by Rosemont, with funding from the proponent. In addition to increasing knowledge regarding the movement of wildlife in the area, information collected during this investigation may identify a suitable wildlife crossing structure location that could be constructed using Regional Transportation Authority funds dedicated for that purpose.

5. Report all Jaguar and Ocelot sightings immediately to the Biological Monitor.

6. Rosemont will provide $50,000 to a suitable entity approved by the Coronado National Forest to support camera studies for large predators including Jaguar and Ocelot. The money will be provided for additional monitoring efforts between the Santa Rita and the Whetstone Mountains and along the Santa Rita Mountains. In addition to increasing knowledge regarding the movement of wildlife in the area, information collected during this investigation may identify a suitable wildlife crossing structure location that could be constructed using Regional Transportation Authority funds dedicated for that purpose.

K. Lesser Long-nosed Bat:

The June 2012 BA includes some Conservation Measures which have been updated in subsequent versions of the BA and through discussions with Rosemont and the Coronado National Forest. For example: Bullet 1: there is not a final MPO yet, so we cannot confirm content, hence, what conservation measures may be included; Bullet 2: there is no detailed Palmer Agave management strategy; and Bullet 3: these are multi-species minimization measures (multiple-species design criteria).

Conservation measures included in sections for Sonoita Creek Ranch, Davidson Watershed Parcels, Helvetia Ranch Annex North Parcels, and Water Features and Grazing that benefit LLNB are incorporated here by reference. Additional conservation measures include:

1. Prior to submittal of proposed modification of the Allotment Management Plan (Conservation Measure D.2), Rosemont shall refine existing estimates of Palmer Agave that will be impacted within the security fence area and conduct studies sufficient to identify and establish baseline conditions of pastures that will be proposed in the AMP modification for seasonal grazing restrictions to increase flowering success of agave.

2. Rosemont shall include Palmer's Agave in its concurrent reclamation plan.

3. Rosemont shall plant (transplanted or nursery grown stock) at least 35,850 Palmer Agaves as outlined in Table 1 of WestLand (2012b). The average density of plantings as proposed is 10.3 per acre. A record of the agave transplanted and planted from nursery-grown stock during concurrent reclamation efforts and the general location and density of transplants shall be maintained and reported to the Biological Monitor and in the Annual Report.

3.1 Rosemont shall include Palmer's Agave seed in its seed mix provided such seed are commercially available.

3.2 Rosemont shall conduct a scientifically designed study to document the efficacy of seasonal grazing restrictions to enhance agave flowering success. The study shall be implemented annually for five years following approval of the AMP and implementation of grazing management practices.

4. During the sixth year of implementation of conservation measures Rosemont, FWS, and the Biological Monitor will evaluate the success of these conservation measures. If warranted, appropriate adaptive management actions will be developed by the Biological Monitor, FWS and Rosemont.

5. Rosemont will monitor the Helena Mine complex and Adit R2 plus any newly discovered large LLNB roost sites (>100 bats) within 1 mile of the Perimeter Fence annually for LLNB. (Note if the mine feature is not controlled by Rosemont or if for any other reason access cannot be obtained by the Biological Monitor this monitoring obligation shall not apply.)

6.1 Monitoring of each site shall be conducted three times during the late summer LLNB survey period – July, August and September. One of the surveys during the survey season at the Helena Mine will be scheduled to coincide with the region wide count.

6.2 Monitoring of Helena Mine complex, Adit R2, and other Large LLNB Roost Sites shall be conducted annually until five years after mine closure. Monitoring surveys area anticipated to commence beginning in 2013.

6.3 Surveys shall be conducted by evening emergence counts. Infrared tape recordings of the exit shall be recorded during each survey. The number of cameras used to capture emergence on tape will be sufficient to fully document monitored emergence events. Digital copies of the recordings will be provided to the Biological Monitor. The exit counts will be reported in the Annual Report.

6.4 Monitored roost sites shall not be entered, except as authorized by the Biological Monitor in coordination with FWS.

6.5 Rosemont shall provide a brief tabular summary of monitoring results to the Biological Monitor within two working days of each monitoring effort.

7. Rosemont will conduct reconnaissance-level surveys of other known cave and mine features capable of supporting bats within in the perimeter fence and within 1 mile of the perimeter fence for LLNB and other bat species.

7.1 Reconnaissance-level surveys shall be conducted on other known cave and mine features capable of support LLNB or other bats that have only minor numbers of LLNB (<100).

7.2 Reconnaissance-level surveys shall consist of one visit to each monitored feature during the late summer (July through September).

7.3 Reconnaissance-level surveys of these other known caves and mine features shall be conducted annually for the life of the Project and for five years following closure.

7.4 Features known or suspected to have minor numbers of LLNB (<100) will be monitored by external exit count or other remote sensing method approved by the Biological Monitor.

7.5 Caves or mine features suspected to be occupied by LLNB shall not be entered. Caves or mine features that are not suspected to have LLNB may be entered, if determined safe, or may be monitored by external exit count, placement of IR cameras, or other suitable means.

7.6 Rosemont shall provide a brief tabular summary of reconnaissance-level survey results to the Biological Monitor within 10 working days of completion of the reconnaissance surveys.

8. Rosemont will close 20 mine features, including the Chicago Mine prior to Project construction (WestLand 2012b). If other sites are identified by Rosemont in proximity to the Project that may require closure for safety purposes, Rosemont will coordinate with the Biological Monitor. The mine and cave closure process is described in WestLand (2012b). Basically, the site is surveyed for bats or other species, and then closed with chicken wire (to allow bats to escape and not re-enter). Prior to exclusion, Rosemont will notify the Biological Monitor.

9. Following construction of the mine and during the initial year of operation, Rosemont shall work with the Biological Monitor to review the efficacy of light mitigation measures at key resource areas around the mine, such as the Helena Mine, as identified by the Biological Monitor. If additional shielding can be placed to further reduce lighting effects without adverse consequences to safety and unreasonable operational expectations, Rosemont shall implement the additional requested shielding in a manner consistent with safe mining practices.

10. Fence the R2 Mine and Helena Mine complex to exclude unauthorized human access. Fence construction shall be as described in Rosemont's summary of the conservation measures. If during the life of the Project any new major roost sites (greater than 100 LLNB at peak count) are detected within one mile of the perimeter fence it will be fenced or otherwise protected from unauthorized human access in a manner approved by the Biological Monitor.

11. During the life of the Project Rosemont shall work with the Biological Monitor to identify potential restoration areas outside of the security fence and within 2 miles of the perimeter fence that are suitable for Palmer's Agave. Using the seed mix being used for concurrent reclamation programs where appropriate, Rosemont will assist the Coronado National Forest with the revegetation of these areas. In addition to seeding, revegetation efforts will include planting Palmer's Agave transplants or nursery-grown Palmer's Agave. This effort will include portions of the old Arizona Trail being abandoned as part of these conservation measures.

12. Rosemont shall work with the Coronado National Forest to relocate the Arizona Trail away from the Helena Mine complex.

L. Pima Pineapple Cactus

1. Conservation measures included in sections for Helvetia Ranch Annex North Parcels are incorporated here by reference.

2. Construction practices along the proposed utility corridors will be employed to keep surface disturbance to the minimum practicable and to avoid Pima Pineapple cactus.

2.1. Before ground disturbance, the utility corridor routes will be surveyed. Known Pima Pineapple cactus localities will be flagged and to the extent possible will be avoided.

2.2. Rosemont will protect Pima Pineapple cactus that can be avoided with clear limit fencing, and construction/reclamation activity in the vicinity of these plants will be monitored during construction.

2.3. Educate construction personnel for the power and water line in the offsite utility corridor how to identify Pima Pineapple cactus and marking/avoidance methods.

2.4. Pima Pineapple Cactus that cannot be avoided by utility construction/reclamation will be transplanted within the corridor into suitable habitat. A monitoring and maintenance program will be initiated to facilitate establishment that will follow similar previous efforts for Pima pineapple cactus transplantation and will involve watering for the first few months after transplant, followed by regular monitoring.

M. Western Yellow-billed Cuckoo:

1. Conservation measures included in sections for Sonoita Creek Ranch, Cienega Creek Watershed, Davidson Watershed Parcels, and Water Features and Grazing that benefit CLF are incorporated here by reference.

2. Rosemont will survey for Yellow-billed Cuckoo (YBC) in those drainages in the Project Area that have potential habitat (e.g., Barrel Canyon, McCleary Canyon) before trees (including large mesquites) within the Perimeter Fence boundary are removed.

2.1 Survey shall be accordance with the current approved protocol and (and have commenced).

2.2 Survey shall be conducted within suitable habitat within undisturbed portions of the Perimeter Fence area annually for the first five years of mine operation.

3. Should vegetation clearing be proposed during the YBC nesting season, Rosemont shall coordinate with the Biological Monitor and FWS prior to vegetation clearing in suitable YBC habitat.

3.1 Vegetation clearing within 50 meters of an active YBC nest or the center of an active YBC territory shall not occur during the YBC nesting period. This conservation measure shall not restrict vegetation clearing for implementation of an approved Plan of Operation outside of the YBC nesting period.

Action Area

Of greater relevance to section 7 consultation is the *action area*; which includes "all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 CFR §402.02)." The proposed action will adversely affect seven animal and two plant species, each with differing life histories, habitat requirements, and distributions in the areas affected by the proposed action. Given that the proposed action has effects ranging from nearly immediate, direct losses of habitat in the mine's footprint to subtle and longer-term hydrologic changes in distant sites, each species will be affected over a different temporal and spatial scale.

The BA has defined the action area as the aforementioned project area plus a larger, surrounding area that may experience direct or indirect temporal and spatial impacts from the project. Temporally, the potential on-site and off-site impacts resulting from the proposed action encompass all the activities associated with construction, operation, reclamation, and post-closure activities. The action area for this analysis is based on: (1) the area of the mine footprint; (2) areas outside the mine footprint that may be affected by noise, dust, light pollution, and other mining activities; (3) all areas for which mining activity may affect groundwater and surface water; and (4) other areas outside the footprint that are related to mining activity, such as road modifications, power lines, and pipelines (i.e., connected or interrelated/ interdependent actions).

Spatially, the action area totals approximately 146,153 acres, including the footprint of the Barrel and TEP powerline. The action area is located primarily in Pima County but also encompasses a small portion of Santa Cruz County; 65,291 acres are on Forest Service and Bureau of Land Management (BLM) lands, and the remaining 80,934 acres within the action area consist primarily of land administered by the Arizona State Land Department (ASLD), land owned by Pima County, and private land. Included in the BLM acreage within the action area, primarily as a result of expected groundwater drawdown impacts within Cienega Creek and Empire Gulch, is a large portion of Las Cienegas National Conservation Area (NCA). The larger action area was drawn to ensure that the impacts of vibration and noise, dust, artificial night lighting, groundwater drawdown, and surface water alteration on listed species and their critical habitat are considered.

The action area includes vegetation communities, surface water drainages, and on-site physical and topographic features (e.g., mountains, caves and mine adits/shafts, seeps and springs, stock tanks, rocky outcrops, etc.) that may be directly affected by the proposed action. The action area also includes the indirect downgradient effects on the surface water and groundwater environments that would result from the on-site diversion and impoundment of surface water; the indirect effects on springs and seeps surrounding the proposed action area; and the indirect effects of noise, dust, and light resulting from mining and transportation activities. Therefore, the action area includes the following: (1) drainages that receive surface water discharge from the mine site, including Davidson Canyon Wash past its confluence with Cienega Creek to Pantano Dam; (2) springs and seeps within the area of projected groundwater drawdown associated with the mine pit, including Empire Gulch and Cienega Creek, which contain BLM-

administered wetlands; and (3) areas adjacent to the mine site and transportation corridors that may be impacted by vibration, noise, dust, and artificial night lighting. The temporal analysis period includes 24 hours of light and noise for 25 to 30 years and the potential for groundwater drawdown for up to 1,000 years after closure of the mine. Impacts to downstream water quality would occur as a result of runoff from tailings and waste rock piles, and disruption of surface water flow would result from the capture of runoff in the pit. Downstream impacts to water quality and/or disruption of surface water flow resulting from the capture of runoff in the pit are only expected to occur along the Barrel Canyon drainage and through Davidson Canyon to its confluence with Cienega Creek.

Land Ownership and Surrounding Land Uses

The action area is a combination of Federal, state, county and private lands, totaling approximately 146,153 acres. The land immediately surrounding the proposed action includes National Forest System land, Public Land administered by the BLM, State Trust land, and private land. Land use in the vicinity of the proposed action primarily consists of mining, livestock grazing, and dispersed recreation. Sporadic prospecting reportedly began in the northwestern portion of the proposed action area, the Helvetia mining district, sometime in the mid-1800s. By the 1880s, the production from mines on both sides of the northern Santa Rita Mountains was supporting the construction and operation of the Columbia smelter at Helvetia on the west side of the Santa Rita Mountains and the Rosemont smelter in the Rosemont mining district on the east side of the Santa Rita Mountains. Since copper production ceased in 1951, the area stretching from the Peach-Elgin prospect to Rosemont has seen a progression of exploration campaigns. The majority of the land surrounding the proposed action area is currently under permit for livestock grazing. Current rangeland conditions on the district are largely the result of recent drought conditions and an older history of intense grazing pressure that resulted in severe erosion, including arroyo cutting. Recreation activities on lands within and adjacent to the proposed action area include casual or dispersed uses, as well as organized events. Typical recreation activities in the proposed action area consist of motorized vehicle touring (including off-highway vehicle use), dispersed camping, wildlife observation, nature study, bird watching, recreational prospecting, hunting, rock and mineral collection, picnicking, mountain biking, hiking, and horseback riding.

Local and Regional Climate

The climate in the action area is semiarid, with precipitation varying by season and with elevation. The 30-year normal (1971 to 2000) annual average precipitation for the Santa Rita Experimental Range station (approximately 5 miles northwest of the project area) is 23.41 inches (Western Regional Climate Center 2009). Over this 30-year period, nearly one-half of the precipitation occurred in July, August, and September. The smallest amount of precipitation occurred in April, May, and June.

Temperatures regionally are moderate to extreme, with maximums and minimums also varying with elevation. The 30-year normal average monthly maximum temperatures at the Santa Rita Experimental Range station ranged from a low of 60.4 degrees Fahrenheit (°F) in January to a

high of 93.3°F in June. Average monthly minimum temperatures ranged from a low of 37.5°F in December and January to a high of 66.8°F in July. A climatological summary appears in Table 27 of the Draft EIS.

Biophysical Features

The action area ranges in elevation from approximately 2,740 to 6,610 feet above mean sea level. The topography is dominated by rolling to steep hills, drainages, and canyons. The Santa Rita Mountain range includes numerous drainages that contain riparian vegetation. Barrel Canyon is the principal drainage system within the action area (see Figure A-1). Wasp, McCleary, and Scholefield Canyons discharge to Barrel Canyon, which discharges to Davidson Canyon and then to Cienega Creek in the northeastern portion of the action area (see Figure A-1). Empire Gulch and Gardner Canyon discharge into upper Cienega Creek in the southeastern portion of the action area. The northwest side of the action area is drained by a series of unnamed headwater tributaries of Sycamore Canyon. Box Canyon is the major drainage system within the southwestern portion of the action area, west of the main ridgeline. There are 95 springs and seeps (i.e., areas where there is moist soil or lotic or lentic surface water systems) and 148 stock tanks in the action area (Figure 3 in the June 2012 BA). Two springs in the action area were identified as being associated with wetlands: Scholefield Spring, located on a tributary to Scholefield Canyon; and Fig Tree Spring, a developed spring near the head of a minor unnamed tributary to Sycamore Canyon (WestLand 2010a, as cited in the BA). The aforementioned water sources provide habitat for aquatic plant and animal species within the action area. Previous mining activity has resulted in a number of mine adits and shafts within the action area (Figure 4 in the June 2012 BA); mine adits and shafts provide roosting habitat for bats and other wildlife species (WestLand 2009a).

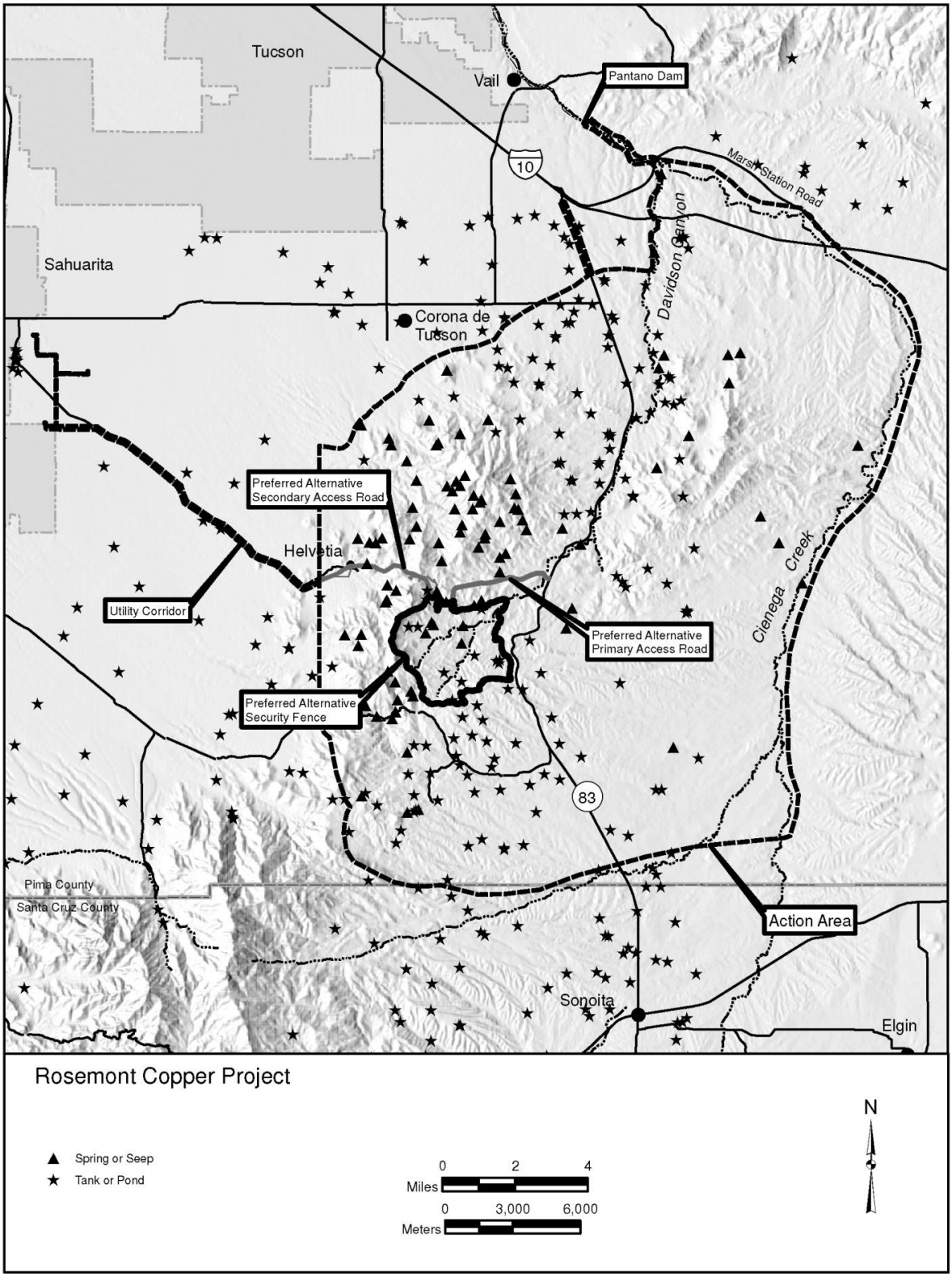


Figure I-3: Water resources within the Action Area of the Rosemont Mine project.

Mr. Jim Upchurch, Forest Supervisor

Vegetation Communities

Uplands

The action area is located in three upland vegetation communities: semidesert grassland, Madrean evergreen woodland, and Chihuahuan desertscrub (Brown 1994) (see Figure I-4). Semidesert grassland, characterized by open grasslands with widely scattered shrubs and cacti, generally covers the lower elevations of the action area. Madrean evergreen woodland mostly covers the higher elevations of the action area, generally in the western and southern areas, and is characterized by open woodlands or savanna, primarily consisting of trees interspersed with grasses and forbs. Chihuahuan desertscrub is dominated by the shrub, creosotebush (*Larrea tridentata* var. *tridentata*), on plains, low hills, and valleys on the uplands surrounding middle Cienega Creek.

Semidesert Grassland

There is a total of approximately 94,797 acres of the semidesert grassland vegetation community in the action area. In the semidesert grassland vegetation type, composition, and density varies with geographic location, precipitation, and topography. Some areas within this vegetation community are nearly barren with an abundance of sand, rock, gravel, scree, or talus, while other areas may have sparse to dense vegetation cover that includes succulent species, grasses, shrubs, scattered trees, and some herbaceous cover (Brown 1994; Forest Service 2009b, as cited in the BA, USFS 2013d). Within the action area, semidesert grassland is characterized by grasses interspersed with a variety of low-growing trees, shrubs, and cacti, including whitethorn acacia (*Acacia constricta*), catlaw acacia (*A. greggii*), prickly-pear cactus (*Opuntia* spp.), cholla (*Cylindropuntia* spp.), soaptree yucca (*Yucca elata*), beargrass (*Nolina microcarpa*), desert spoon (*Dasylirion wheeleri*), and agave (principally *Agave schottii* and *A. palmeri*). Native grass species include black grama (*Bouteloua eriopoda*), blue grama (*B. gracilis*), sideoats grama (*B. curtipendula*), hairy grama (*B. hirsuta*), buffalo grass (*B. dactyloides*), plains lovegrass (*Eragrostis intermedia*), little bluestem (*Schizachyrium cirratum*), plains bristlegrass (*Setaria machrostachya*), fluffgrass (*Dasyochloa pulchella*), burrograss (*Scleropogon brevifolius*), and slim tridens (*Tridens muticus*). The non-native Lehmann lovegrass (*E. lehmanniana*) is one of the more abundant nonnative grass species semidesert grassland portions within the action area.

Madrean Evergreen Woodland

There is a total of approximately 27,274 acres of the Madrean evergreen woodland vegetation community mapped within the action area (Brown 1994; Forest Service 2009b, as cited in the BA, USFS 2013d). The Madrean evergreen woodland vegetation community occurs on foothills, canyons, bajadas, and plateaus between semidesert grasslands and montane conifer forests; however, in the action area, virtually all of the Madrean evergreen woodland (sensu Brown 1994, as cited in the BA) is the lower end, more appropriately termed Madrean encinal (oak) woodland, as opposed to the upper end, usually termed Madrean pine/oak woodland, and trees indicative of the Madrean pine/oak woodland are absent (McLaughlin and Van Asdall n.d.

[1977], as cited in the BA). This community is dominated by evergreen oaks, and in the action area, common oak (*Quercus arizonica*). Other tree species present are alligator bark juniper (*Juniperus deppeana*), one-seed juniper (*J. monsperma*) species include Emory oak (*Q. emoryi*), Mexican blue oak (*Q. oblongifolia*), and Arizona white oak (*Q. monosperma*), velvet mesquite (*Prosopis velutina*), and Mexican pinyon (*Pinus cembroides*). All of the shrub and warm season grass species and other ground cover listed in the semidesert grassland section can also be found in areas dominated by the Madrean evergreen woodland vegetation community.

Chihuahuan Desertscrub

There is a total of approximately 1,976 acres of the Chihuahuan desertscrub vegetation community in the action area. Chihuahuan desertscrub is limited to uplands in the vicinity of Cienega Creek within the action area (Brown 1994). The action area is within the Mexican Highlands Ecoregion, the Chihuahuan Desert influences this ecoregion, and McLaughlin and Van Asdall (1977) noted that Chihuahuan desertscrub vegetation components are present in the mine site area. Shrubs such as creosotebush and whitethorn acacia dominate the Chihuahuan desertscrub vegetation community. Other vegetation in this community includes very large yucca (*Yucca* spp.), which grow among grasses (mostly *Bouteloua* spp.) or scattered shrubs [e.g., desert zinnia (*Zinnia acerosa*) and condalia (*Condalia* sp.)], agave (*Agave* spp.), ocotillo (*Fouquieria splendens*), jatropha (*Jatropha* sp.), and scattered cacti.

Sonoran Desertscrub

Sonoran desertscrub is located at the periphery of the action area, using the coarse-scale mapping of Brown (Brown 1994). Locally, Sonoran desertscrub, or components of its vegetative community, are is present in lower Davidson Canyon, lower Cienega Creek, and in the northwest portion of the action area; however, the Sonoran Desertscrub biotic elements are often ecotonal with the other upland habitat types. There is also a small extent of Sonoran desertscrub vegetation outside of semidesert grassland at the far western terminus of the water and utility ROW. The conspicuous vegetation of the Arizona Upland subdivision of the Sonoran Desert includes saguaro (*Carnegiea gigantea*), palo verdes (*Parkinsonia* spp.), creosotebush, and numerous species of cacti, such as chain fruit cholla (*Cylindropuntia fulgida*), and Engelmann prickly pear (*Opuntia phaeocantha* var. *phaeocantha*). Birds are often associated with (e.g., nest in) the saguaro and cholla cacti, as well as palo verdes.

Riparian

The word “riparian” is used to describe plant communities associated with natural washes, rivers, ponds, and springs. Riparian plant associations occur along a continuum of available soil moisture, and regulatory agencies and researchers have consequently developed numerous and varied definitions of riparian (WestLand Resources Inc. 2010c). Some definitions relate directly to the nature of the water supply (e.g., perennial streams only); others relate to the condition and nature of the habitats associated with the watercourse (e.g., vegetation location, density, and composition), and still others use definitions that incorporate varied combinations of these factors (WestLand Resources Inc. 2010c). Riparian ecosystems provide habitat for

approximately one-third of the plant species in western North America, and approximately 60 percent of vertebrate species and 70 percent of threatened and endangered species in the arid Southwest are riparian obligates (Poff *et al*. 2011). These ecosystems provide essential ecological functions and are unique because species diversity, density, and productivity are high in these areas.

There are a total of approximately 22,106 acres of riparian vegetation in the analysis area. These vegetation communities are present in drainages within the analysis area and along downstream portions of Box, McCleary, Sycamore, Scholefield, Wasp, Barrel, Davidson, and Gardner Canyons; Empire Gulch; and Cienega Creek. In addition to the riparian vegetation listed below as occurring in riparian areas in the analysis area, Emory oak, Mexican blue oak, and Arizona white oak are common in Box, McCleary, Sycamore, Scholefield, Wasp, and Barrel Canyons. While many springs support some individuals of species considered to indicate hydroriparian habitat, only two springs had large mappable areas of hydroriparian vegetation: Scholefield No. 1 spring supports about 0.3 acre of wetland, and Fig Tree spring supports about 0.5 acre of riparian habitat, with a very limited wetland area. These water sources provide habitat for aquatic species within the analysis area. Pima County's riparian mapping source is used for this project, and the following riparian habitat types are mapped within the analysis area (Pima County 2013).

Hydroriparian

Hydroriparian habitats are generally associated with perennial watercourses and/or springs. Plant communities are dominated by obligate or preferential wetland plant species such as Goodding's willow (*Salix gooddingii*) and Fremont cottonwood (*Populus fremontii*) and also include velvet ash (*Fraxinus velutina*), seep willow (*Baccharis salicifolia*), Arizona walnut (*Juglans major*), tamarisk (*Tamarisk* spp.), and mesquite. The cottonwood/willow forest is a typical example of this habitat type. The following drainages and associated riparian habitat contain stretches that are mapped as hydroriparian: Cienega Creek, Gardner Canyon, Empire Gulch, Davidson Canyon, and Barrel Canyon. Approximately 7,325 acres of hydroriparian habitat are located within the analysis area.

Aquatic vegetation that is unique to the springs and seeps is present within the analysis area. Vegetation at these springs and seeps includes obligate wetland plants (i.e., almost always occur under natural conditions in wetlands) such as seep monkey flower (*Mimulus guttatus*) and water speedwell (*Veronica anagallis-aquatica*), along with facultative wetland plants (i.e., usually occur in wetlands, but occasionally found in nonwetlands) such as smooth horsetail (*Equisetum laevigatum*) and Arizona giant sedge (*Carex spissa* var. *ultra*) (which is likely a facultative wetland plant). Other riparian plant species documented at springs and seeps in the analysis area include sycamore (*Plantanus wrightii*), willow (*Salix* spp.), netleaf hackberry (*Celtis reticulata*), and deergrass (*Muhlenbergia rigens*). Within the analysis area, moist soil or surface water (both lentic and lotic systems) and associated aquatic vegetation are known to occur at the several springs (e.g., Deering, Upper Empire Gulch, Fig Tree, Mudhole, Oak, Ojo Blanco, Rosemont, Scholefield No. 1, Sycamore, and Water Develop) (WestLand Resources Inc. 2011j). Areas of aquatic habitats are too small to map; therefore, they do not appear on Figure I-4, below.

Xeroriparian

Xeroriparian habitats are generally associated with an ephemeral water supply. These communities typically contain plant species also found in upland habitats; however, these plants are typically larger and/or occur at higher densities than adjacent uplands. Approximately 14,781 acres of xeroriparian habitat are located within the analysis area. Xeroriparian habitat is further divided into four subclasses to reflect the amount of vegetation present. Pima County Regional Flood Control District's Regulated Riparian Habitat Mitigation Standards and Implementation Guidelines (Pima County Department of Transportation and Flood Control District 2001; Pima County Regional Flood Control District 2011) define the xeroriparian subcategories as follows:

• Xeroriparian A: The most dense xeroriparian subcategory with a total vegetative volume greater than 0.856 m^3/m^2. Xeroriparian A habitat is present in stretches of Cienega Creek, Empire Gulch, and Davidson Canyon where vegetation consists of mesquite and netleaf hackberry. Approximately 145 acres of xeroriparian A habitat is located within the analysis area.

• Xeroriparian B: Moderately dense xeroriparian subcategory with a total vegetative volume less than or equal to 0.856 m^3/m^2 and greater than 0.675 m^3/m^2. Xeroriparian B habitat is present in stretches of Cienega Creek, Gardner Canyon, Empire Gulch, Davidson Canyon, and Barrel Canyon where vegetation consists of mesquite, scattered cottonwood, netleaf hackberry, burrobrush (*Hymenoclea monogrya*), juniper (*Juniperus* sp.), and acacia (*Acacia* sp.). Approximately 7,116 acres of xeroriparian B habitat is located within the analysis area.

• Xeroriparian C: Less dense xeroriparian subcategory with a total vegetative volume less than or equal to 0.675 m^3/m^2 and greater than 0.500 m^3/m^2. Xeroriparian C habitat is present in stretches of Cienega Creek, Gardner Canyon, Empire Gulch, and Davidson Canyon where vegetation consists of mesquite, desert broom (*Baccharis sarothroides*), burrobush, desert willow (*Chilopsis linearis*), hackberry (*Celtis* sp.), and juniper. Approximately 7,345 acres of xeroriparian C habitat is located within the analysis area.

• Xeroriparian D: Less to sparse plant density xeroriparian subcategory that provides hydrologic connectivity to other riparian habitat areas with a total vegetative volume less than or equal to 0.500 m^3/m^2. Xeroriparian D habitat is present in stretches of Cienega Creek and Davidson Canyon where vegetation consists of acacia and desert broom. Approximately 174 acres of xeroriparian D habitat is located within the analysis area.

Aquatic Vegetation

Aquatic vegetation is unique to the springs and seeps within the action area and includes obligate wetland plants (i.e., almost always occurs under natural conditions in wetlands) such as seep monkey flower (*Mimulus guttatus*) and water speedwell (*Veronica anagallis-aquatica*), along with facultative wetland plants (i.e., usually occur in wetlands, but occasionally found in non-wetlands) such as smooth horsetail (*Equisetum laevigatum*) and Arizona giant sedge (*Carex spissa* var. *ultra*) (which is likely a facultative wetland plant). Other riparian plant species documented at springs and seeps in the action area include sycamore (*Plantanus wrightii*),

willow (*Salix* spp.), netleaf hackberry, and deergrass (*Muhlenbergia rigens*). Within the action area, moist soil or surface water (both lentic and lotic systems) and associated aquatic vegetation are known to occur at the following springs (WestLand 2011a): Basin, Deering, Empire Gulch, Fig Tree, Mudhole, Oak, Ojo Blanco, Rosemont, Scholefield, Sycamore, and Water Develop.

Information provided by the BLM during the review of the draft version of the BO notes that these aquatic vegetation communities, along with those present along cienega-like reaches of Cienega Creek and its tributaries should be classified as Interior (Sonoran) Marshland (Brown 1982). These Cienega communities (Minckley and Brown 1982, Hendrickson and Minckley 1984) are prevalent in the Las Cienegas NCA; the area contains over 30 jurisdictional wetlands, both perennial and seasonal. Most of these wetlands occur on the Cienega Creek floodplain between Cinco Canyon and Oak Tree Canyon. Named wetland complexes include Cieneguita Wetland, Spring Water Wetland, Cinco Ponds Wetland. Another series of wetlands occurs upstream of the Mattie Canyon confluence on Cienega Creek (Cold Spring Wetland). These wetlands cover tens of acres. An inventory of wetlands has been completed by the Arizona Botanical Garden with a report anticipated to be transmitted in September 2013.

Areas of aquatic habitats were considered too small to map by USFS; therefore, they do not appear on Figure I-4, below. The BLM, in comments on the content of the Draft BO, stated that Cienaga Cienega Creek exhibits approximately 7 miles of surface flow. In addition, Empire Gulch has approximately 0.5 mile, Empire Spring approximately 1,000 feet, and Mattie Canyon approximately 1 mile. The BLM also stated that large blocks of wetland also occur which could easily be delineated on a map. We note that aquatic habitat in the context of this section refers to vegetative communities, not solely wetted areas. While we agree that mapping cold be improved, it is likely that the aquatic vegetative community mapping was superseded by mapping of the dominant overstory (i.e. xerioriparian or hydroriparian) that may co-occur with the understory of Interior Marshland in many sites.

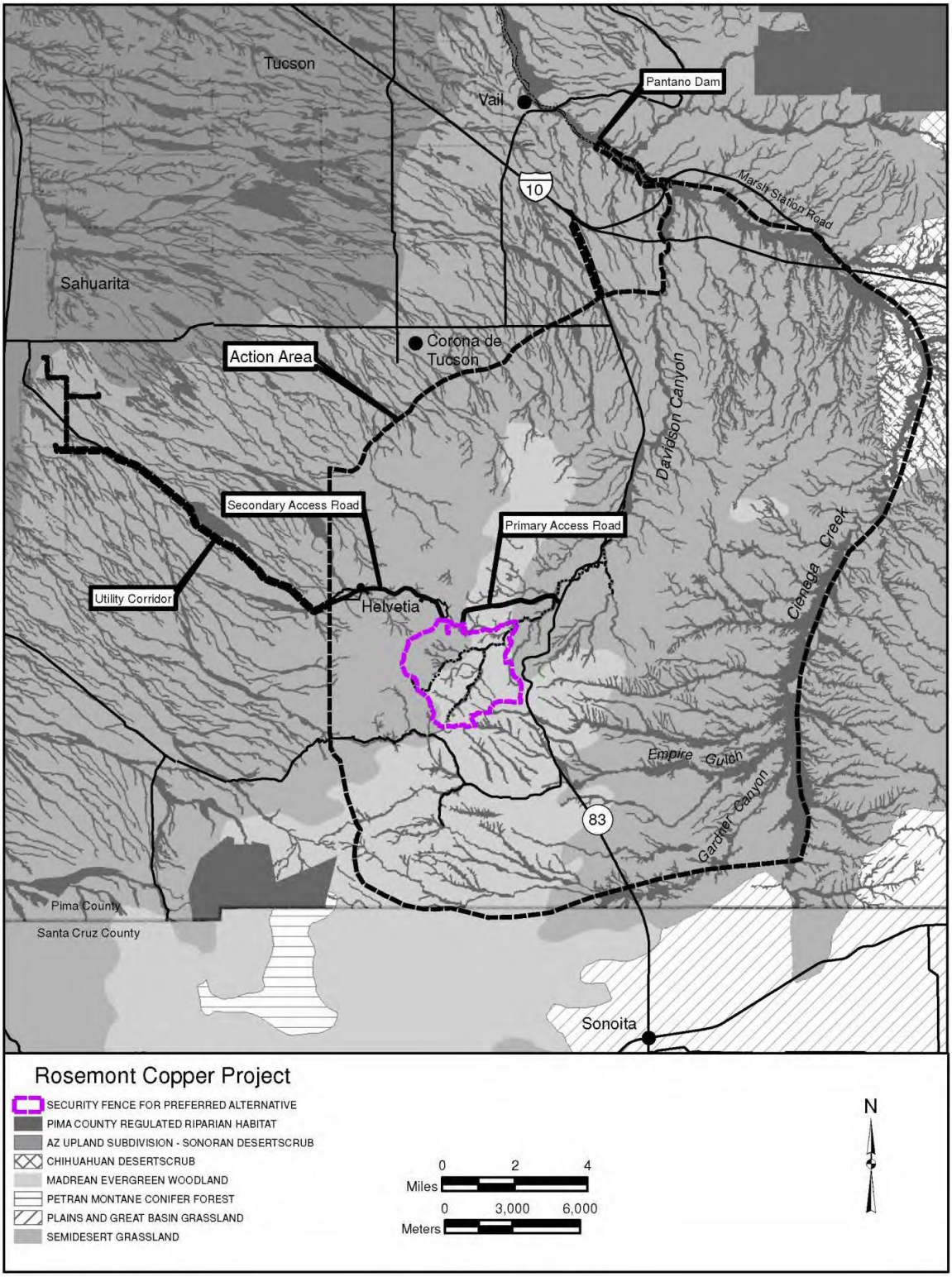


Figure I-4: Vegetation communities within the Action Area for the Rosemont Mine project

Existing Disturbances

Previous mineral exploration and production activities in the proposed action area have resulted in numerous landscape disturbances, such as mine prospects and adits, mine related access roads, and geotechnical drilling sites, that potentially contribute to current light levels in the night sky and fugitive dust. These disturbances are scattered throughout the proposed action area. Additional anthropogenic disturbances have resulted from livestock grazing and all-terrain vehicle (ATV) use. Past wildfires have also affected biological resources in the analysis area: since 1989 there have been 27 fires larger than 10 acres, totaling approximately 49,321 acres. Fires kill vegetation and wildlife to a varying degree, depending on the severity and intensity of the fire, and the recovery can take up to decades, depending on the pre-fire vegetation community and the severity and intensity of the fire. Within and adjacent to the action area, there are numerous wells in the Sonoita area that support residential and ranching uses and contribute to groundwater drawdown in the analysis area.

Historic Mining Activities

Helvetia was the largest mining camp of the Helvetia district, followed by Old Rosemont, New Rosemont, and smaller mining camps established at the "Tiptop, Blue Jay, Proctor and Deering, Beuhman, Cuprite, Pauline, Metallic, Helena, Scholefield and Ridley mines" (Ayres 1984, as cited in the BA). The major era of mining at Rosemont was 1879 to 1915, although Old Rosemont was most active from 1894 to 1915, and New Rosemont was most active from 1915 to 1921.

Ranching and Grazing

Livestock grazing has been an ongoing disturbance in and around the footprint of the proposed mine for over 100 years—historically at much higher levels than at present. One of the earliest ranches in the proposed action area was the VR Ranch, which was established in the 1880s and later homesteaded. By about 1900, the López and Martínez ranches were in operation, but neither of these was homesteaded. In 1903–1904, when the 1905 Patagonia USGS quadrangle map was surveyed, there were three ranches within the proposed action area: López, Martínez, and VR. With the establishment of the Santa Rita Forest Preserve in 1902 and the Coronado National Forest in 1908 (Ayres 1984), the federal government began to require permits to graze cattle on federal land. Smaller ranchers, such as the Lópezes and the Martínezes, were allowed to graze a few head without permits. The Taylor Grazing Act of 1934 established a system of grazing allotments for public lands. Most of the project area lies within the Rosemont grazing allotment, which was established in 1935 and covers 11,369 acres. From 1938 to 1951, this allotment was leased by Chiricahua Ranches. Rosemont holds term grazing permits on four allotments: Rosemont, Thurber, Greaterville, and DeBaud. Rosemont plans to continue all current grazing activities as permitted throughout the course of the proposed action .

Recent Geotechnical and Hydrologic Drilling

In August 2006, Tetra Tech completed a geotechnical investigation on lands within the proposed

action area in support of feasibility-level designs of a heap leach pad and associated ponds, dry-stack tailings facilities, plant site facilities, a waste rock storage area, and various water management facilities (Tetra Tech and Schafer 2007). Initial geotechnical site investigations were conducted between November 2006 and March 2007. A total of 10 boreholes and 33 test pits were completed during this initial phase of the work. The boreholes and test pits were confined to the limits of private land (patented claims and fee lands).

On March 6, 2008, the Forest Service approved a proposal for preliminary mineral exploration for short-term geotechnical and hydrologic drilling and related activities on the Coronado National Forest. From May through July 2008, Tetra Tech completed a total of 19 boreholes at 15 drill sites located on Forest Service land (Tetra Tech 2009b, as cited in the BA). Because of the restricted amount of ground disturbance allowed on Forest Service land, 13 of the 15 drill sites were located along existing dirt roads. Two new access roads were constructed in order to reach drill sites located within the plant site area and the footprint of the proposed primary crusher. In accordance with Forest Service instructions, all disturbed areas associated with the geotechnical drilling on Forest Service land was reclaimed (i.e., recontoured and seeded) within 30 days of the completion of drilling, with the exception of boreholes that will be used for groundwater monitoring. Gating of new access roads and the permanent closure of access roads following the completion of drilling activities were also conditions stipulated by the Forest Service.

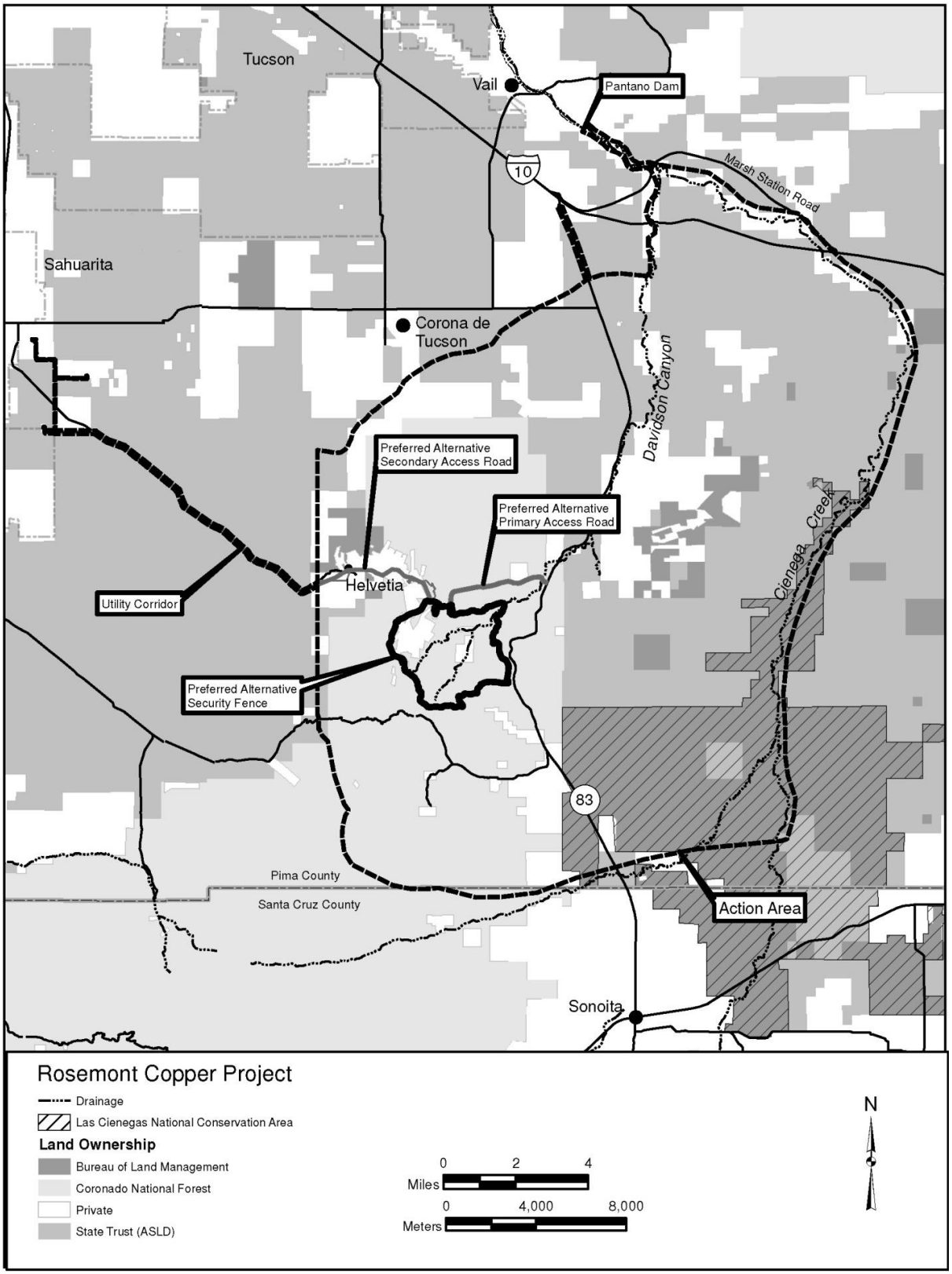


Figure I-5: Action Area for the Rosemont Mine project

Status of the Species - Lesser Long-Nosed Bat

Species Description

The lesser long-nosed bat is a medium-sized, leaf-nosed bat. It has a long muzzle and a long tongue, and is capable of hover flight. These features are adaptations for feeding on nectar from the flowers of columnar cacti [e.g., saguaro (*Carnegiea gigantea*); cardon (*Pachycereus pringlei*); and organ pipe cactus (*Stenocereus thurberi*)]; and from paniculate agaves [e.g., Palmer's agave (*Agave palmeri*)] (Hoffmeister 1986). The lesser long-nosed bat was listed (originally, as *Leptonycteris sanborni*; Sanborn's long-nosed bat) as endangered in 1988 (U.S. Fish and Wildlife Service 1988). No critical habitat has been designated for this species. A recovery plan was completed in 1997 (U.S. Fish and Wildlife Service 1997). Loss of roost and foraging habitat, as well as direct taking of individual bats during animal control programs, particularly in Mexico, have contributed to the current endangered status of the species. Recovery actions include roost monitoring, protection of roosts and foraging resources, and reducing existing and new threats. The recovery plan states that the species will be considered for delisting when three major maternity roosts and two post-maternity roosts in the U.S., and three maternity roosts in Mexico have remained stable or increased in size for at least five years, following the approval of the recovery plan. A five-year review has been completed and recommends downlisting to threatened (U.S. Fish and Wildlife Service 2007b).

Distribution and Life History

The lesser long-nosed bat is migratory and found throughout its historical range, from southern Arizona and extreme southwestern New Mexico, through western Mexico, and south to El Salvador. It has been recorded in southern Arizona from the Picacho Mountains (Pinal County) southwest to the Agua Dulce Mountains (Pima County) and Copper Mountains (Yuma County), southeast to the Peloncillo Mountains (Cochise County), and south to the international boundary.

Within the U.S., habitat types occupied by the lesser long-nosed bat include Sonoran Desert scrub, semi-desert and plains grasslands, and oak and pine-oak woodlands. Farther south, the lesser long-nosed bat occurs at higher elevations. Maternity roosts, suitable day roosts, and concentrations of food plants are all critical resources for the lesser long-nosed bat. All of the factors that make roost sites suitable have not yet been identified, but maternity roosts tend to be very warm and poorly ventilated (U.S. Fish and Wildlife Service 1997). Such roosts reduce the energetic requirements of adult females while they are raising their young (Arends *et al.* 1995).

Roosts in Arizona are occupied from late April to September (Cockrum and Petryszyn 1991) and on occasion, as late as November (Sidner 2000); the lesser long-nosed bat has only rarely been recorded outside of this time period in Arizona (U.S. Fish and Wildlife Service 1997, Hoffmeister 1986, Sidner and Houser 1990). In spring, adult females, most of which are pregnant, arrive in Arizona and gather into maternity colonies in southwestern Arizona. These roosts are typically at low elevations near concentrations of flowering columnar cacti. After the young are weaned, these colonies mostly disband in July and August; some females and young

move to higher elevations, primarily in the southeastern parts of Arizona near concentrations of blooming paniculate agaves. Adult males typically occupy separate roosts forming bachelor colonies. Males are known mostly from the Chiricahua Mountains and, recently, the Galiuro Mountains (personal communication with Tim Snow, Arizona Game and Fish Department, 1999), but also occur with adult females and young of the year at maternity sites (U.S. Fish and Wildlife Service 1997). Throughout the night between foraging bouts, both sexes will rest in temporary night roosts (Hoffmeister 1986).

Lesser long-nosed bats appear to be opportunistic foragers and extremely efficient fliers. They are known to fly long distances from roost sites to foraging sites. Night flights from maternity colonies to foraging areas have been documented in Arizona at up to 25 miles, and in Mexico, at 25 miles and 36 miles (one way) (Ober *et al.* 2000; Dalton *et al.* 1994, Ober and Steidl 2004, Lowery *et al.* 2009). Lowery *et al.* 2009 and Steidl (personal communication, 2001) found that typical one-way foraging distance for bats in southeastern Arizona is roughly 6 to 18 miles. A substantial portion of the lesser long-nosed bats at the Pinacate Cave in northwestern Sonora (a maternity colony) fly 25-31 miles each night to foraging areas in OPCNM (U.S. Fish and Wildlife Service 1997). Horner *et al.* (1990) found that lesser long-nosed bats commuted 30-36 miles round trip between an island maternity roost and the mainland in Sonora; the authors suggested these bats regularly flew at least 47 miles each night. Lesser long-nosed bats have been observed feeding at hummingbird feeders many miles from the closest known potential roost site (Lowery *et al.* 2009; personal communication with Yar Petryszyn, University of Arizona 1997).

Lesser long-nosed bats, which often forage in flocks, consume nectar and pollen of paniculate agave flowers; and pollen and fruit produced by a variety of columnar cacti. Nectar of these cacti and agaves is high energy food. Concentrations of some food resources appear to be patchily distributed on the landscape, and the nectar of each plant species used is only seasonally available. Cacti flowers and fruit are available during the spring and early summer; blooming agaves are available primarily from July through October. In Arizona, columnar cacti occur in lower elevational areas of the Sonoran Desert region, and paniculate agaves are found primarily in higher elevation desert scrub areas, semi-desert grasslands and shrublands, and into the oak and pine-oak woodlands (Gentry 1982). Lesser long-nosed bats are important pollinators for agave and cacti, and are important seed dispersers for some cacti.

The conservation and recovery of lesser long-nosed bats requires the presence of secure and appropriate roost sites throughout the landscape (including maternity roost sites, as well as transitional and migration roost sites) and adequate forage resources in appropriate juxtaposition to provide for life history needs including breeding, parturition, and migration.

Status and Threats

Recent information indicates that lesser long-nosed bat populations appear to be increasing or stable at most Arizona roost sites identified in the recovery plan (Arizona Game and Fish Department 2005, Tibbitts 2005, Wolf and Dalton 2005, U.S. Fish and Wildlife Service 2007b; electronic mail from Tim Tibbitts 2009). Lesser long-nosed bat populations additionally appear

to be increasing or stable at other roost sites in Arizona and Mexico not included for monitoring in the recovery plan (Sidner 2005, Arizona Game and Fish Department 2009). Less is known about lesser long-nosed bat numbers and roosts in New Mexico. Though lesser long-nosed bat populations appear to be doing well, many threats to their stability and recovery still exist, including excess harvesting of agaves in Mexico; collection and destruction of cacti in the U.S.; conversion of habitat for agricultural and livestock uses, including the introduction of bufflegrass, a non-native, invasive grass species; wood-cutting; alternative energy development (wind and solar power); illegal border activities and required law enforcement activities; drought and climate change; fires; human disturbance at roost sites; and urban development.

Approximately 20 – 25 large lesser long-nosed bat roost sites, including maternity and late-summer roosts, have been documented in Arizona. Of these, 10 – 20 are monitored on an annual basis depending on available resources (U.S. Fish and Wildlife Service 2007b). Monitoring in Arizona in 2004 documented approximately 78,600 lesser long-nosed bats in late-summer roosts and approximately 34,600 in maternity roosts. More recently, in 2008, the numbers were 63,000 at late-summer roosts and 49,700 at maternity roosts (Arizona Game and Fish Department 2009). Ten to 20 lesser long-nosed bat roost sites in Mexico are also monitored annually. Over 100,000 lesser long-nosed bats are found at just one natural cave at the Pinacate Biosphere Reserve, Sonora, Mexico (Cockrum and Petryszyn 1991). The numbers above indicate that although a relatively large number of lesser long-nosed bats exist, the relative number of known large roosts is quite small.

The primary threat to lesser long-nosed bat is roost disturbance or loss. The colonial roosting behavior of this species, where high percentages of the population can congregate at a limited number of roost sites, increases the risk of significant declines or extinction due to impacts at roost sites. Lesser long-nosed bats remain vulnerable because they are so highly aggregated (Nabhan and Fleming 1993). Some of the most significant threats known to lesser long-nosed bat roost sites are impacts resulting from use and occupancy of these roost sites by individuals crossing the border illegally for a number of reasons. Mines and caves, which provide roosts for lesser long-nosed bats, also provide shade, protection, and sometimes water, for border crossers. The types of impacts that result from illegal border activities include disturbance from human occupancy, lighting fires, direct mortality, accumulation of trash and other harmful materials, alteration of temperature and humidity, destruction of the roost itself, and the inability to carry out conservation and research activities related to lesser long-nosed bats. These effects can lead to harm, harassment, or, ultimately, roost abandonment (U.S. Fish and Wildlife Service 2005). For example, the illegal activity, presumably by individuals crossing the border, at the Bluebird maternity roost site, caused bats to abandon the site in 2002, 2003, and 2005. Other reasons for disturbance or loss of bat roosts include the use of caves and mines for recreation; the deliberate destruction, defacing or damage of caves or mines; roost deterioration (including both buildings or mines); short or long-term impacts from fire; and mine closures for safety purposes. The presence of alternate roost sites may be critical when this type of disturbance occurs.

In summary, threats to lesser long-nosed bat forage habitat include excess harvesting of agaves in Mexico; collection and destruction of cacti in the U.S.; conversion of habitat for agricultural and livestock uses; the introduction of bufflegrass and other invasive species that can carry fire

in Sonoran Desert scrub; wood-cutting; urban development; fires; and drought and climate change.

Large fires supported by invasive vegetation in 2005 affected some lesser long-nosed bat foraging habitat, though the extent is unknown. For example, the Goldwater, Aux, and Sand Tank Fire Complexes on Barry M. Goldwater Range-East burned through and around isolated patches of saguaros. Rogers (1985) showed that saguaros are not fire-adapted and suffer a high mortality rate as a result of fire. Therefore, fire can significantly affect forage resources for lesser long-nosed bats in the Sonoran desert. Monitoring of saguaro mortality rates should be done to assess the impacts on potential lesser long-nosed bat foraging habitat. More recently, the summer of 2011 saw huge wildfires burning across Arizona. The Wallow Fire (538,049 acres) set a new state record, burning a larger area than the 2002 Rodeo-Chediski Fire (468,638 acres). The Horseshoe 2 Fire (222,954 acres) burned approximately 70% of the Chiricahua Mountains and became the 4th largest fire in Arizona history. In addition to the Horseshoe 2 Fire, two other large wildfires (Murphy Complex and the Monument Fire) and numerous smaller fires burned a total of 366,679 acres in the Coronado National Forest. The Horseshoe 2, Monument, and Murphy fires affected lesser long-nosed bat forage and roost resources throughout those mountain ranges. Fire suppression activities associated with wildfires could also affect foraging habitat. For example, slurry drops can leave residue on saguaro flowers, which could impact lesser long-nosed bat feeding efficiency or result in minor contamination.

Drought may affect lesser long-nosed bat foraging habitat, though the effects of drought on bats are not well understood. The drought in 2004 resulted in near complete flower failure in saguaros throughout the range of lesser long-nosed bats. During that time however, in lieu of saguaro flowers, lesser long-nosed bats foraged heavily on desert agave (*Agave deserti*) flowers, an agave species used less consistently by lesser long-nosed bats (Tibbitts 2006). Similarly, there was a failure of the agave bloom in southeastern Arizona in 2006, probably related to the ongoing drought. As a result, lesser long-nosed bats left some roosts earlier than normal and increased use of hummingbird feeders by lesser long-nosed bats was observed in the Tucson area (personal communication with Scott Richardson, FWS, January 11, 2008). Climate change impacts to the lesser long-nosed bats in this portion of its range likely include loss of forage resources. Of particular concern is the prediction that saguaros, the primary lesser long-nosed bat forage resource in the Sonoran Desert, will decrease or even disappear within the current extent of the Sonoran Desert as climate change progresses (Weiss and Overpeck 2005, p. 2074). Monitoring bats and their forage during drought years is needed to better understand the effects of drought on this species.

The lesser long-nosed bat recovery plan (U.S. Fish and Wildlife Service 1997) identifies the need to protect roost habitats and foraging areas and food plants, such as columnar cacti and agaves. The lesser long-nosed bat recovery plan provides specific discussion and guidance for management and information needs regarding bat roosts and forage resources (U.S. Fish and Wildlife Service 1997). More information regarding the average size of foraging areas around roosts would be helpful to identify the minimum area around roosts that should be protected to maintain adequate forage resources.

We have produced numerous BOs on the lesser long-nosed bat since it was listed as endangered in 1988, some of which anticipated incidental take. Incidental take has been in the form of direct mortality and injury, harm, and harassment and has typically been only for a small number of individuals. Because incidental take of individual bats is difficult to detect, incidental take has often been quantified in terms of loss of forage resources, decreases in numbers of bats at roost sites, or increases in proposed action activities.

Examples of more recent BOs that anticipated incidental take for lesser long-nosed bats are summarized below. The 2010 BO related to the National Park Service's abandoned mine closure program, anticipated the direct take of up to 115 lesser long-nosed bats as a result of collisions with mine closure structures, and the abandonment of one roost site due to mine closure activities (U.S. Fish and Wildlife Service 2010). The 2009 and 2008 BOs for implementation of the SBI*net* Ajo 1 and Tucson West Projects, including the installation, operation, and maintenance of communication and sensor towers and other associated infrastructure, each included incidental take in the form of 10 bats caused by collisions with towers and wind turbine blade-strike mortality for the life (presumed indefinite) of the proposed action. The 2007 BO for the installation of one 600 kilowatt wind turbine and one 50KW mass megawatts wind machine on Fort Huachuca included incidental take in the form of 10 bats caused by blade-strikes for the life (presumed indefinite) of the proposed action (U.S. Fish and Wildlife Service 2007c). The 2005 BO for implementation of the Coronado National Forest Land and Resource Management Plan (U.S. Forest Service) included incidental take in the form of harm or harassment. The amount of take for individual bats was not quantified; instead take was to be considered exceeded if simultaneous August counts (at transitory roosts in Arizona, New Mexico, and Sonora) drop below 66,923 lesser long-nosed bats (the lowest number from 2001 – 2004 counts) for a period of two consecutive years as a result of the action. The 2004 BO for the Bureau of Land Management Arizona Statewide Land Use Plan Amendment for Fire, Fuels, and Air Quality Management included incidental take in the form of harassment. The amount of incidental take was quantified in terms of loss of foraging resources, rather than loss of individual bats. The 2003 BO for Marine Corps Air Station–Yuma Activities on the BMGR included incidental take in the form of direct mortality or injury (five bats every 10 years). Because take could not be monitored directly, it was to be considered exceeded if nocturnal low-level helicopter flights in certain areas on the BMGR increased significantly or if the numbers of bats in the Agua Dulce or Bluebird Mine roosts decreased significantly and MCAS-Yuma activities were an important cause of the decline. The 2007 BO for Department of the Army Activities at and near Fort Huachuca (Fort), Arizona anticipated incidental take in the form of direct mortality or injury (six bats over the life of the project), harassment (20 bats per year), and harm (10 bats over the life of the project) (U.S. Fish and Wildlife Service 2007a).

The lesser long-nosed bat recovery plan (U.S. Fish and Wildlife Service 1997), listing document (U.S. Fish and Wildlife Service 1988), and the 5-year review summary and evaluation for the lesser long-nosed bat (U.S. Fish and Wildlife Service 2007b), all discuss the status of the species, and threats, and are incorporated by reference.

Environmental Baseline - Lesser Long-Nosed Bat

Action Area

As stated previously, the action area is defined as all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 CFR §402.02). The FWS has described above the general action area for the Rosemont Mine project (see Action Area section above). The action area as it relates specifically to the lesser long-nosed bat extends beyond this general action area and includes the areas directly impacted by the Rosemont mine features identified, including utility corridors and access roads, as well as the area defined by a circle with a radius of 36 miles (the maximum documented one-way foraging distance of the lesser long-nosed bat) around the Rosemont Mine project. Lesser long-nosed bats may occur anywhere within this foraging radius around roosts occupied by lesser long-nosed bats during the time of annual occupancy in the area. The action area represents only a small portion of the lesser long-nosed bat's range. However, using this definition increases the number of lesser long-nosed bat roosts in the action area from three, as described in the various BAs, to 13, which includes 10 lesser long-nosed bat roosts in the Santa Rita, Empire, Mustang, Whetstone, Patagonia, Rincon and Santa Catalina mountains that are within 36 miles of the proposed Rosemont Mine project.

The above description of the action area for lesser long-nosed bats is supplemented by the overall description of the action area used earlier in this document (see Action Area section above) with regard to land management and vegetation community description.

Status of the Lesser Long-Nosed Bat in the Action Area

Bat surveys of the proposed action area and vicinity were conducted in 2008 (WestLand 2009f), 2009 (Buecher *et al.* 2010), 2010 (Buecher *et al.* 2011), and 2011 (WestLand 2011f). Methods included active and passive ultrasonic acoustic sampling at flowering agaves, infrared photography and observations of flowering agaves, and surveys of potential roost sites.

In 2008, 143 potential bat roost sites (i.e., caves, mine shafts, and adits) were evaluated within the action area and surrounding region (WestLand 2009f). Of these 143 sites, 59 were within the proposed action footprint, and 16 were near the proposed action footprint. Acoustic and/or roost site surveys were conducted on a total of 20 different dates between August 4 and November 12, 2008, and ultrasonic acoustic surveys and infrared surveys were conducted on five evenings between August 11 and September 16, 2008. Because lesser long-nosed bats often remain silent while foraging, several sites also were monitored in 2008 with night vision equipment to further document use of flowering agaves. Lesser long-nosed bats were documented foraging regularly on agaves in the proposed action area from late August to mid-September based on the results of acoustic and infrared surveys. Lesser long-nosed bat calls were recorded at 23 of the 27 Palmer agave sites where acoustic surveys were successful (i.e., no equipment failures), and night vision equipment was successful in detecting frequent lesser long-nosed bat visits to flowering Palmer agaves. Lesser long-nosed bats were documented roosting at three sites within the action area in

2008: Site 9 (the name was changed to Chicago Mine in Buecher *et al.* 2010), Site R-2, and the Helena Mine complex (Figure LLB-1). The Chicago Mine was visited five separate times during 2008; approximately 12 to 15 lesser long-nosed bats were present in August, and none were present in late September. The R-2 site was visited once in 2008, which resulted in the confirmed sighting of one lesser long-nosed bat. A small colony of 20 to 30 lesser long-nosed bats was roosting at the Helena Mine complex in 2008. Only one of these sites (Site 9/Chicago Mine) is within the proposed action footprint and is located within the proposed mine pit. Site R-2 is immediately adjacent to the southwestern portion of the proposed fence line of the Barrel alternative. Lesser long-nosed bats also were found at the Helena Mine complex approximately 1 mile north-northeast of the fence line for the Barrel alternative.

In 2009, 37 sites were examined during eight field visits conducted in August, September, and October (Buecher *et al.* 2010). Survey efforts in 2009 focused on sites that supported nectar-feeding bats in 2008 and sites where the potential for bats was considered high, including the following: 1) the Helena Mine complex, which is characterized by multiple entrances, supported small numbers of *L. yerbabuenae* in 2008; 2) Adit S and Adit R-47, where accumulations of insectivorous bat guano was found in 2008; 3) R-46, which was not visited in 2009 but was thought to have high potential for bat use; 4) Chicago Mine (referred to as Site 9 in WestLand 2009f), which supported small numbers of Leptonycteris in 2008; and 5) R-2 (located in Sycamore Canyon), where one *L. yerbabuenae* was found in 2008. Lesser long-nosed bats were documented at the same three roosts at which they were detected in 2008 (see LLB-1, below). The Chicago Mine was visited two times in 2009, and approximately 32 lesser long-nosed bats were documented exiting the mine. The R-2 site was visited three times in 2009. This resulted in a single lesser long-nosed bat observed on August 25, 2009, more than 50 detected with acoustic sampling and infrared video cameras on September 3, 2009, and the presence of lesser long-nosed bats on October 13, 2009. At the Helena Mine complex, more than 5,000 lesser long-nosed bats were detected during an exit count in September.

In 2010, three of the sites that were previously surveyed, including one site that contained lesser long-nosed bats in 2008 and 2009 (Helena Mine complex), were revisited (Buecher *et al.* 2011). Additionally, the BLM conducted surveys on their lands near Helvetia late in 2010, and lesser long-nosed bats were observed roosting on abandoned mine land features (Hughes 2011). Lesser long-nosed bats were documented roosting only at the Helena Mine complex site; however, the Chicago Mine and R-2 sites were not surveyed. Significantly fewer (approximately 150) lesser long-nosed bats were detected overall during exit counts in 2010 than in 2009 (more than 5,000). However, some of the emergence counts were stopped early because of inclement weather, so it is unclear whether the reduced counts were accurate representations of the number of bats at these roost locations.

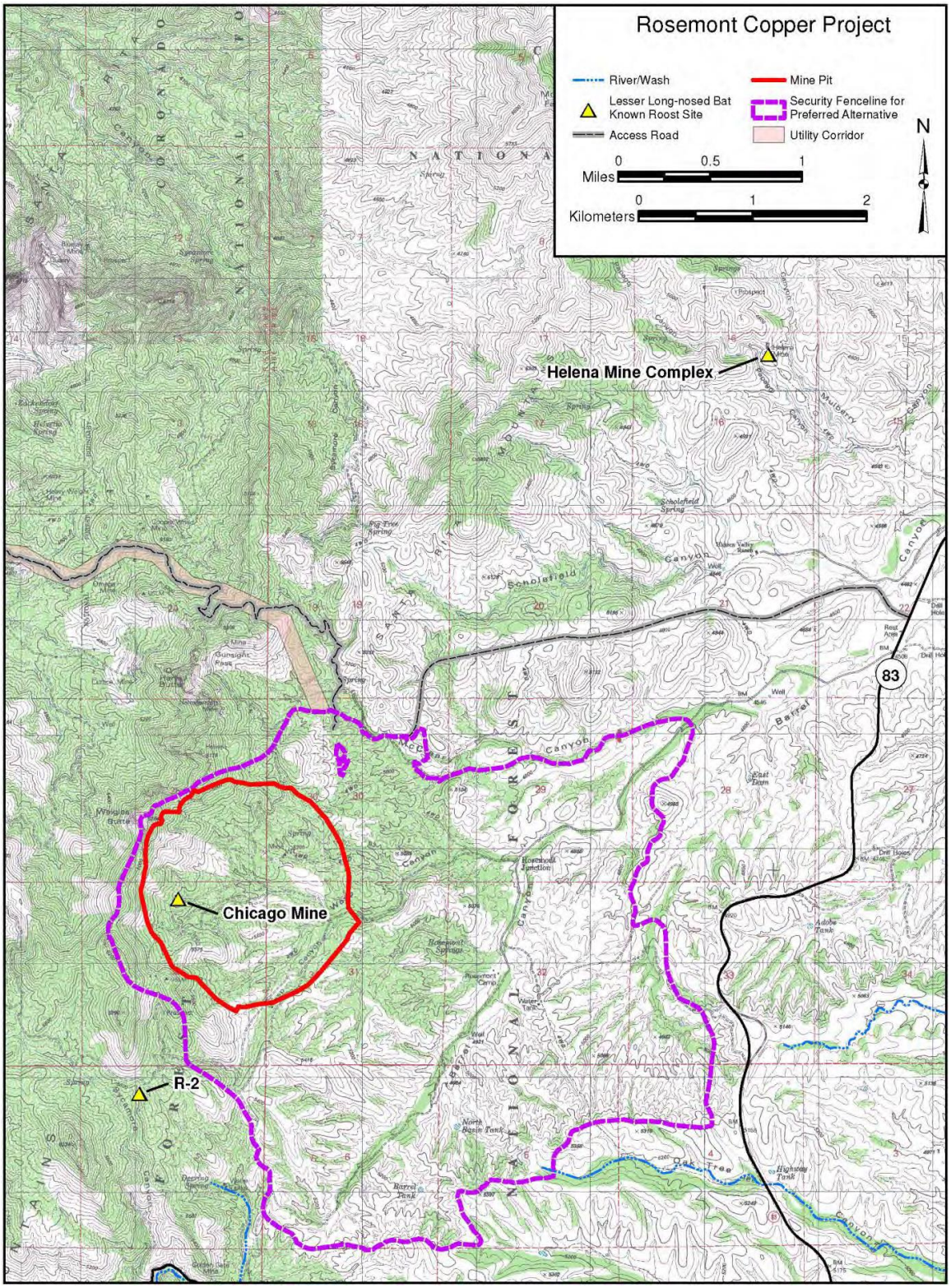


Figure LLB-1: Lesser Long-Nosed Bat roosts in the Action Area of the Rosemont Mine project

In 2011, 33 sites were examined in 10 field visits in July, August, and September (WestLand 2011f). Some sites surveyed were used by bats in previous years, and additional mines not covered during prior surveys were also evaluated. Evaluations included mine entry (internal surveys) and/or external roost evaluations (emergence surveys). Lesser long-nosed bats were documented roosting at the Helena Mine complex site, the Chicago Mine, and R-2 sites (see Figure LLB-1 below). At the Helena Mine complex, approximately 4,650 lesser long-nosed bats were detected during an exit count in August; during a second emergence count in September, approximately 2,021 Lesser Long-nosed Bats were recorded. At the Chicago Mine, one lesser long-nosed bat was detected roosting in July. At the R-2 site, three lesser long-nosed bats were detected roosting in July.

Regional monitoring of lesser long-nosed bats occurs in the vicinity of the Rosemont Mine project, including mountain ranges within 36 miles (maximum documented foraging distance for lesser long-nosed bats) of the Rosemont Mine project. Based on this regional monitoring data, 10 additional lesser long-nosed bat roosts occur within 36 miles of the Rosemont mine site. Bats from these roost sites potentially visit the Rosemont Mine area to forage on available agave plants. The number of lesser long-nosed bats using these additional roosts is generally from 1,000 – 12,000 bats. While it is unlikely that all of the lesser long-nosed bats from these roosts will use the Rosemont Mine area for foraging, it is likely that, in any given year, some of the bats from these roost sites will forage in the area of the Rosemont Mine.

In summary, the action area is located in the post-maternity dispersal region for lesser long-nosed bat (maternity colonies in southwestern Arizona disband in July and August), and there are numerous Palmer agaves and at least thirteen active roosts within the action area (three of which are within or in the immediate vicinity of the proposed action footprint). Of these roosts, only Chicago Mine is in the proposed action footprint. Although dates of arrival at post-maternity sites are variable in Arizona from one year to the next, surveys in the action area in 2008, 2009, 2010, and 2011 indicate that lesser long- nosed bats forage and occupy roosts in the area beginning at least in early August and, based on results at the Helena Complex, continuing into October. The large number of this species present at the Helena Mine complex in 2009 and 2011 indicates that this site could be a roost complex of regional importance to lesser long-nosed bats.

Lesser long-nosed bat numbers at post-maternity or transition roosts tend to fluctuate more than do numbers at maternity roosts. This fluctuation is apparently based on local forage availability (agave blooms). Agave blooming is subject to climatic conditions and during the ongoing, extended drought, some portions of the action area have been subject to forage failures. Lesser long-nosed bats are highly mobile and will switch to areas and roosts where forage is available.

A number of activities occur in the action area that could affect bats. Because of the extent of Federal lands in the action area, most activities that currently, or have recently, affected the lesser long-nosed bats or their habitat in the action area are Federal actions, many of which have undergone formal consultation. Ongoing illegal border activities are an exception. Efforts are ongoing in the action area that contribute to the conservation and protection of lesser long-nosed bat populations and habitat within the action area. For example, the National Park Service and the Coronado National Forest have constructed bat gates at two lesser long-nosed bat roosts in

the Huachuca and Canelo Hills, respectively. The effectiveness of these efforts is being monitored. Research and monitoring activities funded by Customs and Border Protection on public and private lands within the action area are contributing to our knowledge of lesser long-nosed bat roost locations and developing appropriate protective measures for lesser long-nosed bat roost sites. In general, the lesser long-nosed bat populations within the action area are stable to increasing, but threats are ongoing, and in some cases increasing (climate change, invasive species, border activities, etc.)

Effects of the Action - Lesser Long-Nosed Bat

Effects to Roosts

The proposed action will directly affect and result in the permanent loss of at least one known lesser long-nosed bat post-maternity roost site (Chicago Mine) within the footprint of the proposed mine, which in August 2008 contained approximately 12 to 15 lesser long-nosed bats, in 2009 contained approximately 32 lesser long-nosed bats, and in July 2011 contained one roosting lesser long-nosed bat. Any individual lesser long-nosed bats present within the footprint of the mine infrastructure (including the pit, buildings, roads, tailings or waste piles, etc.) will either be crushed or forced to relocate. Rosemont will close the Chicago Mine when lesser long-nosed bats are not present in the Chicago Mine (excluded); therefore, no lesser long-nosed bats would be killed by the construction of the mine pit, if no individuals are in the mine during closure.

Given the anticipated levels of project related activity and associated disturbance from noise, vibrations, and light, there exists the potential for effects on two additional lesser long-nosed bat post-maternity roosts adjacent to the proposed mine footprint [i.e., R2 (immediately adjacent to the southwestern portion of the proposed fence line of the proposed action0 and the Helena Mine complex (approximately 1 mile north-northeast of the fence line for the proposed action)]. At the R2 site, one lesser long-nosed bat was detected each year in 2008 and 2009, and three lesser long-nosed bats were detected there in 2011. More than 5,100 lesser long-nosed bats were counted at the Helena Mine complex in 2009, and approximately 4,650 lesser long-nosed bats were detected in 2011. Any individuals present adjacent to the mine footprint would experience effects from light, noise, and vibrations. Although Rosemont has developed a light pollution mitigation plan (Monrad *et al.* 2012), light from artificial illumination will increase light levels at night, and specific impacts of light on lesser long-nosed bats in the habitat within the project and actions areas are unknown; therefore, increased light levels could disrupt this nocturnal species, resulting in changes in dispersal, reproductive behavior, communication patterns, and decreased foraging success (Longcore and Rich 2004). Similarly, noise and vibrations from construction of the mine or blasting will disturb lesser long-nosed bats, likely causing changes in dispersal, reproductive behavior, communication patterns, decreased foraging success, increased predation and stress response, and possibly damaged hearing if the noise is loud enough (NoiseQuest 2013; Pater *et al.* 2009). The magnitude of impacts from noise, vibration, and light are uncertain, but these impacts are expected to decrease as the distance from the mine increases.

While not addressing impacts to lesser long-nosed bat roosts from light, noise, blasting, etc., Rosemont will include a conservation measure as part of the proposed action that addressed the threat of human intrusion at these sites. Rosemont will fence or implement some other form of roost protection at the Helena Mine roost site and the R-2 Adit roost site. While these actions will potentially provide long-term protection of these known lesser long-nosed bat roost site, the fencing or other protective measures may also affect the use of these sites by lesser long-nosed bats. Such measures may alter the microclimate of the roosts, create impediments or hazards within the flight paths of bats entering and exiting the roosts, increase the vulnerability of lesser long-nosed bats to predators, or attract additional human activity to the sites. Rosemont has committed to coordinating these efforts with FWS and suitable entities so that appropriate measures that minimize effects to lesser long-nosed bats will be selected. Many of the potential negative effects of these measures can be avoided or significantly reduced with the selection of appropriate measures and the proper design and implementation of those measures. We are confident that we can work with Rosemont to develop appropriate protective measures for these roost sites, which will also present us with an opportunity to evaluate the effectiveness of the selected protective measures with regard to lesser long-nosed bat roost conservation. Nonetheless, the implementation of protective measures at known lesser long-nosed bat roost sites will have effects and, potentially, take that must be evaluated in this BO.

Effects to Forage

The proposed action will affect lesser long-nosed bats through the removal of potential lesser long-nosed bat forage plants (i.e., paniculate agaves) in the late summer range of the species. Based on surveys, it is estimated that between 196,268 and 306,209 Palmer agave rosettes will be impacted as a result of the proposed action (WestLand 2009e). In terms of acres of lesser long-nosed bat foraging habitat, the mine pit and associated facilities, including roadways, will remove approximately 5,400 acres of foraging habitat. Effects on lesser long-nosed bat forage plants may also result from an increase in dust levels adjacent to access roads and mining areas. Agaves could be negatively impacted by windborne fugitive dust coating leaves, resulting in reduced photosynthetic activity. Physical effects of dust on plants may include blockage and damage to stomata, shading, and abrasion of leaf surface or cuticle (Goodquarry 2011). Reduced food sources could result in reduced reproduction success or could result in the abandonment of the action area and nearby roosts by lesser long-nosed bats. Known lesser long-nosed bat maternity roosts are all more than 75 miles from the proposed action area; therefore, no effects on lesser long-nosed bat maternity roosts are anticipated.

In some of the WestLand technical reports, particularly WestLand (2012j), various aspects of livestock grazing management on Forest Service-managed allotments that are leased by Rosemont are proposed as a conservation measure to increase the availability of agave flower stalks. The grazing proposals address issues relative to grazing intensity and duration, as well as stock tank management. The proposal to reduce grazing pressure is proposed as a measure (in addition to agave planting) to compensate for the effects of the project on forage of lesser long-nosed bat under the premise that reduced livestock grazing pressure during the agave bolting period will increase the number of available agave flower stalks when compared to the current livestock grazing approach. As outlined in Coronado National Forest's second supplemental

BA, we agree that the revised grazing management cannot completely compensate for the loss of agaves in the project area, nor can any of the other proposed conservation measures (reclamation using agaves and additional agave planting) completely compensate for the loss of agaves. We agree with the rationale outlined in the second supplemental BA emphasizing that (1) some of the project area capable of growing agaves will be permanently removed from the landscape by the action (e.g., formation of the pit); (2) there are uncertainties about the ability to grow, transplant, and recruit Palmer's agave on the potentially capable areas following disturbance (e.g., waste rock facilities, roads, plant site); (3) previous consultation on livestock grazing has shown "no adverse effect" to lesser long-nosed bats from grazing anyway; (4) only 10% of the agaves lost from the project will be mitigated for by being planted; (5) seed mixes containing agave seeds are untested; (6) limited offsite, disturbed areas lacking agaves are proposed for restoration; and (7) conservation lands are not expected to differ significantly from the surrounding areas, with or without grazing (although easements could preclude future development or other actions with negative effects to lesser long-nosed bats). Nevertheless, FWS, like the Coronado National Forest, does support the concept of reduced grazing to help offset the effects of the action on Palmer agaves, the primary food source of the lesser long-nosed bat, although we do not have specific data to determine the extent of this reduction or the potential benefit to lesser long-nosed bats. Additionally, we have found in previous section 7 consultations that there has not been an adverse affect to lesser long-nosed bat from grazing on Palmer agave.

As part of the proposed action, Rosemont will reroute portions of the Arizona Trail. On the one hand, this will reduce the potential for human disturbance at the Helena Mine lesser long-nosed bat roost site, but it will also result in new disturbance of lesser long-nosed bat foraging habitat and increase the human disturbance along the new Arizona Trail route. The proposed reroute of the Arizona Trail will encompass approximately 13 miles and 19 acres of disturbance. The proposed trail reroute will not occur in proximity to any additional, known lesser long-nosed bat roosts. Effects to vegetation will occur, including the possibility of additional impacts to agaves. Rosemont has included the potential planting or revegetation with agaves of the old Arizona trail alignment. This will help offset the additional impacts to lesser long-nosed bat foraging habitat.

Effects from Noise and Lighting

Artificial light from the mine activities was recognized as a source of effects to lesser long-nosed bats in the Coronado National Forest's June BA and October Supplemental BA. The proposed action is expected to produce approximately 6.4 million lumens, which takes into account all lighting sources, including equipment-mounted lighting systems. To date, there is limited information on the existing condition, other than the qualitative observation that there is little existing artificial light, so the area is fairly dark. Because the project will operate around the clock, additional light pollution is of concern to astronomical interests and to the environmental community in general, particularly with regard to nocturnal species such as the lesser long-nosed bat. In the BA and Supplemental BA, there was some information on environmental consequences of light from the mine, but the existing technical reports targeted effects of "light pollution" and sky glow, primarily for astronomy and observatory concerns. More recently, WestLand produced another technical report related to the quantification of effects of the

lighting associated with the Rosemont Mine Project (Westland 2012f). This report helped to quantify the intensity and attenuation of light within twelve miles of the project area, using predictive modeling based on known and assumed lighting sources and the topography of the area. This report displayed predicted increases in horizontal light from artificial sources at the proposed copper mine.

Increases in light were displayed as increases to ambient light levels in terms of natural light levels (i.e., increase in artificial night light, based on different phases in the moon). The report also made it easier for us to envisage the amount of light at night from sky glow—it stated the artificial light would emit about the same number of lumens as the towns of Sells or Ajo, Arizona. That can be compared to the previous expectation (related to the initial Mine Plan of Operation) of sky glow similar to Nogales, Arizona. The Monrad (2012) and WestLand (2012g) reports both emphasize the improvements in the most recent lighting plan. The design features (which are not considered species-specific conservation measures) in the revised lighting plan are somewhat responsive to mitigating effects of lighting on plants and animals (Rich and Longcore 2006). In particular, part of this edited book that focuses on birds, Gauthreaux and Belser (2006, p. 87) lists the following "lighting control strategy options" (albeit more geared to office buildings than mines):

• Installing motion-sensitive lighting
• Using desk lamps and task lighting
• Reprogramming timers
• Adopting lower-intensity lighting

Other taxa accounts in Rich and Longcore (2006) mention how certain wavelengths of emitted light can be adjusted to decrease effects to certain animals. At least some of the design features that employ these measures are discussed in Monrad (2012) and WestLand (2012g). These reports do show that there was a significant effort on the part of the proponent to reduce lighting effects, but artificial night-lighting will still affect the lesser long-nosed bat for the next 25 to 30 years, despite the fact that Rosemont has committed to use light sources that minimize short wavelengths of light in an effort to reduce potential effects to wildlife.

Vehicular traffic will be present on SR 83, the west and east access roads, and within the project area. It is important to consider synergistic effects of human activity related to artificial night lighting. Vehicular light, especially, will be compounded by noise at the source of activity. As an example, for a moving vehicle at night, effects of artificial lighting are synergistic with noise pollution and motion, resulting in a loud, bright, moving object).

The Rosemont Mine project will create an epicenter of relatively intense lighting, similar to the light output of "the towns of Sells and Ajo", as mentioned above. This new occurrence of light in an area where such lighting has not occurred in the past can impact wildlife. For example, a migratory bird flying over the area could be affected by this epicenter of artificial light from the project (see Gauthreaux and Belser 2006). Certainly artificial night light in proximity to the source would have a more significant impact on nocturnal species, such as the lesser long-nosed bat, than areas where the light becomes more diffused, such as in areas peripheral to the light

source. Another aspect that cannot be readily quantified is the amount of light at an angle above the horizontal, but below the vertical. This is a possible issue for volant species. For example, when lesser long-nosed bats exit their roosts, they will quickly be above the horizontal, in an area experiencing elevated artificial light levels; spatially, this would be an area larger than that depicted by the figures presented by WestLand (2102g).

There are many ways that plants and animals can be affected by artificial night lighting. Beier (2006) discussed some of the major physical and behavioral effects to mammals:

• Disruption of foraging behavior
• Increased risk of predation
• Disruption of biological clocks
• Increased deaths in collisions on roads
• Disruption of dispersal movements
• Disruption of corridor use

While the specific effects of the lighting associated with the proposed Rosemont mine are largely unknown and discussed in terms of our best professional judgment, we do anticipate a real effect on the use of the area in the vicinity of the mine by foraging lesser long-nosed bats, and, potentially, effects on the use of roost sites affected by the lighting of the proposed mine.

In the past century, the extent and intensity of artificial night lighting has increased such that it has substantial effects on the biology and ecology of species in the wild (Longcore and Rich 2004). Recent studies have shown that artificial lights affect the movements of bats through the landscape, particularly slower flying bats. Stone *et al.* (2009) and Rydell (1992) showed in separate studies that street lighting disturbed and even prevented movements by certain species of bats; primarily bats with slower flight behavior. Recent telemetry research conducted by the Arizona Game and Fish Department (AGFD) on foraging lesser long-nosed bats in the Tucson Basin shows that foraging bats travel along washes as they move between foraging areas and roost locations. The AGFD believes that the washes provide areas of reduced lighting that provide pathways for movement while reducing the likelihood of predation and other threats (AGFD 2009). Lesser long-nosed bats use a hovering, slow flight while foraging and, as the AGFD research suggests, may be avoiding areas with artificial lighting. A study by Scanlon and Petit (2008) showed that urban parks without artificial lighting had higher bat use and bat species diversity than urban parks with artificial lighting, further indicating that artificial lighting can affect bat use and movements. A number of other studies also show negative effects on bat emergence, roost sites, movements, feeding behavior, and prey relationships (Boldogh *et al.* 2007, Holsbeek 2008, Fure 2006, Bat Conservation Trust 2008, Downs *et al.* 2003). During a study on a nectar feeding bat species more closely related to the lesser long-nosed bat, Winter *et al.* (2003) found that *Glossophaga soricina* locates forage using ultraviolet light reflected by forage species. Because this attribute has not been researched in lesser long-nosed bats, it is not known whether lesser long-nosed bats have this same ability. However, these bats are in the same taxonomic family, and artificial light may cause interference or redirect foraging lesser long-nosed bats keying on ultraviolet light sources or reflections. We do not, however, have enough information to definitively evaluate this potential effect. Ongoing research by AGFD

and others may provide additional information in the future regarding this issue. Information specific to the effects of lighting on lesser long-nosed bats are limited. We know that lesser long-nosed bats forage in areas which have increased levels of light compared to non-urbanized areas. However, given the observations of telemetered lesser long-nosed bats using areas of little or no urban lighting to move within the landscape, we anticipate that the light emitted as a result of the Rosemont will have effects to foraging and, potentially, roosting lesser long-nosed bats evidenced by reduced use or abandonment of the area.

Noise effects to lesser long-nosed bats are related to blasting and drilling, ore processing, and waste rock and tailings placement. Day-to-day operations of the plant and associated travel by trucks and other equipment also contribute to noise impacts in the vicinity of the Rosemont Mine project. While much of the more intense activity will occur during daylight hours, the proximity of known lesser long-nosed bat roosts make it likely that day-roosting bats will be affected by the increased noise levels of the proposed mine. Lighting and noise disturbance will also affect foraging lesser long-nosed bats in the vicinity of the mine as some mine activity will occur around the clock.

Changes in Lesser Long-Nosed Bat Status Within the Action Area

Lesser long-nosed bats exhibit high fidelity to maternity roosts, returning year after year. Fidelity to post-maternity roost sites, such as those located within the action area of the Rosemont Mine project, is not as strong. The numbers of lesser long-nosed bats using post-maternity roost sites varies from year to year, and some sites may not be used every year. This is apparently in response to variability in the quantity and location of available forage resources. In some ways, this makes the conservation and protection of known post-maternity sites equally as important as the protection of maternity roost sites. The availability of post-maternity roost sites distributed across the landscape allows lesser long-nosed bats to take advantage of variable and ephemeral food resources. Without the flexibility of multiple roost sites from which to select, the most efficient and effective use of forage resources by lesser long-nosed bats may be precluded. As a result, altered timing of migration and inability to obtain adequate resources may result in migrating lesser long-nosed bats in poor condition which can contribute to increased mortality and reduced productivity.

A number of the lesser long-nosed bat roosts within the action area occur on private lands and may or may not be subject to section 7 consultation for actions that could be proposed on these lands and which could affect lesser long-nosed bat roost sites. Lesser long-nosed bat roosts on public lands have been affected despite the efforts to protect those sites and despite the fact that such actions underwent section 7 consultation. In recent years, lesser long-nosed bat use at known roost locations has been affected by the occurrence of large wildfires and activities associated with illegal border crossing at these roost sites. These threats to lesser long-nosed bat roosts are not expected to diminish in the future. Ten additional post-maternity lesser long-nosed bat roost sites are located outside of the immediate vicinity of the Rosemont Mine project, but within the action area. Effects to any of these roost sites from fire, illegal border activities, poor forage production, or other threats may necessitate the use of the roost sites near the Rosemont Mine project. The converse is also true if the effects of the Rosemont Mine cause the roost sites

near the mine to be abandoned or the use of those roosts to be reduced, necessitating the need for those bats to find and use alternative roost sites within the action area. If lesser long-nosed bats are unable to find alternative roost sites, their migratory patterns, body condition, and, ultimately, productivity may be affected.

We conclude that the availability of post-maternity roost sites across the range of the lesser long-nosed bat is crucial to this species' ability to meet its life history requirements. In particular, this availability contributes to the lesser long-nosed bat's ability to use an ephemeral and variable forage resource, as well as find protection afforded by roost sites if other roost sites within the range of the bat become compromised. The roost sites affected by the Rosemont Mine may reduce the availability of post-maternity roosts in this area of the lesser long-nosed bat's range, and correspondingly reduce options for this species to meet its life history requirements.

The *Lesser Long-nosed bat Recovery Plan* (FWS 1991) states that reclassification of the species from endangered to threatened would be warranted if all of the following criteria are met: (1) each major roost population in Arizona and Mexico is monitored for at least five years; (2) the results of that monitoring show that population numbers are stable or increase over the higher set of population figures appearing in this recovery plan; (3) sufficient progress has been made in the protection of roosts and forage plants from disturbance or destruction; (4) no new threats to the species or its habitat have been identified or there are no increases to currently recognized threats; and (5) the [FWS] Service determines the species is no longer endangered. The *Lesser Long-Nosed Bat* (Leptonycteris curasoae yerbabuenae) *5-Year Review: Summary and Evaluation* (FWS 2007) considered additional data collected since the Recovery Plan was prepared and stated that the primary recovery actions are to monitor and protect known roost sites and foraging habitats.The proposed action will result in the loss of a single roost site as well as an appreciable acreage of forage resources, but the lesser long-nosed bat's flexibility in selecting roosts an foraging areas, the protection of roosts elsewhere, the partial replacement of forage resources on-site, and the continues presence of roosts and forage plants in areas not affected by the Rosemont Copper Mine, make it unlikely that the ability to recover the species (meet the recovery criteria) will be diminished.

Cumulative Effects - Lesser Long-Nosed Bat

Cumulative effects include the effects of future State, tribal, local or private actions that are reasonably certain to occur in the action area considered in this BO. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act.

The majority of lands within the action area are managed by Federal agencies; thus, most activities that could potentially affect lesser long-nosed bats are Federal activities that are subject to section 7 consultation. The Coronado National Forest and BLM manage approximately 45% of the lands within the action area and administer projects and permits on those lands; therefore, some of the activities that could potentially affect lesser long-nosed bats are likely Federal activities subject to additional Section 7 consultation under the ESA. The effects of these Federal activities are not considered cumulative effects.

Residential and commercial development, farming, livestock grazing, actions resulting in the invasion of buffelgrass, surface mining and other activities occur on these lands and, while difficult to predict and quantify, are expected to continue into the foreseeable future. Other non-Federal actions expected to occur include continued road maintenance, grazing activities, and recreation in the action area, current and future development, other nearby mining projects, and unregulated activities on non-federal lands, such as trespass livestock and inappropriate use of OHVs, which can cumulatively adversely affect the lesser long-nosed bat. Additional cumulative effects on lesser long-nosed bats include recreation without a Federal nexus and cross-border activities that include the following: human traffic; deposition of trash; new trails from human traffic; increased fire risk from human traffic; and water depletion and contamination.

These actions, the effects of which are considered cumulative, may result in loss or degradation of lesser long-nosed bat foraging habitat, and potential disturbance of roosts, and are reasonably certain to occur in the action area considered in this BO.

Conclusion - Lesser Long-Nosed Bat

After reviewing the current status of the lesser long-nosed bat; the environmental baseline for the action area; the effects of the proposed action; and the cumulative effects, it is our biological opinion that the proposed action is not likely to jeopardize the continued existence of the lesser long-nosed bat. No critical habitat has been designated for this species; therefore, none will be affected. Our conclusion is based on the following:

1. Take of lesser long-nosed bats will occur as a result of the proposed action. Direct take of individuals is possible related to potential collisions with fencing or other protective structures and/or increased predation associated with the proposed conservation measures related to the Helena and R-2 roost sites. Other direct take associated with the proposed action is not anticipated because of certain proposed conservation measures, including survey and exclusion, which is included in the project design. Indirect take is expected in the form of harm or harass as a result of the complete loss of one lesser long-nosed bat roost site, and effects to two adjacent lesser long-nosed bat roost sites from increased human activity, and associated noise and light effects. Additional indirect take is anticipated from the significant loss of forage resources within the mine footprint, and the reduced availability of forage resources for some distance around the mine due to increased human activity, and associated noise and light effects. However, Rosemont has proposed conservation measures (see Proposed Action section above) to offset and reduce the potential for such indirect take associated with the proposed action. We conclude that these measures address the anticipated effects to lesser long-nosed bats to the extent that the proposed action will not jeopardize the continued existence of the lesser long-nosed bat.

2. Monitoring and adaptive management will be applied to evaluate the effects of the proposed action, as well as the effectiveness of proposed conservation measures. This process will allow the Coronado National Forest and FWS to evaluate and adapt the approach of the proposed conservation measures to be as effective as possible.

3. The acquisition and conservation of lands in the vicinity of the proposed mine will provide conservation benefit to the lesser long-nosed bat. Currently, these lands are subject to potential actions that could affect lesser long-nosed bat forage resources. The conservation, monitoring, and adaptive management approach for these lands will provide a conservation benefit to lesser long-nosed bats.

4. Rosemont has proposed multiple conservation measures and project actions designed to reduce the effects of noise and light on the adjacent lesser long-nosed bat roosts. If these measures are successful or, through adaptive management, can be revised to be successful, the protective measures implemented at the Helena and R-2 roost sites will reduce the potential for roost disturbance by human intrusion at these sites. This provides a conservation benefit for the lesser long-nosed bat.

5. Rosemont has proposed ongoing roost surveys and monitoring, and exclusion of bats prior to closure for small lesser long-nosed bat roosts to be lost as a result of the proposed mine. Currently, only one such small lesser long-nosed bat roost is known within the project area (the Chicago Mine). The potential for direct mortality of lesser long-nosed bats within this roost, as well as any other small lesser long-nosed bat roosts found within the construction area, will be reduced by implementing exclusion of lesser long-nosed bats prior to construction.

6. Agaves will be included in restoration and reclamation activities associated with the proposed Rosemont Mine project. While there will be a temporal loss of forage resources, these restoration and reclamation activities will reduce the long-term loss of lesser long-nosed bat forage resources. Additionally, if the proposed changes to livestock grazing management, as outlined in the conservation measures above, are effective in reducing livestock impacts to agave flowering, some level of additional lesser long-nosed bat forage resources may be available on those allotments within the action area.

7. The effects and actions noted under Conclusions 2 through 6, above, will make the proposed action unlikely to diminish the potential to recover the lesser long-nosed bat.

The conclusions of this BO are based on full implementation of the project as described in the "Description of the Proposed Action" section of this document, including any conservation measures that were incorporated into the project design.

INCIDENTAL TAKE STATEMENT - LESSER LONG-NOSED BAT

Section 9 of the Act and Federal regulation pursuant to section 4(d) of the Act, prohibit take of endangered or threatened species, respectively, without special exemption. "Take" is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. "Harm" is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns, including breeding, feeding, or sheltering. "Harass" is defined in the regulations as ``an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering (50 CFR §17.3). Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the proposed action is not considered to be prohibited taking under the Act provided such taking is in compliance with this Incidental Take Statement.

The measures described below are non-discretionary, and must be included by the USFS as binding conditions of any grant or permit issued to the applicant, as appropriate, for the exemption in section 7(o)(2) to apply. The USFS has a continuing duty to regulate the activity that is covered by this Incidental Take Statement. If the USFS (1) fails to assume and implement the terms and conditions, or (2) fails to require the applicant to adhere to the terms and conditions of this incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, the USFS, or the applicant must report the progress of the action and its impact on the species as specified in the Incidental Take Statement (see 50 CFR 402.14(I)(3)).

Amount or Extent of Take - Lesser Long-Nosed Bat

We anticipate incidental take of lesser long-nosed bats as a result of this proposed action in the form of direct mortality, as well as harm or harassment due to the effects of significant loss of forage resources, and to human disturbance and associated effects of noise and light. These effects are anticipated to cause lesser long-nosed bats to reduce their occupancy or abandon adjacent roost sites and move to alternate roost sites in the area, potentially affecting the regional population of lesser long-nosed bats through overuse of limited forage and roost resources.

Specifically, incidental take for the currently proposed Rosemont Mine project is anticipated as follows:

<u>Take associated with roosts</u> – It is difficult to assess take in the form of harm or harass for individual lesser long-nosed bats at roost sites because the number of individual bats fluctuates over time, and the take of individuals may actually occur away from the original roost site as a result of bats abandoning a known roost. Direct take (mortality of those bats left inside inadvertently and harm of those forced to relocate) resulting from the closure of a known roost

site is more easily quantified, but is still dependent on the number of bats present if the closure occurs while the roost is occupied. Even if bats are excluded prior to closure, or if closure of the roost occurs during a time of year when the bats are not present, take of lesser long-nosed bats in the form of harm can still occur as a result of the loss of necessary habitat elements supporting the life history requirements of lesser long-nosed bats. The effects of noise, lights, and increased human activity in proximity to known lesser long-nosed bat roost sites, to the extent that such effects result in reduced occupancy or abandonment of the roost site, represents take in the form of harass. It is easier to quantify take of lesser long-nosed bats in relation to the number of roosts affected, rather than at the scale of individual lesser long-nosed bats.

For take associated with roosts, we use the number of roosts lost or affected as a surrogate for take, rather than quantifying individual bats. We anticipate the loss of the Chicago Mine roost site as a result of the proposed mine. We also anticipate the loss of the R-2 and Helena roost sites if noise and light conservation measures and best management practices outlined earlier in this BO prove to be ineffective. While there is some potential for loss of other roost sites (Rosemont will continue reconnaissance-level surveys and may close additional occupied small roosts following exclusion of the bats), we conclude this is unlikely to occur because no additional occupied roosts have been found within the action area during previous surveys. If additional roosts are found, closure would be limited to small roost sites and exclusion should eliminate direct take of the bats occupying these small sites. Total take related to lesser long-nosed bat roosts for the Rosemont Mine project is three post-maternity roosts (approximately 6,000 bats); this is a relatively small proportion of the total numbers of bats known from population surveys (see Status of the Species section, above).

While the implementation of protective measures at known lesser long-nosed bat roosts should result in long-term conservation benefits to the species, these measures can also result in mortality of individual bats due to collisions with the structures (gates, fences, etc.) or increased predation due to altered exit and return behavior of the bats. We believe most of these potential issues can be avoided by proper installation and design. However, the potential exists for some mortality of lesser long-nosed bats to occur. Therefore, we anticipate that up to 10 lesser long-nosed bats may be directly taken as a result of the implementation of protective measures at known lesser long-nosed bat roosts.

<u>Indirect take associated with the loss of locally significant lesser long-nosed bat forage resources</u> – Indirect take of lesser long-nosed bats associated with the loss of important forage resources will occur in the form of harm or harass. Harm will occur due to the permanent loss of locally significant forage resources. Take in the form of harass will occur if lesser long-nosed bats are precluded from using available forage resources due to noise, light, or increased human activities associated with the proposed Rosemont Mine. Such take is difficult to quantify and document at the level of individual bats. Take related to forage resources is likely to occur over time and is difficult to document because individual bats taken may not be affected in the same area as where the loss of forage resources has occurred. Loss or reduced availability of lesser long-nosed bat forage resources can result in energetic impacts to lesser long-nosed bats. These effects can result in lesser long-nosed bats having to travel farther to find available forage resources, thereby using additional energetic reserves. If available forage resources are more

limited than those lost due to the Rosemont Mine project, energetic rewards will be reduced, potentially affecting the wellbeing of affected individuals. Because lesser long-nosed bats are migratory, the inability of individual bats to acquire the needed resources for migration, due to reduce forage availability, affects multiple aspects of this species natural history. Additional intra-specific competition for reduced forage resources may also occur. Lesser long-nosed bats have high roost fidelity and increasing the number of bats using particular foraging areas due to lost forage resources resulting from Rosemont's mining project can lead to increased intra-specific conflicts. Increased travel distance to use available forage also exposes lesser long-nosed bats to increased risk of predation, collision, and other environmental threats. As indicated in the Recovery Plan and the 5-Year Review, adequate forage appropriately distributed across the range of the lesser long-nosed bat is needed to achieve recovery of the population. The widespread failure of agave flowering in 2006 impacted the lesser long-nosed bat population through increase use of hummingbird feeders as a source of food and migration out of the area earlier that would occur under normal agave flowering conditions. If lack of forage on the landscape in southeast Arizona results in changes in lesser long-nosed bat migration patterns as was seen in 2006, this can affect whether forage resources are available to the bats along the migration route due to the need to time forage availability with occupancy of the landscape by lesser long-nosed bats. The ability of this species to migrate, breed, and over-winter is dependent on adequate forage available at the time the bats are present. If this does not happen, population level effects to the species could occur. Given a reduced baseline of available lesser long-nosed bat forage due to recent large, intense wildfires in the Chiricahua, Huachuca, and Atascosa mountains, additional forage losses due to the proposed action could limit available forage in the region and result in more widespread, population level impacts to this species resulting from the potential need to switch roosts, travel longer distances to forage, and possible changes to the timing of migration, which, if the timing of migration changes enough, may affect forage availability as the bats migrate south.

Therefore, we will use the number of acres of forage resources lost as a surrogate for take of individual lesser long-nosed bats. With regard to the amount of incidental take authorized under this BO, using habitat as a surrogate for take of individual lesser long-nosed bats, the FWS authorizes take in the form of harm and harass due to the loss of significant forage resources for up to and including 5,401 acres (USFS 2013d) of lesser long-nosed bat foraging habitat (acres of habitat supporting Palmer's agave). This take is anticipated for the long-term loss of foraging habitat within the footprint of the mine pit and mine facilities, including roadways, utility corridors and relocation of the Arizona National Scenic Trail.

In summary, and stated differently, the maximum allowable incidental take of lesser long-nosed bats is: (1) harassment of 6,000 individuals at three post-maternity roosts; (2) harm of ten individuals at known lesser long-nosed bat roosts subject to the implementation of protective measures; and (3) loss of 5,401 acres of affected habitat containing Palmer's agave, a surrogate measure of take (via harm and harassment) of individuals.

Effect of the Take - Lesser Long-Nosed Bat

In this BO, the FWS determines that this level of anticipated take is not likely to result in

jeopardy to the species for the reasons stated in the Conclusions section. No critical habitat has been designated for the lesser long-nosed bat; therefore, no critical habitat will be destroyed or adversely modified.

Reasonable and Prudent Measures - Lesser Long-Nosed Bat

The Rosemont Copper Company has included a number of measures and design elements within their proposed action that should, once completely implemented, reduce the proposed action's adverse effects to lesser long-nosed bats. The following Reasonable and Prudent Measures are necessary and appropriate to minimize take of lesser long-nosed bats:

1. Rosemont shall work with the FS, FWS, and other entities to permanently protect a known lesser long-nosed bat roost site within, or as close to the action area as possible.

2. In the event that either the R-2 and/or Helena lesser long-nosed bat roosts are abandoned or experience a significant reduction in occupancy over time, and these occurrences can be reasonably attributed to the proposed Rosemont Mine, Rosemont shall work with the FS, FWS, and other entities to permanently protect an additional lesser long-nosed bat roost site within the action area.

3. Rosemont shall ensure that the effectiveness of protective measures implemented at the Helena and R-2 roost sites, including effects to bat behavior, and bat mortality or predation, and occupancy of the sites, are monitored. Monitoring shall also occur at any other lesser long-nosed bat roosts where protective measures are implemented as part of the conservation measures outlined in the proposed action.

4. In addition to the agave planting outline in Conservation Measure 11 for lesser long-nosed bats, Rosemont shall implement additional agave planting and monitoring within the action area to help offset losses of lesser long-nosed bat forage resources associated with the proposed action.

5. Rosemont shall implement conservation measures and Reasonable and Prudent Measures, except for survey and monitoring activities, during the times of year when lesser long-nosed bats are not present.

6. Rosemont shall annually report to the FWS the results of the implementation and results of the Terms and Conditions outlined below.

Terms and Conditions - Lesser Long-Nosed Bat

In order to be exempt from the prohibitions of section 9 of the Act, Rosemont shall comply with the following terms and conditions, which implement the reasonable and prudent measures described above and outline required reporting/monitoring requirements. These terms and conditions are non-discretionary.

1. The following terms and conditions implement Reasonable and Prudent Measures 1 and 2 for the lesser long-nosed bat:

   a. Rosemont shall implement protective measures at a known lesser long-nosed bat roost site within, or as close to the action area as possible. The known roost where this term and condition will be applied, as well as the appropriate associated protective measures, will be evaluated and selected through coordination with FWS, other entities, and the USFS (for biological and technical input as well as to incorporate concerns with the agency's existing Abandoned Mine Lands program).
   b. Based on information gathered as outlined in the Conservation Measures for lesser long-nosed bats earlier in this document, if Rosemont or their agents observe during monitoring at either the R-2 or Helena lesser long-nosed bat roosts: (1) an up to 25 percent decline in the numbers of lesser long-nosed bats for 3 consecutive years; or (2) a greater than 25 percent decline in each of 2 years; or (3) a complete abandonment of the roost in 1 year, the adaptive management as described in Conservation Measure 9 will include selection of protective measures to be applied to another known lesser long-nosed bat roost within or as close to the action area as possible. Known roosts and associate protective measures will be evaluated and selected through coordination with FWS and other entities.
   c. Protective measures agreed upon by the Coronado National Forest, the FWS, and other entities at the selected roost sites shall include completion of any environmental compliance requirements and initiation of project elements within one year of roost site selection.
   d. Pre- and post-implementation monitoring will occur at these roost sites, with an annual report to the FWS for a period of four years (1 season of pre-implementation monitoring and 3 seasons of post-implementation monitoring).

2. The following term and condition implements reasonable and prudent measure #3 for the lesser long-nosed bat:

   With input from the FWS and other entities, Rosemont shall implement a monitoring program to evaluate the effectiveness of protective measures implemented at known lesser long-nosed bat roosts as part of the conservation measures included in the proposed action. Monitoring shall include a minimum of three visits per season and include methods to evaluate:

   - as appropriate, any collisions, increased predation over existing levels, or other sources of lesser long-nosed bat mortality associated with the protective measures.
   - the long-term integrity of structures installed as part of the protective measures.
   - any impacts to exit and return behavior of lesser long-nosed bats that may be caused by the protective measures. Note that pre-installation monitoring must be conducted so that changes can be detected.

- the effectiveness of the protective measures in reducing disturbance and other impacts to lesser long-nosed bat roosts. Pre-installation assessment of the disturbance and other impacts must be conducted so that changes can be detected

Results of this monitoring program shall be reported in the annual report to FWS as outlined in the Conservation Measures section of this BO.

3. The following terms and conditions implement reasonable and prudent measure #4 for the lesser long-nosed bat. The objective of these terms and conditions is to seek to restore an equivalent acreage of agave habitat affected by the proposed action:

   a. Rosemont shall reclaim the short road segment leading to the R-2 Adit roost site, including the use of agave planting (if the FS, RCC, FWS, and other entities determine site conditions would support the species) to reduce the likelihood of human intrusion at this roost site.

   b. Rosemont shall investigate the feasibility of agave plantings at ecologically appropriate sites on proposed conservation lands, including Sonoita Creek Ranch, Davidson Canyon Watershed parcels, and Helvetia Ranch North parcels. Plant agaves at ecologically appropriate densities (as determined by RCC, FWS, and other entities) and conduct follow-up monitoring at sites where such plantings are feasible and have a high likelihood of success. The status and success of these efforts should be included in the annual report to FWS as outlined in the Conservation Measures section of this BO.

4. The following term and condition implements reasonable and prudent measure #5 for the lesser long-nosed bat:

   a. Rosemont shall implement conservation measures related to known lesser long-nosed bat roost protection measures to rerouting of the Arizona Trail, reclamation and revegetation, and any other project activities that will occur in proximity to known lesser long-nosed bat roosts during the time of year when lesser long-nosed bats are not present in the project action area. Such activities could typically be carried out from November 1 to July 1 of each year.

5. The following term and condition implements reasonable and prudent measure #6 for the lesser long-nosed bat:

   a. In addition to the reporting requirements already specified as part of the proposed action, Rosemont, or their agents shall report to FWS:

      The monitoring and adaptive management process outlined in the BA and this BO is key to reducing take of lesser long-nosed bats resulting from the implementation of this project. Therefore, Rosemont shall report to the FWS the results of all monitoring and adaptive management actions undertaken as a result

of this project. Annually, and in compliance with the reporting deadlines outlined above in this BO, Rosemont shall provide a report to FWS that includes: (a) any new lesser long-nosed bat roosts documented as a result of monitoring; (b) monitoring data for all roost sites occupied by lesser long-nosed bats including dates and numbers of lesser long-nosed bats counted; (c) classification of each lesser long-nosed bat roost monitored with regard to season of use; (d) any documented negative effects of the protective measures as discussed in Term and Condition #2 above, e) any recommendations to remove or alter the roost protective measures or change the monitoring protocol; (f) results of monitoring to document the effectiveness of the roost protection measures implemented at the Helena and R-2 roost sites, as well as any additional lesser long-nosed bat roost protected as a result of the implementation of the conservation measures outlined in the proposed action; (g) any other pertinent information related to monitoring and adaptive management under this project.

a. The Biological Monitor shall report to the FWS all data received from Rosemont related to the monitoring of known lesser long-nosed bat roosts and reconnaissance level surveys within 10 working days of each monitoring or survey effort. The Biological Monitor shall report the intent to close any feature that supports 30 or more lesser long-nosed bats to FWS at least 30 days prior to initiating exclusion and closure of the feature. Note that since the Biological Monitor will be employed by the Coronado National Forest, this portion of the Term and Condition applies to the Forest Service.

Review requirement: The reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize incidental take that might otherwise result from the proposed action. If, during the course of the action, the level of incidental take is exceeded, such incidental take would represent new information requiring review of the reasonable and prudent measures provided. The Coronado National Forest must immediately provide an explanation of the causes of the taking and review with the FWS the need for possible modification of the reasonable and prudent measures.

Conservation Recommendations-Lesser Long-Nosed Bat

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

1. We recommend that the Coronado National Forest participate in the development of a revised long-term monitoring protocol for the lesser long-nosed bat as outlined in the most recent Lesser Long-Nosed Bat 5-year review and the recently completed evaluation by the University of Arizona (Cerro 2012).
2. We recommend that the Coronado National Forest participate in the development of a range-wide agave monitoring program with a standardized monitoring protocol.

3. We encourage the Coronado National Forest to initiate or participate in additional lesser long-nosed bat research related to the foraging patterns, roost occupancy patterns, and seasonal behavior of lesser long-nosed bats in southern Arizona.
4. We encourage the Coronado National Forest to work with Border Patrol and the Department of Homeland Security to assess and minimize the impacts of border fences and other facilities on the lesser long-nosed bat.

In order for the FWS to be kept informed of actions minimizing or avoiding adverse effects or benefiting listed species or their habitats, the FWS requests notification of the implementation of any conservation recommendations.

STATUS OF THE SPECIES- JAGUAR

Legal Status

In 1972, the jaguar (*Panthera onca*) was listed as endangered (37 FR 6476; March 30, 1972) in accordance with the Endangered Species Conservation Act of 1969 (ESCA), a precursor to the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). Under the ESCA, the FWS maintained separate listings for foreign species and species native to the United States. At that time, the jaguar was believed to be extinct in the United States; thus, the jaguar was included only on the foreign species list. On July 25, 1979, the FWS published a notice (44 FR 43705) stating that, through an oversight in the listing of the jaguar and six other endangered species, the United States populations of these species were not protected by the Act. The notice asserted that it was always the intent of the FWS that all populations of these species, including the jaguar, deserved to be listed as endangered, whether they occurred in the United States or in foreign countries. Therefore, the notice stated that the FWS intended to take action as quickly as possible to propose the U.S. populations of these species (including the jaguar) for listing. On July 25, 1980, the FWS published a proposed rule (45 FR 49844) to list the jaguar and four of the other species referred to above in the United States. The proposal for listing the jaguar and three other species was withdrawn on September 17, 1982 (47 FR 41145) stating that the Act mandated withdrawal of proposed rules to list species which have not been finalized within 2 years of the proposal. On July 22, 1997, the FWS published a final rule clarifying that endangered status for the jaguar extended into the United States (62 FR 39147).

Life History

The jaguar, a large member of the cat family (Felidae), is an endangered species that currently occurs from southern Arizona and New Mexico to southern South America. Jaguars are muscular cats with relatively short, massive limbs and a deep-chested body. They are cinnamon-buff in color with many black spots; melanistic (dark coloration) forms are also known, primarily from the southern part of the range.

The life history of the jaguar has been summarized by Seymour (1989, entire) and Brown and López González (2001, entire), among others. Jaguars breed year-round rangewide, but at the southern and northern ends of their range there is evidence for a spring breeding season.

Gestation is about 100 days; litters range from one to four cubs (usually two). Cubs remain with their mother for nearly 2 years. Females begin sexual activity at 3 years of age, males at 4. Studies have documented few wild jaguars more than 11 years old, although a wild male jaguar in Arizona was documented to be at least 15 years of age (Johnson *et al.* 2011, p. 12), and in Jalisco, Mexico, two wild females were documented to be at least 12 and 13 (Núñez 2011, pers. comm.). The consensus of jaguar experts is that the average lifespan of the jaguar is 10 years.

Prey

The list of prey taken by jaguars throughout their range includes more than 85 species (Seymour 1989, p. 4). Known prey include, but are not limited to, collared peccaries (javelina (*Pecari tajacu*)), white-lipped peccaries (*Tayassu pecari*), capybaras (*Hydrochoerus* spp.), pacas (*Agouti paca*), agoutis (*Dasyprocta* spp.), armadillos (*Dasypus* spp.), caimans (*Caiman* spp.), turtles (*Podocnemis* spp.), white-tailed deer (*Odocoileus virginianus*), livestock, and various other reptiles, birds, and fish (sources as cited in Seymour 1989, p. 4; Núñez *et al.* 2000, pp. iii–iv; Rosas-Rosas 2006, p. 17; Rosas-Rosas *et al.* 2008, pp. 557–558). Jaguars are considered opportunistic feeders, especially in rainforests, and their diet varies according to prey density and ease of prey capture (sources as cited in Seymour 1989, p. 4). Jaguars equally use medium- and large-size prey, with a trend toward use of larger prey as distance increases from the equator (López González and Miller 2002, p. 218). Javelina and white-tailed deer are thought to be the mainstays in the diet of jaguars in the United States and Mexico borderlands (Brown and López González 2001, p. 51).

Home Range and Movement

Like most large carnivores, jaguars have relatively large home ranges. According to Brown and López-González (2001), their home ranges are highly variable and depend on sex, topography, available prey, and population dynamics. However, little information is available on this subject outside tropical America, where several studies of jaguar ecology have been conducted. Data compiled from studies in Brazil, Venezuela, and Belize found mean home range areas for males to vary from 12.8 to 140 square kilometers (km^2)[5 to 52 square miles (mi^2)] during the wet season and 28 to 165.8 km^2 (11 to 64 mi^2) during the dry season. For females, the ranges were smaller, with less variation between seasons (Rabinowitz and Nottingham 1986, Crawshaw and Quigley 1991, Brown and López-González 2001, Cavalcanti and Gese 2009). In the tropical deciduous forest of Jalisco, Mexico, mean home range size for two males was 100.3 +/- 15.0 km^2 (38.7 +/- 5.8 mi^2) and four females was 42.5 +/- 16 km^2 (16.4 +/- 6.2 mi^2) (Núñez-Pérez 2006).

Only one limited home range study using standard radio-telemetry techniques has been conducted for jaguars in northwestern Mexico. Telemetry data from one adult female tracked for four months during the dry season in the municipality of Sahuaripa, Sonora, indicated a home range size of 100 km^2 (39 mi^2) (López-González 2011, pers. comm.). Additionally, camera trap data indicated that the average male home range in the municipality of Sahuaripa, Sonora, was 84 km^2 (32 mi^2) (López-González 2011, pers. comm.). Also using camera traps, in Nacori Chico, Sonora, Rosas-Rosas and Bender (2012) estimated the home range for one adult male jaguar encompasses about 200 km^2 (77 mi^2).

No home range studies have been conducted for jaguars in southwestern U.S. using standard radio-telemetry techniques. The home ranges of borderland jaguars are presumably as large or larger than the home ranges of tropical jaguars (Brown and López González 2001, p. 60), as jaguars in this area are at the northern limit of their range and the arid environment contains resources and environmental conditions that are more variable than those in the tropics (Hass 2002, as cited in McCain and Childs 2008, p. 6). Therefore, jaguars require more space in arid areas to obtain essential resources such as food, water, and cover.

In coastal Jalisco, jaguars moved up to 20 km (12.4 mi) in one night and one juvenile male dispersed about 70 km (43.5 mi) to the north (Núñez *et al.* 2002). The mean one-day movement of radio-collared jaguars in the Pantanal region of southwestern Brazil was 2.4 +/- 2.3 km (1.5 +/- 1.4 mi), with that of one male being significantly larger [3.3 +/- 1.8 km (2.0 +/- 1.1 mi)] than that displayed by females (1.8 +/- 2.5 km) (Crawshaw and Quigley 1991). Additionally, the mean distance travelled by all animals during one-day intervals in the dry season [2.7 +/- 2.5 km (1.7 +/- 1.5 mi)] was significantly greater than the mean one-day movement for all other months combined [1.6 +/- 2.1 km (1.0 +/- 1.3 mi)] (Crawshaw and Quigley 1991). In Brazil, male jaguars have been documented to disperse up to 64 km (Rabinowitz and Zeller 2010).

Habitat

Jaguars are known from a variety of vegetation communities (Seymour 1989). Toward and at middle latitudes, they show a high affinity for lowland wet communities, including swampy savannas or tropical rain forests. Swank and Teer (1989) stated that jaguars prefer a warm, tropical climate, usually associated with water, and are rarely found in extensive arid areas. However, jaguars have been documented in arid areas, including thornscrub, desertscrub, lowland desert, mesquite grassland, Madrean oak woodland, and pine-oak woodland communities of northwestern Mexico and southwestern U.S. (Boydston and López-González 2005, McCain and Childs 2008, López-González and Brown 2002). The more open, dry habitat of southwestern U.S. has been characterized as marginal in terms of water, cover, and prey densities (Rabinowitz 1999). Jaguars rarely occur above 2,591 m (8,500 ft) (Brown and López-González 2001).

Conde *et al.* (2010) found significant differences in habitat use between male and female jaguars in the Mayan Forest of the Yucatan Peninsula by modeling occupancy as a function of land cover type, distance to roads, and sex. Although both male and female jaguars prefer tall forest, short forest was used by females but avoided by males. Other studies have also shown that jaguars selectively use large areas of relatively intact habitat away from certain forms of human influence. Zarza *et al.* (2007) report that towns and roads had an impact on the spatial distribution of jaguars [jaguars used more frequently than expected by chance areas located more than 6.5 km (4 mi) from human settlements and 4.5 km (2.8 mi) from roads] in the Yucatan peninsula. In the state of Mexico, Monroy-Vichis *et al.* (2007) report that one male jaguar occurred with greater frequency in areas relatively distant from roads and human populations. In some areas of western Mexico, however, jaguars (both sexes) have frequently been recorded near human settlements and roads (Núñez-Pérez, August 2, 2011, email to FWS.). In Marismas

Nacionales, Nayarit, a jaguar den was recently located very close to an agricultural field, apparently 1 km (0.6 mi) from a small town (Núñez-Pérez, August 2, 2011, email to FWS). Jaguar presence is affected in different ways by various human activities; however, direct persecution likely has the most significant impact.

No formal habitat use studies have been conducted (with the exception of Núñez *et al.*'s (2002) examination of arroyo use) in the northwestern most portion of the jaguar's range. However, results of a study in the municipality of Nácori Chico, Sonora, showed that jaguar kill sites of wild prey (i.e., white-tailed deer and peccary) (Rosas-Rosas, August 6, 2011, email to FWS) and cattle were positively associated with oak forest and semi-tropical thornscrub vegetation types, whereas they were negatively associated with upland mesquite (Rosas-Rosas *et al.* 2010). Sites of cattle kills were also positively associated with proximity to permanent water sources and roads (Rosas-Rosas *et al.* 2010). General jaguar habitat associations have been described in this region by various authors. In western Mexico, including Nayarit and Jalisco, jaguars primarily occur in tropical deciduous forest, although other formerly important habitats are the mangrove forests and swamps of the Agua Bravo and Marismas Nacionales straddling the borders of Nayarit and Sinaloa (Brown and López-González 2001). In Jalisco, oak and pine forest are used by jaguars, some of them located between 2,700 and 2,800 m (8,858 ft and 9,186 ft) in elevation (Núñez-Pérez, August 2, 2011, email to FWS). Although jaguars are not primarily associated with these vegetation communities, it is important to consider oak woodlands and pine forests as potential jaguar corridors (Núñez-Pérez, August 2, 2011, email to FWS).

Several studies have helped refine a general understanding of habitats that have been or might be used by jaguars in Arizona and New Mexico, including studies by the Sierra Institute Field Studies Program (2000), Hatten *et al.* (2002 and 2005), Menke and Hayes (2003), Boydston and López-González (2005), Robinson *et al.* (2006), McCain and Childs (2008), Grigione *et al.* (2009), Sanderson and Fisher (2013a, 2013b). As Johnson *et al.* (2011) explain, however, any conclusions about the conservation importance of the habitat types in which jaguars have occurred or might occur in Arizona and New Mexico are preliminary and can vary widely, depending on what assumptions are factored into the analyses, such as the number and reliability of jaguar occurrence records and the significance of single "point in time" occurrence observations as predictors of habitat use by jaguars.

Hatten *et al*. (2005) used Geographic Information System (GIS) to characterize potential jaguar habitat in Arizona by overlaying 25 historic jaguar sightings on landscape and habitat features believed important (e.g., vegetation biomes and series, elevation, terrain ruggedness, proximity to perennial or intermittent water sources, human density). The amount of Arizona land area identified as potential jaguar habitat ranged from 21 to 30 percent, depending on the input variables. One hundred percent of jaguar records were observed in four biomes. Of these, 56 percent were observed in scrub grasslands of southeastern Arizona, 20 percent in Madrean evergreen forest, 12 percent in Rocky Mountain montane conifer forest, and 12 percent in Great Basin conifer woodland. Related to water, when springs, rivers, and creeks were combined, 100 percent of the jaguar records were within 10 km (6.2 mi) of a water source. Sixty percent of jaguars were observed between 1,220 and 1,829 m (4,003 and 6,001 ft) in elevation, largely in the scrub grassland biome of southeastern Arizona. The remaining jaguar sightings were

between 1,036 and 2,743 m (3,399 and 8,999 ft). With respect to topography, 92 percent of jaguar sightings occurred in intermediately rugged to extremely rugged terrain, with the remainder (8 percent) in nearly level terrain.

More recently, Sanderson and Fisher (2013a, 2013b) modeled jaguar habitat in the Northwestern Jaguar Recovery Unit (NRU) (see description below) following a variant of the Hatten *et al.* (2005) method. Habitat factors used to characterize potential jaguar habitat were: (1) percentage of tree cover; (2) ruggedness index; (3) human influence; (4) ecoregion; (5) elevation (some model versions only); and (6) distance from water. Altogether, 13 habitat model versions were produced with input from the Technical Subgroup of the Jaguar Recovery Team. The habitat models were also translated into carrying capacity. The final habitat model (version 13) suggests a potential carrying capacity of more than 3,400 jaguars over an area of over 226,000 km^2. This capacity was further broken down into smaller geographic areas or "subunits" of the NRU which, from south to north, may have the potential to contain: approximately 1,318 jaguars in the Jalisco Core Area, approximately 929 jaguars in the Sinaloa Secondary Area, approximately 1,124 jaguars in the Sonora Core Area, and approximately 42 jaguars in the Borderlands Secondary Area (which include portions of northern Sonora, southern Arizona, and southeastern New Mexico). The current populations are substantially below these carrying capacities, but are not zero according to recent observations in all four subunits (Sanderson and Fisher 2013a, 2013b).

Distribution, Abundance, Population Trends

The only neotropical large carnivore with a distribution extending north into the Madrean Archipelago is the jaguar. Historically, the jaguar inhabited 21 countries throughout the Americas, from the United States south into Argentina, but currently the jaguar is found in 19 of those countries (no longer in El Salvador and Uruguay) (Caso *et al.* 2008). The population trend of jaguars is decreasing (Caso *et al.* 2008), although the rate of decline is unknown and likely highly variable throughout the jaguar range. To better understand abundance and population trends, research, inventories, and monitoring programs are being implemented in some parts of the jaguar range (Caso *et al.* 2008, Wildlife Conservation Society 2007, Chávez *et al.* 2007, Panthera 2011). During a symposium in November 2009 titled "The Jaguar in the XXI Century: The Continental Perspective", experts estimated that there are still probably more than 30,000 jaguars (Medellin 2009) and that Mexico has an estimated 4,100 jaguars (Zarza *et al.* 2010). Sanderson *et al.* (2002) found that the jaguar is known to be extant in about 8.75 million km2 (3.4 million mi2), which represents 46 percent of its historical global range. Jaguars are known to be extirpated in 37 percent of their historical range, and their status in another 18 percent is unknown (Sanderson *et al.* 2002). The probability of long-term survival of the jaguar is considered high in 70 percent of the currently occupied range (over 6 million km2 or 2.3 million mi^2) (Sanderson *et al.* 2002). Zeller (2007) updated Sanderson *et al*.'s (2002) work and found that the jaguar is known to be extant in about 11.7 million km^2, which represents 61% of its historical range, likely reflecting simply a greater representation of knowledge rather than actual range expansion. Within the currently occupied range, 90 Jaguar Conservation Units (JCUs) were identified representing a total area of 1.9 million km2 (0.7 million mi2) (Zeller 2007). JCUs were defined either as: (1) areas with a stable prey community, currently known or

believed to contain a population of resident jaguars large enough (at least 50 breeding individuals) to be potentially self-sustaining over the next 100 years; or (2) areas containing fewer jaguars but with adequate habitat and a stable, diverse prey base, such that jaguar populations in the area could increase if threats were alleviated (Sanderson *et al.* 2002, Zeller 2007).

In northwestern and western Mexico, jaguars occur from the border of Colima and Jalisco north through Nayarit, Sinaloa, southwestern Chihuahua, and Sonora to the border with the U.S. Breeding populations currently occur in Jalisco, Nayarit, Sinaloa, and Sonora. The most northern recently documented breeding population of jaguars occurs in Sonora near the towns of Huasabas and Sahuaripa, about 210 km (130 mi) south of the U.S./Mexico international border (Valdez *et al.* 2002, Brown and López-González 2001). Since 2009, two jaguars have been documented at Rancho El Aribabi, Sonora, about 48 km (30 mi) southeast of Nogales, and one jaguar has been documented in the Sierra Los Ajos within the Reserva Forestal Nacional y Refugio de Fauna Silvestre Ajos-Bavispe, about 48 km (30 miles) south of the U.S. border near Naco, Mexico. Estimates in the Sonora and Jalisco JCUs were 50-100 and >500, respectively (Zeller 2007). Results of the Mexican National Jaguar Census (Manriquez, July 15, 2011, email to FWS) indicate there are an estimated 271 jaguars in Sonora, 211 in Sinaloa, 92 in Nayarit, and 176 in Jalisco.

In the United States, jaguars historically occurred in California, Arizona, New Mexico, Texas, and possibly Louisiana (62 FR 39147). The last jaguar sightings in California, Texas, and Louisiana were documented in the late 1800s into the early 1900s, with the last confirmed jaguar killed in Texas in 1948 (Nowak 1975). While jaguars have been documented as far north as the Grand Canyon, Arizona, occurrences in the U.S. since 1963 have been limited to south-central Arizona and extreme southwestern New Mexico. Three records of females with cubs have been documented in the U.S. (all in Arizona), the last in 1910 (Lange 1960, Nowak 1975, Brown 1989), and no females have been confirmed in the U.S. since 1963 (Brown and López-González 2000, Johnson *et al.* 2011). As a result, jaguars in the U.S. are thought to be part of a population, or populations, that occur largely in Mexico.

From 1996 through 2013, several individual adult jaguars have been documented in the U.S. (i.e., within Arizona and New Mexico). One adult male was observed and photographed on March 7, 1996, in the Peloncillo Mountains in New Mexico near the Arizona border (Glenn 1996, Brown and López-González 2001). The Peloncillo Mountains run north-south to the Mexican border, where they join the foothills of the Sierra San Luis and other mountain ranges connecting to the Sierra Madre Occidental. Another jaguar was photographed in 2004; however, it could not be determined if the animal was a unique individual. Another adult male was observed and photographed on August 31, 1996, in the Baboquivari Mountains of southern Arizona (Childs 1998, Brown and López-González 2001). In February 2006, another adult male jaguar was observed and photographed in the Animas Mountains in Hidalgo County, New Mexico (McCain and Childs 2008). From 2001 to 2009, two jaguars, both adult males, were photographed (one repeatedly) using infra-red camera traps in south-central Arizona, near the Mexico border, one of which, was the male observed and photographed in 1996 in the Baboquivari Mountains. More specifically, these two jaguars were documented in three different

mountain range complexes in southeastern Arizona, over an area extending from the U.S./Mexico international border north 66 km (47 mi) and 63 km (39 mi) east to west (McCain and Childs 2008). Furthermore, they were found using areas from rugged mountains at 1,577 m (5,174 ft) to flat lowland desert floor at 877 m (2,877 ft) (McCain and Childs 2008). A male jaguar was seen and photographed by a hunter in the Whetstone Mountains in 2011. Male jaguars have been documented in southern Arizona, within and near the proposed action area, as recently as August 2013 (see Environmental Baseline section below). The rugged and arid conditions at the northern limit of this distribution contrast sharply to lush tropical forests to the south (Boydston and López González 2005).

Boydston and López-González (2005) estimated the potential geographic distribution of jaguars in the southwestern U.S. and northwestern Mexico by modeling the jaguar ecological niche from occurrence records [100 male records from Arizona (47), New Mexico (6), Chihuahua (8), and Sonora (39) and 42 female records from Arizona (6) and Sonora (36)]. They report that eastern Sonora appeared capable of supporting male and female jaguars with potential range expansion into southeastern Arizona, while New Mexico and Chihuahua contained environmental characteristics primarily limited to the male niche and thus may be areas into which males occasionally disperse. They found significant differences between land cover within the female distribution and the available landscape. The predicted distribution of female jaguars was mainly across areas of shrubland, deciduous broadleaf forest, and grassland, but deciduous broadleaf forest and mixed forest composed more of the female distribution than expected by chance when compared to the available land cover for the study area. Shrubland was a smaller proportion of the female distribution than expected, and grassland and needleleaf forest were present in proportion to their availability. Boydston and López-González's (2005) results indicated that the availability of areas meeting females' environmental requirements may be an important factor limiting the distribution of northern jaguars.

Grigione *et al.* (2009) conducted a mapping study to construct a blueprint of priority conservation areas for jaguars, as well as ocelots and jaguarundis, in the U.S. – Mexico border region. For the jaguar in the western bioregion of the study area (including Arizona, New Mexico, Sonora, Chihuahua, and Sinaloa), four units were identified (two very high priority, one high priority, and one low priority), including two in the U.S. and two in Mexico [totaling 102,530 km^2 (39,587mi^2)]. Within these four units, currently 19.8 percent of the area has any form of protection (Grigione *et al.* 2009). A very high priority corridor was identified between the two Mexican units; otherwise the connections between the units are poorly understood and consequently two corridors needing further study were identified. Two underpasses were identified as being needed in northern Sonora, where jaguars are believed to be crossing roads as they disperse north. The authors conclude that the region to the south of Arizona and New Mexico is especially critical for the recovery of the jaguar in the southwestern U.S. because the source population is likely in central Sonora. Citing Brown and López-González (2001) and List (2007), Grigione *et al.* (2009) explain that to reach the U.S., jaguars need to travel through Sonora and Chihuahua, where there are many challenges to jaguar survival and movement, including the U.S.–Mexico border fence. The Sky Islands Unit was ranked as "very high priority" for a conservation area for jaguars (Grigione *et al.* 2009:83).

Threats

In addition to the numerous anthropogenic threats affecting jaguars, the species has a number of intrinsic biological factors that limit its recovery, including being a K-selected species (i.e., species with large body size, long life expectancy, and the production of fewer offspring, which often require extensive parental care until they mature) and having large spatial requirements. Small and isolated jaguar populations do not appear to be highly persistent (Haag *et al.* 2010, Rabinowitz and Zeller 2010). However, persistence of relatively small populations appears to increase with connectivity to other populations and reduction of threats within a corridor (Rabinowitz and Zeller 2010). The prospects for the jaguar being self-sustaining in the wild are favorable; however conservation of key jaguar habitats and populations is critical to this sustainability (FWS 2012b).

Illegal killing of jaguars is one of the two most significant threats to the jaguar (Medellin 2009, Chávez and Ceballos 2006, Medellín *et al.* 2002, Núñez *et al.* 2002, Nowell and Jackson 1996) and, to recover jaguars, likely requires the most immediate response (FWS 2012a). Experts from throughout the jaguar range agree that one of the most severe causes of mortality is the direct hunting of jaguars, either because jaguars have caused some conflict by killing livestock or to sell the jaguar as a trophy or its skin or teeth (Medellin 2009). This illegal and indiscriminate killing eliminates hundreds or even thousands of jaguars each year in Latin America and must be controlled to reduce the risk of extinction (Medellin 2009).

Range wide, habitat destruction and modification form the other of the two most significant threats to the jaguar (Medellin 2009, Chávez and Ceballos 2006, Medellín *et al.* 2002, Núñez *et al.* 2002, Nowell and Jackson 1996). To recover jaguars, addressing this threat of habitat loss requires immediate response. The jaguar is classified as “Near Threatened” on the Red List of the International Union for the Conservation (IUCN) due to a number of factors, including habitat loss and fragmentation of populations across portions of the range (Caso *et al.* 2008). Various factors, particularly habitat loss, have caused a considerable reduction in the historical range of the jaguar (Sanderson *et al.* 2002, Zeller 2007, Rabinowitz and Zeller 2010). Most loss of occupied range has occurred in the southern U.S., northeastern Mexico, northern Brazil, and southern Argentina (Sanderson *et al.* 2002). Deforestation rates are high in Latin America and fragmentation of forest habitat isolates jaguar populations so that jaguars are more vulnerable to human persecution (Nowell and Jackson 1996). Medellin *et al.* (2002) report that loss, fragmentation, and modification of jaguar habitat have contributed to population declines throughout much of the species’ range, including northern Mexico.

Human population growth has both direct and indirect impacts on jaguar survival and mortality. For example, human growth and development tend to fragment habitat and isolate populations of jaguars and other wildlife. For carnivores in general, the impacts of high road density have been well documented and thoroughly reviewed (e.g., Noss *et al.* 1996, Carroll *et al.* 2001, as cited by Menke and Hayes 2003). Roads may have direct impacts to carnivores and carnivore habitats, including mortality caused by vehicles, disturbance, habitat fragmentation, changes in prey numbers or distribution, and provision of increased access for legal or illegal harvest (Menke and Hayes 2003, Colchero *et al.* 2010). These threats are relevant to jaguars throughout most of their

range; however, no jaguars have been documented in collisions with vehicles in the U.S. despite the fact that they have documented to cross roads, including two lane highways in Arizona. For example, the same male jaguar has been photo-documented in both the Whetstone and Santa Rita mountains. This jaguar would have had to cross over or through a passage bneath State Route 82 or 83 to move between the mountain ranges.

Habitat fragmentation may disrupt original patterns of gene flow and lead to drift-induced differentiation among local population units and top predators, such as the jaguar, may be particularly susceptible to this effect, given their low population densities, leading to small effective sizes in local fragments (Haag *et al.* 2010). Large-scale habitat removal and fragmentation of once-contiguous habitat can cause the reduction of genetic diversity in jaguar populations (Haag *et al.* 2010). To avoid the negative demographic and genetic consequences of small population size caused by habitat fragmentation, connectivity should be restored to ensure gene flow is maintained (Haag *et al.* 2010). Citing a number of sources, Rabinowitz and Zeller (2010) explain that reduction or loss of genetic exchange leads to smaller effective population sizes, increased levels of genetic drift and inbreeding, and potential deleterious effects on sperm production, mating ability, female fecundity, and juvenile survival. Furthermore, they state that such effects eventually compromise adaptive potential, reduce fitness, and contribute to extinction risk for a population and, ultimately, for the species. To ensure genetic health and long-term viability of jaguars range-wide, it is critical to maintain gene flow among populations through maintaining and restoring connectivity. Corridors can provide one of the most basic requirements for species persistence–genetic exchange (Rabinowitz and Zeller 2010). Boydston and López-González (2005) suggest that range expansion to the north of eastern Sonora could help prevent genetic isolation and extinction of the northern jaguars and also increase chances for long-term survival of this species in the face of global anthropogenic changes.

Overall, the threat of human encroachment cannot be eliminated, but through conservation planning and implementation efforts, it can be reduced. Conservation of key habitat areas is critical to the recovery of jaguars. There are many opportunities and methods (i.e., creation of new reserves, incentive programs, etc.) to continue to conserve jaguar habitat; however, they will require significant international, national, and local cooperation, as well as financial support.

The jaguar is classified as “Near Threatened” on the Red List of the IUCN in part due to poaching of prey (Caso *et al.* 2008). According to experts across the jaguar range, hunting of the most important prey, such as peccaries and deer, is one of the primary factors negatively affecting the jaguar (Medellin 2009). An estimated 27 percent of jaguar range has a depleted wild prey base (WCS 2008 as cited by Caso *et al.* 2008). Illegal hunting of potential jaguar prey species is one of the main threats to long-term conservation of jaguars in northwestern Mexico (Rosas-Rosas 2006). Human population growth can put pressure on game populations that are used for human consumption. These same game populations are often prey for jaguars. Furthermore, overhunting of natural prey may cause an increase in jaguar predation on livestock and consequently increase human-jaguar conflicts, including continued negative attitudes toward jaguars and illegal killing of jaguars.

Jaguar Recovery Planning

The species has a recovery priority number of 5C, meaning that it has a low potential for recovery with a relatively high degree of conflict. Recovery for the jaguar was originally addressed in *Listed Cats of Texas and Arizona Recovery Plan (with Emphasis on the Ocelot)* (U.S. Fish and Wildlife Service 1990), but only general information and recommendations to assess jaguar status in the U.S. and Mexico, and protect and manage occupied and potential habitat in the U.S. were presented. No specific recovery recommendations or objectives for the jaguar were presented. In 2007, the FWS made a 4(f)(1) determination that development of a formal recovery plan at that time would not promote the conservation of the jaguar. The rationale for this determination was that for the purposes of formal recovery planning, the jaguar qualifies as an exclusively foreign species. The FWS was subsequently litigated on this determination and the presiding judge remanded the decision regarding recovery planning back to the FWS. Subsequently, in 2010, the FWS made a new determination that development of a recovery plan would contribute to jaguar conservation and that, therefore, the FWS should prepare a recovery plan.

In 2012, a Recovery Outline for the jaguar (FWS 2012b) was finalized by the FWS. The outline, prepared by the Technical Subgroup of the Jaguar Recovery Team in conjunction with the Implementation Subgroup of the Jaguar Recovery Team and the FWS, serves as interim guidance for the FWS to direct recovery efforts, including recovery planning, for the jaguar until a full recovery plan is developed and approved. The Recovery Team is currently developing a draft recovery plan and thus, the Recovery Outline for the Jaguar represents the best available scientific information for this consultation.

The goal for the Recovery Outline is to conserve and protect the jaguar and its habitat so that its long-term survival is secured and it can be considered for removal from the list of threatened and endangered species (delisted). Although the recovery outline does not include Recovery Criteria, the Preliminary Recovery Strategy does include eight Preliminary Recovery Objectives, which collectively describe the specific conditions under which the goals for recovery of the jaguar (i.e., delisting) will be met. These objectives are:

1. Assess, protect, and restore sufficient habitat to support viable populations of jaguars in the two recovery units.
2. Mediate or mitigate the effects of human population growth and development on jaguar survival and mortality where possible.
3. Reduce direct human-caused (i.e., illegal and legal killing) mortality of jaguars.
4. Reduce illegal hunting of jaguar prey and improve regulation of legal hunting where appropriate (i.e., in cases where hunting is leading to significant reductions of jaguar prey).
5. Maintain or improve genetic fitness, demographic conditions, and health of the jaguar.
6. Assure the long-term viability of jaguar conservation through partnerships, the development and application of incentives for landowners, application of existing regulations, and public education and outreach.

7. Practice adaptive management in which recovery is monitored and recovery tasks are revised by the FWS in coordination with the Jaguar Recovery Team as new information becomes available.
8. Support international efforts to ascertain the status and conservation needs of the jaguar in the two recovery units.

The 2012 Recovery Outline for the Jaguar described two recovery units for the jaguar across its range, the Northwestern Recovery Unit (NRU; 222,197 km^2; 85,791 mi^2) (see Figure J-1 below) and the Pan American Recovery Unit (PARU; 14.9 million km^2; 5.75 million mi^2) (FWS 2012a, p. 58). The analyses in this BO laregely focus on the NRU. Please note that the boundaries and areal extent of the NRU were revised by sanderson and Fisher (2013b); these revisions are described in the subsequent section. Recovery units are subunits of the listed species' habitat that are geographically or otherwise identifiable and essential to the recovery of the species (FWS 2012a, p. 20). Recovery units for the jaguar are further divided into core, secondary, and peripheral areas (FWS 2012a, pp. 20–23). Core areas have both persistent verified records of jaguar occurrence over time and recent evidence of reproduction. Secondary areas are those that contain jaguar habitat with either or both historical or recent records of jaguar presence with no recent record or very few records of reproduction. In peripheral areas, most historical jaguar records are sporadic, and there is no or minimal evidence of long-term presence or reproduction that might indicate colonization or sustained use of these areas by jaguars.

Northwestern Recovery Unit (NRU) and Northwestern Management Unit (NMU)

The NRU is approximately 192,339 km^2 (74,262 mi^2); with [7,663 km^2 (2,959 mi^2)] in the U.S. and 184,676 km^2 [71,304 mi^2] in Mexico) (sanderson and Fisher 2013b). Table J-1, below, describes the subdivisions within the NRU. The Northern Management Unit (NMU), which contains the U.S and Mexico portions of the Borderlands Secondary Area, lies within the NRU and is approximately 32,057 km^2 (12,337 mi^2); with 7,663 km^2 (2,959 mi^2) in the U.S. and 24,394 km^2 (9,419 mi^2) in Mexico (see Figure J-1 and Table J-1).

Table J-1: Modeled habitat and potential jaguar numbers of jaguars in the Northwestern Management Unit (NMU) and Northwestern Recovery Unit (NRU) (Sanderson and Fisher 2013b)

Population Subunit	**Former Subunit Name (Sanderson and Fisher 2013a)**	**Estimate of Habitat Area**		**Estimated number of potential jaguars**
		km^2	**mi^2**	
Jalisco Core Area	MX Sinaloa Sub-Population	44,510	17,185	1,410
Sinaloa Secondary Area	MX North Sinaloa Connector Area	39,501	15,251	1,198
Sonora Core Area	MX Sonora Sub-Population	76,271	29,448	1,670
Borderlands Secondary Area/NMU – Mexico	MX Northern Sonora Connector Area	24,394	9,419	135
Borderlands Secondary Area/NMU – United States	US South of I-10 Highway[1]	7,663	2,959	27
NMU– Mexico		24,394	9,419	135
NMU – United States		7,663	2,959	27
NMU - Total		32,057	12,337	162

NRU – Mexico	184,676	71,304	4,413
NRU – United States	7,663	2,959	27
NRU – Total	192,339	74,262	4,440
[1] US North of I-10 Highway subunit (Sanderson and Fisher 2013a) has been removed from consideration.			

Within the U.S., jaguar habitat in the NRU primarily occurs on tribal (Tohono O'odham Nation) lands and federally and state owned lands, including those managed by the U.S. Forest Service (Coronado National Forest), Bureau of Land Management, National Park Service, FWS, and Arizona State Land Department. The remaining non-state and non-federal lands within the NRU are privately owned. Within Mexico, jaguar habitat within the NRU primarily occurs on privately owned, ejido (communal), and indigenous community (i.e., Yaqui) lands. Although there are natural protected areas (ANP) designated by the Comisión Nacional de Áreas Naturales Protegidas (CONANP [National Commission for Natural Protected Areas]) within the NRU, they overlap privately-owned and communal lands. The protected status of these ANPs does not change the land ownership status but instead imposes use restrictions on the lands. At this time, at least eight Federally recognized protected areas have been established within the NRU in Mexico that provide for jaguar protection (FWS 2012b).

As mentioned above, the U.S. lands within the Borderlands Secondary area of the Northwestern Recovery Unit are also located within the Northwestern Management Unit. Management units, as described in the Recovery Outline, are areas within a recovery unit that might require different management, be managed by different entities, or encompass different populations (Jaguar Recovery Team 2012:40). The U.S. lands located within the NMU simply acknowledge the existence of different species management on either side of the International Border with Mexico. This differening title for the the U.S. lands as part of the NMU does not mean that the habitat in United States has any less significance within the secondary area of the recovery unit.

Also, and important to note, is that populations at the edge of a species' range play a role in maintaining the total genetic diversity of a species (Jaguar Recovery Team 2012a, pp. 19–20); in some cases, these peripheral populations persist the longest as fragmentation and habitat loss impact the total range (Channell and Lomolino 2000, pp. 84–85). The United States and northwestern Mexico represent the northernmost extent of the jaguar's range, with populations persisting in distinct ecological conditions (xeric, or extremely dry, habitat) that occur nowhere else in the species' range (Sanderson *et al.* 2002, entire). Peripheral populations such as these are an important genetic resource in that they may be beneficial to the protection of evolutionary processes and the environmental systems that are likely to generate future evolutionary diversity (Lesica and Allendorf 1995, entire). This may be particularly important considering the potential threats of global climate change. Citing Young and Clarke (2000), Grigione *et al.* (2009) suggest that conservation of peripheral populations, such as the jaguar in the northernmost portion of its range, plays a role in maintaining the total genetic heterozygosity of a species. The ability for jaguars in the NRU to utilize physical and biological habitat features in the Northern Management Unit (NMU; a sub-area of the NRU, as described below) is ecologically important to the recovery of the species; therefore, maintaining connectivity to Mexico is essential to the conservation of the jaguar (FWS 2012b).

Proposed Critical Habitat

We are proposing six units as critical habitat for the jaguar. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the jaguar. The six units we have proposed as critical habitat are: (1) Baboquivari Unit divided into subunits (1a) Baboquivari-Coyote Subunit, including the Northern Baboquivari, Saucito, Quinlan, and Coyote Mountains, and (1b) the Southern Baboquivari Subunit; (2) Atascosa Unit, including the Pajarito, Atascosa, and Tumacacori Mountains; (3) Patagonia Unit, including the Patagonia, Santa Rita, Empire, and Huachuca Mountains, and the Canelo and Grosvenor Hills; (4) Whetstone Unit, divided into subunits (4a) Whetstone Subunit, (4b) Whetstone-Santa Rita Subunit, and (4c) Whetstone-Huachuca Subunit; (5) Peloncillo Unit, including the Peloncillo Mountains both in Arizona and New Mexico; and (6) San Luis Unit, including the northern extent of the San Luis Mountains at the New Mexico-Mexico border. The units affected by the proposed action, Units 3 and 4, are described below.

Unit 3: Patagonia Unit

Unit 3 consists of 148,364 ha (366,615 ac) in the Patagonia, Santa Rita, and Huachuca Mountains, as well as the Canelo Hills, in Pima, Santa Cruz, and Cochise counties, Arizona. Unit 3 is generally bounded by Interstate 19 to the west; Interstate 10 to the north; Cienega Creek and Highways 83, 90, and 92 to the east, including the eastern slopes of the Empire Mountains; and the U.S.-Mexico border to the south. Land ownership within the unit includes approximately 107,471 ha (265,566 ac) of Federal lands; 11,847 ha (29,274 ac) of Arizona State lands; and 29,046 ha (71,775 ac) of private lands. The Federal land is administered by the Coronado National Forest, Bureau of Land Management, and Fort Huachuca. We consider the Patagonia Unit occupied at the time of listing (37 FR 6476; March 30, 1972) based on the 1965 record from the Patagonia Mountains, and it is currently occupied based on a series of confirmed sightings from 2011 through August 2013. The mountain ranges within this unit contain all primary constituent elements of the physical or biological feature essential to the conservation of the jaguar.

The primary land uses within Unit 3 include military activities associated with Fort Huachuca, as well as Federal forest management activities, border-related activities, grazing, and recreational activities throughout the year, including, but not limited to, hiking, camping, birding, horseback riding, picnicking, sightseeing, and hunting. Special management considerations or protections needed within the unit address human disturbances through such activities as military ground maneuvers and increased human presence in remote locations through mining and development activities, construction of impermeable fences, and widening or construction of roadways, power lines, or pipelines to ensure all PCEs remain compatible with jaguar use.

Subunit 4a: Whetstone Subunit

Subunit 4a consists of 25,284 ha (62,478 ac) in the Whetstone Mountains in Pima, Santa Cruz, and Cochise Counties, Arizona. Subunit 4a is generally bounded by Cienega Creek to the west,

Interstate 10 to the north, Highway 90 to the east, and Highway 82 to the south. Land ownership within the subunit includes approximately 16,066 ha (39,699 ac) of Federal lands; 5,445 ha (13,455 ac) of Arizona State lands; and 3,774 ha (9,325 ac) of private lands. The Federal land is administered primarily by the Coronado National Forest. We consider the Whetstone Subunit occupied at the time of listing (37 FR 6476; March 30, 1972) based on photographs taken in 2011, and it may be currently occupied although the animal recently photographed in the Santa Ritas is the same male photographed in the Whetstones in 2011. The mountain range within this subunit contains all primary constituent elementsessential to the conservation of the jaguar, except for connectivity to Mexico.

The primary land uses within Subunit 4a include Federal forest management activities, grazing, and recreational activities throughout the year, including, but not limited to, hiking, camping, birding, horseback riding, picnicking, sightseeing, and hunting. Special management considerations or protections needed within the subunit addresshuman disturbances through development activities, and widening or construction of roadways, power lines, or pipelines to ensure all PCEs remain compatiblecompatible with jaguar use.

Subunit 4b: Whetstone-Santa Rita Subunit

Subunit 4b consists of 5,143 ha (12,710 ac), including the Empire Mountains, between the Santa Rita Mountains and northern extent of the Whetstone Mountains in Pima County, Arizona. Subunit 4b is generally bounded by (but does not include) the eastern slopes of the Empire Mountains to the west, a line running roughly 6 km (3.7 mi) south of Interstate 10 to the north, the western slopes of the Whetstone Mountains to the east, and Stevenson Canyon to the south. Land ownership within the subunit includes approximately 532 ha (1,313 ac) of Federal lands and 4,612 ha (11,396 ac) of Arizona State lands. According to the proposed rule, the Whetstone-Santa Rita Subunit provides connectivity from the Whetstone Mountains to Mexico and was not known to be occupied at the time of listing, but is essential to the conservation of the jaguar because it contributes to the species' persistence by providing connectivity to occupied areas that support individuals during dispersal movements during cyclical expansion and contraction from the nearest core area and breeding population in the NRU (FWS 2012b).

The primary land uses within Subunit 4b include grazing and recreational activities throughout the year, including, but not limited to, hiking, camping, birding, horseback riding, picnicking, sightseeing, and hunting.

Subunit 4c: Whetstone-Huachuca Subunit

Subunit 4c consists of 8,026 ha (19,832 ac) between the Huachuca Mountains and southern extent of the Whetstone Mountains in Santa Cruz and Cochise Counties, Arizona. Subunit 4c is generally bounded by Highway 83 to the west; Highway 82 to the north; Highway 90 to the east; and up to but not including the Huachuca Mountains to the south. Land ownership within the subunit includes approximately 1,654 ha (4,088 ac) of Federal lands; 2,981 ha (7,366 ac) of Arizona State lands; and 3,391 ha (8,379 ac) of private lands. The Federal land is administered by the Coronado National Forest, Bureau of Land Management, and Fort Huachuca. According

to the proposed rule, the Whetstone-Huachuca Subunit provides connectivity from the Whetstone Mountains to Mexico and was not occupied at the time of listing, but is essential to the conservation of the jaguar because it contributes to the species' persistence by providing connectivity to occupied areas that support individuals during dispersal movements during cyclical expansion and contraction of the nearest core area and breeding population in the NRU (FWS 2012b).

The primary land uses within Subunit 4c include military activities associated with Fort Huachuca, as well as Federal forest management activities, grazing, and recreational activities throughout the year, including, but not limited to, hiking, camping, birding, horseback riding, picnicking, sightseeing, and hunting.

Models Used for Proposing Critical Habitat

When we are determining which areas should be designated as critical habitat, the FWS's primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

The criteria used by the FWS to identify critical habitat included reviewing available information and supporting data that pertained to the habitat requirements of the jaguar. Much of this information was compiled in the Recovery Outline for the Jaguar (Jaguar Recovery Team 2012, entire) and Digital Mapping in Support of Recovery Planning for the Northern Jaguar report (Sanderson and Fisher 2011:1–11), which the FWS regarded as the best available information for the jaguar and its habitat needs in the northern portion of its range. Additionally, the FWS relied on information provided through modeling exercises for Arizona (Hatten *et al.* 2005) and New Mexico (Menke and Hayes 2003; Robinson *et al.* 2006) to further refine the habitat features available in the United States. Because jaguars are secretive animals and generally tend to avoid highly disturbed areas (Quigley and Crawshaw 1992; Hatten *et al.* 2005:1025), human density was afactor considered in jaguar habitat modeling exercises for Arizona (Hatten *et al.* 2005, p. 1025), New Mexico (Menke and Hayes 2003:9–13; Robinson *et al.* 2006, pp. 10, 15, 18–20), and the habitat model developed by Sanderson and Fisher (2011:5–11) for the northwestern Mexico and the U.S.-Mexico borderlands area.

The habitat model developed by Sanderson and Fisher (2011:5–11) included a human influence index (HII) criterion. HII values, calculated worldwide by combining eight input layers (human population density per square km, railroads, major roads, navigable rivers, coastlines, stable nighttime lighting, urban polygons, and land cover) can range from 0 to 64, with 0 representing no human influence and 64 representing the maximum human influence possible (see SEDAC 2012 for more information on how HII was calculated worldwide). Within the northwestern Mexico and the U.S.-Mexico borderlands region considered for their habitat model, Sanderson and Fisher (2011, pp. 5–11) found that roughly 90 percent of the 333 jaguar records used in their model were located in areas where the HII was less than 30 out of 64. They therefore considered

lands with an HII of less than 30 as potential jaguar habitat within their modeling exercise, while lands with an HII equal to or greater than 30 were excluded. Similarly, in our analysis of 130 reports of jaguar locations in the United States, we found that approximately 99 percent occurred in areas where the HII was less than 20 (<20). Please note that this was stated as 20 or less (≤20) in the proposed rule (FWS2012b); the correct analysis was employed during preparation of the revised proposed rule (FWS 2013) Therefore, based on this information, the FWS identified areas in which the HII calculated over 1-square km (0.4-square mi) is less than 20 as an essential component of the physical or biological feature essential for the conservation of the jaguar in the United States. These areas are characterized by minimal to no human population density, no major roads, or no stable nighttime lighting over any 1-square km (0.4-square mi) area.

Primary Constituent Elements for Jaguar Critical Habitat

The primary constituent elements of critical habitat essential to the conservation of jaguar within areas of expansive open spaces in the southwestern United States at least 84 to 100 km^2 (32 to 37 mi^2) in size. The primary constituent elements are those which:

1. Provide connectivity to Mexico;

2. Contain adequate levels of native prey species, including deer and collard peccary (javelina), as well as medium-sized prey such as coatis, skunks, raccoons, or jackrabbits;

3. Include surface water sources available within 20 km (12.4 mi) of each other;

4. Contain 1 to 50 percent woody species canopy cover within Madrean evergreen woodland, generally recognized by a mixture of oak, juniper, and pine trees on the landscape, or semidesert grassland vegetation communities, with a woody species overstory and an understory usually characterized by *Pleuraphis mutica* (tobosagrass) or *Bouteloua eriopoda* (black grama) along with other grasses;

5. Are characterized by intermediately, moderately, or highly rugged terrain; and

6. Are characterized by minimal to no human population density, no major roads, or no stable nighttime lighting over any 1-square-km (0.4-square-mi) area (expressed as an HII of less than 20).

Jaguar Recovery Planning in Relation to Critical Habitat

Jaguar habitat in the U.S. – Mexico borderlands area is part of the secondary area of the NMU within the NRU for the jaguar (see Figure J-1 and Table J-1) (FWS 2012a:58). The United States portion of the NRU is considered a secondary area that provides a recovery function benefitting the overall recovery unit (FWS 2012a:40, 42). By Jaguar Recovery Team guidelines (FWS 2012a), a secondary area for jaguars is an area meeting the following conditions: (1) compared to core areas, secondary areas are generally smaller, likely contain fewer jaguars, maintain jaguars at lower densities, and exhibit more sporadic current and historical records of

jaguars; some of the secondary areas may not have not been surveyed through the use of defined survey protocols, thus resulting in the unknown current status of jaguars in some secondary areas; (2) there is no or little evidence of recent reproduction (within 10 years); and (3) quality and quantity of jaguar habitat is lower compared to core areas. Jaguar habitat is likely less optimal due to one or more or a combination of these variables important for jaguar presence, including increased human impact, smaller amount of contiguous habitat, different vegetation types, and lower prey populations. The Jaguar Recovery Team hypothesized that secondary areas may contribute to jaguar persistence by providing habitat to support jaguars during dispersal movements, by providing small patches of habitat (perhaps in some cases with a few resident jaguars), and as areas for cyclic expansion and contraction of the core areas (FWS 2012a).

Because such a small portion of the jaguar's range occurs in the United States, it is anticipated that recovery of the entire species will rely primarily on actions that occur outside of the United States; activities that may adversely or beneficially affect jaguars in the United States are less likely to affect recovery than activities in core areas of their range (FWS 2012a:38).

However, according to the proposed rule, specific areas within this secondary area that provide the physical and biological features essential to jaguar habitat can contribute to the species' persistence and, therefore, overall conservation. As described in the Recovery Outline for the Jaguar, the Northwestern Recovery Unit is essential for the conservation of the species; therefore, consideration of the spatial and biological dynamics that allow this unit to function and that benefit the overall unit is prudent. Providing connectivity between the United States and Mexico is a key element to maintaining those processes.

ENVIRONMENTAL BASELINE - JAGUAR

The environmental baseline includes past and present impacts of all Federal, State, or private actions in the action area, the anticipated impacts of all proposed Federal actions in the action area that have undergone formal or early section 7 consultation, and the impact of State and private actions that are contemporaneous with the consultation process. The environmental baseline defines the current status of the species and its habitat in the action area to provide a platform to assess the effects of the action now under consultation.

In the environmental baseline analysis, we discuss the current condition of the critical habitat units in the action area, the factors responsible for that condition, and the conservation roles of the units. In particular, we discuss the relationship of the affected units in the action area to the entire proposed critical habitat with respect to the conservation of the jaguar.

Action Area

The action area is defined as the area within which effects to the listed species and its critical habitat (if any is designated) are likely to occur and is not limited to the actual footprint of the proposed action. The proposed project falls within the northern-most secondary area of the NRU, or the NMU, as defined in the Jaguar Recovery Outline (FWS 2012) and at least one

jaguar has recently occurred near the project area. For the purposes of the jaguar analysis, we use the Forest Service Action Area definition (i.e., defined by hydrology).

Terrain, Vegetation Communities, and Climate in the Action Area

The Action Area subsection of the Description of the Proposed Conservation Measures section, above, includes descriptions of the terrain, vegetation communities, and climate in the action area.

Status of the Species within the Action Area

Life History and Habitat

Life history of the jaguar is described above in the Status of the Species. Generally, life history elements are similar throughout their range, although some, such as diet and vegetation community use, vary by region (see Status of the Species).

Distribution and Abundance

Confirmed jaguar detections have recently occurred within and near the proposed project and action area. The detections were from trail cameras placed by resident hunters, the Arizona Game and Fish Department, and researchers from the University of Arizona – jaguar survey and monitoring project funded by the Department of Homeland Security via the U.S. Fish and Wildlife Service. All detections, captured by photographs at night, were located on lands administered by the Coronado National Forest within proposed critical habitat (Units 3 and 4). Analysis by jaguar experts of the comparison of rosette patterns concluded that the photographs are of the same male jaguar. The male jaguar photographed by a mountain lion hunter in the Whetstone Mountains (within proposed critical habitat Subunit 4 – Whetstone Unit) in November 2011 was later detected in the Santa Rita Mountains (within proposed critical habitat Unit 3 – Patagonia Unit) by the trail cameras. Detections of this male jaguar have occurred in the Santa Rita Mountains from September 2012 to October 2013.

The Forest Service hypothesizes that this single resident male jaguar has established a territory that includes most of the Santa Rita Mountains (which includes the proposed action area) and possibly the Whetstone Mountains as well (from the June 2012 BA and February 2013 Supplemental BA). To move between the Whetstone and Santa Rita mountains, the male jaguar would have had to cross a two-lane highway, possibly State Route 83, although its exact movement pattern is unknown.

Threats

Threats to the jaguar in the action area are generally similar to threats to the species throughout its range as described under “Status of the Species”; however, in the United States, the threat of illegal killing is not currently thought to be a problem (FWS 2012a). Other threats to jaguars in this region are international border issues such as: (1) infrastructure along and near the U.S. -

Mexico border, including pedestrian and vehicle barriers and towers and their associated roads and lighting; and (2) illegal and U.S. Border Patrol traffic (pedestrian and vehicle). Fences designed to prevent the passage of humans (i.e., pedestrian barriers) also prevent passage of jaguars. Other infrastructure (e.g., vehicle barriers, towers, roads, and lighting) and human activity may limit jaguar movement across the border, but it is uncertain if and how much this is affecting that movement. McCain and Childs (2008) identified open-pit mines as a threat to jaguars in the species core habitats in the southwestern U.S. specifically mentioning the Patagonia and Santa Rita mountains; this threat was reiterated in the BA. Connectivity to Mexico is essential for maintaining jaguars in the NMU in Arizona and New Mexico.

Proposed Critical Habitat within the Action Area as Defined by the Forest Service

Current Condition of Proposed Critical Habitat - The action area as defined by the Forest Service occurs within the Patagonia Unit (Unit 3) (Figure J-2) which consists of 148,364 ha (366,615 ac) in the Patagonia, Santa Rita, Empire, and Huachuca Mountains, as well as the Canelo Hills, in Pima, Santa Cruz, and Cochise Counties, Arizona. The mountain ranges within this unit contain all primary constituent elements essential to the conservation of the jaguar.

The action area is situated west of the Whetstone-Santa Rita Unit (Subunit 4b) (Figure 2) which consists of 5,143 ha (12,710 ac) between the Santa Rita Mountains and northern extent of the Whetstone Mountains in Pima County, Arizona. The Whetstone-Santa Rita Subunit may provide connectivity from the Whetstone Mountains to Mexico through Unit 3, was not known to be occupied at the time of listing (FWS 2012b, FWS 2013),and is not known to have ever been used by jaguars.

Factors Responsible for the Current Condition of Proposed Critical Habitat - The Patagonia Unit was proposed as critical habitat because areas such as the Santa Rita Mountains contain the primary constituent elements essential to the conservation of the jaguar. In the jaguar habitat model developed for northwestern Mexico and the U.S.-Mexico borderlands area, Sanderson and Fisher (2011:11) described how low human influence is perhaps the most important feature defining jaguar habitat, as jaguars most often avoid areas with too much human pressure. The Santa Rita Mountains, where the proposed project is located, was identified by the model as having HII values between 14 and 18. As stated above, an HII value of less than 20 was the parameter identified as an essential component for the conservation of the jaguar in the United States (FWS 2013).

According to the proposed rule, connectivity between the United States and Mexico is necessary if viable habitat for the jaguar is to be maintained (FWS 2012b, FWS 2013). The intent of Subunit 4b is to connect Subunit 4a to Mexico via Unit 3, although connectivity is also provided through Subunit 4c, which is not affected by the proposed action. Jaguar habitat and the features essential to their conservation are threatened by the direct and indirect effects of increasing human influence into remote, rugged areas, as well as projects and activities that sever connectivity to Mexico. These may include, but are not limited to: significant increases in border-related activities, both legal and illegal; widening or construction of roadways, power lines, or pipelines; construction or expansion of human developments; mineral extraction and

mining operations; military activities in remote locations; and human disturbance related to increased activities in or access to remote areas (FWS 2012b, FWS 2013).

***Conservation Role of the Proposed Critical Habitat Units* –** The FWS considers the Patagonia Unit 3 to have been occupied at the time of listing based on the 1965 record from the Patagonia Mountains. The Patagonia Unit is currently occupied based on the series of recent jaguar sightings in the Whetstone and Santa Rita Mountains (see above). The mountain ranges within this unit contain all primary constituent elements essential to the conservation of the jaguar. Connectivity between the United States and Mexico was referenced throughout the proposed critical habitat rule as essential for the conservation of jaguars. Therefore, the intent of the proposed rule was to provide connectivity of Subunit 4a to Mexico through Unit 3 via Subunits 4b and 4c, although there are no records indicating that either of these subunits have been used by jaguars.

Past and Ongoing Federal Actions in the Action Area

The respective Environmental Baseline sections for affected species describe completed consultations for past and ongoing Federal actions in the action area. Three projects have undergone formal section 7 consultation for effects to jaguar in southern Arizona,, but there have been no previous consultations on proposed critical habitat. Incidental take of one jaguar has been authorized and no jeopardy opinions have been issued. A summary of these consultations is below:

1. *Biological Opinion on Nationwide U.S. Department of Agriculture, Animal and Plant Health Inspection Service-Wildlife Services (USDA, APHIS-WS) Activities on the endangered Jaguar* (Consultation Number 000194RO issued on June 22, 1999)

This consultation analyzed the effects of USDA, APHIS-WS' national animal damage control activities on jaguars. Adverse effects to jaguars could occur from certain animal damage control methods, including the use of leg-hold and box traps, snares, M-44s, etc. We determined that the proposed action was not likely to jeopardize the continued existence of jaguars and anticipated that, due to animal damage control activities, there would be an undeterminable level of take as a result of harassment and injury, and the take of one jaguar as the result of direct injury or mortality. The anticipated level of take was considered to be exceeded if animal damage control activities are directed at jaguars, or if one jaguar is unintentionally trapped, injured, or killed. To minimize incidental take, a number of reasonable and prudent measures were included in the biological opinion. To date, no incidental take has been documented resulting from WS' program.

2. *Biological Opinion on the Pedestrian Fence Proposed Along the U.S. and Mexico Border near Sasabe, Naco, and Douglas* (Consultation number 22410-2007-F-0416 issued August 29, 2007)

This consultation addressed the effects of DHS's construction of a pedestrian fence (and other associated activities such as road construction and maintenance) along the U.S./Mexico

international border near Sasabe, Pima County; Nogales, Santa Cruz County; and near Naco and Douglas, Cochise County. Some pedestrian fence segments that were constructed in these three areas were included in this consultation, while others did not undergo section 7 consultation. Specifically, pedestrian fence segments were constructed in Sasabe (7 mi, all of which were included in this consultation), Nogales (about 6 mi, roughly 2 of which were included in this consultation), Naco (about 25 mi, 15 of which were in this consultation), and Douglas (about 17 mi, 7 of which were included in this consultation). Adverse effects to jaguars were expected to occur from the proposed action by impeding jaguar movement between Mexico and the U.S., disturbing jaguars, and degrading their habitat. We determined that the proposed action was not likely to jeopardize the continued existence of jaguars and no incidental take was anticipated. Conservation measures, including funding for the implementation of jaguar recovery actions, were included to help offset the effects of the action on jaguars.

3. *Biological Opinion on Secure Border Initiative (SBInet) Tucson West Tower Project, Ajo, Tucson, Casa Grande, Nogales, and Sonoita Stations Area of Operation, U.S. Border Patrol, Tucson Sector, Arizona* (Consultation number 22410-2008-F-0373 issued September 4, 2008)

This consultation addressed the effects of the construction, operation, and maintenance of communication and sensor towers, roads, and mobile surveillance systems, as well as the deployment of unattended ground sensors. Adverse effects to jaguars were expected to occur from the proposed action by disturbing jaguars and degrading their habitat. We determined that the proposed action was not likely to jeopardize the continued existence of jaguars and no incidental take was anticipated. Conservation measures, including funding for jaguar monitoring, were included to help offset the effects of the action on jaguars.

In addition to the aforementioned activities, DHS/CBP has constructed a number of vehicle barriers and pedestrian fences in the action area that have not undergone formal consultation. Furthermore, CBP – Tucson Sector regularly conducts patrol activities within the action area that may affect jaguars and, with the exception of patrol activities associated with the Tucson West Towers Project, have not undergone formal consultation.

Under section 10 of the Act, which prescribes permits for scientific purposes or incidental take while carrying out lawful activities, the following has been authorized for specific approved activities of the Arizona Game and Fish Department: 1) incidental take of one jaguar in the form of mortality or harm, and 2) unlimited take in the form of harass.

EFFECTS OF THE ACTION - JAGUAR

The effects of the action refer to the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action (50 CFR §402.02). Indirect effects occur later in time but are reasonably certain to occur. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration (50 CFR §402.02). In the effects of the action

analysis, we also characterize the direct and indirect effects of the action and those of interrelated and interdependent actions on the proposed critical habitat. We describe how the primary constituent elements or habitat qualities essential to the conservation of the species are likely to be affected and, in turn, how that will influence the function and conservation role of the affected critical habitat unit(s).

Effects of the Action on the Jaguar

As analyzed at length in the BA, Supplemental BA, and Second Supplemental BA, and supported by additional analyses below, the proposed project will result in degradation of jaguar habitat and disturbance to jaguars. Construction and operations of the mine, including the associated roads, will result in removal, destruction, and degradation of jaguar habitat and jaguar prey habitat and is likely to disturb jaguars, causing changes in, among other things, their habitat use and movement patterns. Conservation measures included in the project description may help offset adverse effects to jaguars to some extent.

1. Project Construction

The June 2012 BA defined the project area (BA Figure 3) as all areas in which any ground disturbance would take place as a result of the proposed project, including the mine pit, waste rock piles, tailings, access roads, utility corridors, and on-site facilities (i.e., the mine "footprint" or area within the security fence plus roads, corridors, and trails). The BA indicated that 7,016 acres of land would be directly disturbed. The acreage of direct disturbance was later refined to 5,421 acres, which includes areas within the security fence (4,228 acres), the primary access road (226 acres), the utility line corridor (889 acres), decommissioned or new forest roads (59 acres), and the rerouted Arizona National Scenic Trail and trailheads (19 acres). The affected area appears in Figure J-2.

Vegetation types within this area are Madrean evergreen woodland and semidesert grassland, both important vegetation types for jaguars in the NMU; and both xero- and hydroriparian. Therefore, the project will result in long term (30 years, after which the perimeter fence will be removed), direct effects to 7,016 acres (perimeter fence, roads, trails, and ROW) and the permanent removal of about 5,401 acres of jaguar habitat (security fence, new roads, and ROW; 20 acres of decommissioned roads are omitted from the calculation permanent effects).

Although we do not know the home range size of jaguars in Arizona, home ranges in Sonora range from 84 to 200 km^2 (20,757 to 49,421 acres). There will be a 7,016-acre temporal loss of up to approximately 14.2 to 33.8 percent of a jaguar home range. In the future, once the perimeter fence has been removed, the 5,401-acre will be approximately 10.9 percent to 26.0 percent of a jaguar home range, with slightly lesser percentages of affected acreage if reclamation succeeds in reestablishing sufficient permanent canopy cover. It is also likely that the effects are slightly overestimated due to the fact that not all of the 889 acres of utility ROW are within the Madrean evergreen woodland or semidesert grassland vegetation types; the far westernmost portion is within the Arizona upland subdivision vegetation type, if not within human-disturbed habitats such as other, existing ROWs and similar features. Again, these are

direct effects associated with the footprint of various mine features; indirect effects (light, noise, traffic, etc.) are discussed in subsequent sections. Regardless of the exact, directly-affected acreage, the jaguar known to be in the northern Santa Rita Mountains recently will most likely lose some portion of its home range. The extent of that loss is unknown since the animal's home range has not been determined.

Throughout most of the jaguar distribution, we know that home ranges most often overlap (Seymour 1989); however, we have not documented this overlap in Arizona so do not know whether the project footprint will impact additional jaguar home ranges. The definition of home range varies, but it is generally considered the area over which an animal normally travels, searches for food, and cares for young. Given the recent, continuous use of the Santa Rita Mountains by a male jaguar, we hypothesize that he has established a home range in the U.S. that encompasses these mountains. Due to loss of habitat and additional human disturbance near the project area (e.g. lights, noises, etc. - see below for further discussion), the male jaguar detected in the Santa Rita Mountains will most likely adjust its home range southward.

In addition to eliminating jaguar habitat, the project will also result in the direct removal of jaguar prey habitat, leading to a reduced prey base for jaguars. According to AGFD (2012), the proposed project will result in the estimated loss of 14 white-tailed deer and 56 collared peccary (javelina), both key prey species for jaguar. This loss was calculated by multiplying the average density of these species per square mile by the total square miles then anticipated to be directly affected by the project. Also, while the AGFD estimate did not take into consideration the potential indirect impacts (future) of the project on prey species, it likely did not consider the postclosure state of the project area, at which point only the mine pit may remain unsuited to these prey species.

Outside of the security fence, a perimeter barbed-wire fence will be constructed. The area between the security fence and the perimeter fence will not be subject to extensive ground disturbance. Given the influence of human and vehicular activity, noise, and lighting (see discussion below for information on effects of noise, lights, and traffic on jaguars) in the area between the security and perimeter fences, we anticipate that jaguars will likely avoid most or all of the area.

Construction activities associated with all aspects of the project may disturb jaguars and cause them to flee and/or avoid the areas affected by light, noise, traffic, and other human activities. We are concerned that the jaguar recently and repeatedly detected in the vicinity of the proposed action has established a home range will be subject to such effects, but other jaguars occurring in the area in the future would also be affected. Dispersing jaguars or jaguars moving through the proposed project area may exhibit greater tolerance for some disturbance; however, we anticipate they would still generally avoid areas of high human influence. Once project construction is complete and operations are underway, jaguars would be excluded from the area as it will be devoid of habitat, as described above. Following operations, and presuming tailings piles are successfully revegetated, jaguars will be excluded from only the pit area. Jaguar avoidance of the project area, particularly the jaguar that has previously established a likely home range in the area, may cause them to shift southwest-, south-, or eastward, possibly into less suitable habitat..

Such shifts could result in increased home range size and energy expenditure (due to presumed reductions in prey densities, risk for encounters with humans and vehicles (state highways are situated east and south of the mine, and the community of Sonoita is to the south-southeast), and potential competitors (i.e., cougars and other jaguars that have or may establish home ranges in adjacent areas), and other stresses.

2. Lighting

In addition to the direct project footprint, jaguars that occur within the vicinity of the project may be adversely affected by light associated with the project; this likelihood was explored in detail in the Second Supplemental BA (USFS 2013a). The area in and adjacent to the project area currently is dark at night because there are few artificial light sources and no developed areas to affect night sky views or the natural light conditions and cycles that are important to native plants and animals. Although general aspects of overall sky brightness have been studied (STEM Laboratory 2011) there is little other information on the current baseline night light levels in the area surrounding the proposed action. According to the Forest Service, the majority of the action area (as defined by the Forest Service) is relatively dark on moonless nights; the Border Patrol Station near Sonoita does illuminate the sky (STEM Laboratory 2011), but the lights of the Station and greater Tucson metropolitan area are blocked by the surrounding topography in the project area (Monrad 2012). Background lighting in the action area comes from a number of sources, including headlights from vehicles traveling at night along SR 83 and along forest roads; adjacent private lands; mine exploration activity; and an existing limestone quarry (Imerys) located just west of the proposed mine. The Imerys Quarry occupies approximately 22 acres and roughly twenty truckloads of materials depart the mine site via Santa Rita Road each day (Green Valley Recreation Hiking Club 2013). According to the Green Valley Recreation Hiking Club, the quarry operates 24 hours a day, seven days a week; however according to the BLM work occurs during the daytime only; however lights are operated 24 hours per day. Lights from the Imerys Quarry are sufficiently bright to be remotely sensed (see Figures J-5 and J-6). The quarry likely influences sky glow, but the extent is not known. Horizontal light emanating from the quarry is unlikely to enter the Rosemont Mine site, as illustrated by the simulated extent of Rosemont's northward-oriented horizontal light seen in Figure J-4. Should horizontal light from the Imerys Quarry already be illuminating the northern flanks of the topographic features that are blocking Rosemont's northward-oriented lighting, the end result would be an area with appreciably more horizontal lighting than currently exists. The proposed action includes the use of night lighting which will originate from the Rosemont Mine site itself (i.e., mine-site illumination is needed for conducting mining operations, per Mine Safety and Health Administration standards) as well as from vehicle headlights on roads associated with the mine.

Although Rosemont Copper Company has developed a light pollution mitigation plan, artificial illumination will increase light levels at night, which could impact jaguars, resulting in a wide variety of effects, including, but not limited to changes in behavior, habitat use, and movement patterns; disruption of dispersal movements, corridor use, and circadian clocks; and increased deaths due to in collision on roads (Beir 1995, Longcore and Rich 2004, Beier 2006). Artificial lighting will be persistent at night for 20 years of operation plus a period of reclamation and

closure. In some areas, horizontal light will extend at least 12 miles beyond the project, and sky glow from the project is expected to be comparable to, but less than, sky glow from Ajo, Arizona (a town of about 3,300 people) (WestLand Resources, Inc, 2012). The light intensity will be highest at the mine and attenuate farther from the mine. Many areas within a 12-mile radius will be blocked from line of sight horizontal light emanating from the project area (WestLand Resources, Inc, 2012) (Figure 4); however, jaguars are mobile animals that travel over hills and ridgetops, and therefore would likely see the lighting (horizontal) during regular movement activities or during dispersal. Additionally, sky glow will likely be visible to jaguars in the vicinity of the mine at all times of night. In addition to the lighting from the proposed action, the Imerys Quarry will also contribute to nighttime lighting (see Figures 5 and 6).

Although the specific effects of artificial lighting on jaguars are not known, the effects of human disturbance and artificial night lighting on large felids have been documented by several studies. Beier (1995) for example found dispersing pumas (*Puma concolor*) avoided night-lights in conjunction with open terrain, suggesting that pumas were moving away from city lights and urban glow and navigating toward the darkest horizon. Ngopresert *et al*.'s (2007) regression model showed that leopard (*Panthera pardus*) habitat use increased with distance from human settlements. In addition, a manual on the problem of depredation caused by jaguars and puma on cattle ranches states that the installation of lights in livestock corrals is a useful measure to deter jaguars from killing livestock (Hoogesteijn 2010). Although lighting intensity in a corral would likely be more intense than the lighting spilling outside the perimeter fence, the above studies suggest some avoidance of lighted areas by large felids.

Because jaguars are extremely secretive and generally avoid human-disturbed areas, we anticipate that the jaguar may be reluctant to regularly use areas wherever horizontal light and possibly sky glow from the mine is visible. It is difficult to understand how sky glow may be perceived by jaguars; however according to the DEIS, nocturnal animals may be adversely affected by the light glow in night skies (USDA 2012:5). Sky glow may increase the ambient illumination in the area, which we anticipate could adversely affect jaguars to some degree.

The Rosemont Copper Mine (measured from the edge of the perimeter fence) would constrict the semidesert grassland jaguar habitat between it and the existing Imerys Quarry (see Figure J-5) to a strip approximately 1.5 km (0.93 mi) in width (see Figure J-8); light and noise effects would also enter this area (see Figures J-4, J-9, J-10, and J-11). If jaguars do attempt to go through the narrower corridor between the mine and quarry(see discussion of effects to critical habitat, below), movement may be made more difficult due to the existing topography between the two facilities. In areas with rugged terrain, large carnivores' (including jaguars') travel patterns generally follow canyon bottoms and ridgelines (Beier 1995). Consistent with Beier's findings, Dickson *et al.* (2005) found that cougars consistently used travel paths that were less rugged than their general surroundings. This suggests that individuals consider the energetic cost of alternative paths; hunting or traveling individuals minimize energetic expense by frequenting landscape features that cost the least. Based on the aforementioned information, jaguars moving through or within the proposed project area likely follow the numerous canyon bottoms occurring throughout the area within the proposed perimeter fence. The canyon bottoms and ridgelines in the aforementioned constricted corridor between the proposed mine and Imerys

mine, however, generally run north-south, meaning that, after project construction, if a jaguar attempted to move through the corridor it would likely have to travel perpendicular to its normal travel patterns (i.e., up and down slope faces instead of via canyon bottoms and ridgelines). However, while this travel pattern could result in increased energetic cost to jaguars, jaguars are known to move large distances in rugged terrain, so this topography would not present a barrier to jaguar movement. Because areas immediately southeast of the mine contain habitat less suitable for jaguars (i.e. they were not included as proposed critical habitat), it is less likely that jaguar will move around the mine to the south.

In conclusion, while much of the light will be confined to the pit area and thus minimally affect jaguars, the additional escaped horizontal lighting and sky glow may have an impact on jaguar movements. Jaguars may curtail their movements in the vicinity of the mine due the influence of nighttime lighting.

3. Noise

In addition to lights, jaguars that occur within the vicinity of the project may also be adversely affected by noise associated with the project. There will be increased noise associated with the proposed project due to construction,machinery, vehicle traffic, and blasting. Blasting will typically occur once a day and be limited to daylight hours. Some noise- management techniques and operational tools to minimize noise generated during mine operations have been incorporated into the project design.

The nature of anthropogenic noise is multifaceted and complex in terms of how it affects wildlife. Noise is typically presented in terms of decibels (dB), and for the majority of noise assessments, including the one completed for the proposed project (Tetra Tech 2008, 2009c), it is quantified in terms of dBA, which is an “A-weighted” sound level scale that more closely describes how a person perceives sound. Thus, the sound level when defined as dBA does not always transfer to wildlife since species groups have different hearing sensitivities and ranges (Pater *et al.* 2006). Weighting is species-specific, and received sound levels depend on many factors (e.g., distance from source to receiver, source emission strength, source directivity, atmospheric attenuation, terrain, ground cover, weather, and frequency energy) (Pater *et al.* 2009).

According to the WestLand Resources, Inc. November 9, 2012, memo, much of the maximal intermittent equipment noise associated with the project will be within the perimeter fenceline, with the exception of low noise contours (30-40 dBA) that extend to the south across Box Canyon Road (Tetra Tech 2009). Blasting will generate brief maximum noise levels that would drop from about 52 to 57 dBA at three miles from the Open Pit to about 41 to 47 dBA at locations six miles from the center of the proposed Open Pit, and to 36 to 42 dBA at eight miles from the center of the Open Pit. These noise levels would be comparable to or less than the maximum noise levels of 55 to 60 dBA that currently occur several times per hour during daytime periods (Tetra Tech 2009). Noise contour maps for various mining activities appear in Figures J-9, J-10, and J-11. Noise levels (measured in dBA) associated with increased traffic volumes on SR 83 are predicted to increase, but it is not known how these will be perceived by

jaguars. Increased noise levels due to traffic on the Sycamore connector road and the primary and utility maintenance roads, as well as possible increased traffic on Box Canyon road were not analyzed.

Noise from construction and operation of the mine, including blasting and vehicle noise, is anticipated to disrupt jaguars' normal movement patterns, possibly causing, among other things, changes in home range (size and location), habitat use, activity, foraging patterns and increased stress response. (NoiseQuest 2013; Pater *et al.* 2009). As stated above, jaguars selectively use large areas of relatively intact habitat away from certain forms of human influence (Zarza *et al.* 2007, Monroy-Vichis *et al.* 2007) and are therefore likely to avoid human disturbance such as noise produced by the proposed project. As with lighting, the magnitude of impacts from noise is uncertain, but these impacts are expected to decrease as the distance from the mine increases.

In the same or similar manner that noises affect jaguars, these anthropogenic disturbances may also adversely affect jaguar prey, leading to a reduced prey base for jaguars. Sawyer *et al.* (2006) reported mule deer were significantly more likely to select habitat away from noise-producing oil and gas developments. Barber *et al.* (2009) document the costs of chronic noise exposure for terrestrial organisms and state that animal responses probably depend upon the intensity of perceived threats rather than on the intensity of noise. So, while the project is estimated to result in the permanent estimated loss of 14 white-tailed deer and 56 collared peccary (javelina) (AGFD 2012), we anticipate the project may also result in changes in prey distribution in surrounding areas.

4. <u>Roads and Utility Maintenance Corridor</u>

The detrimental effects of roads have been reported for a wide variety of large carnivores (Noss *et al.* 1996). Because large carnivores occur at low densities and have low reproductive rates, the effects of human disturbance are often magnified (Kerley *et al.* 2002). Roads are a serious threat to many large-carnivore populations because they can lead to increased mortality from vehicle strikes, disturbance, habitat fragmentation, access for legal or illegal harvest, and decreased prey numbers or changed prey distribution (Murphy 1983, Beier and Barrett 1993, Caso 1994, Menke and Hayes 2003, Colchero *et al.* 2010). The effects of roads can vary among large carnivore species and among sex and age classes within species. Colchero *et al.* (2010) note that jaguars move preferentially to undisturbed forests and that females avoid moving close to roads and to areas with even low levels of human occupation, while males also avoid roads, but to a lesser degree. According to Conde *et al.* (2010), female jaguars avoided roads while males appeared less likely to avoid them. Monroy-Vichis *et al.* (2007) report that jaguars occur with greater frequency in areas relatively distant from roads and human populations. Zarza *et al.* (2007) report that towns and roads have an impact on the spatial distribution of jaguars (jaguars used more frequently than expected by chance areas located more than 6.5 km from human settlements and 4.5 km from roads). However, in recent times, male jaguars in Arizona are known to have crossed roads, including two-lane highways. For example, the jaguar recently detected in the vicinity of the Rosemont Mine was formerly detected in the Whetstone Mountains. While we cannot determine the path taken by the animal to arrive in the Santa Rita Mountains, either or both SR 82 or 83 would need to have been crossed.

Vehicle strikes are a significant source of mortality for some felid populations (Beier and Barrett 1993, FWS 2010). For example, in the Santa Ana Mountain Range in Southern California, vehicle collisions are the leading cause of mortality of cougars, comprising 32% of all deaths of radiotagged cougars and their offspring (Beier and Barrett 1993). Less is known about the level of mortality of jaguars caused by vehicle strikes. Jaguar road kill has been documented (Colchero *et al.* 2010), but not in the U.S.

Pursuant to the Forest Service's first supplemental Biological Assessment, no major paved roads are expected to be built to accommodate the mine, but the nearby major road (State Route 83) will experience an increase in traffic, and problems associated with traffic, such as more cars, more lights, more trucks, closer distance between vehicles, and so on. Mine-related traffic on SR 83 during operations will primarily consist of trucks carrying supplies to the proposed project, trucks carrying concentrate from the proposed project, and employee traffic. A summary of mine-related truck traffic reports that 69 truck trips per day (455 per week) will occur on SR 83 and the primary access road for the life of the project. This does not include other forms of vehicular access, such as by mine staff entering and leaving the site. The largest concentrated volume of mine traffic during a 24-hour period will occur during workforce shift change which will vary between 6 a.m. to 8 a.m. and 4 p.m. to 6 p.m. Vehicular use of SR 83 associated with the proposed project is anticipated day and night, although according to Rosemont, heavy vehicular use of SR 83 and primary access road generally will not occur at night.

Traffic during the pre-mining phase will use SR 83 and existing Forest Road 231 to access the project area until the new primary access road is constructed. This may require an upgrade to Forest Road 231 within the existing easement, in addition to an upgrade of the entrance to SR 83. At the intersection of SR 83 and the primary access road (see below), SR 83 will be widened and provided with additional lanes. As anticipated by the Forest Service in the BA, to accommodate such increases in traffic, additional portions of SR 83 may need to be upgraded. If this occurs, SR83 may further fragment jaguar habitat and lead to an increased risk of vehicle collision with jaguars. Additionally, if travelers attempt to avoid heavier traffic on SR 83, they may use Box Canyon Road as an alternative route. Increased traffic on SR 83 (regardless of widening) and possibly on Box Canyon will lead to an increased risk of jaguars being struck by vehicles. However, because jaguars in Arizona are scarce and no jaguars are known to have been struck by a vehicle in Arizona, it seems unlikely that there is great risk of vehicles striking jaguars on either road.

While we are aware that male jaguars will cross roads, increased traffic on SR 83 may also lead to increased avoidance of areas near the road which may prevent them from crossing the road and using habitat on either side (Monroy-Vichis *et al.* 2007, Zarza *et al.* 2007, Conde *et al.* 2010). After mine closure and reclamation/restoration activities end, the mine should cease being an influence on traffic on SR 83 and Box Canyon Road.

Increased vehicular traffic on these roads will also likely lead to increased collisions with jaguar prey. Rosemont will monitor road-kill weekly on SR 83, adjacent to mine site, from the northern extent of currently proposed critical habitat to Gardner Canyon Road, to assess loss of jaguar,

ocelot, or jaguar prey base (white-tailed and mule deer, collared peccary, and white-nosed coati, in particular). Monitoring will begin at the commencement of mine construction and continue through the second year of mine operation, a total of four years.

The primary access road to the mine will be a newly constructed, two-lane paved road which will provide access to SR83 see (Figure J-3). During mine operations, the primary access road between the perimeter fence and the mine will be closed to the public; however, after mine closure, it will be open to public use. The primary access road will experience all mine-related traffic and some level of public use while the mine is in operation. Once operations have concluded and the primary access road between the perimeter and security fences is opened to public use, it will experience an unknown, but likely small level of vehicular use. Although we anticipate that jaguars will generally avoid the project area due to human disturbance associated with the mine, operation of this new road may increase the likelihood of vehicle collisions with jaguars. However, because jaguars in Arizona are scarce and no jaguars are known to have been struck by a vehicle in Arizona, it seems unlikely that there is great risk of vehicles striking jaguars on the primary access road. Vehicles could collide with potential jaguar prey; however, we do not anticipate it will have a significant impact on the jaguar prey base. The road will fragment suitable habitat between the mine footprint and areas to the north (Figure J-3). However, we anticipate jaguars will avoid most or all areas within the perimeter fence given the human influence between the project footprint and perimeter fence.

The utility maintenance road, located within the utility corridor (Figure J-3) to serve as access to the power supply line, water supply line, and water booster pump stations, crosses through semidesert grassland northwest of the mine. Vehicle traffic on this road is expected to be much lighter in comparison to that on the primary access road. Therefore, we anticipate the chance of vehicles colliding with jaguars is even lower than on the primary access road. The road will be closed to the public during mine construction and operation; however, after the mine is closed, portions of the road, which will have been improved to permit access by lower-clearance, 2-wheel drive vehicles, may be reopened to the public. Because we do not know if it will be reopened or, if reopened, the extent of public use that will occur on the road, it is impossible to predict the effects to jaguars that may occur from this road in the future. That said, in general, roads can lead to increased public access to areas, in this case to areas of jaguar habitat, which could lead to somewhat increased: (1) disturbance to jaguars in the area; (2) habitat degradation; (3) risk of human-caused fire; and (4) risk of illegal killing of jaguars and their prey. Additionally, the public may illegally use the road during mine operations and thereby increase the risk of the four aforementioned threats to jaguars. The Forest Service has indicated that illegal off-road vehicle use has been a problem for the Imerys mine.

The Sycamore connector road (Figures J-3 and J-5) will be a new road constructed from a point on the primary access road outside the north edge of perimeter fence, to connect with National Forest System Road (NFSR) 4050-0.36R-1 (which intersects NFSR 4050 about 0.3 mile farther west). NFSR 4050-0.36R-1 is a road that traverses the aforementioned (and described below) narrowed corridor between the proposed Rosemont Mine and Imerys mine. Per the Forest Service, the Sycamore connector road is needed because the proposed perimeter fence will cut off legal public access to NFSRs in the Sycamore Canyon area, north of the project area. The

Sycamore connector road will be about 12,184 feet long (2.3 miles) and impact about 26 acres. The NFSRs in Sycamore Canyon currently connect to public roads out the bottom (north) end of the canyon. However, the roads cross numerous private ownerships, and a public easement for the road does not exist. Public access from this direction into Sycamore Canyon is thereby controlled by these private landowners. While public access is sometimes granted, it cannot be guaranteed. Constructing the Sycamore Connector Road as a NFSR will continue to provide legal public access to the roads that currently exist on Forest Service lands in this area. Improved accessibility in this area will likely result in increased public access to jaguar habitat which may lead to an increase in the four aforementioned threats above plus increased human presence in remote areas (i.e., roads may facilitate increased off-road vehicle and pedestrian traffic in the area). Likely increased traffic and resulting human disturbance would occur in an area already narrowed by the proposed project (i.e., between the proposed mine and Imerys mine).

Disturbed ground will be susceptible to colonization by invasive nonnative plants such as buffelgrass and Lehmann lovegrass. Nonnative species may outcompete native species and the introduced grasses also carry fire better and burn hotter than the native species, which would degrade potential ocelot habitat. The invasive species monitoring and control measures (see Appendix B (the definitive version of which will be included in the Final EIS) will minimize this potential effect on NFS lands, but private and ASLD lands may be subject to lesser requirements.

5. <u>Increase in Human Disturbance</u>

As stated above, jaguars avoid areas of human activity. The project and action areas could subjectively be classified as relatively unpopulated; the action area has a low human density and contains no large communities. The major road in the vicinity is SR 83 immediately east of the project area, a paved two-lane highway between Sonoita and the Tucson metropolitan area. A certain level of recreation already exists in the area and thus, the primary adverse effect from an increase in human disturbance to the jaguar will be from the activities associated with the mine such as human presence, machinery, lighting, noise from blasting, and increased vehicles using SR 83. Due to the construction of two access roads and a connector road, there will be an increased possibility of legal and illegal access to the area which increases the risk of threats to jaguars as described above.

In the same or similar manner that human activity affects jaguars, this anthropogenic disturbance may also adversely affect jaguar prey, leading to a reduced prey base for jaguars. So, as stated above, while the project will directly impact and result in the estimated loss of 14 white-tailed deer and 56 collared peccary (javelina) during the mine's active construction and operation period (AGFD 2012); this may include additional impacts to prey due to increased human disturbance and possible increased legal and illegal access to the area. Upon conclusion of mining, and presuming that revegetation is effective over the long term, the area-based prey base losses will be reduced to only those attributable to the pit.

Effects of the Action on Proposed Critical Habitat

Role and definitions of occupied (at the time of listing) versus unoccupied (at the time of listing) critical habitat

According to the proposed rule, the conservation role or value of jaguar critical habitat (both occupied and unoccupied at the time of listing) is to provide areas to support some individuals during transient movements by providing patches of habitat (perhaps in some cases with a few resident jaguars), and as areas for cyclic expansion and contraction of the nearest core area and breeding population in the Northwestern Recovery Unit (NRU) (FWS 2012b). As explained in the proposed rule (FWS 2012b), occupied critical habitat requires all PCEs to be present; however if PCE 1 (connectivity to Mexico) is not present, then it must be provided by a unit not known to have been occupied at the time of listing. Per the proposed rule, unoccupied critical habitat (i.e., areas essential for the conservation of jaguars outside of occupied areas) does not require the presence of all PCEs; however it must: (1) connect an area that may have been occupied that is isolated within the United States to Mexico, either through a direct connection to the international border or through another area that may have been occupied; and (2) contain low human influence and impact, and either adequate vegetative cover or rugged terrain.

The effects of the action on proposed critical habitat, including each of the primary constituent elements, are discussed below.

Overarching requirement for jaguar critical habitat

<u>Expansive open spaces in the southwestern United States of at least 100 square kilometers (37 square miles; 24,710 acres)</u>

The proposed action will permanently affect open spaces because the security fence will encircle and directly affect 3,513 acres of proposed critical habitat in Unit 3; new roads and trails will directly affect an additional 499 acres (17 miles of decommissioned roads are not permanent effects). These 4,017 acres of effects represent 1.1 percent of the 366,615-acre proposed critical habitat Unit 3 and 0.47 percent of all proposed critical habitat rangewide (858,137 acres).

Outside of the security fence, a perimeter barbed-wire fence will be constructed to AGFD wildlife-compliant standards, but the area between it and the security fence will be subject to road, powerline, and water line construction and use, light, noise, and prey base effects. The perimeter fence will enclose an additional 2,291 acres beyond the security fence, thus affecting a total of 5,804 acres of jaguar proposed critical habitat for up to 30 years, with some areas potentially becoming more suitable if vegetation reclamation is successful over the long term. The area of proposed critical habitat permanently affected by roads and trails remains at 499-acres (17 acres of to-be-decommissioned roads are not a permanent effect). These 6,304 acres of combined long-term and permanent effects from both fences and the associated roads, trails, and rights-of-way represent 1.72 percent of the 366,615-acre proposed critical habitat Unit 3, and 0.73 percent of all proposed critical habitat rangewide (858,137 acres).

Although the proposed action will diminish the amount of expansive open space in Unit 3, it will still contain sufficient open space to retain its function (i.e., the proposed project will not reduce the remaining size of Unit 3 to less than 100 km^2).

Primary Constituent Elements

PCE 1: Connectivity to Mexico

Connectivity to Mexico is a trait of the proposed critical habitat and exists throughout each unit. Should a project be constructed such that it directly excludes any of the proposed critical habitat from access by jaguars moving to or from Mexico, the areal extent of the PCE is reduced. The proposed action will permanently remove connectivity to Mexico on 3,513 acres of land that will be encircled by the security fence, which will not be permeable to large, terrestrial animals such as jaguars. The perimeter fence and the section of access road between it and the security fence will likely remove or appreciably reduce connectivity to Mexico on 5,805 acres (2,291 acres more than the security fenced area) for 25 to 30 years. If connectivity to Mexico is to be stated in terms of width, rather than area, the mine (measured from the edge of the perimeter fence) will narrow the northern portion of Unit 3 from its present width of 3.6 km (2.2 mi) to approximately 1.5 km (0.93 mi) (see analysis in subsequent paragraph and Figure J-8, below). Proposed critical habitat will remain in place outside of the perimeter fence, north of the proposed mine, south of the Imerys Quarry, and thus our analysis must consider if connectivity to Mexico is retained in that largely indirectly-affected area.

The location of the proposed project in the northern portion of Patagonia Unit 3 would constrict the width of the northeastern portion of the unit which, in turn, could restrict the connection between Unit 3 and the Whetstone-Santa Rita Subunit 4b to the east which, as stated in the proposed critical habitat rule (FWS 2012b), may provide connectivity from the Whetstone Mountains to Mexico via the western portion of Unit 3 (see Figure J-2). We note, however, that no jaguar has ever been documented using Subunit 4b, and that other, more direct connectivity to Mexico would be through Subunit 4c (which also does not have documented jaguar occurrence records). The mine (measured from the edge of the perimeter fence) would constrict the northern portion of Unit 3 to a strip approximately 1.5 km (0.93 mi) in width from its present minimum width of 3.6 km (2.2 mi) (see Figure J-8 below). The 1.5 km area of semidesert grassland would thus be between the existing mine (Imerys Quarry) and the proposed action.

As explained above under Effects of the Proposed Action on the Jaguar, a portion of this 1.5 km bottlenecked area will be impacted by noise, lights, vehicle traffic, and human recreation from the proposed project, making it less likely that jaguars will travel through the area. Refer to figures 4, 5 and 6 in the December 7, 2012, WestLand Resources report on the potential effects of lighting from the Rosemont project for a depiction of simulated light levels within jaguar critical habitat (Figure 6 from this report is included below as Figure J-6). Furthermore, construction and operation of the Sycamore connector road will ensure legal (to the extent that current access involved private lands) public access (vehicle and pedestrian) to the 1.5 km constricted corridor. The direct (noise, lights, dust) and indirect effects (likely increased public access and resulting increase in threats to jaguars) of this road will likely further reduce the

likelihood that jaguars will travel through the narrowed corridor between the proposed mine and critical habitat. The secondary access road, although not situated in the narrowest corridor, will be constructed/reconstructed across a narrowed portion of the corridor between the mine and edge of critical habitat and may permit modest increases in access (in that current access involves private lands). The effects of this road (presence and use) will likely further reduce the likelihood that jaguar will travel through the corridor between the two mines within critical habitat. If jaguars avoid movement through this narrowed corridor, they would be unable to move from the Whetstones to Mexico via subunit 4b.

Figures 3, 4, and 5 from Tetra Tech (2009) depict the noise contours of surface blasting, pit blasting, and construction, respectively, and are included here as Figures J-9, J-10, and J-11. Some level of increased sound will enter the corridor between the proposed action and the Imerys Quarry. We reiterate that Tetra Tech (2009) stated the modeled noise values will not exceed current noise maxima at the site, but also that jaguars' hearing sensitivities and ranges may differ from humans (Pater *et al.* 2006).

As explained above, we acknowledge that the effects of human influence from the proposed project may reduce the likelihood that jaguars will move through the corridor between the two mines. However, we do not have enough information on the ability of jaguars to move through habitat affected by human influence in Arizona to determine with a reasonable degree of certainty whether or not a jaguar will move through the constricted corridor between the mines. Depending on jaguar response to the mine (i.e., if they will move through the constricted corridor or not), the possible effects to critical habitat from the proposed project would vary. For example, if jaguars will move through the constricted corridor, then the most significant effects of the proposed project would stem from the direct loss of critical habitat acres due to the project footprint. However, if jaguars will not move through the constricted corridor remaining within Unit 3, then the role of Subunit 4b, as defined in the proposed critical habitat rule (i.e., to connect Subunit 4a to Mexico via Unit 3) would be lost, in addition to the direct loss of critical habitat from the project footprint. That said, connectivity of Subunit 4a to Mexico would still exist via Subunit 4c (Whetstone-Huachuca Subunit). Further, there is no evidence that jaguars ever have used this area for travel and we cannot speculate whether they will use this area for travel in the future.

At this time, we are uncertain which direction a jaguar may move to travel between the Whetstone Mountains and Mexico (i.e., via 4b or 4c), therefore, maintaining all critical habitat that allows for this movement could be important to jaguar conservation. We note that jaguar movement in the U.S. is poorly understood, but also that no established movement pathways have been documented here.

<u>PCE 2: Adequate levels of prey species</u>

Please refer to the discussion of this effect under the Effects of the Proposed Action on the Jaguar section, above.

<u>PCE 3: Surface water sources within 12.4 miles (20 km) of each other</u>

In the action area (as defined by the Forest Service) perennial streams are known to exist at Box Canyon, Empire Gulch, and Cienega Creek; all of these are intermittent during dry periods (early summer low flow and drought) but tend to have some pools remaining. There are several named ephemeral streams (e.g., Barrel, McCleary, Scholefield, Wasp, and Davidson Canyons), numerous constructed waters (primarily stock tanks and drinkers), and some seeps with surface water in the project and action areas.

All surface water will be eliminated within the footprint of the mine and thus impact PCE 3. As a result of groundwater drawdown after the life of the mine, the amount or volume of water within regional perennial pools could decrease, which could result in indirect effects on PCE 3. Disruptions of surface water flow resulting from the capture of runoff in the pit are expected to occur along the Barrel Canyon drainage through Davidson Canyon to its confluence with Cienega Creek. Groundwater flow models were designed to simulate conditions prior to pit development, during pit dewatering, and for a 1,000-year post-closure period of groundwater level recovery and potential pit lake development (Montgomery and Associates 2010; Tetra Tech 2010c), and it was determined that groundwater level drawdown could result in the dewatering of streams, seeps, and springs, which may serve as water sources for jaguars. Uncertainties in the variables used to build the models, however, could be manifested as greater reductions of groundwater and greater impact to surface water levels (e.g., lower water level, more extensive dry reaches) and riparian vegetation than modeled. Conversely, impacts may not prove to be as severe. The timing and amount of groundwater drawdown at Box Canyon Dam Structure, Ophir Gulch Well, and South Sycamore Canyon have been modeled, but not specifically reported beyond the groundwater contour information in Tetra Tech (2010c), Montgomery (2010), and Myers (2010) and displayed in SWCA (2012) (citations refer to the Effects to Aquatic Ecosystems section). Any effects to waters of interest would be more pronounced during periods of low flow (May and June, or during an extended drought) because even small flow reductions could cause some portions of Cienega Creek, or other aquatic areas, to stop flowing. These modeled decreases in groundwater (less than 1 foot) would occur over a long period of time but could cause changes in riparian vegetation extent or health; if there are reductions in stream flow in a large area, this could impact jaguars, which need free-standing water sources within 20 km of each other. The Water Source Enhancement mitigation measure, however, calls for seven already-located and 23 not-yet-located water sources to be installed or enhanced. Should these sites be advantageously situated – and siting will be guided, in part, by the Terms and Conditions associated with the Chiricahua leopard frog analysis - they could prevent the 20 km distance from being exceeded.

Although the amount of available water will be reduced by the proposed action, there is no indication that PCE 3 will be reduced to a level that water will not be available in any 20-km area. Because of the numerous water sources such as stock tanks and drinkers, PCE 3 will not be reduced to below the threshold established in the proposed critical habitat rule. Further, Rosemont will ensure that restored or replaced springs within jaguar critical habitat are constructed in accordance with jaguar PCEs for surface water (see Proposed Conservation Measures and their effects, below).

PCE 4: Madrean evergreen woodland or semidesert grassland vegetation community between 1 to 50 percent canopy cover

Within the project area (as described in the BA and above) and most of the action area (as described in the BA), the vegetation community is composed of semidesert grassland and Madrean evergreen woodland. The only part of the project area not in this vegetation type is along the spine of the mountains, where some rock outcrops and talus slopes may have less than 1% cover. The area also contains moderate to highly rugged terrain. The proposed action will affect PCE 4 within the project footprint because the security fence will encircle and directly affect and remove (for the construction and operational life of the mine) 3,513 acres of proposed critical habitat in Unit 3; roads and trails will directly and permanently affect an additional 499 acres.

PCE 5: Moderate to highly rugged terrain

The area also contains moderate to highly rugged terrain. During operations, effects to ruggedness will be immaterial relative to effects to PCEs 2 (prey) and 6 (human disturbance). The proposed action's permanent effect to ruggedness, assuming the extent of the PCE related to vegetative cover (PCE 4) is adequately addressed by reclamation and revegetation, is primarily within the pit which, while topographically rugged, will be permanently excluded from access.

PCE 6: Little human influence or disturbance

This PCE was developed using research that highlights the fact that jaguars generally avoid areas of human activity. Pursuant to the proposed rule, an HII of 20 or less is an essential element of PCE 6. Specifically, this PCE includes minimal to no human population density, no major roads, and no stable nighttime lighting over any 0.4-square-mile (1-km^2) area (FWS 2012b). The proposed project and action areas currently have a low human density and contain no large communities. The proposed project is currently in an area with an HII values between 14 and 18.

As described below, as a result of the proposed project, overall human influence and disturbance (from roads, lights, etc.) will increase which will likely remove PCE 6 from the project area and a portion of the action area. Although the level of human influence will increase, at this time we cannot quantify the extent by which the HII will be affected due to the complicated way a number of variables interact to create HII. For example, road density is a component of HII, but we cannot determine if the existing roads in the area (i.e. the current Sycamore Canyon access), already drive observed human disturbance to the same extent that the proposed Primary Access Road will. Similarly, although overall human influence and disturbance will increase within the areas between Imerys Quarry and the proposed action, we cannot determine the resulting value of the HII in that area.

As described above, primary and secondary access roads and the Sycamore connector road will be constructed as part of the proposed project. The physical construction of these roads and their associated traffic, as well as likely increased public access to and use of areas around the mine

(due to the roads), will further contribute to increased human influence in the area, and possibly increased HII. Additionally, increased traffic on SR 83, and possible upgrades to SR 83 (as described above) and on Box Canyon will further contribute to increased human influence in the area, and possibly increased HII. Increased traffic on SR 83 may further limit jaguar access to the northeastern portion of Unit 3. Lighting from the proposed mine, as discussed in detail under the Effects of the Proposed Action on Jaguar, will result in increased horizontal lighting and sky glow in jaguar habitat, will further contribute to increased human influence in the area, and possibly result in increased HII.

The presence of a jaguar in the action area in 2012 and 2013 suggests that the amount of ambient light present is not great enough to repel the jaguar, indicating the area is currently "dark enough" for jaguars. It also suggests that the current HII is currently "low enough" for jaguars. The September 2012 camera detection of the jaguar was particularly close to the proposed mine site and was approximately 6.4 km (4 mi) away from the existing mine (Imerys). However, once the proposed action is in place, jaguars may avoid the area between the proposed mine and the Imerys mine because of the decreased width of the corridor and increased human disturbance (roads, lighting, etc.), which may further functionally narrow the corridor.

Summary of Effects to PCEs

In summary, the mine's project footprint will adversely affect all PCEs (i.e., connectivity to Mexico, prey, surface water, canopy cover, rugged terrain, and little human influence) to some degree in the northern portion of Unit 3 for 25 to 30 years, although some of the effects will be offset to varying degrees by the proposed conservation measures. Many PCEs outside of the project footprint but within portions of the action area will also be indirectly adversely affected by the proposed project (from increased lighting, noise, traffic, human use, etc.). While the extent to which jaguars will traverse the constricted portion of Unit 3 is unknown, it is reasonable to conclude that access through this area will be hampered to some extent. We reiterate, however, that we are unable to predict whether jaguars will use this connection between the Whetstones and Santa Ritas. If jaguars will not move through the constricted area of Unit 3, then the role of Subunit 4b to the east, as defined in the proposed critical habitat rule (i.e., to connect Subunit 4a to Mexico via Unit 3) would be lost. That said, connectivity of Subunit 4a to Mexico would still exist via Subunit 4c. Additionally, if the constricted corridor creates a barrier to jaguar movement, the function of the northeastern portion of Unit 3 could be diminished. Again, however, the remaining portion of Unit 3 (i.e., south of the mine) would still remain functional. The direct loss of critical habitat (in Unit 3) and possible indirect loss of critical habitat (in Unit 4b) will somewhat reduce the conservation value of those critical habitat units for the jaguars.

Effects to the Conservation Value of Critical Habitat with the Proposed Action

Critical habitat is defined as: (1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (a) Essential to the conservation of the species and (b) Which may require special management considerations or protection; and (2) Specific areas outside the geographical

area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Specific areas within the U.S. that provide the physical and biological features essential to jaguar habitat can contribute to the species' persistence and, therefore, overall conservation by providing areas to support some individuals during dispersal movements, by providing small patches of habitat (perhaps in some cases with a few resident jaguars), and as areas for cyclic expansion and contraction of the nearest core area and breeding population in the NRU. As such, critical habitat was developed to allow the above functions to occur. Specifically, as explained above, critical habitat for the jaguar was defined as expansive open spaces in the southwestern United States with adequate connectivity to Mexico that contain a sufficient native prey base and available surface water, have suitable vegetative cover and rugged topography to provide sites for resting, and have minimal human impact (FWS 2012b, FWS 2013). These areas are limited within the U.S. and therefore have an important conservation role for the jaguar.

Unit 3 connects with Mexico in two separate areas, to the east/southeast through the Huachuca Mountains and to the south through the Patagonia Mountains. Subunit 4 contains three subunits (4a, 4b, and 4c), one of which (4a) is considered to have been occupied at the time of listing. According to the proposed rule, the Whetstone-Santa Rita Subunit (4b) and Whetstone-Huachuca Subunit (4c) are essential to the conservation of the jaguar because they provide connectivity from the Whetstone Mountains to Mexico (FWS 2012b, FWS 2013). Both 4b and 4c were included in critical habitat because we do not know which route(s) are most conducive to providing the connectivity function. We also have no records that either Subunit has ever been used for this purpose by jaguars. Because we cannot predict which way jaguars may move between the Whetstone Mountains and Mexico, either or both subunits may (or may not) be important to the conservation of jaguars in the NRU.

The loss of proposed jaguar critical habitat within the project footprint and partial loss of PCEs within portions of the action area (as described above) reduces the conservation value of Unit 3 by reducing the amount of area that may support: (1) some individual jaguars during dispersal movements, by providing small patches of habitat (perhaps in some cases with a few resident jaguars); and (2) cyclic expansion and contraction of the nearest core area and breeding population in the NRU. That said, the majority of Unit 3, and therefore its conservation value, will not be affected by the proposed action.

We do not know if a jaguar will move through the constricted portion of Unit 3 between the proposed mine and the Imerys Quarry. If jaguars cannot traverse the constriction, the role of Subunit 4b, as defined in the proposed critical habitat rule (i.e., to connect Subunit 4a to Mexico

via Unit 3) could be lost, but connectivity of Subunit 4a to Mexico would still exist via Subunit 4c. However, the integrity of the critical habitat complex comprised of Units 3 and 4 will be weakened to some extent.

This possible reduction in function of Subunit 4b and partial loss of function of Unit 3 will somewhat diminish the conservation value of critical habitat as a whole. As explained above, areas that provide the primary constituent elements essential to jaguar habitat are limited within the U.S. and therefore have an important conservation role for the jaguar. Losing portions of these areas (i.e., critical habitat areas), as is likely to occur with the proposed project, reduces the ability of critical habitat to function as intended by the proposed rule. That said, the majority of critical habitat will be unaffected by the proposed action and will therefore retain its function and conservation value. Further, the effects of the action on the proposed critical habitat will not considerably reduce the capability of critical habitat to be used in a way such that research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping and transplantation and other similar conservation measures are precluded.

Effects of the Action on Proposed Critical Habitat in Relation to Recovery

As described above in the Status of the Species, a draft recovery plan for the jaguar has not been finalized, thus no recovery criteria exist to date to be used in this opinion. However, the 2012 Recovery Outline for the Jaguar developed eight "recovery objectives," which, at this time, provide FWS with the best information based on the opinion of jaguar experts. Recovery objectives collectively describe the specific conditions under which the goals (i.e., delisting) for recovery of the jaguar, throughout its range (including within and outside of the proposed critical habitat in the U.S.) will be met. As described below, the proposed action may adversely impact five out of eight recovery objectives within the Jaguar Recovery Outline:

"1) Assess, protect, and restore sufficient habitat to support viable populations of jaguars in the two recovery units." This objective is adversely impacted to an extent, but a loss of less than one percent of critical habitat, and a much smaller percentage of the NRU, cannot be expected to preclude achievement of this objective.

"2) Mediate or mitigate the effects of human population growth and development on jaguar survival and mortality where possible." This objective is adversely impacted to an extent. The proposed action will increase human influence in the portion of the range where the action would be implemented, but we have no evidence to conclude that the action will appreciably influence survival and mortality at the Recovery Unit level; attainment of this recovery objective is not precluded by the proposed action.

"3) Reduce direct human-caused (i.e., illegal and legal killing) mortality of jaguars." This objective is adversely impacted to an extent. Our analysis contemplates that increased human access to the action area and surrounding lands could lead to an increased risk of intentional (e.g. shooting) and unintentional (e.g., vehicle collisions) jaguar fatalities. However, this is somewhat speculative and, even if true, does not appreciably affect attainment of this objective in the NRU.

"4) Reduce illegal hunting of jaguar prey and improve regulation of legal hunting where appropriate (i.e., in cases where hunting is leading to significant reductions of jaguar prey)." This objective is adversely impacted to an extent. Our analysis estimates a minimum estimated reduction (in carrying capacity) equaling 14 white-tailed deer and 56 javelina. This is not significant at the Recovery Unit level.

"5) Maintain or improve genetic fitness, demographic conditions, and health of the jaguar." This objective is adversely impacted to an extent. Our analysis shows that connectivity to Mexico will remain after implementation of the proposed action, so we do not anticipate that genetic fitness, demographic conditions, or the health of the jaguar will be significantly compromised.

"6) Assure the long-term viability of jaguar conservation through partnerships, the development and application of incentives for landowners, application of existing regulations, and public education and outreach." This recovery objective will not be adversely affected by the proposed action.

"7) Practice adaptive management in which recovery is monitored and recovery tasks are revised by the USFWS in coordination with the Jaguar Recovery Team as new information becomes available." This proposed action has no applicability to this recovery objective; the objective will not be adversely impacted.

"8) Support international efforts to ascertain the status and conservation needs of the jaguar in the two recovery units." This proposed action has no applicability to this recovery objective; the objective will not be adversely impacted.

Although five of these objectives may be adversely impacted by the proposed project, it is unlikely that the level of the impact will lead to measurable delays in the recovery of jaguars within the NRU, within and/or outside of the proposed critical habitat.

Proposed Conservation Measures and their effects

The conservation measures that are part of the proposed action are meant to avoid or offset some adverse effects. The Forest Service provided jaguar-specific conservation measures in the BA that include:

1. Mitigation with regard to lighting (see Monrad 2012) includes the reduction of lumens to 5.2 million lumens, though we note that USFS (2013b) later revised its estimates upward to 5.8 and 6.4 million lumens, the latter of which will appear in the Final EIS (see USGS 2013d, as cited in the Description of the Proposed Action section).
2. Rosemont will ensure that restored or replaced springs within jaguar critical habitat are constructed in accordance with jaguar PCEs for surface water.
3. As part of the concurrent reclamation program, Rosemont will establish 1 to 50 percent woody vegetation cover averaged over the reclamation area, excluding the pit. This shall be established as a prescriptive obligation of the concurrent reclamation program in

appropriate areas as determined in conjunction with the biological monitor during project development.

4. Rosemont will monitor road-kill weekly on SR 83, adjacent to the mine site, from the northern extent of currently proposed critical habitat to Gardner Canyon Road, to assess loss of jaguar, ocelot, or jaguar prey base (white-tailed and mule deer, collared peccary, white-nosed coati, in particular). Monitoring will begin at the commencement of mine construction and continue through the second year of mine operation, a total of four years. After the initial four years of monitoring, the Biological Monitor, working with Rosemont, other entities, and FWS, will determine if additional field data collection is necessary to inform determination of whether or not a man-made wildlife crossing structure is needed and, if it is required, where it might be located. Rosemont will report road-kill in the annual report. Smaller jaguar prey (lagomorphs, rodents) will not be reported. Fatalities of any FS and BLM sensitive species will also be reported. This work may be conducted by the Biological Monitor as part of their regular site visits funded by Rosemont. In addition to increasing knowledge regarding the movement of wildlife in the area, information collected during this investigation may identify a suitable wildlife crossing structure location. We note that this Conservation Measure does not ensure that such a crossing will be constructed.
5. Rosemont will report all jaguar and ocelot sightings immediately to the Biological Monitor.
6. Rosemont will provide $50,000 to an entity approved by the CNF to support camera studies for large predators including jaguar and ocelot. The money will be provided for additional monitoring efforts between the Santa Rita and the Whetstone Mountains and along the Santa Rita Mountains. In addition to increasing knowledge regarding the movement of wildlife in the area, information collected during this investigation may identify a suitable wildlife crossing structure location. Again, we note that this Conservation Measure does not ensure that such a crossing will be constructed.
7. Rosemont will acquire or record restrictive covenants or conservation easements on the following parcels of land:

    a. <u>Sonoita Creek Ranch</u>: This land will be purchased and either made available to an approved ILF Sponsor (see Sonoita Creek Ranch Conservation Measure for an explanation of the ILF program) approved by the Corps or managed for conservation by Rosemont or a conservation partner. In any case, the land will provide wildlife conservation benefits as described in the conservation measures. It contains a total of approximately 1,200 acres of semidesert grassland, Madrean evergreen woodland, and riparian habitat along upper Sonoita Creek and includes surface water rights that support two perennial ponds and associated riparian vegetation. It is within proposed jaguar critical habitat. Sonoita Creek Ranch will be managed for conservation purposes to provide habitat and connectivity for jaguars and ocelots between the Canelo Hills/Patagonia Mountains and the Santa Rita Mountains, slightly over a mile away to the west of the ranch, in perpetuity. The southern portion of the ranch has been identified by the Arizona Wildlife Linkages Workgroup and the Arizona Missing Linkages Corridor design as a likely corridor between these two CNF land blocks.

b. Davidson Canyon Watershed Parcels: Rosemont will record a restrictive covenant or conservation easement on these parcels. These properties consist of six parcels on the eastern side of the Santa Rita Mountains and total approximately 574 acres of semidesert grassland and associated xero- or mesoriparian habitat. All but one of these parcels are within proposed jaguar critical habitat (a total of 527 acres within proposed critical habitat). These will be included as available land for the establishment of water features beneficial to listed species such as jaguars.

c. Helvetia Ranch North: Rosemont will record a restrictive covenant or conservation easement on these parcels which contain approximately 940 acres of semidesert grassland on the west side of the northern Santa Rita Mountains near the proposed project's infrastructure corridor. The parcels are outside of proposed jaguar critical habitat. These will be included as available land for the establishment of water features beneficial to listed species such as jaguars.

The conservation measures listed above are anticipated to help avoid and offset adverse effects of the proposed project to jaguars to some extent. Sonoita Creek Ranch and five of the Davidson Canyon parcels are located within proposed jaguar critical habitat and therefore may help protect connectivity within critical habitat. The other conservation lands are not located within proposed critical habitat and thus will not contribute to the protection of connectivity within critical habitat. They will, however, likely contribute to some extent to jaguar conservation in general. Although the funding to conduct carnivore monitoring may provide some information on jaguar use of the area, $50,000 is likely only enough funding to conduct carnivore monitoring in a limited geographic area for about six months, which is generally not a sufficient amount of time to collect quality data on cryptic carnivore movement.

The Forest Service also proposed a series of general conservation measures as well as conservation measures for other listed species, some of which have elements that may provide conservation benefits to the jaguar. For example, the species-specific conservation measures for the Chiricahua leopard frog, as modified by the Terms and Conditions appearing in the frog's Incidental Take Statement, include establishment of new waters. The USFS (2013b) has stated that site selection for these aquatic habitats will include consideration for the between-water travel distance associated with jaguars. The Second Supplemental BA section entitled Additional Considerations for Aquatic and Riparian Species and their Habitat, and Seeps and Springs will further ensure that jaguars (and ocelots) are considered in the replacement of affected waters.

The Second Supplemental BA section entitled Mechanism for Monitoring and Adaptive Management will help ensure that measures are implemented and that their biological efficacy is monitored, with changes made to ensure their intended mitigative purpose is achieved.

Summary of Effects of the Action

Jaguar

The proposed project will directly and indirectly affect jaguars and jaguar habitat within the NMU. The proposed action will result in an up to 30-year temporal loss of up to approximately 14.2 to 33.8 percent of a jaguar home range. The proposed action will result in a permanent loss of up to approximately 10.9 to 26.0 percent of a jaguar home range. Lesser effects may be anticipated as reclamation activities proceed and successfully reestablish sufficient permanent canopy cover; permanent habitat losses will then be largely due to the security-fenced area and pit.

The mine will also permanently reduce the abundance of jaguar prey, estimated by AGFD (2012) to amount to 14 white-tailed deer and 56 collared peccary (javelina), both key prey species for jaguar. However, this habitat loss will be partially offset by Rosemont's conservation commitment to protect 2,714 acres of jaguar habitat (and currently, proposed critical habitat) in perpetuity.

In addition to the direct habitat loss, lighting and noise from the proposed project are anticipated to disturb jaguars. Should the human activity associated with this mine disturb jaguars significantly, the result would likely be a shift in home range, perhaps to an area further south in the Santa Rita and/or Patagonia Mountains. These disturbances, along with additional roads and traffic, may also make jaguars reluctant to travel through the narrowed portion of habitat in the northern Santa Rita Mountains, and thence to the Whetstone Mountains. The conservation measures listed above are anticipated to avoid and offset adverse effects of the proposed project to jaguars to some extent.

Because no recovery criteria have been established for the species, we cannot determine how the proposed project will specifically affect the downlisting and delisting of jaguars. The project may, however, adversely impact 5 out of 8 recovery objectives, but not to the extent that those objectives are precluded. The analyses contained in Items 1 through 8 in the section entitled Effects of the Action on Proposed Critical Habitat in Relation to Recovery, above, apply to the jaguar and the species' habitat, both within and outside of the proposed critical habitat. Also as stated in these prior analyses, although these objectives may be affected by the proposed project, it is unlikely that the level of the effect will lead to measurable delays in the recovery of jaguars within the NRU.

<u>Proposed Jaguar Critical Habitat</u>

1. Direct loss of proposed critical habitat due to the proposed project footprint:

The security fence will encircle and directly affect 3,513 acres of proposed critical habitat in Unit 3; the direct effects of new roads and trails bring the total affected area to 4,017 acres. This 4,017 acres of effects represent 1.1 percent of the 366,615-acre proposed critical habitat Unit 3 and 0.47 percent of all proposed critical habitat rangewide (858,137 acres).

The perimeter fence will enclose an additional 2,291 acres beyond the security fence, thus affecting a total of 5,804 acres of jaguar proposed critical habitat for up to 30 years, with some areas potentially becoming more suitable if vegetation reclamation is successful over the long

term. The addition of road and trail effects brings the affected area to 6,304 acres of combined long-term and permanent effects, which represents 1.72 percent of proposed critical habitat Unit 3, and 0.73 percent of all proposed critical habitat rangewide. Conservation lands (totaling 1,727 acres), however, will be protected and managed in perpetuity within proposed jaguar critical habitat, and therefore will offset some of this habitat loss.

2. Indirect effects to proposed critical habitat and reduced connectivity due to the proposed project:

As described above, the location of the proposed project in the northern portion of Patagonia Unit 3 will likely restrict connectivity between Patagonia Critical Habitat Unit 3 and the Whetstone-Santa Rita Subunit 4b to some unknown extent. The latter unit, according to the proposed rule, provides connectivity from the Whetstone Mountains and to Mexico through Unit 3 (see Figures J-2 and J-3). We do not have enough information on the ability of jaguars to move through habitat affected by human influence in Arizona to determine definitively whether or not a jaguar will move through the constricted corridor between the mines. However, if jaguars will not move through the constricted portion of northeastern Unit 3, then the functional role of Subunit 4b, as defined in the proposed critical habitat rule (i.e., to connect Subunit 4a to Mexico via Unit 3), would be removed. That said, connectivity of Subunit 4a to Mexico would still exist via Subunit 4c. Additionally, if the constricted corridor area creates a barrier to jaguar movement, the function of the northeastern portion of Unit 3 (i.e., the portion of Unit 3 from the constricted corridor to the western boundary of Subunit 4b) would also be diminished. Again, however, the remaining portion of Unit 3 (i.e., south of the mine) would still remain functional. Further, Rosemont's permanent protection of 1,727 acres of private lands within critical habitat will further protect connectivity within critical habitat.

3. Effects to recovery:

By definition, critical habitat is habitat determined to be essential for the conservation (i.e., recovery) of the species. Adverse effects to some of these limited critical habitat areas and to one potential pathway from the Whetstones to Mexico, as may occur with the proposed project (as described above), somewhat reduces the ability of critical habitat and the northernmost secondary area (i.e., NMU) to contribute to the recovery of jaguars in the NRU. That said, the majority of proposed critical habitat will remain unaffected and therefore retain its ability to contribute to jaguar recovery in the NRU. Additionally, although some recovery objectives for the jaguar may be affected by the proposed project, it is unlikely that the level of the effect will lead to measurable delays in the recovery of jaguars within the NRU.

4. Effects to conservation:

This partial loss of function of Unit 3 and possible reduction in function of Subunit 4b will somewhat diminish the conservation value of proposed critical habitat as a whole. As explained above, areas that provide the primary constituent elements essential to jaguar habitat are limited within the U.S. and therefore have an important conservation role for the jaguar. Adverse effects to portions of these areas (i.e., proposed critical habitat areas), as are likely to occur as a result of

the proposed action, reduce the ability of proposed critical habitat to function as intended by the proposed rule. That said, the vast majority of proposed critical habitat will be unaffected by the proposed action and will therefore retain its function and conservation value. Further, the effects of the proposed action on the proposed critical habitat will not considerably reduce the capability of proposed critical habitat to be used in a way such that research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping and transplantation and other similar conservation measures are precluded.

CUMULATIVE EFFECTS - JAGUAR

Cumulative effects include the effects of future State, local, or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation under section 7 of the Act. Many lands within the action area are managed by Federal agencies; thus, many activities that could potentially affect jaguars are Federal activities that are subject to section 7 consultation. The effects of these Federal activities are not considered cumulative effects. However, a portion of the action area also occurs on private lands. Residential and commercial development, road construction, farming, livestock grazing, mining, off-highway vehicle use, and other activities occur on these lands and are expected to continue into the foreseeable future.

Critical Habitat Units 3 and 4 are closer to rapidly expanding urban areas than any other units and therefore more vulnerable to loss of connectivity. Tucson, Patagonia, and Sierra Vista are all expanding populations with increasing land development. Immediately southwest of the Mustang Mountains (Subunit 4c) is the proposed Rain Valley development. On the other (east) side of the Mustang Mountains, the community of Huachuca City is poised for additional development with the impending completion of a new wastewater treatment plant. Subunit 4b, through the Empire Mountains, lies between growth both to the north (Tucson) and the south (Patagonia and Sonoita). The aforementioned actions, the effects of which are considered to be cumulative, may result in fragmentation, loss, or degradation of jaguar habitat and disturbance to jaguars. Although not documented recently in the U.S., illegal hunting of jaguars adversely affects the species. Illegal activities associated with cross-border smuggling and illegal immigration (e.g., human traffic, deposition of trash, creation of trails and routes, and increased fire risk from human traffic) also occur in the action area. These activities can also degrade jaguar habitat and disturb jaguars.

CONCLUSIONS - JAGUAR

Jaguar

After reviewing the current status of the jaguar, the environmental baseline for the action area, the effects of the proposed action, and the cumulative effects, it is our opinion that the Rosemont Copper Mine, as proposed, is not likely to jeopardize the continued existence of the jaguar. Pursuant to 50 CFR §402.02, “jeopardize the continued existence of” means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the

likelihood of both survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species. We base this conclusion on the following:

1. Jaguars range from southern U.S., i.e., Arizona and New Mexico, to south America, i.e., Argentina, Belize, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, French Guiana, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Venezuela (Swank and Teer 1989, Caso *et al.* 2008). Habitat loss (assuming a 5,401-acre/8.4 mi^2 area) from the proposed action will affect a miniscule amount of habitat from this global perspective. The proposed action's effect to the 15.1 million km^2 (5.8 million mi^2) combined NRU and Pan-American Recovery Units, which encompass the entire range of the jaguar, is immeasurably small, at 1.4×10^{-6} percent. The effects of habitat loss are also small at the recovery and management unit scales. The proposed action will permanently affect approximately 0.01 percent of the 74,262 mi^2 NRU, approximately 0.07 percent of the entire 12,337 mi^2 NMU, and 0.3 percent of the 2,959 mi^2 portion of the NMU in the U.S.

2. Only one jaguar may be incidentally taken via harassment under the proposed action, and there are an estimated 30,000 jaguars throughout the species' range. Sanderson and Fisher (2013b) estimate a carrying capacity of 27 jaguars in the U.S. portion of the NMU, 162 jaguars in the entire NMU, and 4,400 jaguars within the NRU; actual population numbers are unknown.

3. Although abundance and population trends for the jaguar range-wide are not well known and populations throughout the species' range continue to be at risk, the Rosemont Copper mine will not have an appreciable impact on the population at the rangewide, NRU-specific, or NMU-specific scales. Thus, the proposed action is not expected, directly or indirectly, to reduce appreciably the likelihood of both survival and recovery of the jaguar in the wild by reducing the reproduction, numbers, or distribution of the species.

Proposed Critical Habitat

Legal Standards and Definitions

This biological and conference opinion does not rely on the regulatory definition of "destruction or adverse modification" of critical habitat at 50 CFR §402.02. Instead, we have relied upon the statutory provisions of the Act to complete the following analysis with respect to critical habitat. From section 3(3) of the Endangered Species Act: "The terms 'conserve,' 'conserving,' and 'conservation' mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Endangered Species Act are no longer necessary. Thus, designation of critical habitat helps ensure that proposed Federal actions will not result in the adverse modification of habitat to the point that the species will not be able achieve recovery, i.e. not able to be removed from the threatened or endangered species list.

Section 7(a)(2) of the Endangered Species Act of 1973, as amended, states: "Each Federal agency shall…insure that any action funded, authorized, or carried out…is not *likely* to…result in the destruction or adverse modification of (critical) habitat…" (emphasis added). *Merriam Webster's Collegiate Dictionary, Tenth Editio*n, defines "likely" as "1: having a high probability of occurring or being true; very probable." Therefore, in order to reach a conclusion of destruction or adverse modification of critical habitat from a Federal action, we must determine that preclusion of recovery is "very probable" due to that action.

We used four documents to determine how to analyze whether the threshold for destruction or adverse modification will be reached by the proposed action. These include: 1) 2004 guidance regarding the application of the "Destruction of Adverse Modification" standard under Section 7(a)(2) of the Endangered Species Act (FWS 2004); 2) Section 7 Consultation Handbook; 3) the proposed rule for jaguar critical habitat; and 4) our letter regarding Incremental Effects for the economic analysis for the proposed rule to designate critical habitat for the jaguar (FWS, August 28, 2012).

Our 2004 guidance indicates that destruction or adverse modification may be reached when critical habitat would not remain functional to serve the intended conservation role for the species.

Our Section 7 Consultation Handbook notes that the adverse modification threshold is exceeded when the proposed action will adversely affect the critical habitat's constituent elements or their management in a manner likely to appreciably diminish or preclude the role of that habitat for recovery of the species.

The 2012 proposed rule (FWS 2012b) to designate critical habitat for the jaguar states that activities that may destroy or adversely modify critical habitat are those that alter the physical or biological feature and PCEs to an extent that appreciably reduces the conservation value of critical habitat for the jaguar.

The Incremental Effects Letter (FWS August 28, 2012) states that destruction or adverse modification is potentially reached when connectivity is severed either between the U.S. and Mexico or within a critical habitat unit or subunit. According to the incremental effects letter, "major construction projects (such as new highways, significant widening of existing highways), or construction of large facilities (such as large mining operations) could constitute adverse modification to jaguar critical habitat in both occupied and unoccupied subunits if connectivity within a critical habitat unit is severed." Additionally, the letter states that "major construction projects (such as new highways, significant widening of existing highways, or construction of large facilities) that could sever connectivity within these critical habitat subunits could constitute adverse modification. The most likely unoccupied subunits in which these activities may occur are 4b and 4c". The destruction or adverse modification of critical habitat could occur if the function of one or more critical habitat units is affected by, for example, the construction of impenetrable fencing across a portion of the currently open areas of vegetated, rugged terrain at the U.S.-Mexico border. This could create a situation in which a unit of critical habitat could become inaccessible to jaguars. The Incremental Effects Letter (FWS 2012) also

states that "The loss of one critical habitat unit would not constitute jeopardy to the species, but it could constitute destruction or adverse modification".

Therefore, following guidance from each of these four sources and considering the effects noted above, it is our conference opinion that implementation of the proposed action will not likely destroy or adversely modify proposed critical habitat. We base this conclusion on the following rationale:

Habitat Loss

1. Although the proposed action will result in the direct loss of proposed critical habitat in Unit 3, the majority of Unit 3 will retain its PCEs and function. The security fence and roads will permanently remove 4,013 acres of proposed critical habitat in Unit 3. This 4,013 acres of permanent effects represent 1.1 percent of proposed critical habitat Unit 3 and 0.47 percent of all proposed critical habitat rangewide. The perimeter fence and roads are a long term (25-30 years) effect to 6,304 acres, which represents 1.72 percent of proposed critical habitat Unit 3, and 0.73 percent of all proposed critical habitat rangewide. Further, proposed conservation measures will permanently protect 1,727 acres within proposed critical habitat that could otherwise be subject to development or other adverse effects. This provides a significant offset (27.3 to 42.8 percent) to the habitat expected to be lost.

2. If the constriction of the proposed critical habitat between the proposed Rosemont Mine and Imerys Quarry render the northeastern portion of Unit 3 inaccessible (but see discussion below), an additional 32,992 acres of Unit 3 would be removed from its function in jaguar conservation. The perimeter fence and roads will affect 6,304 acres of proposed critical habitat for the long term (25 to 30 years). Adding this acreage to that of the inaccessible portion of Unit 3, the areal extent of the long-term loss of proposed critical habitat containing all the PCEs to support jaguars would be 39,296 acres. This would constitute approximately 10.7 percent of Unit 3 and 4.6 percent of all proposed critical habitat rangewide. Adding the acreage of the inaccessible portion of Unit 3 to the 4,013 acres of proposed critical habitat in which all PCEs are permanently affected by the security fence and roads brings the total impact to 37,005 acres. This would constitute a permanent loss of 10.1 percent of Unit 3 and 4.3 percent of all proposed critical habitat rangewide. Both the long-term and permanent hypothetical losses are partially offset by the aforementioned permanent protection of 1,727 acres of conservation lands. Although the proposed action could potentially cause long-term and permanent, direct and indirect losses of function in Unit 3, function would be retained in 89.3 (long-term) to 89.9 (permanent) percent of Unit 3 and in 95.4 (long-term) to 95.7 (permanent) percent of all proposed critical habitat.

3. If the lost function of northeastern Unit 3 analyzed in Item 2, above, removed the connectivity-to-Mexico role of the 12,710-acre Subunit 4b and also rendered the 62,478-acre Subunit 4a inaccessible via northeast Unit 3, the resulting 75,188-acre loss of function would represent 8.8 percent of the overall proposed critical habitat (7.3 percent

in Subunit 4a, 1.5 percent in Subunit 4b). We note, however, that connectivity to Mexico for Subunit 4a exists through Subunit 4c and the southeastern portion of Unit 3 in the Huachuca Mountains, regardless of the potential functional loss of Subunit 4b.

4. When the 6,304 acres occupied by the perimeter fence and roads are added to the potential for a functional losses of 32,992 acres of northeastern Unit 3 and all of the 12,719-acre Subunit 4b (as in Items 2 and 3, above), there would be a 52,006-acre long-term loss of function within the 379,325-acre combined area of Unit 3 and Subunit 4b. Considering the 4,013-acre security-fenced area and roads, there would be a 49,715-acre permanent loss of function to the combined area of Unit 3 and Subunit 4b. Under these hypothetical scenarios, function would be retained in 86.3 to 86.9 percent of the combined acreage of Unit 3 and Subunit 4b and in 93.9 to 94.2 percent of all proposed critical habitat. We reiterate that connectivity to Mexico for Subunit 4a exists through Subunit 4c and the southeastern portion of Unit 3 in the Huachuca Mountains, regardless of the potential functional loss of Subunit 4b. We again note that both the long-term and permanent potential losses would be partially offset by the aforementioned permanent protection of 1,727 acres of conservation lands.

5. When the 6,304 acres occupied by the perimeter fence and roads are added to the potential for a functional losses of 32,992 acres of northeastern Unit 3, the 62,478-acre Subunit 4a, and the 12,719-acre Subunit 4b (as in Items 2 and 3, above), there would be a 114,484-acre long-term loss of function within the 441,803-acre combined area of Unit 3 and Subunits 4a and 4b. Considering the 4,013-acre security-fenced area and roads, there would be a 112,193-acre permanent loss of function to the combined area of Unit 3 and Subunits 4a and 4b. Under these hypothetical. Worst-case scenarios, function would be retained in 74.1 to 74.6 percent of the combined acreage of Unit 3 and Subunits 4a and 4b and in 86.7 to 86.9 percent of all proposed critical habitat. We reiterate that connectivity to Mexico for Subunit 4a exists through Subunit 4c and the southeastern portion of Unit 3 in the Huachuca Mountains, regardless of the potential functional loss of Subunit 4b; and that both the long-term and permanent potential losses would be partially offset by the aforementioned permanent protection of 1,727 acres of conservation lands.

Effects to Jaguar Movement

In order to reach a conclusion that the proposed action is "likely" to result in destruction or adverse modification of critical habitat, the analysis would have to show a "high probability" for ***each*** of the following: (1) that the jaguar would be unable to traverse the constricted area in Unit 3 and access Subunit 4b; (2) that such a preclusion would render Subunits 4b and 4a inaccessible to jaguars and/or preclude connectivity between the U.S. and Mexico; and (3) that both of those results would preclude or significantly diminish the conservation value of proposed critical habitat for jaguar recovery. It is our conference opinion that the standard of "highly probable" is not met for any of these arguments singly, let alone all of them combined.

1. Our analysis makes a plausible argument that jaguar movement between units 3 and 4b will become somewhat restricted, but does not reach the level that such movement will

likely be precluded. Known male jaguars have been documented as having traveled widely around southern Arizona in recent years, apparently despite the presence of numerous roads, lit areas, and other human disturbances. Even if movement through the constricted corridor were completely blocked, our analysis would have to show that precluding such movement would appreciably reduce the functionality of the currently proposed array of critical habitat. Two arguments might be made in this regard: that both units 4a and 4b will become inaccessible to jaguars if movement through the 1.5 km strip is curtailed, thus removing another 8.8 percent of critical habitat (7.3 percent in 4a, 1.5 percent in 4b) (see Item 3 in Habitat Loss analysis, above); and that preclusion of this connectivity will significantly impair jaguar movement into and out of Mexico. Neither of these arguments is adequately supported by the best available information. Further, we have analyzed three other hypothetical combinations, including: (1) the loss of function in Subunits 4a and 4b (see Item 3 under Habitat Loss section, above); (2) the effects of the action, the loss of function in Unit 3 and Subunit 4b (see Item 4, above); and (3) the effects of the action, the loss of function in Unit 3 and Subunits 4a and 4b (see Item 5, above). These hypothetical, and increasingly worst-case effects, are similarly unsupported by the best available information.

2. Although we know that a jaguar moved from the Whetstones (Unit 4a) to the Santa Ritas (Unit 3), we do not know what travel pathway it took. Subunit 4b connects Units 4a and 3; however, we have no evidence that 4b has ever been or ever will be used by a jaguar, and it is difficult for us to determine whether Subunit 4b is so important to jaguar movement that loss of this connectivity would lead to an adverse modification conclusion. Furthermore, there are other connections between Units 3 and 4 within Subunit 4c. Finally, the occupied critical habitat in both the Whetstones and the Santa Ritas remains connected to Mexico through at least two mountain ranges (the Patagonia and Huachuca mountains).

3. Supposing that connectivity between Unit 3 and Subunit 4a were completely precluded, and that such preclusion would sever connectivity to Mexico, we would then analyze the effect these factors would have on the conservation (recovery) of the jaguar. Three of the four guidance documents mentioned above - the 2004 guidance regarding the application of the "Destruction of Adverse Modification" standard under Section 7(a)(2) of the Endangered Species Act (FWS 2004), the Section 7 Consultation Handbook, and the proposed rule for jaguar critical habitat) - refer to either "conservation" or "recovery" of the species under analysis.

The question then becomes "What constitutes jaguar recovery?" The Jaguar Recovery Team, in its Recovery Outline for the species (FWS 2012a), recognizes the "Northwestern Recovery Unit" (NRU). By definition, the NRU is Essential to the recovery of the species rangewide. Therefore, we are analyzing the effect of the overall impact to critical habitat at the recovery unit level rather than rangewide. As described above, the proposed action may impact five out of eight recovery objectives in the Jaguar Recovery Outline (FWS 2012a), including the following: (1) Assess, protect, and restore sufficient habitat to support viable populations of jaguars in the two recovery units; (2) Mediate or mitigate the effects of human population growth and development

on jaguar survival and mortality where possible; (3) Reduce direct human-caused (i.e., illegal and legal killing) mortality of jaguars; (4) Reduce illegal hunting of jaguar prey and improve regulation of legal hunting where appropriate; and (5) Maintain or improve genetic fitness, demographic conditions, and health of the jaguar. Although these objectives may be affected by the proposed project, by itself, it is unlikely that the level of the effect will lead to measurable delays in the recovery of jaguars within the NRU.

We also examined the effects of the proposed action in relation to the definition of "conservation". Conservation, as defined under section 3 of the Act, means "to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking". The proposed action should have no significant effect on any of these activities.

Finally we examine the "Incremental Effects memo" which postulates, for purposes of assessing the economic impacts of proposed critical habitat, scenarios where an adverse modification opinion may occur. That memo says, in part, that adverse modification may result if "major construction projects (such as new highways, significant widening of existing highways), or construction of large facilities (such as large mining operations) could constitute adverse modification to jaguar critical habitat in both occupied and unoccupied subunits if connectivity within a critical habitat unit is severed." Additionally, the letter states that "major construction projects (such as new highways, significant widening of existing highways, or construction of large facilities) that could sever connectivity within these critical habitat subunits could constitute adverse modification. The most likely unoccupied subunits in which these activities may occur are 4b and 4c". The best available information indicates that connectivity is not likely to be "severed" by the proposed action.

Losing a portion of Unit 3 and possibly reducing connectivity to Subunit 4a, both areas considered by the proposed rule as essential to the conservation of jaguars, reduces the ability of critical habitat to function as intended by the proposed rule and somewhat diminishes the conservation value of critical habitat as a whole. That said, because the vast majority of critical habitat will be unaffected by the proposed action, its value will not be appreciably reduced. Overall, critical habitat will retain its function and ability to contribute to survival and recovery of the jaguar.

INCIDENTAL TAKE STATEMENT - JAGUAR

Section 9 of the Act and Federal regulation pursuant to section 4(d) of the Act, prohibit take of endangered or threatened species, respectively, without special exemption. "Take" is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. "Harm" is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral

patterns, including breeding, feeding, or sheltering. "Harass" is defined in the regulations as ``an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering (50 CFR §17.3). Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the proposed action is not considered to be prohibited taking under the Act provided such taking is in compliance with this Incidental Take Statement.

The measures described below are non-discretionary, and must be included by the USFS as binding conditions of any grant or permit issued to the applicant, as appropriate, for the exemption in section 7(o)(2) to apply. The USFS has a continuing duty to regulate the activity that is covered by this Incidental Take Statement. If the USFS (1) fails to assume and implement the terms and conditions, or (2) fails to require the applicant to adhere to the terms and conditions of this incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, the USFS, or the applicant must report the progress of the action and its impact on the species as specified in the Incidental Take Statement (see 50 CFR 402.14(I)(3)).

Amount or Extent of Take Anticipated

Confirmed jaguar detections have occurred within the action area as recently as October 2013. The detections were from trail cameras placed by resident hunters and/or researchers from the University of Arizona – jaguar and ocelot survey and monitoring project funded by the FWS and the Department of Homeland Security. All detections were located on lands administered by the Coronado National Forest, photographed at night, and all are suspected to be of a single male jaguar. One of the detections was from a trail camera located to the west of and adjacent to the proposed action area. Thus, incidental take of a jaguar is likely to occur because trail cameras have detected a male jaguar within the area subject to direct and/or indirect effects of the proposed (the action area).

Incidental take of one jaguar over the life of the project in the form of harassment is anticipated for the following activity:

1. Disturbance of jaguars due to construction, operation, and restoration of the mine and associated roads which disrupts normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering. Construction and operation of the mine is anticipated to cause jaguars to shift home range location and travel longer distances, possibly through less suitable habitat. Extra travel would require jaguars to expend additional energy and increase the potential for encounters with humans, vehicles, potential competitors, and other stresses.

We anticipate the above anticipated incidental take will be difficult to detect. However, monitoring and reporting requirements will allow us to assess the effects of proposed project

activities on jaguars. In addition, Rosemont will report to us any mortality or injury of jaguars due to collisions with vehicles or other activities. The amount of anticipated incidental take will have been exceeded, triggering a requirement for reinitiation (50 CFR §402.16[c]) if, for example:

1. Based on the annual and emergency reporting on the status of the proposed project:
    a. A jaguar is injured or killed through collision with a vehicle(s) associated with the proposed project;
    b. Unanticipated events occur that are attributable to the proposed action (e.g. toxic spills or plumes, wildfires, landslides) that are reasonably certain to have resulted in take; or
    c. Additional jaguars are documented in the action area that are reasonably certain to be taken by the proposed action.

In summary, and stated differently, the maximum allowable incidental take of jaguar is the harassment of one individual.

Effect of the Take

We conclude that this level of anticipated take is not likely to result in jeopardy to the jaguar, for the effects are not expected to appreciably reduce the survival and recovery of the species. Jaguars range from southern United States all the way to Argentina and thus, take of one jaguar in the form of harassment in the U.S. will not jeopardize the species.

REASONABLE AND PRUDENT MEASURES

The FWS believes the following Reasonable and Prudent Measures are necessary and appropriate to minimize impacts of incidental take of jaguar:

1. Minimize the effects of disturbance from noise and roads to the jaguar.
2. Monitor jaguars in the Santa Rita Mountains.
3. Monitor incidental take resulting from the proposed action and report to the FWS the findings of that monitoring.

TERMS AND CONDITIONS

To be exempt from the prohibitions of section 9 of the Act, Rosemont shall comply with the following Terms and Conditions, which implement the Reasonable and Prudent Measures described above and outline required reporting and monitoring requirements. These terms and conditions are non-discretionary.

1. The following Terms and Conditions implement Reasonable and Prudent Measure Number 1:

a. Minimize road-related noise, especially at night, through the use of techniques such as avoiding, to the extent practicable (i.e., that allows for safe driving conditions), horn use and "Jake-braking" (the use of an engine's compression combined with downshifting the transmission to slow a vehicle). Compliance with this Term and Condition may be demonstrated by placing signs advising vehicle operators to not employ "Jake-brakes" at both ends and the midpoint of the primary access road.

b. Limit speeds on the primary and secondary access roads and the Sycamore connector road no more than 25 miles per hour and employ the use of wildlife crossing signs. Speed limits will be made known to employees and contractors during safety training or equivalent and via the use of speed limit signs. Compliance with this term and condition may be demonstrated by placing speed limit signs in appropriate locations. Compliance may also be demonstrated by placing signs cautioning vehicle operators of the presence of wildlife both ends and the midpoint of the primary access road and at any other locations determined necessary by the Biological Monitor and/or other entities (while implementing the wildlife movement-related Conservation Measure).

2. The following Term and Condition implements Reasonable and Prudent Measure Number 2:

Rosemont shall conduct (or provide funding to conduct) jaguar surveys and monitoring for the life of the proposed mine plus the 5-year post-closure period. Jaguar surveys and monitoring shall be conducted by a contractor with expertise in large felid survey and monitoring, sampling design, GIS, and data analysis. Objectives of the study include, but are not limited to the following: (1) determine if the male jaguar previously detected near the proposed mine continues to use the area; (2) determine if additional jaguars are present in the vicinity of the mine; (3) gather basic information on jaguar movement and habitat use patterns in the vicinity of the mine, including, if possible, determining travel routes; and (4) enable operations to take into account the presence of jaguars in the immediate vicinity. The exact design, scope, and location of the study will be determined in the study plan and updated as needed to gather the best possible information on jaguars. Unless another study design of equal or lesser effort is determined to be potentially more scientifically effective (i.e., to allow for the best scientific information possible to be obtained), surveys and monitoring will be conducted for the first five years in a 200 km^2 area of jaguar proposed critical habitat roughly centered on the perimeter fence of the mine. Jaguars detected in this area will then be subject to focused monitoring. We note that 200km^2 is the largest, radio-telemetered home range noted from the northern portion of the species range by Rosas-Rosas and Bender (2012) (see Home Range and Movement section, above). After five years, FWS, FS, other entities, and Rosemont will meet to discuss and determine if the existing study design should be continued with the same level of effort, or if a new study design with a similar level of effort should be employed; the goal of either effort will be to continue to obtain the best information possible on jaguars in the action area. Rosemont shall implement the new study design, if warranted, for the life of project plus the 5-year post-closure period, unless another design of equal or lesser effort is determined to be more effective.

All jaguar detections will be reported to FWS and AGFD within 24 hours.

Jaguar survey and monitoring must commence prior to significant surface disturbance. Jaguar survey and monitoring will be conducted through non-invasive means, including, but not limited to the use of trail cameras,, and/or scat-detection dogs. Prior to the commencement of any field work: (1) a study plan (draft and final) will be submitted to and approved by the FWS and other entities; and (2) all necessary permits will be obtained, copies of which must be sent to FWS and other entities as applicable.

The study plan will include, among other information: (1) the study objectives; (2) a detailed description of survey and monitoring methods and analysis techniques to be employed, including the location and spatial array of paired cameras, track plots, or scat-detection dog transects, and frequency with which photos will be downloaded and viewed (at least monthly), track plots read, or scat-detection transects ran; (3) a communications plan that explains, among other things, how jaguar detections will be relayed to the FWS, AGFD, and the general public; and how media requests will be handled; (4) reporting format and schedule (reporting will include draft and final reports, as well as monthly updates); and (5) qualifications of the survey and monitoring team. All aspects of the study plan and implementation of the plan (including, but not limited to, who will conduct the study, how the study will be conducted, and when reports will be due) must be coordinated with FWS and other entities and approved by FWS. Additionally, all survey and monitoring efforts must be coordinated with the FWS, FS, other entities, affected land owners and managers, and other parties determined to be appropriate by the FWS.

The aforementioned survey and monitoring effort expands on the Conservation Measure in the Description of the Proposed Action of the BA which states "Rosemont will provide $50,000 to AGFD or other suitable entity approved by the CNF to support camera studies for large predators including jaguar and ocelot. The money will be provided for additional monitoring efforts between the Santa Rita and the Whetstone Mountains and along the Santa Rita Mountains. In addition to increasing knowledge regarding the movement of wildlife in the area, information collected during this investigation may identify a suitable wildlife crossing structure location." Please note that AGFD has requested that the agency not be referred to within task-oriented conservation measures; it only appears here due to the agency name appearing in quoted text. Reasonable and Prudent Measure Number 1 is required because the $50,000 camera study identified in the Conservation Measures is a small fraction of funding needed to conduct jaguar surveys and monitoring for the life of the proposed mine, plus 5-year post-closure period. To reduce study redundancy and possible disturbance to jaguars in the area, this Conservation Measure and the aforementioned survey and monitoring effort should be conducted by the same entity.

3. The following Term and Condition implements Reasonable and Prudent Measure Number 3:

To monitor incidental take resulting from the proposed action, Rosemont shall monitor the impacts of the action as they relate to jaguar and report these to the FWS for the life of the project. A report will be due to the FWS annually on March 1. The report will include a description of the action implemented, including conservation measures and reasonable and prudent measures. Emergencies and any unanticipated events that may cause take to be exceeded will be reported immediately (at a maximum within 24 hours) to the Arizona Ecological Services Office Field Supervisor via email and telephone.

Review requirement: The FWS believes that no more than one jaguar will be incidentally taken (in the form of harassment) as a result of the proposed action. The reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize incidental take that might otherwise result from the proposed action. If, during the course of the action, the level of incidental take is exceeded, such incidental take would represent new information requiring review of the reasonable and prudent measures provided. FS must immediately provide an explanation of the causes of the taking and review with the FWS-AESO the need for possible modification of the reasonable and prudent measures.

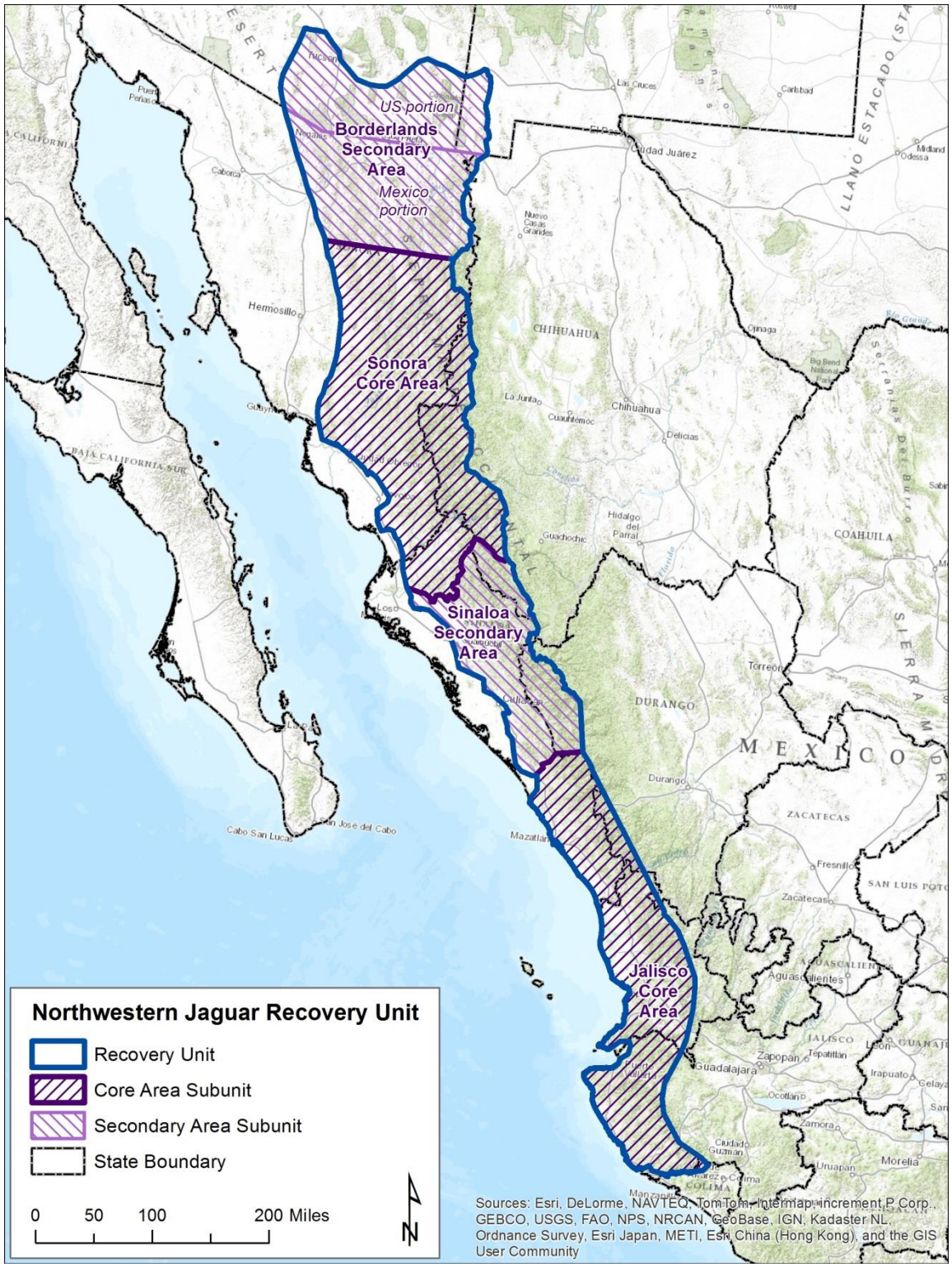
CONSERVATION RECOMMENDATIONS - JAGUAR

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

We recommend that the Forest Service and Rosemont further minimize the effects of night lighting and noise within the action area by:

a. Minimizing the light levels and the distance light emanates from the project site through the use of techniques such as decreasing the use of bright lights, employing methods to deflect lights coming out of project site, and minimizing the lights coming from buildings at the project site;
b. Coordinating the aforementioned Conservation Recommendations with FWS and other entities before the measures are employed.

Mr. Jim Upchurch, Forest Supervisor


US portion
Borderlands Secondary Area
Mexico portion
Sonora Core Area
Sinaloa Secondary Area
Jalisco Core Area
Northwestern Jaguar Recovery Unit
Recovery Unit
Core Area Subunit
Secondary Area Subunit
State Boundary
0 50 100 200 Miles
N
Sources: Esri, DeLorme, NAVTEQ, TomTom, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), and the GIS User Community
Hermosillo
Caborca
Ciudad Juárez
Las Cruces
Carlsbad
Midland
Odessa
CHIHUAHUA
Chihuahua
Delicias
Cuauhtémoc
La Junta
Guachochic
Hidalgo del Parral
COAHUILA
DURANGO
Durango
Torreón
MEXICO
ZACATECAS
Zacatecas
Fresnillo
Mazatlán
Culiacán
Los Mochis
Guaymas
BAJA CALIFORNIA SUR
Cabo San Lucas
San José del Cabo
Aguascalientes
JALISCO
Guadalajara
Zapopan
Tepatitlán
Irapuato
Ocotlán
Zamora
Morelia
Uruapan
Ciudad Guzmán
COLIMA
Colima
Manzanillo
Puerto Vallarta
Nuevo Casas Grandes
Ojinaga
Big Bend National Park
Sabinas
Puerto Peñasco
Nogales
Nuevo Ideal
Rio Grande
Rio Conchos
Rio Yaqui
Rio Mayo
Rio Fuerte
Rio Sinaloa
Rio Lerma
Rio Balsas
Rio Nazas
Rio Aguanaval
Rio Bravo
Rio Salado
Rio Sabinas
Rio Pecos
Rio Mezquital
Rio Tepic
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Rio Armeria
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Rio Coyuca
Rio Papagayo
Rio Ometepec
Rio Verde
Rio Tuxpan

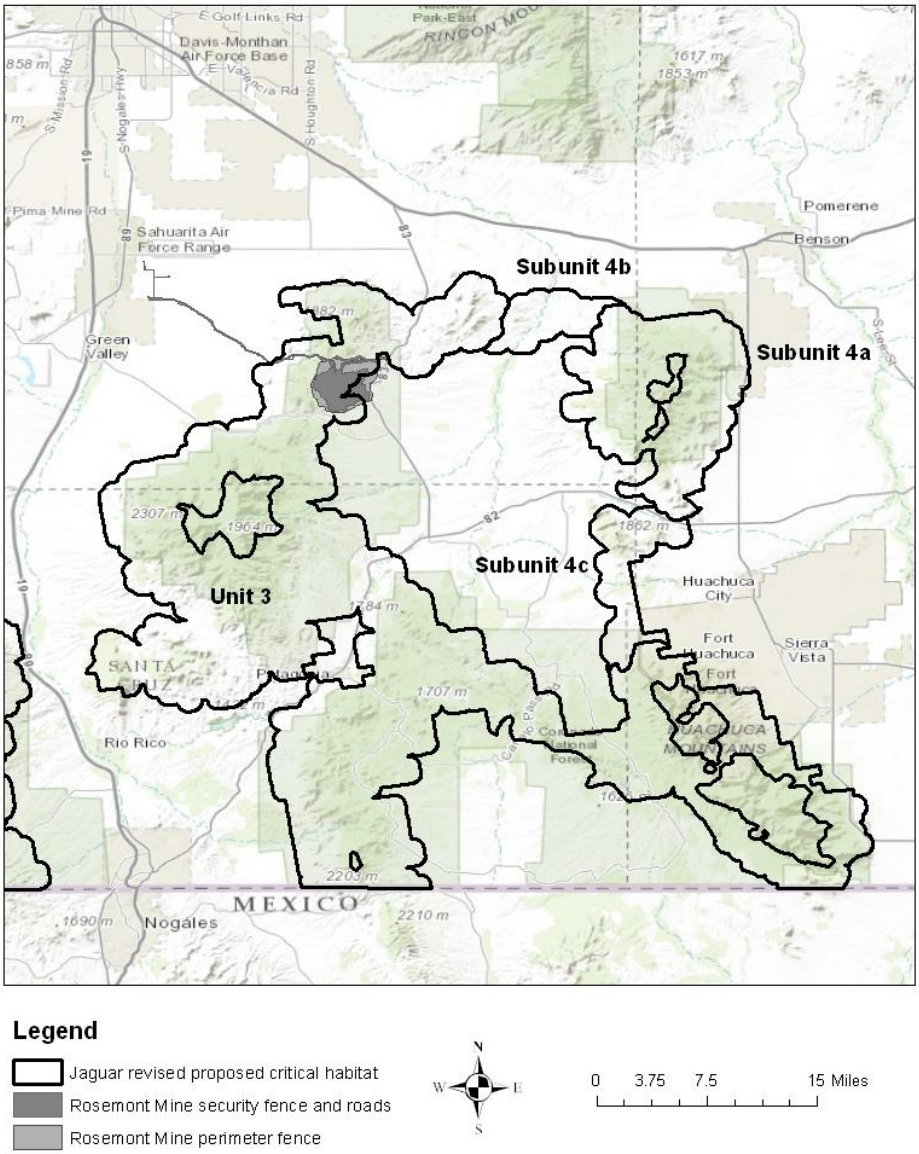

Figure J-2: Map showing the proposed action within proposed critical habitat Unit 3 in relation to Critical Habitat Unit 4 (Subunits a, b, and c).

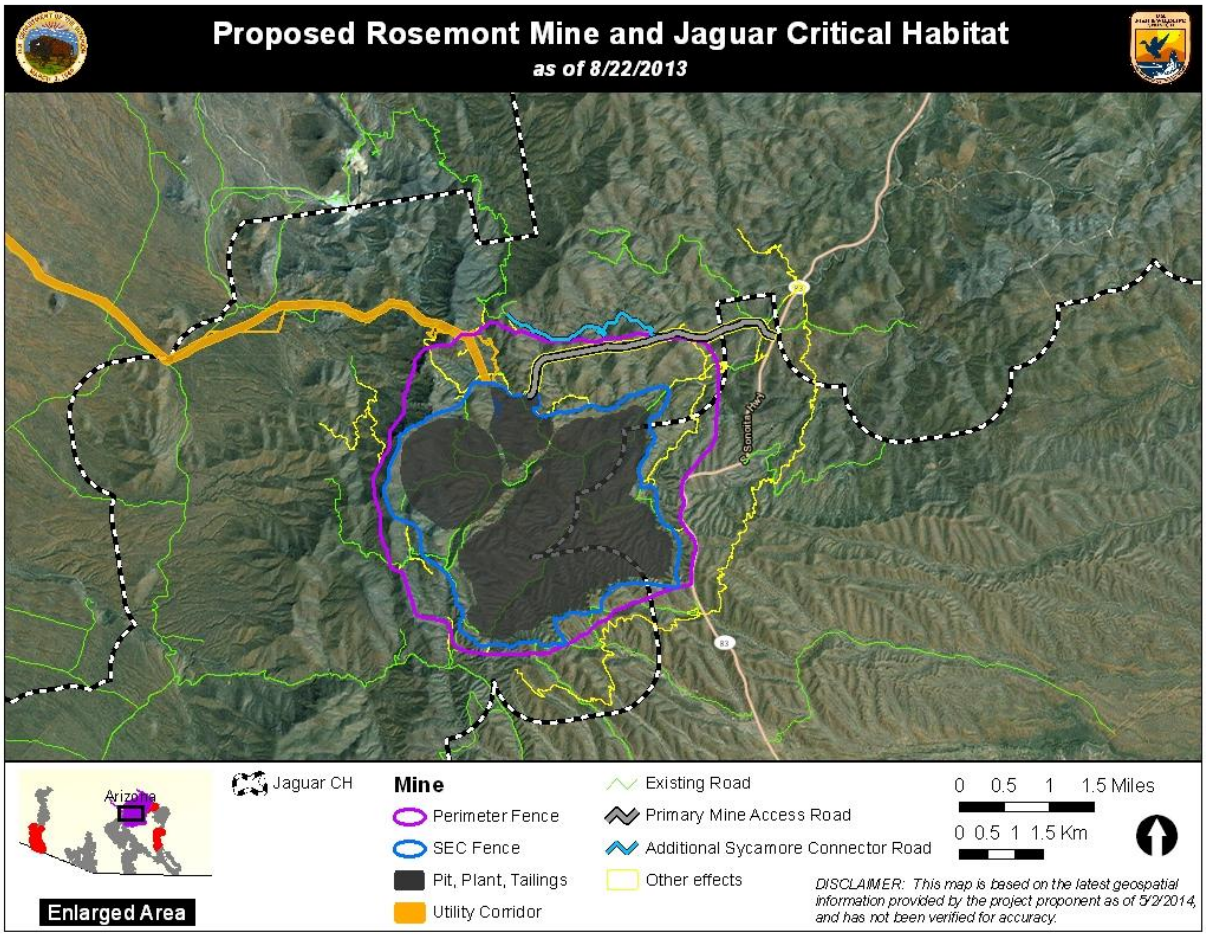

Figure J-3: Proposed Rosemont Mine Project and Jaguar Critical Habitat.

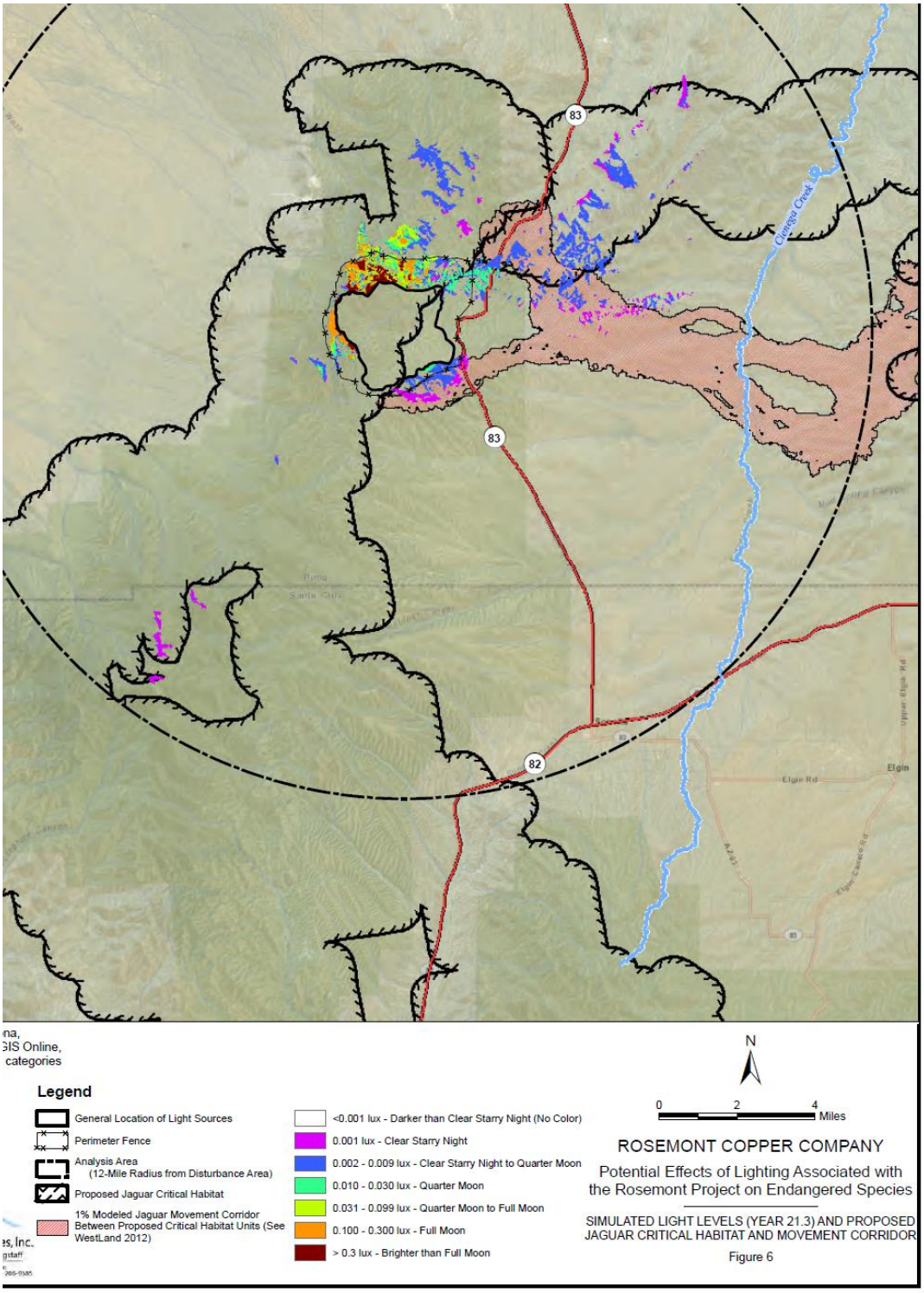

Figure J-4: Simulated light (horizontal) levels as a result of the proposed Rosemont Mine project in relation to jaguar critical habitat (Figure 6 of WestLand Resources Inc, 2012). Please note that this map uses a version of the proposed critical habitat boundaries superseded by the July 1, 2013, revised proposed rule (78 FR 39237).

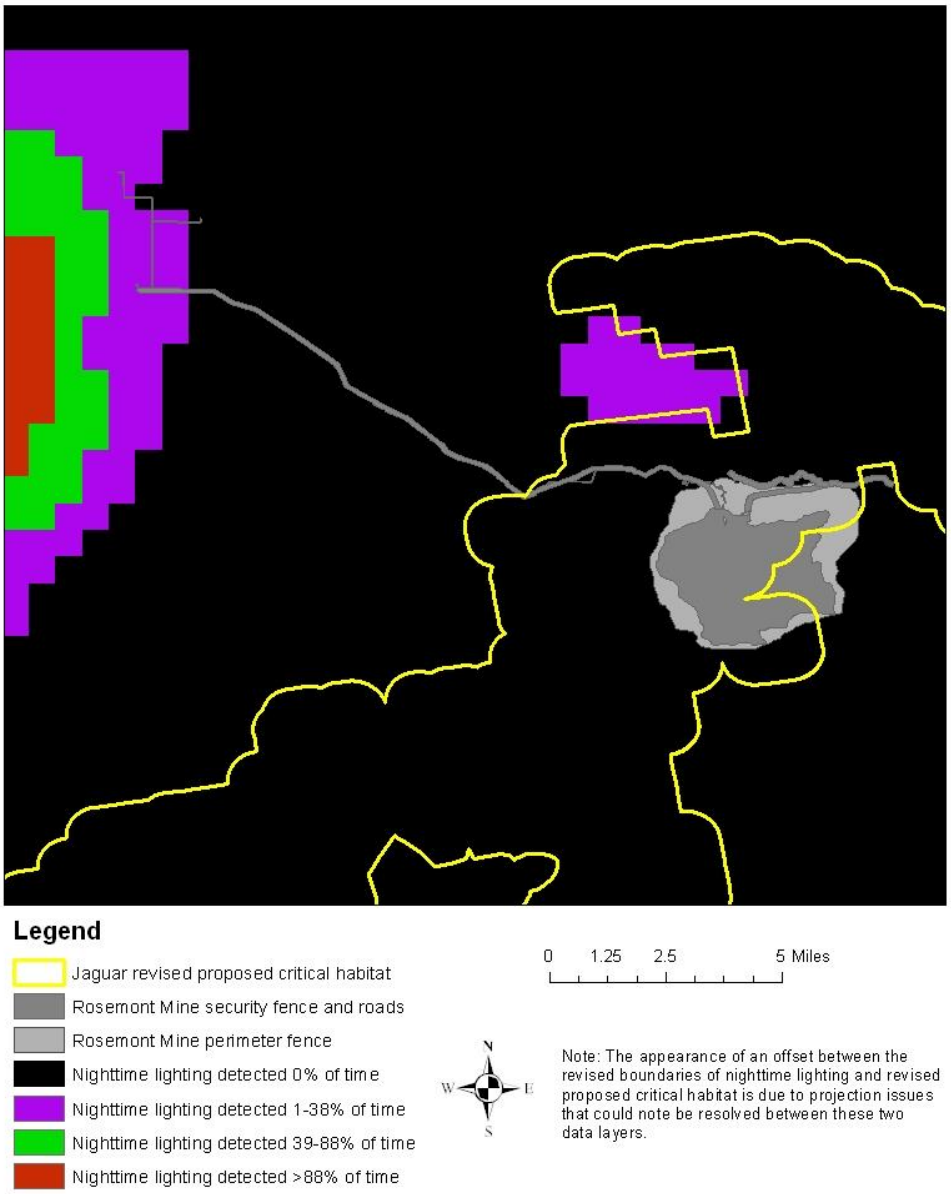

Figure J-5: Map showing nighttime lighting (based on data provided to FWS by the Wildlife Conservation Society) from the current Imerys Quarry (purple area) in relation to the proposed Rosemont mine and proposed jaguar critical habitat.

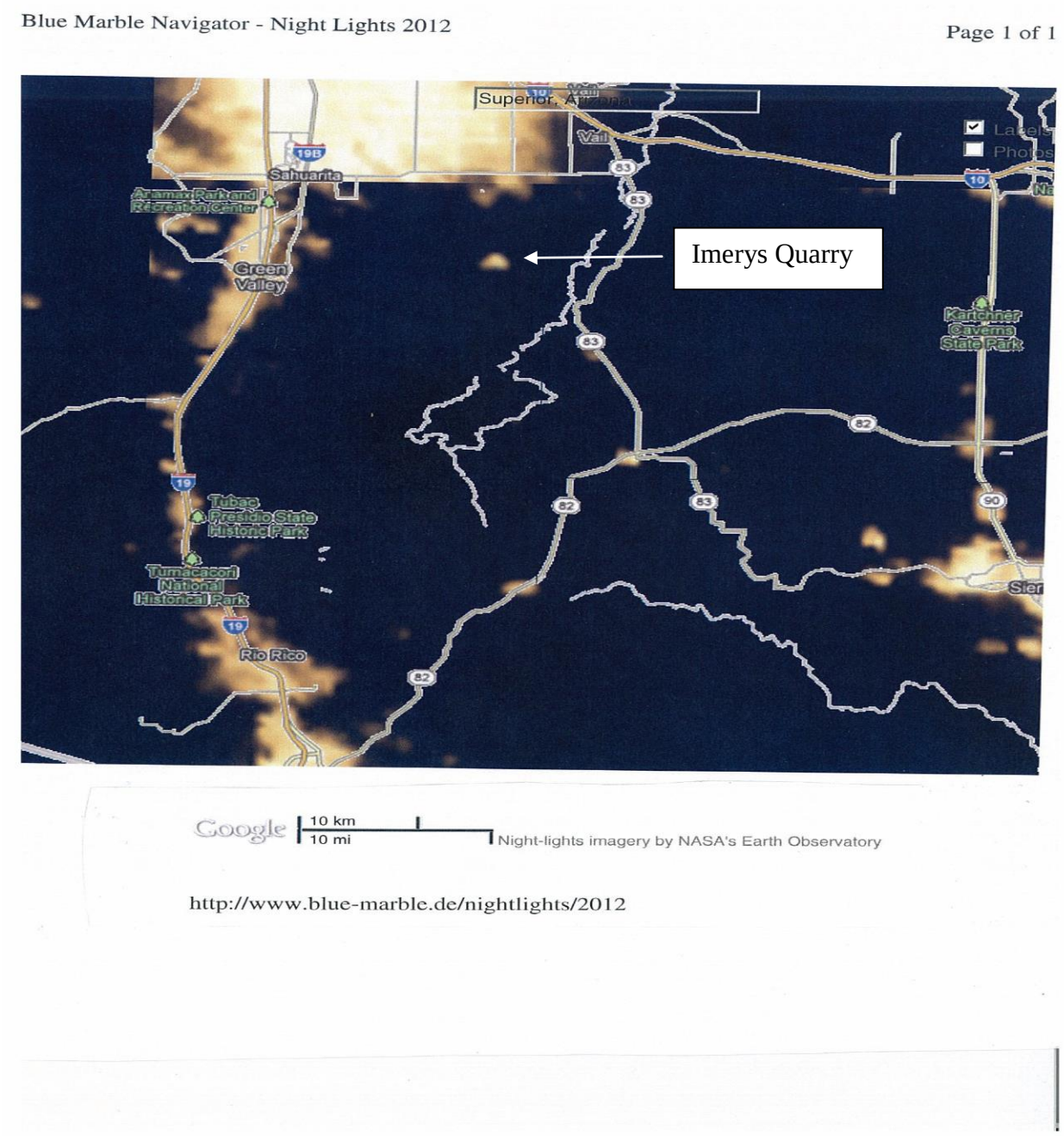

Figure J-6: Image of the currently operating mine known as Imerys Quarry located north of the proposed action at night. Image is from Blue Marble Navigator 2012 (http://www.blue-marble.de/nightlights/2012).

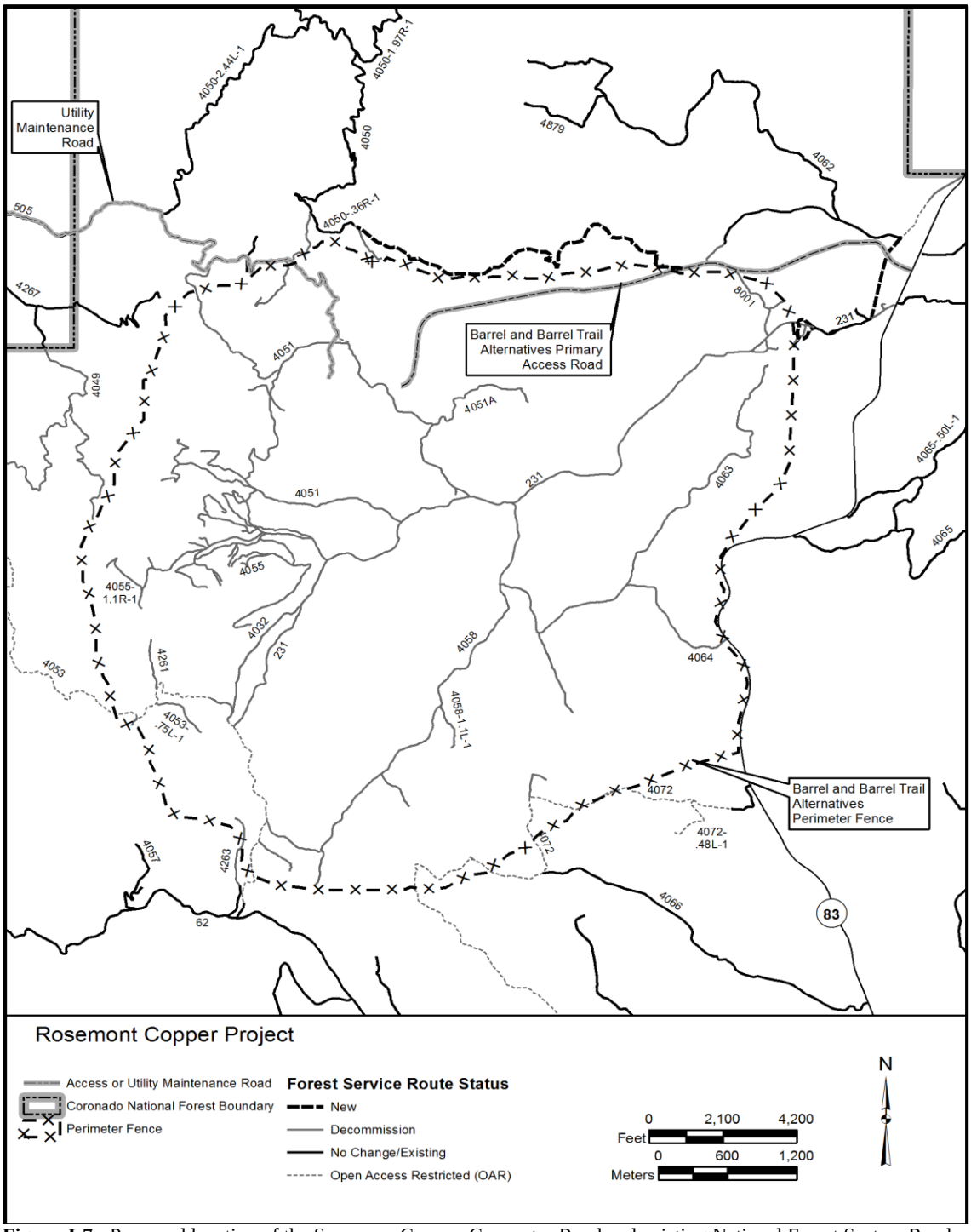

Figure J-7: Proposed location of the Sycamore Canyon Connector Road and existing National Forest System Roads.

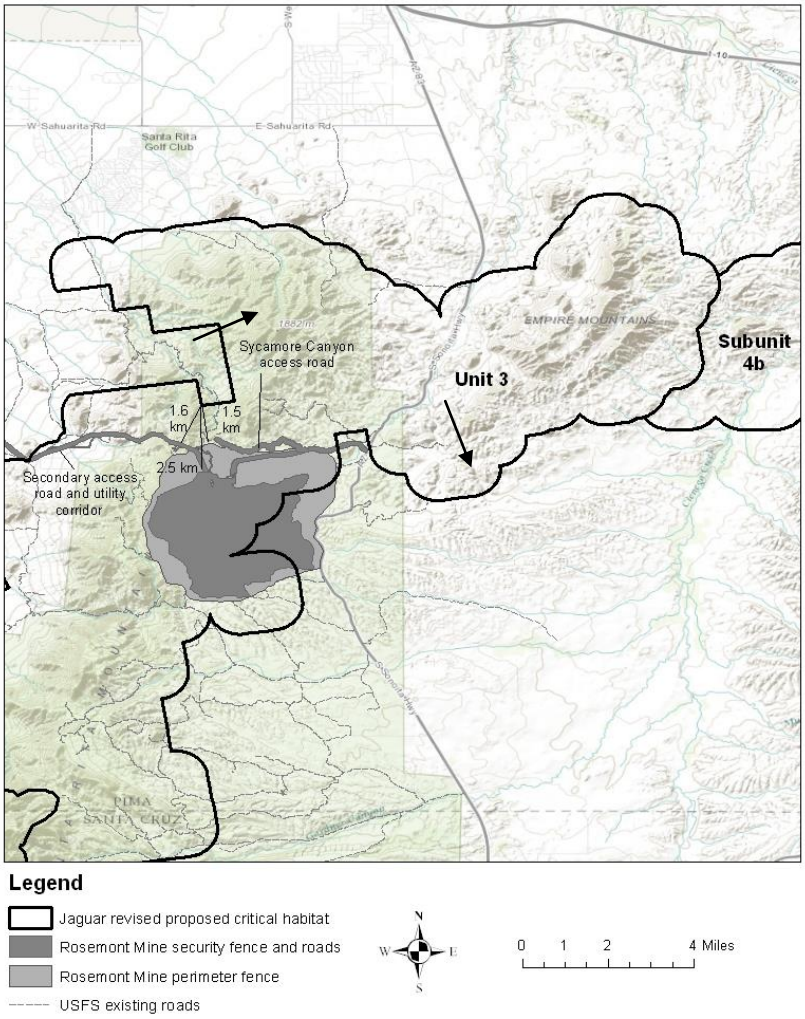

Figure J-8: The proposed action within proposed critical habitat Unit 3 and the distances between the perimeter fence of the proposed action and the active mine to the north (i.e., Imerys Quarry). Note that the area of the northeastern portion of Unit 3 between the 1.5km line and the western boundary of Subunit 4b is 32,992 acres (13,351 hectares).

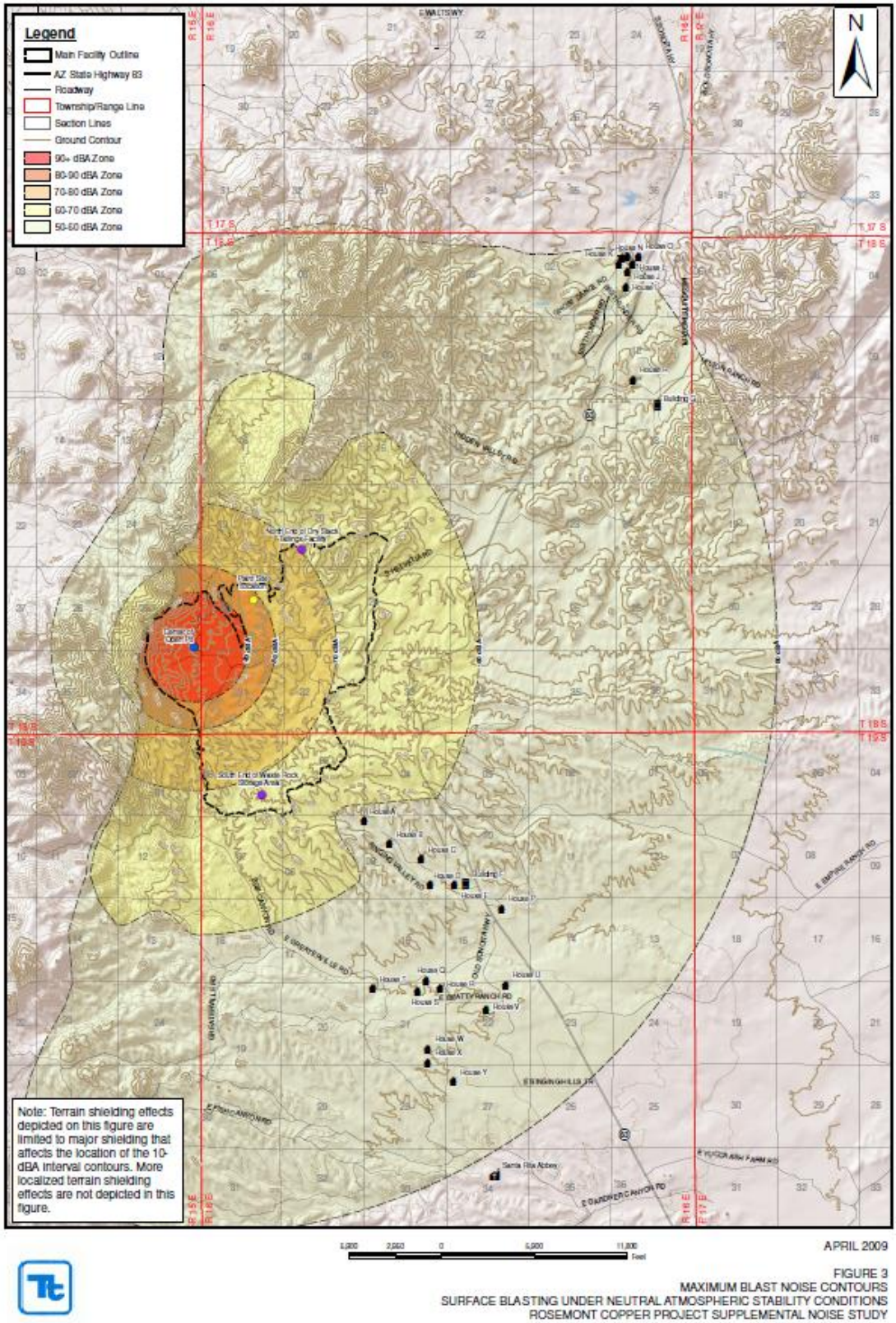

Figure J-9: Maximum noise contours for surface blasting (Tetra Tech 2009)

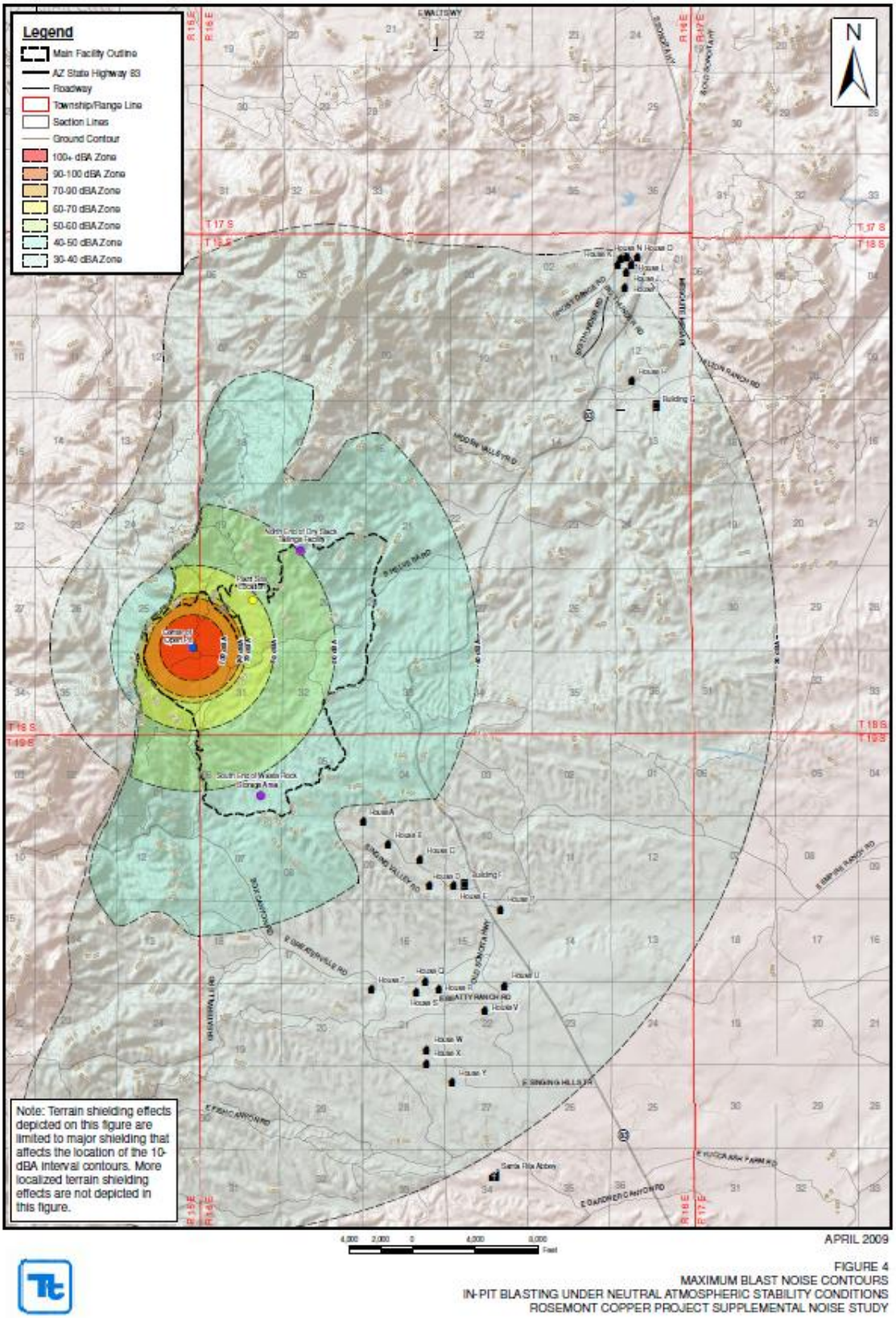

Figure J-10: Maximum noise contours for in-pit blasting (Tetra Tech 2009)

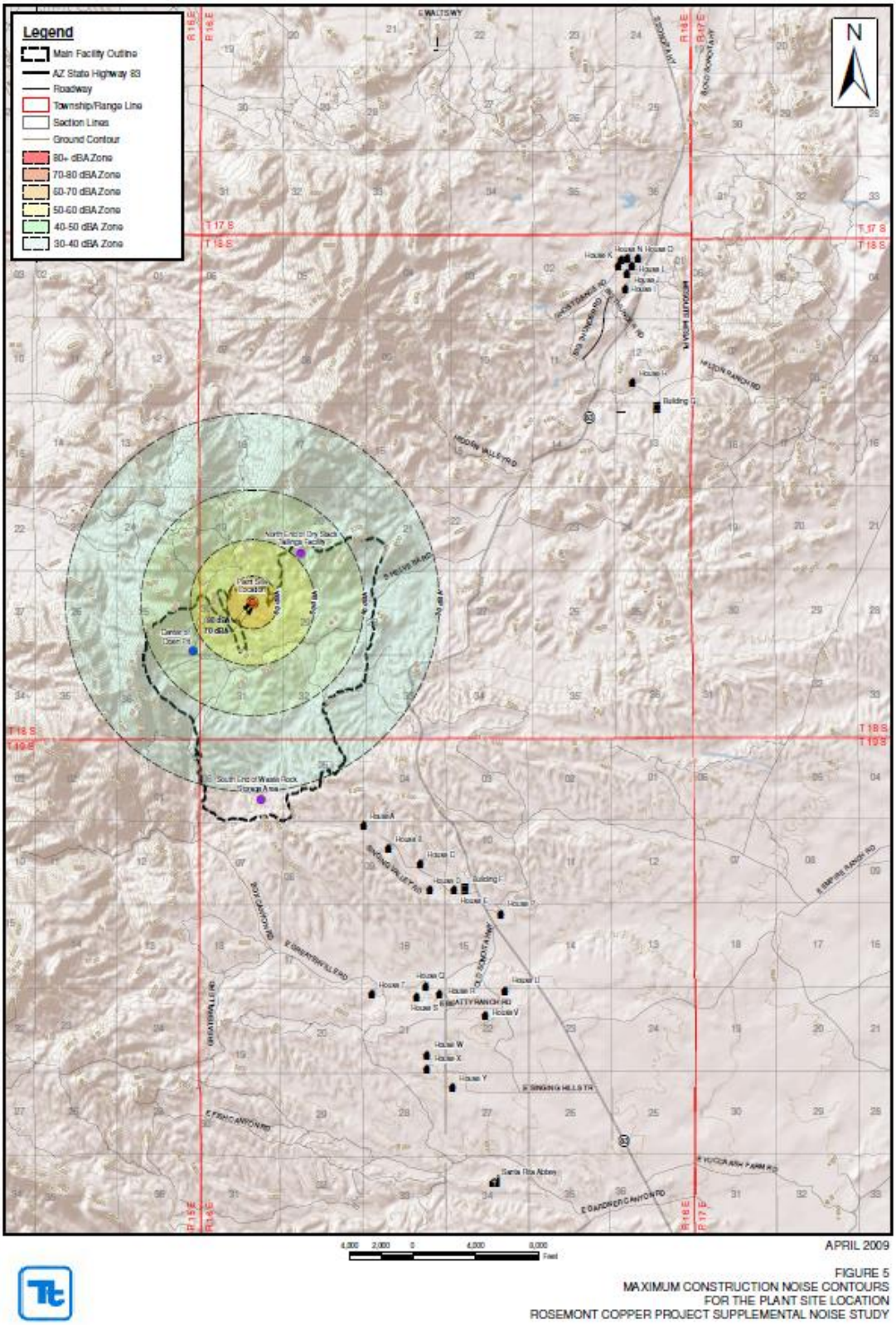

Figure J-11: Maximum noise contours for construction activities (Tetra Tech 2009)

Status of the Species - Ocelot

Description, Legal Status, and Recovery Planning

The ocelot (*Leopardus pardalis*), a medium-sized spotted cat, belongs to the genus *Leopardus* which also includes the margay (*Leopardus wiedii*) and the oncilla (*Leopardus tigrinus*). The ocelot is divided into as many as 11 subspecies that ranged from the southwestern U.S. to northern Argentina (FWS 2010). Two subspecies occur in the United States: the Texas ocelot (*L. pardalis albescens*) and the Sonora ocelot (*L. p. sonoriensis*) (Hall 1981).

The ocelot was listed as endangered in 1972 under the authority of the Endangered Species Conservation Act of 1969 (FWS 1972). The 1969 Act maintained separate lists for foreign and native wildlife. The ocelot appeared on the foreign list, but due to an oversight, not on the native list. Following passage of the ESA in 1973, the ocelot was included on the January 4, 1974, list of "Endangered Foreign Wildlife" that "grandfathered" species from the lists under the 1969 Act into a new list under the ESA (FWS 1974). The entry for the ocelot included "Central and South America" under the "Where found" column in the new ESA list. Endangered status was extended to the U.S. portion of the ocelot's range with a final rule published July 21, 1982 (FWS 1982). The "Historic range" column for the ocelot's entry in the rule reads, "U.S.A. (TX, AZ) south through Central America to South America." The entry on the current list (FWS 2003) is essentially the same, and reads, "U.S.A. (TX, AZ) to Central and South America". The ocelot was upgraded to CITES Appendix I in 1986 (Nowell and Jackson 1996) and is considered endangered in Mexico (SEMARNAT 2002).

The species has a recovery priority number of 5C, meaning that it has a low potential for recovery with a relatively high degree of conflict. Recovery for the ocelot was originally addressed in *Listed Cats of Texas and Arizona Recovery Plan (with Emphasis on the Ocelot)* (FWS 1990). A draft revised recovery plan was made available for public comment in 2010 (FWS 2010), with the goal of improving the status of the species to the point that it no longer needs the protection of the ESA. The draft revised recovery plan has not been finalized as of the date of this biological opinion. The draft recovery strategy calls for 1) the assessment, protection, and restoration of sufficient habitat to support viable populations of the ocelot in the borderlands of the U.S. and Mexico; 2) the reduction of effects of human population growth and development to ocelot survival and mortality; 3) the maintenance or improvement of genetic fitness, demographic conditions, and health of the ocelot; 4) the assurance of long-term viability of ocelot conservation through partnerships, the development and application of incentives for landowners, application of existing regulations, and public education and outreach; 5) the use of adaptive management, in which recovery is monitored and recovery tasks are revised by the FWS in coordination with the Recovery Team as new information becomes available; and 6) the support of international efforts to ascertain the status and conservation of the ocelot in Sonora and south of Tamaulipas.

The major focus of the draft revised recovery plan is on two cross-border management units, the Texas/Tamaulipas Management Unit and the Arizona/Sonora Management Unit (ASMU). The

boundaries of the ASMU is defined as the original range of the subspecies (*L. p. sonoriensis*) as described by Hall (1981) which generally extends from central Arizona south to central Sinaloa. Delisting criteria for the ASMU are: 1) the ASMU population is estimated through reliable scientific monitoring to be above 2,000 animals for 10 years; 2) significant threats to this population have been identified and addressed; 3) habitat linkages to facilitate an ASMU metapopulation have been identified and are conserved for the foreseeable future.

Life History and Habitat

The ocelot is a medium-sized spotted cat weighing from 7-16 kg (15-35 lbs), with males weighing more than females (FWS 2010). The coloration of the upper parts of the body is pale gray to cinnamon. There are spots on the head, two black stripes on the cheeks, and four to five longitudinal black stripes on the neck. The body shows elongated black-edged spots arranged in chain-like bands. The rounded ears are black dorsally, with a conspicuous white spot. The underparts are whitish, spotted with black. The tail is marked with dark bars or incomplete rings (Hall 1981).

The life history of the ocelot has been summarized by Laack (1991), Laack *et al.* (1991 and 2005), Tewes and Schmidly (1987), and others. Ocelots may live greater than 10 years in the wild and can live longer (18 years plus) in captivity (Murray and Gardner 1997). Gestation lasts about 70-80 days, and breeding reaches a peak during autumn in Texas (Tewes and Schmidly 1987); however breeding peaks may vary throughout the ocelot range. Wild ocelots probably first produce young at about 18 to 30 months-of-age (Eaton 1977, Tewes and Schmidly 1987), although Laack (1991) observed first reproduction in wild female ocelots between 30 and 45 months-of-age. Average litter size is about 1 to 1.5 kittens per litter (Laack *et al.* 2005, Mora *et al.* 2000, Murray and Gardner 1997). Males are believed to contribute little to direct parental care (Tewes 1986, Laack 1991) and young may become independent at one year of age (Murray and Gardner 1997). There is little information on the interval between successive litters in the wild, but it is likely two years (Murray and Gardner 1997, FWS 2010).

Although ocelots usually disperse from the natal range, sometimes females may remain in their natal range (Laack 1991). The age at which subadult ocelots disperse from the natal range varies, but is about two years of age (Ludlow and Sunquest 1987, Laack 1991). Laack (1991) found that there was no obvious sex difference in age at dispersal and that duration of successful dispersal (time elapsed between leaving natal range and establishing an independent home range) was 7 to 9.5 months. Studies have shown that dispersal distance varies considerably, for example, in Texas, dispersal distances have been documented between 2.5 km and 42.5 km (Navarro-Lopez 1985, Tewes 1986, Laack 1991, FWS 2010). The longest documented dispersal distance (50 km/31 miles) that we are aware of was of a male ocelot in Tamaulipas, Mexico (Booth-Binczik 2007).

No studies have documented dispersal distance of ocelots in Sonora and Arizona; however, a subadult male ocelot was documented in Arizona in 2010 just west of Globe (it was killed by a car) (Holbrook *et al.* 2011). Ocelots have also been recently detected in the Whetstone (detected in 2009) (Avila-Villegas and Jessica Lamberton-Moreno 2012) and Huachuca Mountains

(detections from 2011 to 2013) (email from Tim Snow, AGFD, March 13, 2013). The nearest recently (in 2011) documented female with young (one kitten) was located about 48 km (30 miles) south of the international border in the Sierra Azul of Sonora, Mexico (Avila-Villegas and Jessica Lamberton-Moreno 2012). If ocelots documented in Globe and the Huachuca and Whetstone mountains dispersed from the nearest breeding population, assuming the nearest breeding population is the one previously mentioned, it means the ocelots moved about 220 km (135 miles) to Globe; 55 km (35 miles) to the Huachuca Mountains (email from Tim Snow, AGFD, March 18, 2013), and 110 km (70 miles) to the Whetstone Mountains (Avila-Villegas and Jessica Lamberton-Moreno 2012). Avila-Villegas and Jessica Lamberton-Moreno (2012), however, believe that travel from northern Sonora to Globe seems unlikely.

Ocelots are solitary animals that maintain home ranges (Emmons 1988, Ludlow and Sunquist 1987, Laack 1991, Crawshaw 1995). Home range for the ocelot varies throughout its range. Adult female home range sizes vary from approximately 2 km^2 to 17 km^2 (494 to 4,201 acres) while adult male home range sizes vary from approximately 5 km^2 to 38 km^2 (1,235 to 9,390 acres), both depending on the habitat type in which they are found (Tewes 1986, Ludlow and Sunquist, 1987, Crawshaw and Quigley 1989, Emmons 1988, Konecny 1989, Laack 1991, Caso 1994, Crawshaw 1995, Fernandez 2002). In the Tamaulipan thornscrub of south Texas and northeastern Mexico, mean ocelot home range sizes reported include: Laack (1991): 6.2 km^2 (1,544 acres) for males, 2.87 km^2 (709 acres) for females; Navarro-Lopez (1985): 2.5 km^2 (623 acres) for males, 2.1 km^2 (512 acres) for females; Tewes (1986): 12.3 km^2 (3,039 acres) for males and 7.0 km^2 (1,730 acres) for females; and Caso (1994): 8.1 km^2 (2,006 acres) for males, 9.6 km^2 (2,372 acres) for females. No home range studies have been done for ocelots in Arizona or northwestern Mexico. However, in western Mexico, specifically, in the tropical deciduous forest of Jalisco, average home range size using the Kernel estimator for male ocelots was 11.7 km^2 (2,891 acres) and for females was 5.8 km^2 (1,433 acres); average home range size using the 95% Minimum Convex Polygon estimator was 16.26 km^2 (4,018 acres) for males and 7.34 km^2 (1,814 acres) for females (Fernandez 2002).

Ocelots inhabit a wide variety of densely vegetated habitat types, including, but not limited to, thorn scrub, semi-arid woodland, tropical deciduous and semi-deciduous forest, subtropical forest, lowland rainforest, palm savanna, and seasonally flooded savanna woodland (Tewes 1986, Ludlow and Sunquist 1987, Crawshaw and Quigley 1989, Crawshaw 1995, Fernandez 2002). In south Texas, ocelots occur predominantly in dense thornscrub communities (Navarro-Lopez 1985, Tewes 1986, Laack 1991). Laack (1991) also documented minimal use of Johnsongrass (*Sorghum halepense*) by ocelots. Caso (1994) found ocelots used primarily forest or woody communities in Tamaulipas, Mexico, and used the open pastures much less often.

In Sonora, López González *et al.* (2003) reported 27 of 36 (75%) of verified ocelot records in Sonora were associated with tropical or subtropical habitats, namely subtropical thornscrub, tropical deciduous forest and tropical thornscrub; a few ocelots were recorded in oak woodlands, but were all males. The mean elevation of the 33 records located with precision was 700 +/- 450 meters (2,297 +/- 1,476 feet), at which altitudes subtropical thornscrub is the main habitat (López González *et al.* 2003). They report that ocelots were associated largely with the mountainous Sierra region of eastern Sonora and that records closer to the Sonoran desert biome were mainly

associated with riparian areas, where the shrub cover is relatively thicker than the surrounding areas. Avila-Villegas and Jessica Lamberton-Moreno (2012) collected 68 camera photographs of ocelots in the Sierra Azul in northern Sonora, all of which were taken at elevation ranges between 1,275 and 1,625 meters (4,183 and 5,331 feet) in Madrean evergreen woodland.

Of the four ocelot recently recorded in Arizona, the one in the Whetstone Mountains was documented (via remote camera) in Madrean evergreen woodland (Avila-Villegas and Jessica Lamberton-Moreno 2012); and, based on photographs, the two in the Huachuca Mountains most likely occur in Madrean Lower Montane Pine-Oak Forest and Woodland (email from Tim Snow, AGFD, March 13, 2013). This habitat is described as from 1,710 to 2,560 meters (5,600 to 8,400 feet), containing more than 50 percent oak, and can hold dense manzanita, silk tassel, and silverleaf oak (email from Tim Snow, AGFD, March 13, 2013).

Despite the variation in habitat use, the species does not appear to be a habitat generalist. Ocelot spatial patterns are strongly linked to dense cover or vegetation, suggesting it uses a fairly narrow range of microhabitats (Emmons 1988, Horne 1998). Horne (1998), in southern Texas, was the first to statistically analyze ocelot habitat selection patterns. He found ocelots used closed (>95% canopy closure) cover types more than cover types with less-than-moderate canopy cover and avoided mixed cover type (50-75% canopy closure). Also in southern Texas, Jackson *et al.* (2005) suggested that ocelots prefer closed canopy over other land cover types, but that areas used by this species tended to consist of more patches with greater edge. No habitat use studies have been conducted in Arizona or Sonora.

Ocelots are generally active for more than half of each 24-hour period and are typically most active at night and during crepuscular periods with more limited diurnal activity (Ludlow and Sunquist 1987, Crawshaw and Quigley 1989, Fernandez 2002, Avila-Villegas and Jessica Lamberton-Moreno 2012). Ocelots are likely generally nocturnal because they follow the nocturnal habits of their primary prey, small mammals (Ludlow and Sunquist 1987, Emmons 1988, and Crawshaw and Quigley 1989).

Ocelots are solitary hunters and eat a wide variety of prey, but small mammals, especially rodents, comprise most of their diet (Emmons 1987, Ludlow and Sunquist 1987, Crawshaw 1995, De Villa Meza *et al.* 2002, Fernandez 2002). Ocelot diets, however, also include medium to large mammals, reptiles, amphibians, birds, fishes, and insects (Emmons 1987, De Villa Meza *et al.* 2002, Fernandez 2002). Based on these results some authors have suggested that ocelots are opportunistic feeders (Bisbal 1986, Emmons 1987).

Distribution and Abundance

Ocelots historically ranged from Louisiana, Arkansas, Texas, and Arizona in the U.S. southward through Mexico, Central and South America to Peru and northern Argentina (Murray and Gardner 1997). Currently, the ocelot ranges from extreme southern Texas and southern Arizona through Mexico and Central America to Ecuador and northern Argentina (Murray and Gardner 1997, FWS 2010). In Mexico, it has disappeared from much of its historic range on the west coast (Caso *et al.* 2008). There are reports of the species up to 3,000 meters (9,842 feet) (Caso *et al.* 2008).

Estimating population sizes of secretive nocturnal carnivores, especially species that inhabit dense vegetative cover, such as the ocelot, is difficult. Currently the U.S. population of the Texas ocelot subspecies has fewer than 100 individuals, found in two separated populations in southern Texas (FWS 2010). A third and larger population of the Texas/Tamaulipas ocelot subspecies occurs more than 200 km (~124 mi) south of the Texas/Mexico border in the Sierra of Tamaulipas, Mexico (Caso 1994).

In Arizona, four individuals have recently been documented, including the following: 1) one ocelot in the Whetstone Mountains in 2009; 2) one subadult male (road-killed) near Globe in 2010; 3) one male in the Huachuca Mountains in 2011; and 4) one ocelot (sex unknown) in the Huachuca Mountains in 2012 (email from Tim Snow, AGFD, March 13, 2013). Both ocelots in the Huachuca Mountains have been re-detected on multiple occasions. However, detections of ocelots in southern Arizona remain an uncommon occurrence.

In addition to the recent Arizona sightings, a number of ocelots have been documented just south of the U.S. border in Sonora, Mexico. Specifically, with the use of camera traps, six ocelots were documented between February 2007 and April 2011 in the Sierra Azul, about 30 miles southeast of Nogales, including two males, one female, one kitten, and two of undetermined sex (Avila-Villegas and Jessica Lamberton-Moreno 2012). Additionally, one ocelot was documented in 2009 in the Sierra de Los Ajos, about 30 miles south of the U.S. border near Naco, Mexico (FWS 2010).

In Sonora, López González *et al.* (2003) obtained 36 verified ocelot records, 21 of which were obtained after 1990, including 19 individual male records, 6 females, and 11 of undetermined sex. A population of 2,025 + 675 ocelots in Sonora was estimated by López González *et al.* (2003) based on the distribution of these records and the availability of potential habitat. Out of the 26 records, the northern-most record of a female was at 30°30' latitude and only one record was of a kitten (located in the southern part of Sonora) (López González *et al.* 2003).

Although methods used to calculate densities vary among studies, some ocelot population density estimates for particular habitats include: 5.7/100 km^2 (38.6 $miles^2$) in subtropical thornscrub to tropical deciduous forest in Sonora, Mexico (Carrillo and López González 2002); 25/100 km^2 to 225/100 km^2 in the tropical deciduous forest of Jalisco (Casariego Madorell 1998; Fernandez 2002); 30 adult ocelots/100 km^2 in Bolivian dry-forests (Maffei *et al.* (2005); and 40 adult ocelots/100 km^2 in the llanos (interspersed dry tropical forest in savanna) of central Venezuela (Ludlow and Sunquist 1987).

Threats

Although the ocelot is protected over most of its range (Fuller *et al.* 1987), it is still threatened by habitat loss and fragmentation due to increased human development, agriculture, and cattle grazing; illegal killing (e.g., retaliatory killing due to depredation of poultry); and illegal trade (pet and pelt) (Fernandez 2002, FWS 2010, Caso *et al.* 2008). Widespread commercial harvests for the fur trade ceased decades ago (Caso *et al.* 2008); however, human population growth and

development continue throughout the ocelot's range. Connectivity among ocelot populations or colonization of new habitats is discouraged by the proliferation of highways and increased road mortality among dispersing ocelots. Increased illegal and law enforcement actions along the Mexico-United States border could limit ocelot movement across the border, but it is uncertain if and how much this is affecting that movement.

In Texas, collisions with motor vehicles appear to be the leading cause of known ocelot mortality and accounted for 45 percent of deaths of 80 radio-tagged ocelots between 1983 and 2002 (FWS 2010). Twenty-six of 61 ocelot deaths between 1983 and 2004 were caused by vehicle collisions in Texas (FWS 2010). Since 2007, in Arizona and Northern Sonora, there have been four documented cases of ocelots being killed by vehicles or illegally killed, including: one ocelot struck close to Globe; one ocelot struck on Mexico Highway 2, between Imuris and Cananea, Sonora; and two ocelots illegally killed in the Sierra Azul (email from Sergio Avila, Sky Island Alliance, March 15, 2013).

Planning and Conservation Efforts

The ocelot is included on CITES Appendix I and is protected across most of its range (Caso *et al.* 2008). Part of the species range includes protected areas, including some capable of maintaining long-term viable populations (Caso *et al.* 2008). While loss and fragmentation of habitat adversely affect ocelot populations, there have been notable efforts to acquire, protect, and restore habitat, and decrease mortality of the species in Texas and northeastern Mexico (see FWS 2010 for a detailed account of planning and conservation efforts made for the ocelot in Texas and northeastern Mexico).

Some planning efforts have also been made for the Sonora subspecies. For example, the recovery plan for ocelots is currently being updated and includes conservation planning efforts for ocelots in Arizona and Sonora. Among others, a specific delisting criterion includes the identification and protection of habitat linkages to facilitate a metapopulation in Sonora and Arizona. Additionally, Grigione *et al.* (2009) conducted a study to identify priority conservation areas for jaguars, ocelots, and jaguarundis in the U.S. – Mexico border region. For ocelots, it was determined that little was known in the western bioregion (Arizona-Sonora). One Cat Conservation Unit (CCU) of high priority was identified in the Sierra Madre Occidental (in Sonora) and two corridors (from the Sonora CCU to the U.S.) and one CCU (in the U.S.) were identified as needing further study.

Few conservation implementation efforts have been made specifically for the Sonora subspecies; however, conservation efforts made for jaguars undoubtedly also contribute to ocelot conservation. For example, the Northern Jaguar Project purchased a total of 18,211 hectares (45,000 acres) to create the Northern Jaguar Reserve for the protection of jaguars in Sonora. Ocelots also occur there and will benefit from this protection. Rancho El Aribabi, a privately owned ranch in northern Sonora where ocelots occur, was recently recognized by the Mexican government as a reserve. Additionally, the Northern Jaguar Project implements a felid photograph project in Sonora where private landowners are paid for photos of live felids. Although primarily designed to support the conservation of jaguars, the project also benefits

ocelots. Sky Island Alliance (2013) is also conducting felid surveys and landowner outreach in northern Sonora. During this effort, they documented the most recent ocelot occurrences in the extreme northern Sonora, including a female with a kitten. Lastly, it is possible that the proposd critical habitat for jaguar will afford some protection to ocelots occurring in the U.S., though the species respective habitat preferences differ.

Environmental Baseline - Ocelot

The environmental baseline includes past and present impacts of all Federal, State, or private actions in the action area, the anticipated impacts of all proposed Federal actions in the action area that have undergone formal or early section 7 consultation, and the impact of State and private actions that are contemporaneous with the consultation process. The environmental baseline defines the current status of the species and its habitat in the action area to provide a platform to assess the effects of the action now under consultation.

Action Area

The action area is defined as the area within which effects to the listed species and its critical habitat (if any is designated) are likely to occur and is not limited to the actual footprint of the proposed action. The proposed action falls within the range of the Sonora subspecies as well as within the ASMU as defined in the draft revised Ocelot Recovery Plan (FWS 2010). Although ocelots have not been documented in the Santa Rita Mountains, it is believed that they may occur there. For the purposes of the ocelot analysis, we use the Forest Service Action Area definition (i.e., defined by hydrology).

Terrain, Vegetation Communities, and Climate in the Action Area

See the Action Area Section above for a description of terrain, vegetation communities, and climate in the action area.

Status of the Ocelot in the Action Area

Life History and Habitat

Life history of the ocelot is described above in the Status of the Species. Generally, life history elements are similar throughout their range, although some, such as diet and vegetation community use vary by region (see Status of the Species). As discussed in greater detail in the Status of the Species, no home range or habitat use studies have been conducted for the Sonora subspecies of ocelot in northwestern Mexico or Arizona, however ocelots in Sonora appear to be primarily associated with tropical or subtropical habitats, namely subtropical thornscrub, tropical deciduous forest and tropical thornscrub (López González *et al.* 2003); however, they are also associated with other vegetation types such as temperate oak woodland and pine-oak forest (López González *et al.* 2003) and Madrean evergreen woodland (Avila-Villegas and Jessica Lamberton-Moreno 2012). Based on limited records, in Arizona ocelots appear to be associated with Madrean evergreen woodland (Avila-Villegas and Jessica Lamberton-Moreno 2012) and

Madrean lower montane pine-oak forest and woodland email from Tim Snow, AGFD, March 13, 2013).

Potential ocelot habitat in Arizona is yet to be quantified, but could become increasingly important to the survival of the ocelot as threats (i.e., illegal killing, land conversion, etc.) continue in Sonora. Ocelots in Arizona and Sonora represent a distributional extreme and the important genetic/adaptive resources that can characterize peripheral populations (Lomolino and Channell 1995). Similar to the jaguar, conservation of ocelots in their northern-most portion of their range may be important to the long-term survival of ocelots

Distribution, Abundance, and Population Trends

The Arizona/Sonora ocelot subspecies occurs in southern Arizona and northwestern Mexico (Sonora and northern Sinaloa) (FWS 2010). Breeding populations occur in the States of Sonora and northern Sinaloa (FWS 2010). As stated above in the "Status of the Species", estimating population sizes of secretive nocturnal carnivores, especially species that inhabit dense vegetative cover, such as the ocelot, is difficult. In Sonora, López González *et al.* (2003) obtained 36 verified ocelot records, 21 of which were obtained after 1990, including 19 individual male records, 6 females, and 11 of undetermined sex. A population of 2,025 + 675 ocelots in Sonora was estimated by López González *et al.* (2003) based on the distribution of these records and the availability of potential habitat. Out of the 26 records, the northern-most record of a female was at 30°30' latitude and only one record was of a kitten (located in the southern part of Sonora) (López González *et al.* 2003). In northern Sonora, a number of ocelots have recently been documented just south of the U.S. border in Sonora, Mexico. Specifically, with the use of camera traps, six live ocelots were documented between February 2007 and April 2011 in the Sierra Azul, about 30 miles southeast of Nogales, including two males, one female, one kitten, and two of undetermined sex; three dead ocelots were documented in the same area during the same timeframe (Avila-Villegas and Jessica Lamberton-Moreno 2012). Additionally, one ocelot was documented in 2009 in the Sierra de Los Ajos, about 30 miles south of the U.S. border near Naco, Mexico (FWS 2010).

No ocelots have been detected in the Santa Rita Mountains, site of the proposed action. However, based on habitat type (i.e., Madrean evergreen woodland) it is believed that ocelots may or could occur in these mountains (personal communication with Tim Snow, AGFD, March 18, 2013, and Sergio Avila, SIA, March 18, 2013). If ocelots occur in the Santa Rita Mountains, they are likely part of a population occurring primarily to the south. As stated above, ocelots are known to occur in the Huachuca Mountains in Arizona and the Sierra Azul in Sonora; however they have also been documented in the Whetstone Mountains and Globe (i.e., to the east and northeast of the Santa Rita Mountains, respectively). In between the Santa Ritas and the Sierra Azul lie the Patagonia Mountains. Although no ocelots have been documented in the Patagonias, this range is connected to areas south of the border, does not have an impermeable border fence, and habitat there is similar to that found in the Sierra Azul.

Threats

Threats to the Sonora subspecies of ocelot are similar to threats to the species throughout its range as described under "Status of the Species". Recently documented cases of ocelots being killed by vehicles (Arizona and Sonora) and illegally killed (Sonora only) in the northwestern most portion of the ocelot range corroborate the hypothesis that roads/vehicles and illegal killing of ocelots are still among the primary threats to ocelot in this region. Other threats include habitat loss and fragmentation due to, among other things, urban expansion and roads. Connectivity among ocelot populations or colonization of new habitats is discouraged by the proliferation of highways.

Other threats to ocelots in this region are international border issues such as 1) infrastructure along and near the U.S. - Mexico border, including pedestrian and vehicle barriers and towers and their associated roads and lighting; and 2) illegal and U.S. Border Patrol traffic (pedestrian and vehicle). Fences designed to prevent the passage of humans (i.e., pedestrian barriers) undoubtedly also prevent passage of ocelots. Other infrastructure (e.g., vehicle barriers, towers, roads, and lighting) and human activity may limit ocelot movement across the border, but it is uncertain if and how much this is affecting that movement. Connectivity to Mexico is likely essential for maintaining ocelots in Arizona (the northern portion of the ASMU). As included in the recovery criteria for this species, delisting the species will require that habitat linkages to facilitate an ASMU metapopulation are identified and conserved for the foreseeable future.

Planning and Conservation Efforts

Significant planning and conservation efforts have been made for the ocelot in certain parts of its range, such as Texas. As described above in "Status of the Species", some planning and conservation efforts have also been made for the Sonora subspecies.

Past and Ongoing Federal Actions in the Action Area

Although a number of Federal actions have occurred in the action area, none of these actions has undergone formal consultation for effects to ocelot; therefore, no incidental take has been anticipated for ocelots in the action area.

Effects of the Proposed Action - Ocelot

"Effects of the action" refer to the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action (50 CFR §402.02). Indirect effects occur later in time but are reasonably certain to occur. "Interrelated actions" are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration (50 CFR §402.02).

The proposed action may result in degradation of potential ocelot habitat and disturbance to ocelots, if they occur in the action area. Construction and operations of the mine, including the associated roads, will result in removal, destruction, and degradation of potential ocelot and ocelot prey habitat and may disturb ocelots, if they occur in the action area, causing changes in,

among other things, their habitat use and movement patterns. Conservation measures included in the project description may help offset adverse effects to ocelots to some extent.

Direct and Indirect Effects of Project Construction

The BA defines the project area as all areas in which any ground disturbance would take place as a result of the proposed action, including the mine pit, waste rock facilities, tailings, access roads, utility corridors, and on-site facilities (i.e., the mine "footprint" or area within the security fence plus roads, corridors, and trails). The project area acreage, expected to result in direct impacts owing to project activities, is 5,401 acres, which includes areas within the security fence (4,228 acres), the primary access road (226 acres), the utility line corridor (889 acres), the Sycamore connector road (26 acres), decommissioned or new forest roads (59 acres), and the rerouted Arizona National Scenic Trail (19 acres) (see USFS 2013d, as cited in the Description of the Proposed Action section). Please note that the 5,401-acre value does not include 20 acres of decommissioned roads.

According to our calculations using ArcMap, the footprint of the facilities contained within the security fence plus roads (primary and secondary access) will permanently remove 2,519 acres of Madrean evergreen woodland, 2,301 acres of semidesert grassland, and 581 acres of riparian vegetation (see USFS 2013d, as cited in the Description of the Proposed Action section). Madrean evergreen woodland is more likely to be used by ocelots than semidesert grassland; however, ocelots have been occasionally documented using grasslands in areas outside of Arizona. Therefore, it is possible that ocelots may use semidesert grassland and/or riparian vegetation, particularly when moving between patches of more suitable habitat. Although we do not know the home range size of ocelots in Arizona, considering ocelot home ranges in other parts of their distribution range from 2 to 38 km^2 (494 to 9,390 acres), using only the area of Madrean evergreen woodland that will be removed by the project, an equivalent of about 0.3 to 5.1 potential ocelot home ranges may be directly impacted (eliminated) by the project footprint assuming no overlap in home ranges. However, because ocelot home ranges overlap (Murray and Gardner 1997, Fernandez 2002, Dillon and Kelly 2008), the project footprint could impact additional ocelot home ranges. Removal of semidesert grassland may also impact ocelots, particularly their movement between patches of more suitable habitat. In addition to eliminating potential ocelot habitat (5,401 acres of combined madean evergreen woodland, semidesert grassland, and riparian vegetation), the project will also result in the direct removal of the same acreage of ocelot prey habitat, possibly leading to a reduced prey base for ocelots.

Outside of the security fence, a perimeter barbed-wire fence will be constructed. The perimeter fence will encompass 6,990 acres of land (USFS 2013b); however, except where specific features such as the primary or secondary access roads are located, the land between the perimeter fence and the security fence will not be disturbed. Together, the perimeter fence plus roads will affect 3,479 acres (1,407 ha) of Madrean evergreen woodland and 4,071 acres (1,647 ha) of semidesert grassland. Effects to riparian vegetation will be similar to the permanent effects (581 acres), as most of these impacts are within the security-fenced mine site itself. Given the influence of human and vehicular activity, noise, and lighting (see discussion below for information on effects of noise, lights, and traffic on ocelots) within the perimeter fence, we

anticipate that ocelots, if they occur in the area, would likely avoid most or all areas within the perimeter fence. If this is the case, then the mine will impact (using only the area of Madrean evergreen woodland that will be affected over the long term) an equivalent of about 0.4 to 7 potential ocelot home ranges, possibly more considering home range overlap and potential ocelot use of semidesert grassland.

Because the project footprint completely bisects a north-south oriented swath of Madrean evergreen woodland (see Figure I-4), potential ocelot movement to and from the northern portion of the Madrean evergreen woodland swath from the main portion of Madrean evergreen woodland in the Santa Ritas (or vice-versa) may be impeded. If ocelots occurring in the main portion of Madrean evergreen woodland were completely cut-off from the northern portion, this would mean an additional ~5,000 acres of suitable potential ocelot habitat (all Madrean evergreen woodland) would become unavailable to ocelots, if they occur in the area. If ocelots currently occur to the north of the mine, after project construction, they may become isolated from ocelots to the south. It may be possible for ocelots to move around the mine; however, the semidesert grassland to the east and west of the mine does not appear to provide as much cover for ocelots as the Madrean evergreen woodland, therefore making it less likely that ocelots would use it. Additionally, because some areas to the east and west of the mine will be subjected to the effects of lighting, noise, and vibrations (see discussion below on effects of lighting, noise, and vibrations), it seems even more unlikely that ocelots, if they occur in the area, would move around the mine to reach the northern portion of the Madrean evergreen woodland swath. Habitat loss associated with the project may cause any ocelots that might occur in the area, to shift their home ranges to the south which could result in increased intra- and inter-specific competition.

Construction activities associated with all aspects of the project may disturb ocelots, if they occur in the area, and cause them to flee and/or avoid the area. Construction of the primary access road, over half of which is in Madrean evergreen woodland, is more likely to result in disturbance to ocelots than construction of and upgrades to the utility maintenance road which crosses through semidesert grassland. Disturbance to ocelots can result in behavioral changes, increased energetic expenditures, and interference with habitat use, including use of movement corridors. These could lead to decreased dispersal opportunities; changes in home range size and location; increased inter- and intra-specific competition; increased difficulty meeting energetic needs; etc. Once project construction is complete, ocelots would be excluded from the area as it will be devoid of habitat, as described above. Ocelot avoidance of the project area could cause them to travel longer distances, possibly into or through less suitable habitat. Extra travel would require ocelots to expend additional energy and increase the potential for encounters with humans, vehicles, potential predators (i.e., cougars, jaguars), and other stresses.

Disturbed ground associated with mine and road construction will be susceptible to colonization by invasive nonnative plants such as Lehmann lovegrass. Nonnative species may outcompete native species and the introduced grasses also carry fire better and burn hotter than the native species, which would degrade ocelot habitat. That said, the project proponent plans to monitor and control invasive nonnative plants throughout the project area.

Effects of Lighting, Noise, and Vibrations from Mining Operations

In addition to the direct project footprint, ocelots that might occur within the vicinity of the project footprint may also be adversely affected by light, noise, and vibrations associated with the project. Although Rosemont has developed a light pollution mitigation plan, artificial illumination will increase light levels at night, which could impact ocelots, if they occur in the area, resulting in a wide variety of effects, including, but not limited to, changes in behavior, habitat use, and dispersal and movement patterns (Beir 1995, Longcore and Rich 2004). Artificial lighting will originate from mine-site illumination and also from vehicles in the project area and beyond. Horizontal light will extend to at least 12 miles beyond the project, in some areas, and sky glow from the project is expected to be comparable, but less than, sky glow from Ajo, Arizona (a town of about 3,300 people) (WestLand 2012). The light intensity will be highest at the mine and attenuate farther from the mine. Most areas within a 12-mile radius will be blocked from line of sight horizontal light emanating from the project area; however, ocelots are mobile animals that travel over hills and ridgetops, and therefore would likely see the horizontal lighting (mapped by WestLand 2012 and reproduced in Figure J-4 in this document) during regular movement activities or during dispersal. Additionally, sky glow will likely be visible to ocelots in the vicinity of the mine at all times at night.

No data exist on the effects of artificial lighting on ocelots; however, in Peru, Emmons (1989) found that while ocelots were equally active during moonlit and dark nights they avoided open areas on moonlit nights (they likewise avoided open areas by day). They concluded that ocelots therefore generally seemed to shift their foraging to denser cover in bright light conditions. They also found that spiny rats, a major prey of ocelots, are equally active during moonlit and dark conditions; however they also changed their behavior so as to be hidden from view of trails on bright nights. They suggest that ocelots seem more likely to have their hunting impeded than enhanced by bright light conditions, which may hinder their ability to approach its prey unseen. In Southern California, radio-collared mountain lions usually avoid habitat corridors that contain artificial lights (Beier 1995). During overnight monitoring, mountain lions made consistent movements in the direction of the darkest horizon. Dispersers especially avoided night-lights in conjunction with open terrain (Beier 1995). Installation of light in cattle corrals is a well-known technique to reduce jaguar predation of cattle (because jaguars avoid lighted areas). Other studies have shown that moonlight greatly influences the activity levels of nocturnal rodents (i.e., ocelot prey) such that rodent activity may decrease and/or shift from open areas to cover as light level of moonlight increases (Grigione and Mrykalo 2004).

Although the effects of artificial lighting on ocelots is not known, given that they use denser cover during bright moon light conditions, we anticipate that they will seek areas of denser vegetation wherever horizontal light enters habitat. It is difficult to understand how sky glow may be perceived by ocelots, but because it is not shining down from above, it may not have the same effect as bright moon conditions. Never-the-less, sky glow may increase the ambient illumination in the area, which could potentially affect ocelots to some degree.

Because areas to the east, southeast, west, and northwest of the project area appear (on Google Earth) less densely vegetated than areas within the perimeter fence, and because those areas will

be affected by light, noise, and vibrations, ocelots may avoid or reduce their movement past or around the mine altogether. This could mean that potential east-west ocelot movement (dispersal) between the Santa Rita and Whetstone mountains could be restricted. If they do move around, as mentioned above, extra travel would require ocelots to expend additional energy and increase the potential for encounters with humans, vehicles, potential predators (i.e., cougars, jaguars), and other stresses.

Similarly, noise and vibrations from construction of the mine or blasting could disturb ocelots, if they occur in the area, possibly causing, among other things, changes in breeding behaviors, home ranges size and location, and habitat use, activity, and foraging patterns; increased stress response; and possibly damaged hearing if the noise is loud enough (NoiseQuest 2013; Pater *et al.* 2009). As with lighting, the magnitude of impacts from vibration and light are uncertain, but these impacts are expected to decrease as the distance from the mine increases. In the same or similar manner that lighting, noise, and vibrations affect ocelots, these anthropogenic disturbances may also adversely affect ocelot prey, leading to a reduced prey base for ocelots.

Indirect Effects of Roads

The primary access road, a new 2-lane paved road, will be constructed to provide access between SR83 and the mine. The primary access road will leave SR 83 along a straight section of the highway, just to the east of the northern portion of the perimeter fence. The majority of the primary access road skirts the northeastern portion of the perimeter fence. In addition to the primary access road, Rosemont and the Coronado National Forest will build a new access road into Sycamore Canyon. This road will also occur along the northern portion of the perimeter fence, but north of the fence. The primary access road from SR 83 to the perimeter fence will be open to the public at all times. During mine operations, the primary access road between the perimeter fence and the mine will be closed to the public; however, after mine closure, it will be open to public use. The Sycamore connector road will also be open to the public at all times. Because these roads cut across Madrean evergreen woodland and heavy vehicular use of the primary access road (which will vary from passenger vehicles to haul trucks and heavy equipment) is anticipated day and night (traffic along the new access road into Sycamore Canyon is anticipated to be limited), vehicle collisions with ocelots could occur. However, given that ocelots in Arizona are scarce and only one ocelot is known to have been struck by a vehicle in Arizona, it seems unlikely that there is great risk of vehicles striking ocelots on the primary access road. Vehicles will likely collide with potential ocelot prey; however, we do not anticipate it will have a significant impact on the ocelot prey base.

The Primary Access and Sycamore Connector roads will fragment suitable habitat between the mine footprint and areas to the north (see Figure 1 of the June 2012 BA and Figures I-1, I-2, and J-3 in this document). However, as stated above, we anticipate ocelots, if they occur in the area, would avoid most or all areas within the perimeter fence given the human influence between the project footprint and perimeter fence. The Sycamore connector road will also fragment suitable habitat outside of the perimeter fence, and provide public access to areas north of the mine. Improved accessibility in this area will likely result in increased public use in suitable ocelot habitat which may lead to somewhat increased: (1) disturbance to ocelots in the area, (2) risk of

collision with ocelots, (3) habitat degradation, (4) risk of human-caused fire, (5) risk of illegal killing of ocelots, and (6) human presence in remote areas (i.e., roads may facilitate increased off-road vehicle and pedestrian traffic in the area).

The utility maintenance road (previously called the secondary access road), located within the utility corridor, crosses through semidesert grassland to the northwest of the mine. Vehicle traffic is expected to be much lighter on this road in comparison to that on the primary access road. Therefore, we anticipate the chance of vehicles colliding with ocelots is very low. The road will be closed to the public during mine construction and operation; however, after the mine is closed, portions of the improved road may be reopened to the public. The road will have been made passable to low-clearance, 2-wheel drive vehicles as part of the proposed action. This could result in increased public access to ocelot habitat which could lead to an increase in the six aforementioned threats.

Disturbed ground will be susceptible to colonization by invasive nonnative plants such as buffelgrass and Lehmann lovegrass. Nonnative species may outcompete native species and the introduced grasses also carry fire better and burn hotter than the native species, which would degrade potential ocelot habitat. The invasive species monitoring and control measures (see Appendix B) will minimize this potential effect on NFS lands, but private and ASLD lands may be subject to lesser requirements.

As a result of the mine, increased traffic is anticipated on SR83 (likely primarily on the part of the road that heads from the mine to the north, located within semidesert grassland) and possibly on Box Canyon Road (part of which crosses through Madrean evergreen woodland) which may lead to an increased risk of ocelots being struck by vehicles. However, as stated above, this risk is likely fairly low. Increased vehicular traffic on these roads will likely lead to increased collisions with ocelot prey; however, we do not anticipate this will have a significant impact on the ocelot prey base.

Effects of Conservation Measures

The conservation measures that are part of the proposed action act to some extent to offset some adverse effects to ocelots. For example, purchase of land parcels, particularly Sonoita Creek Ranch (1,200 acre parcel) which contains some Madrean evergreen woodland and riparian habitat and provides habitat connectivity between the Patagonia and Santa Rita Mountains, may benefit ocelots. Additionally, the project proponent will provide $50,000 to an entity approved by the Coronado National Forest to support camera studies for predators including jaguar and ocelot. The money will be provided for additional monitoring efforts between the Santa Rita and the Whetstone Mountains and along the Santa Rita Mountains. In addition to increasing knowledge regarding the movement of wildlife in the area, information collected during this investigation may identify a suitable wildlife crossing structure location that could be constructed. That said, $50,000 is likely only enough funding to conduct carnivore monitoring in a limited geographic area for about six months which is generally not a sufficient amount of time to collect quality data on cryptic carnivore movement.

Effects to Recovery of the Ocelot in the ASMU with the Project

As stated in the "Status of the Species" delisting criteria for the ASMU are 1) the ASMU population is estimated through reliable scientific monitoring to be above 2,000 animals for 10 years; 2) significant threats to this population have been identified and addressed; and 3) habitat linkages to facilitate an ASMU metapopulation have been identified and are conserved for the foreseeable future. Although the northern part of the ASMU, where the proposed action is located, is likely important to the recovery of the ocelot in the ASMU, we do not anticipate that the proposed action will preclude recovery of the ASMU. The proposed action may directly and indirectly impact sufficient habitat to support a handful of ocelot home ranges and may also reduce connectivity with areas to the north and east. That said, because the project will affect a relatively small area of the overall ASMU, it is likely that the ASMU population goal of 2,000 ocelots could still be reached even with the impacts from the mine, particularly given that most of the ASMU occurs in Sonora. Because habitat linkages to facilitate an ASMU metapopulation have not been identified, the extent to which this project may impact those habitat linkages is not known.

Cumulative Effects - Ocelot

Cumulative effects include the effects of future State, local, or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation under section 7 of the Act.

Many lands within the action area are managed by Federal agencies; thus, many activities that could potentially affect ocelots are Federal activities that are subject to section 7 consultation. The effects of these Federal activities are not considered cumulative effects. However, a portion of the action area also occurs on private lands. Residential and commercial development, road construction, farming, livestock grazing, mining, off-highway vehicle use, and other activities occur on these lands and are expected to continue into the foreseeable future. These actions, the effects of which are considered cumulative, may result in fragmentation, loss, or degradation of ocelot habitat and disturbance to ocelots. Although not documented recently in the U.S., illegal hunting of ocelots adversely affects ocelots. Illegal activities associated with cross-border smuggling and illegal immigration (e.g., human traffic, deposition of trash, creation of trails and routes, and increased fire risk from human traffic) also occur in the action area. These activities can also degrade ocelot habitat and disturb ocelots.

Conclusion - Ocelot

After reviewing the current status of the ocelot, the environmental baseline for the action area, the effects of the proposed action, and the cumulative effects, it is our biological opinion that the project, as proposed, is not likely to jeopardize the continued existence of the ocelot. Critical habitat has not been designated for this species; thus no critical habitat will be affected by the proposed action. We base our conclusion on the following:

1. Although we anticipate the proposed action will result in the loss of potential ocelot habitat, the loss is relatively small in the context of the range of the ASMU of ocelot. Thus, the project is not expected to significantly affect the distribution, numbers, and reproduction of ocelots in the ASMU.
2. Although connectivity to ocelot habitat to the north and east may be reduced, connectivity of ocelot habitat south of the mine to Mexico will remain intact. Thus, the project is not expected to significantly affect the distribution, numbers, and reproduction of ocelots in the ASMU.
3. Conservation measures in the proposed action are anticipated to offset adverse effects of the proposed action to ocelots to some extent.

INCIDENTAL TAKE STATEMENT- OCELOT

Section 9 of the Act and Federal regulation pursuant to section 4(d) of the Act, prohibit take of endangered or threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. "Harm" is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns, including breeding, feeding, or sheltering. "Harass" is defined in the regulations as ``an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3). Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the proposed action is not considered to be prohibited taking under the Act provided such taking is in compliance with this Incidental Take Statement.

Amount or Extent of Take Anticipated - Ocelot

Occupancy is difficult to document for rare and secretive animals. While there are no documented occurrences of ocelots in the Santa Rita Mountains, we conclude that, based on the consistent and increasing occurrence of ocelots in adjacent areas and the presence of appropriate habitat and habitat connectivity, ocelots are likely to occur in the project area. However, we do not anticipate the proposed action will result in incidental take of ocelots because, although we consider the action area likely to be occupied by ocelots, we do not believe it meets the standards relating to documented occupancy as defined under the Arizona Cattle Growers' Association v. U.S. Fish and Wildlife Service decision in 2001 by the 9th Circuit Appellate Court (273 F.3d 1229). If, however, ocelots are definitively documented in the action area in the future, reinitiation of consultation would be prudent to reexamine incidental take.

Status of the Species - Pima Pineapple Cactus

The Pima Pineapple cactus was listed as an endangered species without critical habitat on September 23, 1993 (58 FR 49875). Factors that contributed to the listing include habitat loss

and degradation, habitat modification and fragmentation, limited geographical distribution and species rareness, illegal collection, and difficulties in protecting areas large enough to maintain functioning populations. In 2005, a 5-year review was initiated for the Pima Pineapple cactus (70 FR 5460). This review was completed in 2007 and recommended no change to the cactus's classification as an endangered species (U.S. Fish and Wildlife Service 2007).

Recent investigations of taxonomy and geographical distribution focused in part on assessing the validity of the taxon (see Baker 2004, Baker 2005, and Schmalzel *et al.* 2004). Although there is evidence for a general pattern of clinal variation across the range of the species (Schmalzel *et al.* 2004), this does not preclude the recognition of taxonomic varieties within *C. sheeri* (= *C. robustispina*). Baker (2005) found that there are distinct geographical gaps between the distribution of this subspecies and the other subspecies, which occur in eastern Arizona, New Mexico, and Texas, and that the subspecies are morphologically coherent within their respective taxa (Baker 2004). His geographical and morphological work supports the idea that the sub-specific groups within *C. robustispina* are indeed discrete, and merit separate taxonomic status as subspecies (U.S. Fish and Wildlife Service 2007).

We have determined that Pima Pineapple cactus that are too isolated from each other may not be effectively pollinated. For example, the major pollinator of Pima Pineapple cactus is thought to be *Diadasia rinconis*, a ground-nesting, solitary, native bee. McDonald (2005) found that Pima Pineapple cactus plants need to be within approximately 600 m (1,969 ft) of each other in order to facilitate effective pollination. Based on this information and other information related to similar cacti and pollinators, we have determined that Pima Pineapple cactus plants that are located at distances greater than 900 meters from one another become isolated with regard to meeting their life history requirements. The species is an obligate outcrosser (not self-pollinating), so it is important for plants to be within a certain distance to exchange pollen with each other. Also, the study found that pollination was more effective when other species of native cacti are near areas that support Pima Pineapple cactus. The native bees pollinate a variety of cacti species and the sole presence of Pima Pineapple cactus may not be enough to attract pollinators.

The Pima Pineapple cactus occurs south of Tucson, in Pima and Santa Cruz counties, Arizona, as well as in adjacent northern Sonora, Mexico. In Arizona, it is distributed at very low densities throughout both the Altar and Santa Cruz valleys, and in low-lying areas connecting the two valleys. This cactus generally grows on slopes of less than 10 percent and along the tops (upland areas) of alluvial bajadas. The plant is found at elevations between 2,360 feet (ft) and 4,700 ft (Phillips *et al.* 1981, Benson 1982, Ecosphere Environmental Services Inc. 1992), in vegetation characterized as either or a combination of Arizona upland of the Sonoran desertscrub community and semi-desert grasslands (Brown 1982, Johnson 2004). Paredes-Aguilar *et al.* (2000) reports the subspecies from oak woodlands in Sonora. Several attempts have been made to delineate habitat within the range of Pima Pineapple cactus (McPherson 2002, RECON Environmental Inc. 2006, U.S. Fish and Wildlife Service unpublished analysis) with limited success. As such, we are still unable to determine exact ecological characters to help us predict locations of Pima Pineapple cactus or precisely delineate Pima Pineapple cactus habitat (U.S. Fish and Wildlife Service 2007), except perhaps in localized areas (U.S. Fish and Wildlife Service 2005).

As a consequence of its general habitat requirements, considerable habitat for this species appears to exist in Pima and Santa Cruz counties, much of which is unoccupied. Pima Pineapple cactus occurs at low densities, widely scattered, sometimes in clumps, across the valley bottoms and bajadas. The species can be difficult to detect, especially in dense grass cover. For this reason, systematic surveys are expensive and have not been conducted extensively throughout the range of the Pima Pineapple cactus. As a result, location information has been gathered opportunistically, either through small systematic surveys, usually associated with specific development projects, or larger surveys that are typically only conducted in areas that seem highly suited for the species. Furthermore, our knowledge of the distribution and status of this species is gathered primarily through the section 7 process; and we only see projects that require a Federal permit or have Federal funding. There are many projects that occur within the range of Pima Pineapple cactus that do not undergo section 7 consultation, and we have no information regarding the status or loss of plants or habitat associated with those projects. For these reasons, it is difficult to address abundance and population trends for this species.

The AGFD maintains the Heritage Data Management System (HDMS), a database identifying elements of concern in Arizona and consolidating information about their distribution and status throughout the state. This database has 5,553 Pima Pineapple cactus records, 5,449 Pima Pineapple cactus of which have coordinates. Some of the records are quite old, and we have not confirmed whether the plants are still alive. We also cannot determine which plants may be the result of multiple surveys in a given area. Of the known individuals (5,553), approximately 1,340 Pima Pineapple cactus plants are documented in the database as extirpated as of 2003. There have been additional losses since 2003, but that information is still being compiled in the database. The database is dynamic, based on periodic entry of new information, as time and staffing allows. As such, the numbers used from one biological opinion to the next may vary and should be viewed as a snapshot in time at any given moment. We have not tracked loss of habitat because a limited number of biological assessments actually quantify habitat for Pima Pineapple cactus.

We do know the number and fate of Pima Pineapple cactus that have been detected during surveys for projects that have undergone section 7 consultation. Through 2010, section 7 consultations on development projects (e.g., residential and commercial development, mining, infrastructure improvement) considered 2,680 Pima Pineapple cactus plants found on approximately 15,192 acres within the range of the Pima Pineapple cactus. Of the total number of plants, 1,985 Pima Pineapple cactus (74 percent) were destroyed, removed, or transplanted as a result of development, mining, and infrastructure projects. In terms of Pima Pineapple cactus habitat, some of the 15,192 acres likely did not provide Pima Pineapple cactus habitat, but that amount is difficult to quantify because Pima Pineapple cactus habitat was not consistently delineated in every consultation. Of the 15,192 acres, however, we are aware that 14,545 acres (96 percent) have been either permanently or temporarily impacted. Some of these acres may still provide natural open space, but we have not been informed of any measures (e.g., conservation easements) that have been completed to ensure these areas will remain open. Through section 7 consultation on non-development-related projects (e.g., fire management plans, grazing, buffelgrass control), we are aware of an additional 781 plants within an unknown

number of acres; we do not know the number of acres because these types of projects are often surveyed for Pima Pineapple cactus inconsistently, if at all. Across the entire Pima Pineapple cactus range, it is difficult to quantify the total number of Pima Pineapple cactus lost and the rate and amount of habitat loss for three reasons: 1) we review only a small portion of projects within the range of Pima Pineapple cactus (only those that have Federal involvement and are subject to section 7 consultation), 2) development that takes place without any jurisdictional oversight is not tracked within Pima and Santa Cruz counties, and 3) many areas within the range of the Pima Pineapple cactus have not been surveyed; therefore, we do not know how many plants exist or how much habitat is presently available.

Some additional information related to the survival of Pima Pineapple cactus comes from six demographic plots that were established in 2002 in the Altar Valley. The results from the first year (2002-2003) indicate that the populations were stable; out of a total of over 300 Pima Pineapple cactus measured, only 10 died, and two Pima Pineapple cactus seedlings were found (Routson *et al.* 2004). The plots were not monitored in 2004, but were visited again starting in May 2005. In the two years between September 2003 and September 2005, 35 individuals, or 13.4 percent, of the original population had died and no new seedlings were found (Baker 2006). Baker (2006) suggests that recruitment likely occurs in punctuated events in response to quality and timing of precipitation, and possibly temperature, but there is little evidence until such events occur. He goes on to say that further observations need to be made to determine the rate at which the population is declining, because, based on an overall rate of die-off of 13.4 percent every two years, few individuals will be alive at this site after 15 years. As this monitoring program continues, critical questions regarding the life cycle of this species will be answered.

Threats to Pima Pineapple cactus continue to include habitat loss and fragmentation, competition with non-native species, and inadequate regulatory mechanisms to protect this species. We believe residential and commercial development, and its infrastructure, is by far the greatest threat to Pima Pineapple cactus and its habitat. However, we have only a limited ability to track the cumulative amount of development within the range of Pima Pineapple cactus. What is known with certainty is that development pressure continues in Pima and Santa Cruz counties.

Invasive grass species may be a threat to the habitat of Pima Pineapple cactus. Habitat in the southern portion of the Altar Valley is now dominated by Lehmann lovegrass (*Eragrostis lehmanniana*). According to Gori and Enquist (2003), Boer lovegrass (*Eragrostis chloromelas*) and Lehmann lovegrass are now common and dominant on 1,470,000 acres in southeastern Arizona. They believe that these two grass species will continue to invade native grasslands to the north and east, as well as south into Mexico. These grasses have a completely different fire regime than the native grasses, tending to form dense stands that promote higher intensity fires more frequently. Disturbance (like fire) tends to promote the spread of these non-natives (Ruyle *et al.* 1988, Anable *et al.* 1992). Roller and Halvorson (1997) hypothesized that fire-induced mortality of Pima Pineapple cactus increases with Lehmann lovegrass density. Buffelgrass (*Pennisetum ciliare*) has become locally dominant in vacant areas in the City of Tucson and along roadsides, notably in the rights-of-way along Interstate 10 and State Route 86. Some portions of Pima Pineapple cactus habitat along these major roadways are already being

converted to dense stands of buffelgrass, which can lead to recurring grassland fires and the destruction of native desert vegetation (Buffelgrass Working Group 2007).

The effects of climate change (i.e., decreased precipitation and water resources) are a threat to the long-term survival and distribution of native plant species, including the Pima Pineapple cactus. For example, temperatures rose in the twentieth century and warming is predicted to continue over the twenty-first century. Although climate models are less certain about predicted trends in precipitation, the southwestern United States is expected to become warmer and drier. In addition, precipitation is expected to decrease in the southwestern United States, and many semi-arid regions will suffer a decrease in water resources from climate change as a result of less annual mean precipitation and reduced length of snow season and snow depth. Approximately half of the precipitation within the range of the Pima Pineapple cactus typically falls in the summer months; however, the impacts of climate change on summer precipitation are not well understood. Drought conditions in the southwestern United States have increased over time and may have contributed to loss of Pima Pineapple cactus populations through heat stress, drought stress, and related insect attack, as well as a reduction in germination and seedling success since the species was originally listed in 1993, and possibly historically. Climate change trends are likely to continue, and the impacts on species will likely be complicated by interactions with other factors (e.g., interactions with non-native species and other habitat-disturbing activities).

The Arizona Native Plant Law can delay vegetation clearing on private property for the salvage of specific plant species within a 30-day period. Although the Arizona Native Plant Law prohibits the taking of this species on State and private lands without a permit for educational or research purposes, it does not provide for protection of plants *in situ* through restrictions on development activities. Even if Pima Pineapple cactus are salvaged from a site, transplanted individuals only contribute to a population if they survive and are close enough (within 900 m [(2,970 ft]) to other Pima Pineapple cactus to be part of a breeding population from the perspective of pollinator travel distances and the likelihood of effective pollination. Transplanted Pima Pineapple cactus have variable survival rates, with moderate to low levels of survival documented. Past efforts to transplant individual Pima Pineapple cactus to other locations have had limited success. For example, on two separate projects in Green Valley, the mortality rate for transplanted Pima Pineapple cactus after two years was 24 percent and 66 percent, respectively (SWCA, Inc. 2001, WestLand 2004). One project southwest of Corona de Tucson involved transplanting Pima Pineapple cactus into areas containing *in situ* plants. Over the course of three years, 48 percent of the transplanted individuals and 24 percent of the *in situ* individuals died (WestLand 2008). There is also the unquantifiable loss of the existing Pima Pineapple cactus seed bank associated with the loss of suitable habitat. Furthermore, once individuals are transplanted from a site, Pima Pineapple cactus is considered to be extirpated from that site, as those individuals functioning in that habitat are moved elsewhere.

Pima County regulates the loss of native plant material associated with ground-disturbing activities through their Native Plant Protection Ordinance (NPPO) (Pima County 1998). The NPPO requires inventory of the site and protection and mitigation of certain plant species slated for destruction by the following method: the designation of a minimum of 30 percent of on-site, permanently protected open space with preservation in place or transplanting of certain native

plant species from the site. There are various tables that determine the mitigation ratio for different native plant species (e.g. saguaros, ironwood trees, Pima Pineapple cactus) with the result that mitigation may occur at a 1:1 or 2:1 replacement ratio. Mitigation requirements are met through the development of preservation plans. The inadvertent consequence of this ordinance is that it has created a "market" for Pima Pineapple cactus. Any developer who cannot avoid this species or move it to another protected area must replace it. Most local nurseries do not grow Pima Pineapple cactus (and cannot grow them legally unless seed was collected before the listing). As a result, environmental consultants are collecting Pima Pineapple cactus seed from existing sites (which can be done with a permit from the Arizona Department of Agriculture and the permission of the private landowner), germinating seed, and placing Pima Pineapple cactus plants grown from seed back on these sites. There have been no long-term studies of transplant projects, thus the conservation benefit of these actions is unknown. Moreover, growing and planting Pima Pineapple cactus does not address the loss of Pima Pineapple cactus habitat that necessitated the action of transplanting cacti in the first place.

Other specific threats that have been previously documented (U.S. Fish and Wildlife Service 1993), such as overgrazing, illegal collection, prescribed fire, and mining, have not yet been analyzed to determine the extent of effects to this species. However, partial information exists. Overgrazing by livestock, illegal collection, and fire-related interactions involving exotic Lehmann lovegrass and buffelgrass may negatively affect Pima Pineapple cactus populations. Mining has resulted in the loss of hundreds, if not thousands, of acres of potential habitat throughout the range of the plant.

The protection of Pima Pineapple cactus habitat and individuals is complicated by the varying land ownership within the range of this species in Arizona. An estimated 10 percent of the potential habitat for Pima Pineapple cactus is held in Federal ownership. The remaining 90 percent is on Tribal, State, and private lands. Most of the federally-owned land is either at the edge of the plant's range or in scattered parcels. The largest contiguous parcel of federally-owned habitat is the Buenos Aires National Wildlife Refuge, located at the southwestern edge of the plant's range at higher elevations and with lower plant densities. No significant populations of Pima Pineapple cactus are known from Sonora or elsewhere in Mexico (Baker 2005).

There have been some notable conservation developments for this species. As of 2010, there are two conservation banks for Pima Pineapple cactus, one on a private ranch in the Altar Valley (Palo Alto Ranch Conservation Bank) and another owned by Pima County that includes areas in both the Altar Valley and south of Green Valley. In the Palo Alto Ranch Conservation Bank, 131.6 acres have been conserved to date. In Pima County's Bank, a total of 530 acres are under a conservation easement at this time (the County offsets its own projects within this bank). Additionally, three large blocks of land totaling another 1,078 acres have been set aside or are under conservation easements through previous section 7 consultations (see consultations 02-21-99-F-273, 02-21-01-F-101, and 02-21-03-F-0406). While not formal conservation banks, these areas, currently totaling 1,739.6 acres, are set aside and managed specifically for Pima Pineapple cactus as large blocks of land, and likely contribute to recovery of the taxon for this reason; therefore, we consider these acres conserved. Another 647 acres of land have been set aside as natural open space within the developments reviewed through section 7 consultation between

1995 and 2010. However, these are often small areas within residential backyards (not in a common area) that are difficult to manage and usually isolated within the larger development, and often include areas that do not provide Pima Pineapple cactus habitat (e.g., washes). Some conservation may occur onsite because of these open space designations, but long-term data on conservation within developed areas are lacking; the value of these areas to Pima Pineapple cactus recovery over the long-term is likely not great.

In summary, Pima Pineapple cactus conservation efforts are currently hampered by a lack of information on the species. Specifically, we have not been able to determine exact ecological characters to help us predict locations of Pima Pineapple cactus or precisely delineate its habitat, and considerable area within the Pima Pineapple cactus range has not been surveyed. Further, there are still significant gaps in our knowledge of the life history of Pima Pineapple cactus; for instance, we have yet to observe a good year for seed germination. From researcher observations and motion sensing cameras, we have learned that ants, Harris' antelope squirrels, and jackrabbits act as seed dispersal agents. Demographic plots have been only recently established, and information is just now beginning to be reported with regard to describing population dynamics for Pima Pineapple cactus in the Altar Valley.

Development and associated loss of habitat remain important and continuing threats to this taxon. However, the expanding threat of non-native grasses and resulting altered fire regimes are a serious concern for the long-term viability of the species, as is ongoing drought. The full impact of drought and climate change on Pima Pineapple cactus has yet to be studied, but it is likely that, if recruitment occurs in punctuated events based on precipitation and temperature (Baker 2006), Pima Pineapple cactus will be negatively affected by these forces. Already we have seen a nearly 25% loss of individuals across six study sites in the Altar Valley between 2010 and 2011; these deaths were attributed largely to drought and associated predation by native insects and rodents (Baker 2011). Conservation efforts that focus on habitat acquisition and protection, like those proposed by Pima County and the City of Tucson, are important steps in securing the long-term viability of this taxon. Regulatory mechanisms, such as the native plant protection ordinances, provide conservation direction for Pima Pineapple cactus habitat protection within subdivisions, and may serve to reduce Pima Pineapple cactus habitat fragmentation within areas of projected urban growth.

Environmental Baseline - Pima Pineapple Cactus

The environmental baseline includes past and present impacts of all Federal, State, or private actions in the action area, the anticipated impacts of all proposed Federal actions in the action area that have undergone formal or early section 7 consultation, and the impact of State and private actions which are contemporaneous with the consultation process. The environmental baseline defines the current status of the species and its habitat in the action area to provide a platform to assess the effects of the action now under consultation.

Description of the Action Area

For the Rosemont Mine project, we define the action area for Pima Pineapple cactus as the area that will be affected for the utility corridor (TEP line and the water pipeline). Pima Pineapple cactus are not known or expected to occur within the footprint of the mine and associated structures and facilities occurring at higher elevation within the Santa Rita Mountains. Therefore, the action area for Pima Pineapple cactus includes only the lower elevation portions of the proposed utility corridor up to 4,000 feet elevation (see Figures PPC-1 and PPC-2). Within the action area, approximately 33.2 acres of anticipated disturbance will occur within Pima Pineapple cactus habitat along the proposed utility corridor, in addition to any disturbance that may occur on the Helvetia Ranch North conservation lands associated with the development of water features as a conservation measure for other species covered under this BO such as the Chiricahua leopard frog, jaguar, or ocelot (see Conservation Measures D, G, H, and I of the Second Supplemental BA).

The development and identification of alternative routes for the transmission line was based on electrical system requirements and an environmental and public planning process conducted by TEP from the summer of 2008 through the spring of 2010. Environmental studies included a review of land use issues, as well as studies of visual, biological, and cultural resources. Consideration was given to each route's compatibility with established criteria for a Certificate of Environmental Compatibility (CEC) and consideration in the final route selection process by the Arizona Power Plant and Line Siting Committee and the Arizona Corporation Commission (ACC).

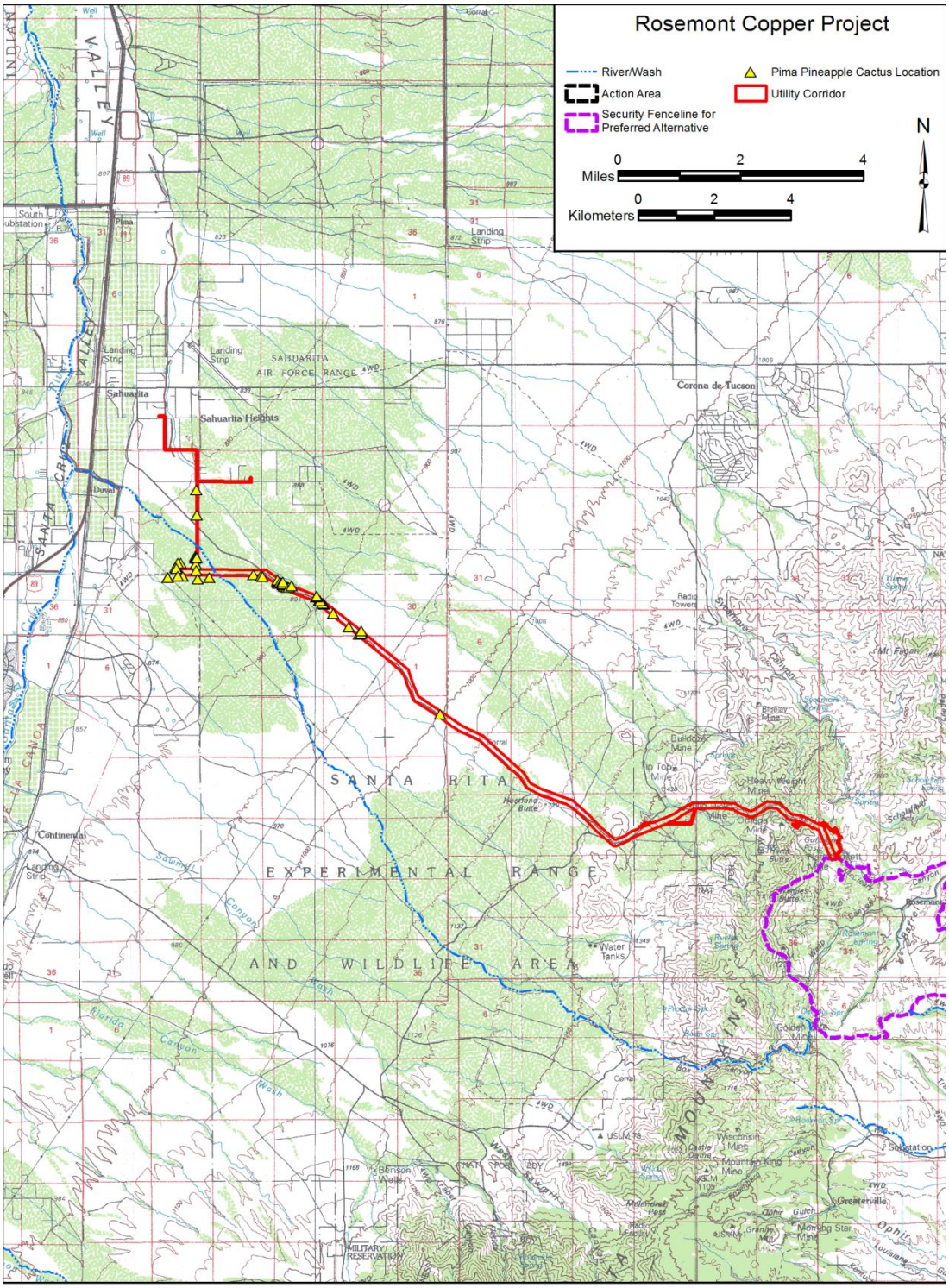

Figure 12. Pima Pineapple Cactus.

Figure PPC-1: Location of the Utility Corridor and Pima pineapple cacti for the Rosemont Mine project.

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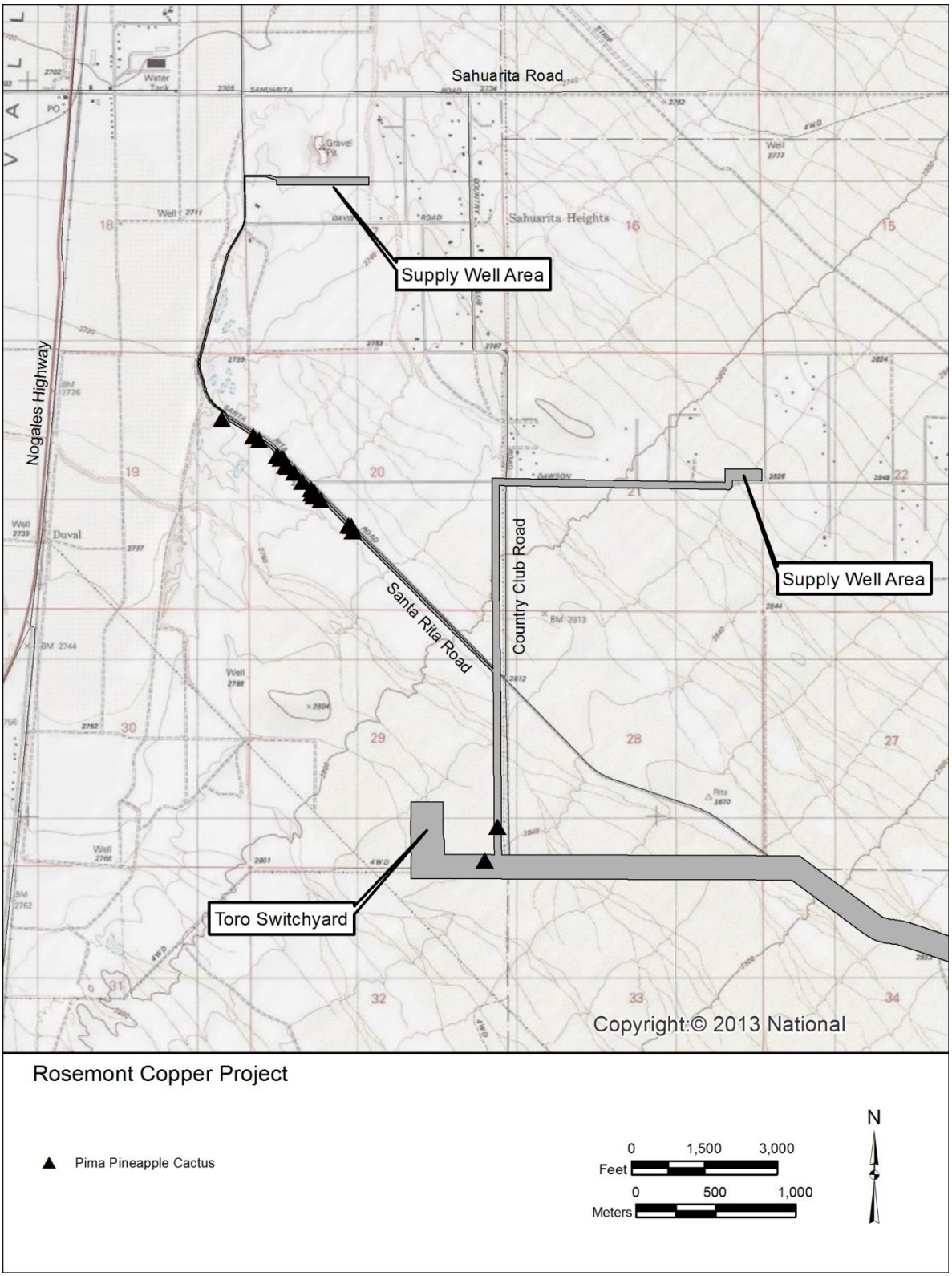

Figure PPC-2: Location of the far-western portion of the Utility Corridor and Pima pineapple cacti for the Rosemont Mine project.

Power would be provided from a link attached to existing transmission lines on the South Substation loop. All of the transmission lines alternatives include aboveground 138-kilovolt transmission lines and an associated 14-foot-wide unpaved maintenance road. This set of routing alternatives recommended to be carried forward will be presented to the Arizona Corporation Commission Line Siting Committee. TEP identified a preferred route and four alternatives for consideration; however, only the preferred route is considered this BO. The TEP preferred route runs west of the Santa Rita Mountains ridgeline. The preferred route generally parallels the existing South Santa Rita Road before entering private property held by Rosemont (see Figure PPC-1). The alignment then enters the Rosemont claim block and crosses the ridgeline at Lopez Pass. The ACC has selected the preferred route and a CEC was issued on June 12, 2012.

With regard to the proposed water pipeline, the proposed Rosemont Mine project will use approximately 5,000 acre-feet per year of fresh water, for a total use over the mine life of approximately 100,000 acre-feet. The water will be pumped from four to six wells located on land owned or leased by Rosemont near the community of Sahuarita in the Santa Cruz Valley at a maximum rate of 5,000 gallons per minute (total pumpage), and the pipeline will require booster stations to maintain water flow in the line. The water pipeline alignment will follow the TEP Preferred Alternative Transmission Line (see Figures I-1, PPC-1, and J-3).

The pipeline will be constructed with a minimum soil cover of 36 inches within ASLD easements and up to 24 inches on Rosemont's property, where available and practical, depending on slope, topography, and the availability of material. At wash crossings, the pipeline will be constructed below the calculated scour depth of the wash, and grade control structures will be provided at the largest washes to provide additional protection. Construction of the pipeline will include an unpaved permanent maintenance road and up to five reservoirs and pump stations. The reservoirs and pump stations will be built outside potential jurisdictional WUS.

The action area occurs is northwest of the Santa Rita Mountains extending to the Town of Sahuarita. Topography consists of sloping terrain bisected by washes, with an estimated elevation range from approximately 2,750 to 4,000 feet. The biotic communities present are the Arizona Upland Subdivision of the Sonoran Desert and Semi-desert Grassland (Brown 1994). Typical vegetation within the project area includes creosote bush (*Larrea tridentata*), velvet mesquite (*Prosopis velutina*), catclaw acacia (*Acacia greggii*), barrel cactus (*Ferocactus wislizenii*), and saguaro (*Carnegiea gigantea*).

Land uses within the action area include the residential areas of the Town of Sahuarita, mining activities in the northwest corner of the Santa Rita Mountains, and livestock grazing lands. Much of the action area is included within the Santa Rita Experimental Range. This area of approximately 50,000 acres consists primarily of State Trust lands, and is controlled by the University of Arizona and used to conduct rangeland management research and monitoring.

Status of the Species within the Action Area

Recent Surveys

In 2008, species-specific surveys for Pima Pineapple cactus were conducted along a preliminary water pipeline corridor route (WestLand 2009a), which has since been dropped because it was decided that the water pipeline alignment should follow the TEP power line and utility maintenance road corridor. Hence, in 2009, a new preferred corridor route was selected, and additional surveys were conducted (WestLand 2009b, 2010b) (Figure PPC-1). The western portion of the route, near the Town of Sahuarita, was changed in September 2013 (Figure PPC-2) The preferred 2009 corridor route extends from just east of the town of Sahuarita to the east side of Lopez Pass in the Santa Rita Mountains.

The width of the area surveyed by WestLand ranged from 150 feet to approximately 650 feet (the width of proposed surface disturbance within the survey corridor is expected to be approximately 50 feet). Approximately 18.5 miles of the preferred corridor route were surveyed in 2009; the easternmost 3.2 miles was not surveyed because it was determined that the area has no potential for Pima Pineapple cactus occurrence because of the presence of steep slopes, sandy washes, and bedrock.

The survey followed guidelines provided by USFWS in the document titled Pima Pineapple cactus 3 Tier Survey Methods (Roller 1996). Surveyors walked parallel transects spaced approximately 15 feet apart in order to achieve 100% coverage of the survey area. The survey area was covered in a single pass. Coordinates for all Pima Pineapple cactus found during the survey were entered into a handheld Trimble global positioning system (GPS) unit. Pima Pineapple cactus were tagged with a unique number, and information was collected on the number of stems and general health of each plant.

Sixty-seven living Pima Pineapple cactus have been found within the preferred TEP and water pipeline corridor, including the western, rerouted portion of the waterline (see Figures PPC-1 and PPC-2) (WestLand 2009a, 2009b, 2010b). Given that the width of proposed surface disturbance within the survey corridor is 50 feet, it is likely that several of these cacti would be avoided during construction of the proposed action. The total impact area (i.e., potentially suitable Pima Pineapple cactus habitat along the selected alternative route) is estimated to be approximately 33.2 acres (17.2 acres permanently affected, 16.0 acres temporarily affected).

Effects of the Proposed Action - Pima Pineapple Cactus

The use of the proposed utility corridor to provide power and water for the Rosemont Mine project would result in direct effects to Pima Pineapple cactus owing to the placement of electrical and water transmission lines and associated access roads. Approximately 67 live Pima Pineapple cactus and 33.2 acres of Pima Pineapple cactus habitat would be affected. Areas of permanent disturbance would remove portions of the seed bank, and areas of temporary disturbance could alter the seed bank. Disturbance of soils would change water infiltration,

compact soil, and change local site conditions. Recently disturbed areas have an increased potential to be invaded by noxious weeds (e.g., Lehmann lovegrass), which can negatively affect Pima Pineapple cactus. Pima Pineapple cactus can be found in areas of recent disturbance, as competition with other plants for nutrients and light are reduced. Although some areas of temporary disturbance may recover, it may take many years before full recovery is achieved. Vasek *et al.* (1975) found that desert vegetation is fragile and easily destroyed, but does have a long-term potential (probably measured in centuries) to recover from substantial disturbance such as that associated with the construction of a utility corridor.

Any individual Pima Pineapple cactus growing in the action area outside the mine footprint may experience indirect effects, such as fugitive dust. Effects from dust are likely to occur along the utility corridor as a result of traffic along the associated roadway. Existing traffic occurs in the area of the utility corridor, but the Rosemont mine project will result in a limited increase in traffic in the area of Santa Rita Road as a result of inspections and maintenance along the utility corridor. Physical effects of windborne fugitive dust on plants may include blockage and damage to stomata and shading and abrasion of the plant surface, which could result in reduced photosynthetic activity (Goodquarry 2011) and possibly reproductive success. These effects may also impact pollinators of Pima Pineapple cactus.

The proposed action will result in the direct removal of 67 Pima Pineapple cactus and permanent or temporary effects to approximately 33.2 acres of Pima Pineapple cactus habitat within the action area. Within the context of Pima Pineapple cactus individuals and surveyed area we have reviewed through section 7 consultation on development projects, this project adds 67 individuals and effects to 33.2 acres of Pima Pineapple cactus habitat to the known baselines. Within the range of the Pima Pineapple cactus in Arizona, this brings baseline numbers up to 2,764 Pima Pineapple cactus individuals, of which, 2,051 will have been destroyed, removed, or transplanted, and 15,275 acres surveyed, of which 14,612 will have been permanently or temporarily impacted by development projects. What this means in the context of the entire range of the Pima Pineapple cactus is difficult to determine for the reasons discussed above.

To offset the indirect effects to Pima Pineapple cactus and Pima Pineapple cactus habitat from invasive plant species, Rosemont has developed an *Invasive Species Management Plan*. This plan includes measures such as using weed-free seed and hay in reclamation and compliance actions, avoiding the use of invasive ornamental plants in landscaping and reclamation activities, and cleaning heavy equipment prior to use on the project to remove dirt, plant parts, and other materials that could carry invasive plant seeds. As part of the Invasive Species Management Plan, Rosemont will conduct monitoring of the project area once per year to determine the occurrence of invasive plant species. The goal of monitoring is to detect newly introduced invasive species and eliminate them before they infest the area and spread to other locations. The *Invasive Species Management Plan* is incorporated herein by reference.

To offset the direct impacts to Pima Pineapple cactus and its habitat, Rosemont proposes to record a restrictive covenant on parcels of land that support Pima Pineapple cactus. The lands are located within the Helvetia Ranch North Parcels (see Figure PPC-3). The proposed conservation lands are currently occupied by Pima Pineapple cactus and support appropriate

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Pima Pineapple cactus habitat. Prior to initiation of construction on the utility corridor, the restrictive covenant will be recorded for the 940 acres that make up these ranch parcels.

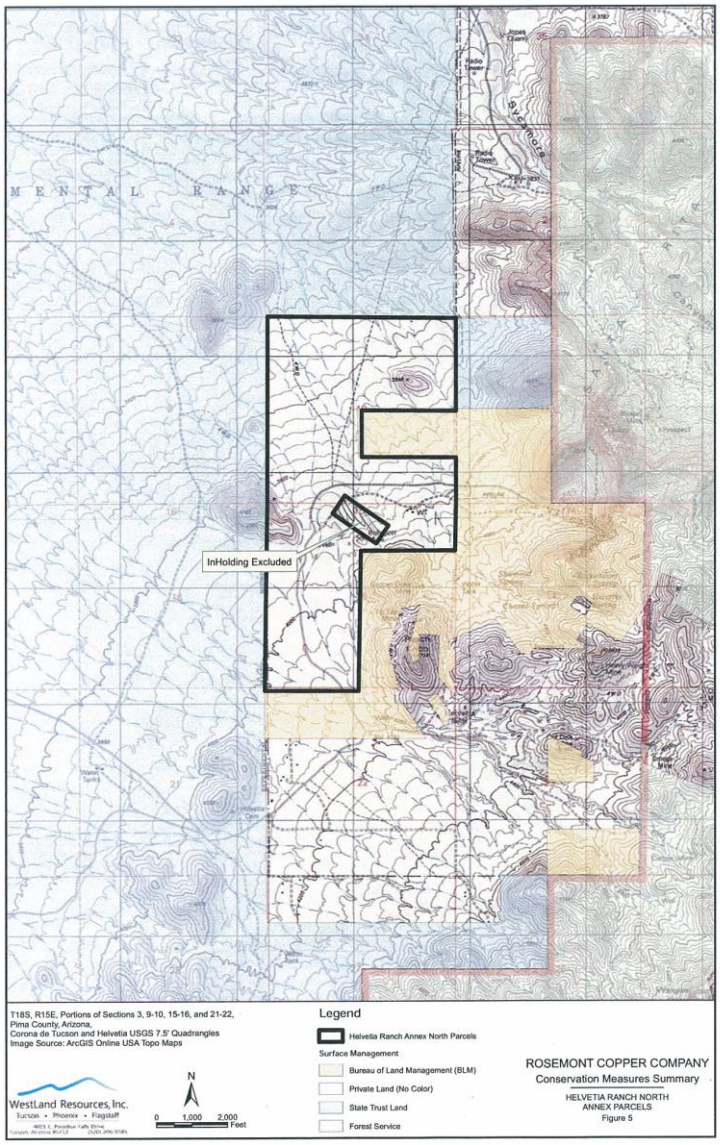

Figure PPC-3: Helvetia Ranch North Pima Pineapple Cactus Conservation Parcels

In summary, the proposed action will result in the direct loss of 67 Pima Pineapple cactus and effects to 33.2 acres of Pima Pineapple cactus habitat. This represents a loss of approximately 3.3 percent of the known individuals and 0.2 percent of the surveyed area we have reviewed through section 7 consultations (including this one). Rosemont proposes to offset this loss by setting aside 940 acres within the Helvetia Ranch parcels, 705 acres of which currently support Pima pineapple cactus or which contain soils and other habitat conditions suitable for the species. The project, while contributing to further fragmentation of Pima Pineapple cactus habitat, also contributes to the survival and recovery of Pima Pineapple cactus because it will establish protection from certain threats for Pima Pineapple cactus on the Helvetia Ranch parcels.

Cumulative Effects - Pima Pineapple Cactus

Cumulative effects include the effects of future State, Tribal, local, or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act. Federal land managers, the Coronado National Forest and Bureau of Land Management, manage approximately 45 percent of the lands affected by the Rosemont Mine project, and administer projects and permits on those lands. However, within the action area for the Pima Pineapple cactus, lands are primarily non-Federal, so there are many activities that could potentially affect Pima Pineapple cactus that are not Federal activities and thus not subject to additional Section 7 consultation under the ESA.

Activities that could result in cumulative effects to Pima Pineapple cactus include continued road maintenance, grazing activities, the spread of invasive species, and recreation in the action area, current and future development, other nearby mining projects, and unregulated activities on non-federal lands, such as trespass livestock and inappropriate use of OHVs. Adjacent open space, such as that found within the Santa Rita Experimental Range and other State Trust lands often provides recreational areas for nearby residents, and the use of these lands for recreation, off-road vehicle use, and illegal dumping of trash can ultimately lead to habitat degradation and possible loss of Pima Pineapple cactus. Additional cumulative effects on Pima Pineapple cactus include cross-border activities such as human traffic; deposition of trash; new trails from human traffic; increased fire risk from human traffic; and water depletion and contamination. From all of these activities, there is an increased risk of non-native invasive plant invasion, leading to both competition for limited resources and increased fire occurrence and intensity, all of which threaten Pima Pineapple cactus conservation and survival.

As discussed above, threats to Pima Pineapple cactus continue to include habitat loss and fragmentation both for the plant and its pollinators, competition with non-native species, and inadequate regulatory mechanisms to protect this species. We conclude that residential and commercial development, and its infrastructure, is a significant threat to Pima Pineapple cactus and its habitat, and that drought, nonnative plant invasion, and predation are also severe threats. The cumulative effects mentioned above all contribute to these ongoing threats to Pima

Pineapple cactus in the action area. The conservation of the Pima Pineapple cactus population in the southern portions of Tucson, extending into the Green Valley area, is tenuous given the extent of these threats and the likelihood that these threats will continue into the foreseeable future. Consideration of the conservation needs of Pima Pineapple cactus is included in the proposed habitat conservation plans being developed by the City of Tucson and Pima County, and implementation of these habitat conservation plans may help to reduce the extent of cumulative impact of non-Federal actions in the vicinity of the action area for Pima Pineapple cactus related to the Rosemont Mine project.

Conclusion - Pima Pineapple Cactus

After reviewing the current status of Pima Pineapple cactus, the environmental baseline for the action area, the effects of the proposed action, and the cumulative effects, it is our biological opinion that the Rosemont Mine project is not likely to jeopardize the continued existence of the Pima Pineapple cactus. No critical habitat has been designated for this species; therefore, none will be affected. Our rationale for this conclusion is as follows:

1. The loss of 67 Pima Pineapple cactus and effects to 33.2 acres of Pima Pineapple cactus habitat represents less than two percent of the Pima Pineapple cactus individuals (the majority of which were destroyed) and area surveyed for which we have conducted section 7 consultations. Additional Pima Pineapple cactus and habitat occur throughout the range of the taxon, but we do not have the information to determine the percentage of the overall range which these 67 Pima Pineapple cactus and 33.2 acres represent. However, based on the sites we have evaluated and for which we have information, the number of Pima Pineapple cactus and acres of Pima Pineapple cactus habitat impacted related to this project are relatively small and, additively, contribute a relatively small number of plants and acres to the effects we have evaluated.
2. Rosemont is proposing measures to reduce direct impacts to Pima Pineapple cactus during the construction of the utility corridor.
3. To offset effects from the Rosemont Mine project, Rosemont will protect approximately 700 acres of occupied Pima Pineapple cactus habitat on the Helvetia Ranch North parcels by recording a restrictive covenant on the parcels which will protect Pima Pineapple cactus from certain activities outlined as threats to Pima Pineapple cactus in our discussion above. This action will also address to some extent the ongoing cumulative effects to Pima Pineapple cactus habitat in the vicinity of the action area by removing the potential for future development of these lands in the future.
4. The relatively small magnitude of effects described under Conclusion 1 and the conservation measures described under Conclusion 3, above, indicate that the proposed action is unlikely to diminish the potential to achieve recovery of the Pima pineapple cactus.

INCIDENTAL TAKE STATEMENT - PIMA PINEAPPLE CACTUS

Sections 7(b)(4) and 7(o)(2) of the Act generally do not apply to listed plant species. However, limited protection of listed plants from take is provided to the extent that the Act prohibits the removal and reduction to possession of Federally listed endangered plants from areas under Federal jurisdiction, or for any act that would remove, cut, dig up, or damage or destroy any such species on any other area in knowing violation of any regulation of any State or in the course of any violation of a State criminal trespass law.

Conservation Recommendations - Pima Pineapple Cactus

Sections 2(c) and 7(a)(1) of the Act direct Federal agencies to use their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of listed species. Conservation recommendations are discretionary agency activities to minimize or avoid effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

1. We recommend that the FS participate in efforts to identify and conserve Pima Pineapple cactus throughout its range, including participation in forums that address the control of invasive, exotic plants (e.g. buffelgrass and Lehmann lovegrass).

2. We recommend that FS support research and monitoring proposals that will contribute to an increased understanding of important conservation efforts related to Pima Pineapple cactus such as the effectiveness of translocating Pima Pineapple cactus, appropriate management of conservation lands and conservation banks to promote recovery of Pima Pineapple cactus, and effects of climate change and fire on Pima Pineapple cactus.

3. We recommend the FS work with Rosemont to implement measures on the Helvetia Ranch North parcels, including appropriate monitoring of Pima Pineapple cactus and Pima Pineapple cactus habitat, so that the conservation approach on these parcels is consistent with other conservation lands, including Conservation Banks, established for the conservation of Pima Pineapple cactus. These measures should include the following in order to ensure the conservation of Pima Pineapple cactus in perpetuity:

   (a.) The conservation lands should be surveyed with 100% survey coverage using an approved Pima Pineapple cactus survey protocol. All Pima Pineapple cactus that are detected during the survey effort should be mapped, GPS coordinates recorded, and information regarding the condition and status of each cactus should be collected. This information should be provided to FWS.

   (b.) A management plan addressing actions needed for long-term conservation of the conservation lands, and all Pima Pineapple cactus within the conservation lands, should be developed and implemented in perpetuity. The management plan should address issues such as fencing and fence maintenance, invasive species

management, fire management, approved and prohibited land uses, maintaining appropriate buffers from surrounding land uses, etc. The management plan should also address monitoring, which should include monitoring every three years to document the status of known cacti, as well as the presence of any new cacti. Annual reports on the status of the conservation lands should be submitted to the FWS.

(c.) Adequate funding should be provided to implement the management plan and required monitoring.

In order that we are kept informed of actions minimizing or avoiding adverse effects or benefiting listed species or their habitats, we request notification of the implementation of any conservation recommendations.

Status of the Species – Chiricahua Leopard Frog

The Chiricahua leopard frog was listed as a threatened species without critical habitat in a Federal Register notice dated June 13, 2002. Included was a special rule to exempt operation and maintenance of livestock tanks on non-Federal lands from the section 9 take prohibitions of the Act. Final designation of critical habitat was made on March 20, 2012 (77 FR 16324) and included 39 sites in Arizona and New Mexico.

The frog is distinguished from other members of the *Lithobates pipiens* complex by a combination of characters, including a distinctive pattern on the rear of the thigh consisting of small, raised, cream-colored spots or tubercles on a dark background; dorsolateral folds that are interrupted and deflected medially; stocky body proportions; relatively rough skin on the back and sides; and often green coloration on the head and back (Platz and Mecham 1979). The species also has a distinctive call consisting of a relatively long snore of 1 to 2 seconds in duration (Platz and Mecham 1979, Davidson 1996). Snout-vent lengths of adults range from approximately 2.1 to 5.4 inches (Platz and Mecham 1979, Stebbins 2003). The Ramsey Canyon leopard frog (*Lithobates* "*subaquavocali*s"), found on the eastern slopes of the Huachuca Mountains, Cochise County, Arizona, has recently been subsumed into *Lithobates chiricahuensis* (Crother 2008) and recognized by the FWS as part of the listed entity (U.S. Fish and Wildlife Service [USFWS] 2009).

The range of the Chiricahua leopard frog includes central and southeastern Arizona; west-central and southwestern New Mexico; and, in Mexico, northeastern Sonora, the Sierra Madre Occidental of northwestern and west-central Chihuahua, and possibly as far south as northern Durango (Platz and Mecham 1984, Degenhardt *et al.* 1996, Lemos-Espinal and Smith 2007, Rorabaugh 2008). Reports of the species from the State of Aguascalientes (Diaz and Diaz 1997) are questionable. The distribution of the species in Mexico is unclear due to limited survey work and the presence of closely related taxa (especially *Lithobates lemosespinali*) in the southern part of the range of the Chiricahua leopard frog. Historically, the frog was an inhabitant of a wide variety of aquatic habitats, including cienegas, pools, livestock tanks, lakes, reservoirs, streams, and rivers at elevations of 3,281 to 8,890 feet. However, the species is now limited primarily to

headwater streams, springs and cienegas, and cattle tanks into which nonnative predators (e.g. sportfishes, American bullfrogs, crayfish, and tiger salamanders) have not yet invaded or where their numbers are low (USFWS 2007). The large valley-bottom cienegas, rivers, and lakes where the species occurred historically are populated with nonnative predators at densities with which the species cannot coexist.

The primary threats to this species are predation by nonnative organisms and die offs caused by a fungal skin disease – chytridiomycosis (caused by the skin fungus, *Batrachochytrium dendrobatidis* (*Bd*)). Additional threats include drought, floods, degradation and loss of habitat as a result of water diversions and groundwater pumping, poor livestock management, altered fire regimes due to fire suppression and livestock grazing, mining, development, and other human activities; disruption of metapopulation dynamics, increased chance of extirpation or extinction resulting from small numbers of populations and individuals, and environmental contamination (USFWS 2007). Loss of Chiricahua leopard frog populations is part of a pattern of global amphibian decline, suggesting other regional or global causes of decline may be important as well (Carey *et al.* 2001). Witte *et al.* (2008) analyzed risk factors associated with disappearances of ranid frogs in Arizona and found that population loss was more common at higher elevations and in areas where other ranid population disappearances occurred. Disappearances were also more likely where introduced crayfish occur, but were less likely in areas close to a source population of frogs.

Based on 2009 data, the species is still extant in the major drainage basins in Arizona and New Mexico where it occurred historically; with the exception of the Little Colorado River drainage in Arizona and possibly the Yaqui drainage in New Mexico. It has not been found recently in many rivers within those major drainage basins, valleys, and mountains ranges, including the following in Arizona: White River, West Clear Creek, Tonto Creek, Verde River mainstem, San Francisco River, San Carlos River, upper San Pedro River mainstem, Santa Cruz River mainstem, Aravaipa Creek, Babocomari River mainstem, and Sonoita Creek mainstem. In southeastern Arizona, no recent records (1995 to the present) exist for the Pinaleño Mountains or Sulphur Springs Valley. Once thought to be extirpated from the Chiricahua Mountains, the species now occurs in Cave Canyon, in the vicinity of the Southwestern Research Station operated by the Smithsonian Institution. The species is now absent from all but one of the southeastern Arizona valley bottom cienega complexes. In many of these regions Chiricahua leopard frog were not found for a decade or more despite repeated surveys.

As of 2009, there were 84 sites in Arizona at which Chiricahua leopard frog occur or are likely to occur in the wild, with an additional four captive or partially captive refugia sites. At least 33 of the wild sites support breeding. In New Mexico, 15-23 breeding sites were known in 2008; the frogs occur at additional dispersal sites. The species has been extirpated from about 80 percent of its historical localities in Arizona and New Mexico. Nineteen and eight localities are known from Sonora and Chihuahua, respectively. The species' current status in Mexico is poorly understood; however, it has been found in recent years in western Chihuahua. Some threats, such as introduced nonnative predators and the threat of catastrophic wildfire, appear to be less important south of the border, particularly in the mountains where Chiricahua leopard frog have been found (Gingrich 2003, Rosen and Melendez 2006, Rorabaugh 2008).

The chytridiomycete skin fungus, *Batrachochytrium dendrobatidis* (*Bd*), the organism that causes chytridiomycosis, is responsible for global declines of frogs, toads, and salamanders (Berger *et al.* 1998, Longcore *et al.* 1999, Speare and Berger 2000, Hale 2001). Decline or extinction of about 200 amphibian species worldwide has been linked to the disease (Skerratt *et al.* 2007). In Arizona, *Bd* infections have been reported from numerous populations of Chiricahua leopard frog in southeastern Arizona and one population on the Tonto National Forest, as well as populations of several other frogs and toads in Arizona (Morell 1999, Davidson *et al.* 2000, Sredl and Caldwell 2000, Hale 2001, Bradley *et al.* 2002, USFWS 2007). In New Mexico, chytridiomycosis appears to be widespread in populations in west-central New Mexico, where it often leads to population extirpation. A threats assessment conducted for the species during the development of the recovery plan identified *Bd* as the most important threat to the frog in recovery units 7 and 8 in New Mexico. In recovery unit 6, which includes much of the mountainous region of west-central New Mexico, *Bd* and nonnative predators were together identified as the most important threats. Die-offs from disease typically occur during the cooler months from October-February (USFWS 2007).

The role of the *Bd* fungus in the population dynamics of the Chiricahua leopard frog is as yet undefined. Some populations are driven to extinction soon after the animals become symptomatic; however, other Chiricahua leopard frog populations can exist with the pathogen for years (USFWS 2007). For instance, the frog has coexisted with *Bd* in Sycamore Canyon, Santa Cruz County, Arizona since at least 1972. That is the earliest record for *Bd* in the western United States, which roughly corresponds to the first observed mass die-offs of ranid frogs in Arizona. Even in cases where populations exist with the disease, it is an additional stressor, resulting in periodic die-offs that increase the likelihood of extirpation and extinction.

Epizootiological data from Central America and Australia (high mortality rates, wave-like spread of declines, wide host range) suggest introduction of the disease into previously uninfected populations and the disease subsequently becoming enzootic in some areas. Alternatively, the fungus may be a widespread organism that has emerged as a pathogen because of either higher virulence or an increased host susceptibility caused by other factors such as environmental changes (Berger *et al.* 1998), including changes in climate or microclimate, contaminant loads, increased UV-B radiation, or other factors that cause stress (Pounds and Crump 1994; Carey *et al.* 1999, 2001; Daszak 2000). Morehouse *et al.* (2003) found low genetic variability among 35 *Bd* strains from North America, Africa, and Australia, suggesting that the first hypothesis – that it is a recently emerged pathogen that has dispersed widely – is the correct hypothesis.

The infection intensity or lethal threshold of *Bd* is perhaps more important to control than the prevalence of infection (the proportion of infected hosts). Efforts to limit multiple exposures to the pathogen can prevent the host population from reaching the lethal threshold of zoospores per frog. In a nine to13 year study by Vredenberg *et al.* (2010), a *Bd* infection took three years to spread until nearly all the 88 yellow-legged frog populations at a lake were infected. A lethal threshold of about 10,000 zoospores of the fungus per frog caused the collapse of these amphibian populations with Bd. Within a population, as the infection prevalence reached 100%, the infection intensity on individual frogs increased in parallel. Frog mass mortality began only

when infection intensity reached a critical threshold and repeatedly led to extinction of populations. Our results indicate that the high growth rate and virulence of *Bd* allow the near-simultaneous infection and buildup of high infection intensities in all host individuals; subsequent host population crashes therefore occur before *Bd* is limited by density-dependent factors. Preventing infection intensities in host populations from reaching this threshold could provide an effective strategy to avoid the extinction of susceptible amphibian species in the wild. Because of a threshold of zoospores per frog must be reached before it results in mortality, there is a time lag between exposure to the pathogen and mortality. This time lag allows for the spread of the pathogen throughout the amphibian population before the population crashes. Unlike other pathogens that disappear as their hosts decline in numbers, this pathogen can cause the extirpation of its host population (Blaustein and Johnson 2010).

Because of this threshold, there is a time lag between exposure and mortality, so the pathogen can spread through much of the amphibian population before disease-driven reductions in host density negatively affect the transmission of *Bd*. Consequently, the pathogen can cause the loss and extinction of its host population, unlike the many other pathogens that disappear as their hosts decline in numbers (Blaustein and Johnson 2010).

Retrospective analysis revealed presence of chytridiomycosis in wild African clawed frogs (*Xenopus laevis*) dating to 1938 (Weldon *et al.* 2004). African clawed frogs were exported to many areas of the globe from Africa for use in human pregnancy testing beginning in the 1930s. Some of the test frogs escaped or were released and established populations in California, Arizona, and other areas. Although other explanations for the origin of the disease are viable, Weldon *et al.* (2004) suggest that Africa is where the disease originated and that international trade in African clawed frogs was the means of disease dissemination.

If the disease was introduced to the Southwest via escaped or released clawed frogs, it may have spread across the landscape by human introductions or natural movements of secondarily-infected American bullfrogs, tiger salamanders, or leopard frogs. If this is the case, its rapid establishment and spread could be attributable to humans. *Bd* does not have an airborne spore, so it must spread via other means. Amphibians in the international pet trade (Europe and USA), outdoor pond supplies (USA), zoo trade (Europe and USA), laboratory supply houses (USA), and species recently introduced (*Rhinella marinus* in Australia and American bullfrog in the USA and Uruguay) have been found infected with *Bd*, suggesting human-induced spread of the disease (Daszak 2000, Mazzoni *et al.* 2003).

Free-ranging healthy bullfrogs with low-level *Bd* infections have been found in southern Arizona (Bradley *et al.* 2002). Tiger salamanders and bullfrogs can carry the disease without exhibiting clinically significant or lethal infections. When these animals move, or are moved by people, among aquatic sites, *Bd* may be carried with them (Collins *et al.* 2003, Picco and Collins 2008). Other native or nonnative frogs may serve as disease vectors or reservoirs of infection, as well (Bradley *et al.* 2002). Green and Dodd (2007) found *Bd* in bullfrogs at a fish hatchery in Georgia and suggested the disease could be moved with stocks of fish. Since that study, *Bd* was confirmed from a bullfrog captured at the Bubbling Ponds Hatchery in Arizona (V. Boyarski, pers. comm.). *Bd* could also be spread by tourists or fieldworkers sampling aquatic habitats

(Halliday 1998). The fungus can exist in water or mud and thus could be spread by wet or muddy boots, vehicles, cattle, fishing gear, and other animals moving among aquatic sites, or during scientific sampling of fish, amphibians, or other aquatic organisms. The AESO and AGFD are employing preventative measures to ensure the disease is not spread by aquatic sampling.

Numerous studies indicate that declines and extirpations of Chiricahua leopard frog are at least in part caused by predation and possibly competition by nonnative organisms, including fishes in the family Centrarchidae (*Micropterus* spp., *Lepomis* spp.), bullfrogs, tiger salamanders (*Ambystoma mavortium mavortium*), crayfish (*Orconectes virilis* and possibly others), and several other species of fishes (Clarkson and Rorabaugh 1989; Sredl and Howland 1994; Fernandez and Bagnara 1995; Rosen *et al.* 1996, 1994; Snyder *et al.* 1996; Fernandez and Rosen 1996, 1998). For instance, in the Chiricahua region of southeastern Arizona, Rosen *et al.* (1996) found that almost all perennial waters investigated that lacked introduced predatory vertebrates supported Chiricahua leopard frogs. All waters except three that supported introduced vertebrate predators lacked Chiricahua leopard frogs. Sredl and Howland (1994) noted that Chiricahua leopard frogs were nearly always absent from sites supporting bullfrogs and nonnative predatory fish. Rosen *et al.* (1996) suggested further study was needed to evaluate the effects of mosquitofish, trout, and catfish on frog presence.

The effect of mosquitofish on Chiricahua leopard frog populations could be influenced by factors such as abundant escape cover, high adult frog survivorship, and high reproductive output in terms of numbers of frog egg masses produced. Examination of studies with other ranid frog species illustrates the likely effects of trout on Chiricahua leopard frog. The relationship between trout and amphibian decline has best been documented with the Mountain yellow-legged frog (*Rana muscosa*) in high lakes of the Sierra Nevada, California. Several authors have concluded that predation by introduced trout and charr (*Salveninus* spp.) into these previously fishless lakes have eliminated many populations of this species (Bradford 1989, Bradford *et al.* 1993, Knapp and Mathews 2000, Vredenburg *et al.* 2005). One of the threats that lead to the listing of the southern California populations of the Mountain yellow-legged frog was predation by introduced trout. However, other factors, including chytridiomycosis and pesticides, are possible contributors to the decline of the species as well (Fellers *et al.* 2001, 2004; Vredenburg *et al.* 2005). Predation by trout has also been also implicated as a factor in decline or population loss in the Cascades frog (*Rana cascadae*, Fellers *et al.* 2007) and Columbia spotted frog (*Rana luteiventris*, Reaser and Pilliod 2005).

Disruption of metapopulation dynamics is likely an important factor in regional loss of populations (Sredl and Howland 1994, Sredl *et al.* 1997). Chiricahua leopard frog populations are often small and habitats are dynamic, resulting in a relatively low probability of long-term population persistence. Historically, populations were more numerous and closer together. If populations became extirpated due to drought, disease, or other causes, these sites could be re-colonized via immigration from nearby populations. However, as numbers of populations declined, populations became more isolated and were less likely to be re-colonized if extirpation occurred. Also, most of the larger source populations along major rivers and in cienega complexes have disappeared.

Wildfires have affected Chiricahua leopard frog habitat. On May 29, 2011, Arizona's largest wildfire in recorded history started, known as the Wallow Fire. The Wallow Fire consumed 538, 049 acres of montane conifer forest on the Apache-Sitgreaves National Forest and likely adversely affected proposed critical habitat in Unit 27, Campbell Blue and Coleman Creeks, although as of October 2010, little information is available on the post-fire status of potential Chiricahua leopard frog habitat within the fire footprint. Since many tanks and springs that are important for recovery of the species in this area occur in meadows, sediment flows may not affect them as they would habitat within canyon bottoms.

Waters at the Beatty's Guest Ranch in the Huachuca Mountains, until recently, supported one of the most robust and dense populations of Chiricahua leopard frogs. On June 12, 2011, the Monument Fire started 4-miles east of Hereford, Arizona; ultimately consuming 30,526 acres and significantly affecting a portion of the Huachuca Mountains, including Miller Canyon and the Beatty Guest Ranch. Subsequent monsoon precipitation in the region liberated significant amounts of top soil and sediment which scoured the canyon bottom and filled-in the majority of ponds and suitable habitat for the frog in lower Miller Canyon on the Ranch. The remaining population at the Ranch represents a small fraction of its former number.

The Greaterville Fire started on May 2, 2011, and may have affected dispersal habitat along the eastern bajada of the Santa Rita Mountains (proposed critical habitat Units 7 and 8), but that fire was less severe, comparatively small-sized, and of shorter duration.

Fire frequency and intensity in Southwestern forests are much altered from historical conditions (Dahms and Geils 1997). Before 1900, surface fires generally occurred at least once per decade in montane forests with a pine component. Beginning about 1870-1900, these frequent ground fires ceased to occur due to intensive livestock grazing that removed fine fuels, followed by effective fire suppression in the mid to late 20th century (Swetnam and Baisan 1996). Absence of ground fires allowed a buildup of woody fuels that precipitated infrequent but intense crown fires (Swetnam and Baisan 1996, Danzer *et al.* 1997). Absence of vegetation and forest litter following intense crown fires exposes soils to surface and rill erosion during storms, often causing high peak flows, sedimentation, and erosion in downstream drainages (DeBano and Neary 1996). These post-fire events have likely resulted in scouring or sedimentation of frog habitats (Wallace 2003).

An understanding of the dispersal abilities of Chiricahua leopard frogs is the key to determining the likelihood that suitable habitats will be colonized from a nearby extant population of frogs. As a group, leopard frogs are surprisingly good at dispersal. In Michigan, young northern leopard frogs (*Lithobates pipiens*) commonly move up to 0.5 mile from their place of metamorphosis, and three young males established residency up to 8.4 miles from their place of metamorphosis (Dole 1971). Both adults and juveniles wander widely during wet weather (Dole 1971). In the Cypress Hills, southern Alberta, young-of-the year northern leopard frogs successfully dispersed to downstream ponds 3.4 miles from the source pond, upstream 0.6 mile, and overland 0.6 mile. At Cypress Hills, a young-of-the-year northern leopard frog moved 5 miles in one year (Seburn *et al.* 1997). The Rio Grande leopard frog (*Lithobates berlandieri*) in

southwestern Arizona has been observed to disperse at least one mile from any known water source during the summer rainy season (Rorabaugh 2005). After the first rains in the Yucatan Peninsula, leopard frogs have been collected a few miles from water (Campbell 1998). In New Mexico, Jennings (1987) noted collections of Rio Grande leopard frogs from intermittent water sources and suggested these were frogs that had dispersed from permanent water during wet periods.

Dispersal of leopard frogs away from water in the arid Southwest may occur less commonly than in mesic environments in Alberta, Michigan, or the Yucatan Peninsula during the wet season. However, there is evidence of substantial movements even in Arizona. Movement may occur via locomotion of frogs or passive movement of tadpoles along stream courses. The maximum distance moved by a radio-telemetered Chiricahua leopard frog in New Mexico was 2.2 miles in one direction (R. Jennings, Western New Mexico University, C. Painter, NMDGF, pers. comm. 2004). In 1974, Frost and Bagnara (1977) noted passive or active movement of Chiricahua and Plains (*Lithobates blairi*) leopard frogs for 5 miles or more along East Turkey Creek in the Chiricahua Mountains. In August, 1996, Rosen and Schwalbe (1998) found up to 25 young adult and subadult Chiricahua leopard frog at a roadside puddle in the San Bernardino Valley, Arizona. They believed that the only possible origin of these frogs was a stock tank located 3.4 miles away. Rosen *et al.* (1996) found small numbers of Chiricahua leopard frog at two locations in Arizona that supported large populations of nonnative predators. The authors suggested these frogs could not have originated at these locations because successful reproduction would have been precluded by predation. They found that the likely source of these animals were populations 1.2-4.3 miles distant. In September 2009, 15-20 Chiricahua leopard frog were found at Peña Blanca Lake west of Nogales. The nearest likely source population is Summit Tank, a straight line distance of 3.1 miles overland and approximately 4.1 miles along intermittent drainages.

Movements away from water do not appear to be random. Streams are important dispersal corridors for young northern leopard frogs (Seburn *et al.* 1997). Displaced northern leopard frogs will home, and apparently use olfactory and auditory cues, and possibly celestial orientation, as guides (Dole 1968, 1972). Rainfall or humidity may be an important factor in dispersal because odors carry well in moist air, making it easier for frogs to find other wetland sites (Sinsch 1991). Based on these studies, the Chiricahua leopard frog recovery plan (USFWS 2007) provides a general rule on dispersal capabilities. Chiricahua leopard frogs are assumed to be able to disperse one mile overland, three miles along ephemeral drainages, and five miles along perennial water courses.

A recovery plan has been completed (USFWS 2007), the goal of which is to improve the status of the species to the point that it no longer needs the protection of the Endangered Species Act. The recovery strategy calls for reducing threats to existing populations; maintaining, restoring, and creating habitat that will be managed in the long term; translocation of frogs to establish, reestablish, or augment populations; building support for the recovery effort through outreach and education; monitoring; conducting research needed to provide effective conservation and recovery; and application of research and monitoring through adaptive management. Recovery actions are recommended in each of eight recovery units throughout the range of the species.

Management areas are also identified within recovery units where the potential for successful recovery actions is greatest.

Additional information about the Chiricahua leopard frog can be found in Platz and Mecham (1984, 1979), Sredl and Howland (1994), Jennings (1995), Rosen *et al.* (1996, 1994), Degenhardt *et al.* (1996), Sredl *et al.* (1997), Painter (2000), Sredl and Jennings (2005), and USFWS (2007).

Critical Habitat

The 2012 final rule includes 39 critical habitat units across the range of the species in Arizona and New Mexico. Based on the above needs and our current knowledge of the life history, biology, and ecology of the species, and the habitat requirements for sustaining the essential life-history functions of the species, we have determined the physical or biological features (the general habitat features upon which a species depends), as described by the primary constituent elements (or PCEs)(the more specific habitat parameters defining the physical and biological features), essential to the conservation of the Chiricahua leopard frog are:

1. Aquatic breeding habitat and immediately adjacent uplands exhibiting the following characteristics:

    a. Standing bodies of fresh water (with salinities less than 5 parts per thousand, pH greater than or equal to 5.6, and pollutants absent or minimally present), including natural and manmade (e.g., stock) ponds, slow-moving streams or pools within streams, off-channel pools, and other ephemeral or permanent water bodies that typically hold water or rarely dry for more than a month. During periods of drought, or less than average rainfall, these breeding sites may not hold water long enough for individuals to complete metamorphosis, but they would still be considered essential breeding habitat in non-drought years.
    b. Emergent and or submerged vegetation, root masses, undercut banks, fractured rock substrates, or some combination thereof, but emergent vegetation does not completely cover the surface of water bodies.
    c. Nonnative predators (e.g., crayfish, bullfrogs, nonnative fish) absent or occurring at levels that do not preclude presence of the Chiricahua leopard frog.
    d. Absence of chytridiomycosis, or if present, then environmental, physiological, and genetic conditions are such that allow persistence of Chiricahua leopard frogs.
    e. Upland habitats that provide opportunities for foraging and basking that are immediately adjacent to or surrounding breeding aquatic and riparian habitat.

2. Dispersal and nonbreeding habitat, consisting of areas with ephemeral (present for only a short time), intermittent, or perennial water that are generally not suitable for breeding, and associated upland or riparian habitat that provides corridors (overland movement or along wetted drainages) for frogs among breeding sites in a metapopulation with the following characteristics:

a. Are not more than 1.0 mile (1.6 kilometers) overland, 3.0 miles (4.8 kilometers) along ephemeral or intermittent drainages, 5.0 miles (8.0 kilometers) along perennial drainages, or some combination thereof not to exceed 5.0 miles (8.0 kilometers).

b In overland and nonwetted corridors, provide some vegetation cover or structural features (e.g., boulders, rocks, organic debris such as downed trees or logs, small mammal burrows, or leaf litter) for shelter, forage, and protection from predators; in wetted corridors, provide some ephemeral, intermittent, or perennial aquatic habitat.

c. Are free of barriers that block movement by Chiricahua leopard frogs, including, but not limited to, urban, industrial, or agricultural development; reservoirs that are 50 acres (20 hectares) or more in size and contain nonnative predatory fish, bullfrogs, or crayfish; highways that do not include frog fencing and culverts; and walls, major dams, or other structures that physically block movement.

The critical habitat units affected by the proposed action include:

Eastern Slope of the Santa Rita Mountains Unit

This unit includes 172 ac (70 ha) of lands in the Greaterville area of the Santa Rita Mountains that are managed by the Coronado National Forest, as well as 14 ac (6 ha) of private lands in this area. Included in this unit are two metal troughs in Louisiana Gulch, Greaterville Tank, Los Posos Gulch Tank, and the Granite Mountain Tank complex. The Granite Mountain Tank complex includes two impoundments and a well. We have determined this unit to be essential to the conservation of the species because it represents several known occupied areas that support or likely support breeding activity for the Chiricahua leopard frog in the Santa Rita Mountains. A number of other sites in this area have been found to support dispersing Chiricahua leopard frogs. Designated critical habitat also includes intervening drainages as follows: (1) From Los Posos Gulch upstream to a saddle, then downslope in an unnamed drainage to the confluence with another unnamed drainage, then upstream and south in that drainage to a saddle, and downslope through an unnamed drainage to its confluence with Ophir Gulch, then in Ophir Gulch to upper Granite Mountain Tank, to include an ephemeral tank near upper Granite Mountain Tank and a well; (2) from Greaterville Tank downstream in an unnamed drainage to Ophir Gulch; and (3) Louisiana Gulch from the metal tanks upstream to the headwaters of Louisiana Gulch then across a saddle and downslope through an unnamed drainage to its confluence with Ophir Gulch. Additionally, this unit has both PCEs 1 and 2.

Las Cienegas National Conservation Area Unit

This unit is in Pima County, Arizona, and includes 1,364 ac (552 ha) of Bureau of Land Management lands and 186 ac (75 ha) of Arizona State Land Department lands, including an approximate 4.33-mi (6.98-km) reach of Empire Gulch and 1.91 mi (3.08 km) of Cienega Creek, including the Cinco Ponds. This unit currently contains PCEs 1 and 2 to support life-history functions essential for the conservation of the species. This reach includes: (1) Empire Gulch from a pipeline road crossing above the breeding site downstream to Cienega Creek; and (2)

Cienega Creek from the Empire Gulch confluence upstream to the approximate end of the wetted reach and where the creek bends hard to the east, to include Cinco Ponds. This unit is currently managed an isolated metapopulation.

Environmental Baseline - Chiricahua Leopard Frog

The environmental baseline includes past and present impacts of all Federal, State, or private actions in the action area, the anticipated impacts of all proposed Federal actions in the action area that have undergone formal or early section 7 consultation, and the impact of State and private actions which are contemporaneous with the consultation process. The environmental baseline defines the current status of the species and its habitat in the action area to provide a platform to assess the effects of the action now under consultation.

Status of the Chiricahua Leopard Frog in the Action Area

Recovery Unit 2 (Santa Rita-Huachuca-Ajos Bavispe, Arizona and Mexico)

There are eight recovery units identified in the Chiricahua leopard frog recovery plan (USFWS 2007). The action area pertaining to the Chiricahua leopard frog under this consultation includes portions of Recovery Unit 2 (RU2), which incorporates several metapopulations (or management areas) and critical habitat units. Specifically, we consider the action area to include the Santa Rita, Empire Cienega, and Red Rock-Sonoita Creek Management Areas which include the Eastern Slope of the Santa Rita Mountains, and Las Cienegas National Conservation Area critical habitat units. These areas are discussed in greater detail below, following general discussion of RU2.

RU2 is generally located in portions of Cochise, Santa Cruz, and Pima counties, Arizona and adjacent portions of northern Sonora. This RU includes the upper reaches and headwaters of the San Pedro and Santa Cruz rivers, as well as the headwaters of the Rios Sonora, Magdalena, and Bavispe. Elevations vary from 9,466 feet on Miller Peak in the Huachuca Mountains to less than 4,000 feet at the western base of the Sierra de Pinitos and on Sonoita Creek downstream of Patagonia. Vegetation communities include semi-desert grasslands at the lower elevations, climbing through oak and pine-oak woodlands to stands of mixed conifer forests. The latter are restricted to the higher elevations of the Santa Rita and Huachuca Mountains in Arizona, and to the Sierra de los Ajos, Sierra Cananea, Sierra Azul, and the southern portions of the Sierra Pinitos in Sonora (Brown and Lowe 1980).

In RU2, Chiricahua leopard frogs are known historically from montane canyons below about 6,230 feet and in valleys above about 4,000 feet. Historically they inhabited canyons such as Scotia Canyon in the Huachuca Mountains and Big Casa Blanca Canyon in the Santa Rita Mountains; valley bottom cienegas, such as Sheehy Spring and the Empire Cienega in the upper Santa Cruz River drainage; as well as major rivers, such as the San Pedro and Santa Cruz. Platz and Mecham (1979) list only a single locality in Sonora from RU2: on the Rio Santa Cruz 4 miles south of the international boundary. However, the frog has been reported from the Ajos – Bavispe region (The Nature Conservancy undated), including Canon Evens in the Sierra los Ajos

(Hale pers. comm. 2004); leopard frogs (possibly Chiricahua leopard frogs) reportedly occur at the Los Fresnos Cienega and the Rancho Las Palmitas in the upper San Pedro River drainage (IMADES 2003); and likely also occur or occurred in other mountain ranges and valleys elsewhere in the Sonoran portion of RU2. Chiricahua leopard frogs are still well-represented in RU2, including populations on the eastern slope of the Santa Rita Mountains, Patagonia Mountains, Canelo Hills, Empire Cienega/Cienega Creek, Monkey Springs, Ajos-Bavispe area/upper San Pedro River basin, and San Rafael Valley.

The management areas (MAs) within RU2, affected by the proposed action include:

Santa Rita MA–Includes Box Canyon Wash-Upper Santa Cruz River hydrologic unit, Cienega Creek hydrologic unit, and Sonoita Creek hydrologic unit. The major threat in this MA is scarcity of water, particularly during long periods of drought. Also, fire in the watershed could result in scouring and sedimentation in the pools important as habitat for the frog. The breeding habitat at Louisiana Gulch, although limited to two 6.0-ft (1.8-m) diameter steel tanks, is dependable because it is fed by a well. The other tanks are filled by runoff and susceptible to drying during drought. Improvements have been made to important breeding habitat to improve their resiliency in holding water. West Tank, a tank formerly threatened by seasonal drying near Greaterville Tank, had piping installed in June 2011, which is fed by a nearby well and now supports a robust breeding population of Chiricahua leopard frogs. Greaterville Tank was dredged and lined in June 2012, which greatly improved its ability to maintain water during periods of short- to medium-term drought. Chytridiomycosis and nonnative predators are potential threats, but neither is considered a current threat in this MA.

Table CLF-1: Chiricahua leopard frog survey data for the Santa Rita Management Area from 2010-2012

Site Name	Descriptor	2010	2011	2012	Notes
Cave Creek	Sawmill Canyon Confluence	ND	D	D	Adults, Juveniles
Anaconda Spring	Temporal Gulch	NS	ND	ND	
Fish Canyon	Fish Well	ND	NS	NS	
Fish Canyon Tank	None	ND	NS	NS	
El Pilar Tank	Trib of Adobe Canyon	NS	ND	ND	
Big Casa Blanca Canyon	“Bathtubs” Area	ND	ND	ND	
Big Casa Blanca Canyon	“Long Pool/Ledge Pool” Area	ND	ND	ND	
Big Casa Blanca Canyon	“String of Pools” Area	ND	NS	ND	
Unnamed Tank	N of Fish Canyon	NS	ND	NS	
Unnamed Tank	SW of Fish Canyon	ND	NS	NS	
Unnamed Tank	Los Posos Gulch	ND	NS	ND	
Unnamed Tank	Little Fish Canyon	ND	ND	NS	
Unnamed Tank	S of Enzenberg Canyon	ND	D	D	Adults, Juveniles
Unnamed Tank	NE of California Gulch	ND	NS	NS	
Unnamed Tank	N of Thurber Ranch	ND	NS	ND	
Unnamed Tank	Ophir Gulch	D	D	ND	Adults, Juveniles

Table CLF-1: Chiricahua leopard frog survey data for the Santa Rita Management Area from 2010-2012

Site Name	Descriptor	2010	2011	2012	Notes
Unnamed Tank	California Gulch	D	D	D	Adults, Juveniles
Unmarked Tank	Armada Mine – Temporal Gulch	NS	NS	ND	
Unmarked Tank	1.2 mi from Crazy Lazy P Tank	NS	ND	D	Juveniles
Unmarked Tank	Just S of Hog Canyon on Mesa	NS	NS	ND	
Unnamed Tank	SE of Adobe Tank	ND	NS	NS	
Unnamed Tank	SE of Barrel Tank	ND	ND	ND	
Unnamed Tank	W of Trail Canyon	ND	ND	ND	
Unnamed Tank	S of Oak Tree Canyon	ND	NS	NS	
Unnamed Tank	Unnamed Trib of Empire Gulch	ND	NS	NS	
Unmarked Tank	Louisiana Gulch	ND	NS	NS	
Unnamed Tank	Los Posos Gulch	ND	NS	NS	
Unnamed Tank	Enzenberg Canyon	ND	NS	NS	
Unnamed Tank	Unnamed Trib of Gardner Canyon	ND	NS	NS	
Jones Canyon	Temporal Gulch	NS	NS	ND	
Adobe Canyon	End of FS 234	ND	ND	ND	
Bathtub Tank	Adobe Canyon	NS	NS	ND	
Temporal Gulch	From 4,450 to 6,450 ft elevation	NS	NS	ND	
Box Canyon	NW of Greaterville	ND	D	D	Adults, Juveniles
Highway Tank	State Hwy 83 and Oak Creek Canyon	ND	ND	ND	
Oak Tree Canyon Tank*	Oak Tree Canyon	ND	ND	ND	
Greaterville Tank*	NW of Greaterville	D	D	D	Adults, Juveniles
Granite Mountain Tank*	Ophir Gulch	D	D	D	Adults, Juveniles, Larvae
Upper Walker Tank	Walker Basin	NS	NS	ND	
Unnamed Drinkers	Corral in Louisiana Gulch	D	D	NS	Adults, Juveniles, Larvae
Unmarked Plastic Drinker/Spring	Ophir Gulch	ND	NS	NS	
Unmarked Drinker	Sucker Gulch	ND	NS	NS	
Unnamed Drinker	Sucker Gulch				
Unnamed Drinker	Ophir Gulch	ND	NS	NS	
Walker Canyon	Walker Basin	NS	NS	ND	
Louisiana Gulch	N of Sucker Gulch	NS	NS	D	Adults, Larvae
Bowman Tank*	Empire Gulch	ND	D	D	Adults, Juveniles
Bowman Spring	Mill Canyon	ND	NS	ND	
Lower Granite Mountain Tank*	Ophir Gulch	ND	ND	ND	
Unmarked Well	W of Greaterville along Ophir Gulch	D	D	D	Adults

Table CLF-1: Chiricahua leopard frog survey data for the Santa Rita Management Area from 2010-2012

Site Name	Descriptor	2010	2011	2012	Notes
Gardner Canyon	Cave Creek-Gardner Canyon Confluence	NS	D	D	Adults, Juveniles, Larvae, Egg Masses; Robust Breeding Population
Gardner Canyon	E of Tunnel Spring, W of Cave Creek Confluence	NS	D	ND	Adults, Juveniles, Egg Masses; Robust Breeding Population
West Tank*	California Gulch	D	D	D	Adults, Juveniles, Larvae; Robust Breeding Population
Fish Tank*	Hog Canyon	NS	D	D	Adults
Sweetwater Dam*	SW of Sweetwater Spring	ND	ND	ND	
Crazy Lazy P Tank*	NW of Douglas Ranch	ND	D	D	Adults, Juveniles
Mesa Tanks	Between Hog and Adobe Canyons	NS	NS	ND	
Milo Tank*	Nothern Trib of Hog Canyon	NS	ND	ND	
Upper Enzenberg Tank*	Enzenberg Canyon	D[+]	ND	ND	[+] Ranid sp., Adult
Perfect Tank*	Unnamed Trib of Sawmill Canyon	ND	ND	NS	
Barrel Tank	E of Oak Tree Canyon	ND	ND	ND	
Cemetery Tank*	Ophir Gulch	ND	NS	NS	
Fish Dam*	Fish Canyon	ND	NS	NS	
Granite Mountain Drinker*	Sucker Gulch	ND	NS	NS	
Gunsite Tank*	W of McLeary Canyon	ND	ND	ND	
McLeary Tank*	McLeary Canyon	ND	ND	ND	
North Basin Tank	E of Barrel Canyon	ND	ND	ND	
Rosemont Crest Tank*	E of Gunsite Pass	ND	ND	ND	
Roadside Tank*	Gardner Canyon	ND	NS	NS	
South Upper Tank*	W of Wasp Canyon	ND	ND	ND	
Oak Tree Windmill*	Oak Canyon	ND	ND	ND	
Substation Tank*	Empire Gulch	ND	NS	NS	

Notes: "NS" means "not surveyed," "D" means species was "detected," and "ND" means the species was "not detected." "Unmarked" means the site was not marked on the corresponding USGS 7.5 minute quadrangle. "Unnamed" means the site was marked on the corresponding USGS 7.5 minute quadrangle but was not named. An asterisk denotes that the site was either unmarked or unnamed and was ascribed a name for identification purposes in the Arizona Game and Fish Department Ranid Frog Database. Survey data from sites on private lands are not included. Data provided by the Arizona Game and Fish Department, Nongame Branch, Ranid Frogs Project and WestLand Resources, Inc.

Empire Cienega MA–Includes the Cienega Creek hydrologic unit. Approximately 60 metamorphosed Chiricahua leopard frogs and 400 tadpoles were released to Las Cienegas Natural Conservation Area during the fall of 2011. Special management is required in this area to improve habitat, control disease, and remove nonnative species. A collaborative, three-year,

multi-partner recovery program for the Chiricahua leopard frog and other native aquatic species known as the FROG Project was completed in 2012 at Las Cienegas which included habitat improvements, nonnative management, and headstarting Chiricahua leopard frogs. Significant progress was been made to eliminate bullfrogs from the area, but bullfrogs are still present regionally and represent a potential, on-going threat. Chiricahua leopard frogs suffer from chytridiomycosis in this area; however, the Chiricahua leopard frogs are persisting with the disease. Crayfish occur within a few miles and pose a significant threat if they reach Cienega Creek or Empire Gulch.

Table CLF-2: Chiricahua leopard frog survey data for the Empire Cienega Management Area from 2010-2012.

Site Name	Descriptor	2010	2011	2012	Notes
Mattie Canyon	Empire Cienega	ND	ND	NS	
Road Canyon Tank	Empire Cienega	ND	ND	D	Juveniles
Empire Spring	NE of Empire Ranch	NS	D	D	Adults, Larvae, Egg Masses
Gardner Canyon	E of Cottonwood Windmill	NS	NS	ND	
Cienega Creek	The Narrows	NS	ND	NS	
Cienega Creek	E of Empire Gulch	ND	ND	ND	Bullfrogs detected 2010-2012
Cienega Creek	SW of Cienega Ranch	NS	ND	NS	
Cienega Creek	Headwaters	ND	NS	NS	
Cinco Ponds*	E of Cienega Creek	NS	ND	ND	Bullfrogs detected 2011 and 2012
Empire Gulch	Cienega Creek	ND	NS	NS	
East Dam	S of Barrel Canyon	ND	NS	NS	
Adobe Tank	E of State Hwy 83	ND	NS	NS	
Clyne Pond*	Mud Spring Canyon	ND	ND	ND	Bullfrogs detected 2010
Clyne Spring*	Mud Spring Canyon	NS	ND	NS	
Boulder Tank	Hilton Wash	ND	NS	NS	
Oil Well Tank	Empire Cienega	ND	ND	NS	
Beck Tank*	W of Cienega Creek	ND	NS	NS	
Bellota Tank*	S of Los Posos Gulch	ND	NS	NS	
Big Pond*	N of Fortynine Wash	ND	NS	NS	
Blacktail Tank	W of Davidson Canyon	ND	NS	NS	
Cemetery Tank	W of Davidson Canyon	ND	NS	NS	
Cottonwood Tank*	Gardner Canyon	ND	NS	NS	
Dry Tank*	S of Smith Canyon	ND	NS	NS	
Fish Tank*	Davidson Canyon	ND	NS	NS	
Water Tank	E of Cienega Creek	ND	NS	NS	
Hummel Tank*	Cienega Creek	ND	NS	NS	
Landing Strip Tank*	N of Fortynine Wash	ND	NS	NS	
Johnson Reservoir*	W of Cienega Creek	ND	NS	NS	
East Johnson Reservoir*	Trib of Cienega Creek	ND	NS	NS	
Mulberry Tank	Mulberry Canyon	ND	NS	NS	

Enzenberg North Well	N of North Canyon	ND	NS	NS	
Rattlesnake Tank*	N of Cienega Creek	ND	NS	NS	
Reeves Tank*	E of Cienega Creek	ND	NS	NS	
Regge Tank*	S of Gardner Canyon	ND	NS	NS	
Unnamed Tank	SW of Blacktail Tank	ND	NS	NS	
Unnamed Tank	W of Davidson Canyon	ND	NS	NS	
Unnamed Tank	Unnamed trib of Cienega Creek	ND	NS	NS	
Smith Tank*	Smith Canyon	ND	NS	NS	
Twin Tanks	E of Davidson Canyon	ND	NS	NS	
Springwater Marsh*	Empire Gulch	ND	NS	NS	
Wind Tank	S of Hilton Wash	ND	NS	NS	
Unmarked Drinker	N of Smith Canyon	ND	NS	NS	
Unmarked Tank	Stoddard Ranch	ND	NS	NS	
Unmarked Tank	Cienega Creek	ND	NS	NS	
Maternity Wildlife Pond**	Las Cienegas NCA	-	-	-	Adults and juveniles, hosts individuals from other sites
Cottonwood Wildlife Pond**	Las Cienegas NCA	-	-	-	Frogs introduced in 2013
Cinco Pond No. 1**	Las Cienegas NCA	-	-	-	Frogs introduced in 2011
Road Canyon Tank**	Las Cienegas NCA	-	-	-	Frogs introduced in 2011
Empire Wildlife Pond**	Las Cienegas NCA	-	-	-	Frogs introduced in 2013
Cinco Canyon Wildlife Pond**	Las Cienegas NCA	-	-	-	Frogs introduced in 2013
Spring Water Wetland Pond**	Las Cienegas NCA	-	-	-	Frogs introduced in 2013
Cienega Creek at Cold Spring Wetland**	Las Cienegas NCA	-	-	-	Frogs introduced in 2012
Notes: "NS" means "not surveyed," "D" means species was "detected," and "ND" means the species was "not detected." "Unmarked" means the site was not marked on the corresponding USGS 7.5 minute quadrangle. "Unnamed" means the site was marked on the corresponding USGS 7.5 minute quadrangle but was not named. An asterisk (*) denotes that the site was either unmarked or unnamed and was ascribed a name for identification purposes in the AGFD Ranid Frog Database. Survey data from sites on private lands are not included. Data provided by the AGFD, Nongame Branch, Ranid Frogs Project. A double-asterisk (**) indicates data provided by the BLM during a review of the draft BO.					

Red Rock-Sonoita Creek MA–Includes the Sonoita Creek hydrologic unit. Red Rock Canyon maintains a largely native biotic community with four species of native fish, Sonoran tiger salamanders, and northern Mexican gartersnakes but bullfrogs and nonnative, soft-rayed fish species are also known to occur within the Red Rock subbasin. Sonoita Creek maintains a persistent population of bullfrogs, crayfish and nonnative, spiny-rayed fish that likely trace their origin to downstream Patagonia Lake which is fed by Sonoita Creek. We are not currently aware of any occupied sites in this MA.

Table CLF-3: Chiricahua leopard frog survey data for the Red Rock-Sonoita Creek Management Area from 2010-2012.

Site Name	Descriptor	2010	2011	2012	Notes
Unnamed Tank	Gringo Gulch	NS	ND	NS	Bullfrogs detected 2010
Dark Tank*	Dark Canyon	ND	NS	NS	

Notes: "NS" means "not surveyed," "D" means species was "detected," and "ND" means the species was "not detected." "Unnamed" means the site was marked on the corresponding USGS 7.5 minute quadrangle but was not named. An asterisk denotes that the site was either unmarked or unnamed and was ascribed a name for identification purposes in the AGFD Ranid Frog Database. Survey data from sites on private lands are not included. Data provided by the AGFD, Nongame Branch, Ranid Frogs Project.

In total and within the Santa Rita (n=17) and Empire Cienega (n=2) MAs, we are aware of 19 sites where Chiricahua leopard frogs have been documented in one or more life stages. West Tank and Gardner Canyon are considered the strongest breeding populations but reproduction has been observed in several other locations from 2010-2013 (see Tables CLF-1, 2, and 3, above). Recent efforts to improve the water storage capacity and duration of Greaterville Tank are expected to create a third robust breeding population in that area.

Effects of the Proposed Action - Chiricahua Leopard Frog

Effects of the action refer to the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated and interdependent with that action, which will be added to the environmental baseline. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration. Indirect effects are those that are caused by the proposed action and are later in time, but are still reasonably certain to occur. The action area as it relates to the Chiricahua leopard frog includes the project site, all aquatic sites subject to the effects of surface flow reductions and groundwater drawdowns, and remote aquatic sites at which conservation measures will be implemented.

The project description provided on pages 9-17 of the June, 2012, Biological Assessment for this project describes mining operations, ancillary operations, and reclamation and closure operations that will result in the direct disturbance of 5,421 acres of Federal, State, and private lands. This description will not be reiterated here, but independent facets of the proposed action that may affect the Chiricahua leopard frog or its critical habitat are identified and discussed below. We differentiate effects of the proposed action as those associated with the physical construction, operation, and closure of the mine and those associated with conservation measures included in the proposed action.

<u>Adverse Effects Associated with Mine Construction and Operation</u>

Adverse effects to Chiricahua leopard frogs are reasonably certain to occur over the life of the proposed action (up to 30 years), but are most likely to be heavily weighted towards the beginning phase of project implementation. Specifically, the majority of adverse effects are

likely to result from the 18-month initial period of construction which will include the use of heavy earth-moving equipment to clear vegetation, build roads, construct infrastructure, manipulate area drainage patterns, build power lines and their access roads; seconded by sustained effects of harassment from lighting and noise associated with operations and discussed below. These activities will span all seasons of the calendar year and therefore overlap with periods recognized for Chiricahua leopard frog surface activity (March – October) and dispersal (July - September; monsoon). Individual frogs dispersing to or from known occupied sites nearby may be injured or killed by heavy equipment or their behavior may be modified by the effects of avoidance behaviors from construction activities in a manner that may result in decreased survivorship or fitness of individuals. Lower Stock Tank, the only tank within the active footprint of mine operations will be removed, but the tank will undergo pre-construction surveys which will greatly limit the number of individual frogs adversely affected by its removal.

As a result of on-going mine operations which include vehicle use, blasting, drilling, lighting, and the processing and management of ore and waste materials, Chiricahua leopard frogs that find their way into the active mining area or cross roads associated with mining activity and may be harassed, injured, or killed. Chiricahua leopard frogs that are nearby but not within the active mining area may be harassed by noise and light pollution associated with blasting, operation of heavy machinery and equipment, and the lighting needs associated with the proposed action. Frogs of many species (including those on the genus *Lithobates*) are known may be attracted to light sources (Longcore and Rich 2004) which may create an attractive nuisance at the active mining area, but most observations of this lighting-behavior phenomena are with light sources several times smaller than that considered for a massive project on a local landscape level. Longcore and Rich (2004) reported conclusions by Rand *et al.* (1997) and Buchanan (pers. comm.) that artificial night lighting may interfere with amphibian breeding activities such as mate selection, inhibit or interfere with movement to and from breeding sites by stimulating phototactic behavior, or may cease breeding behaviors entirely. Increased nocturnal lighting can also increase the predation risk of frogs as found by Rand *et al.* (1997). The rate of attenuation with distance from these types of lighting effects on frogs is uncertain but logic suggests that effects are attenuated with increasing distance from the lighting source. Loud noises associated with blasting and heavy equipment operation may also affect nearby Chiricahua leopard frogs by interfering with male calling ability and therefore breeding success, both independently and in chorus with other males, as suggested by research on the European treefrog (*Hyla arborea*) by Lengagne (2008). Finally, Chiricahua leopard frogs that disperse into the active mining area may be injured or killed by exposure to toxic chemicals associated with ore processing and wastewater storage in open ponds or pits.

As a result of groundwater drawdown after the life of the mine, the amount or volume of water within regional perennial pools could decrease, which could result in indirect effects on Chiricahua leopard frogs through long-term habitat alteration, which could cause die-back in aquatic and some riparian vegetation. Chiricahua leopard frogs have been documented within the action area in four locations that are fed by groundwater and where groundwater drawdown is possible after closure of the mine: Empire Gulch, Box Canyon–Dam Structure, Well in Ophir Gulch, and South Sycamore Canyon. We also note that reductions in discharge in Empire Gulch will result in reductions in flow in Cienega Creek below the confluence. The BLM also

indicated that restored wetlands (Empire Wildlife, Cinco Canyon, and Spring Water Wetland ponds) which are scheduled to receive frogs may also be affectd by drawdowns.

Groundwater flow models were designed to simulate conditions prior to pit development, during pit dewatering, and for a 1,000-year post-closure period of groundwater level recovery and potential pit lake development (Montgomery and Associates 2010; Tetra Tech 2010c), and it was determined that groundwater drawdown could result in the dewatering of key breeding sites and other streams, seeps, and springs that support, or that may support, breeding frogs. These indirect impacts are anticipated to be negligible and immeasurable until at least 50 years after project closure in Empire Gulch and Cienega Creek. After mining activity ceases, however, there are indirect effects anticipated based on long-term projections of the hydrology models. Uncertainties in the variables used to build the models, however, could be manifested as greater reductions of groundwater and greater impact to surface water levels (e.g., lower water level, more extensive dry reaches) and riparian vegetation than modeled. The timing and amount of groundwater drawdown at the Box Canyon Dam Structure, Ophir Gulch Well, and South Sycamore Canyon have been modeled but not specifically reported. These impacts could be critical during periods of low flow (May and June) because even small flow reductions could cause some portions of Cienega Creek, or other aquatic areas, to stop flowing. These modeled decreases in groundwater (less than 1 foot) would occur over a long period of time but could cause changes in riparian vegetation extent or health; the reduction in stream flow could impact this frog species, which needs standing or flowing water. Indirect effects of groundwater drawdown on Chiricahua leopard frogs breeding and foraging within these areas could result in reduction of substrate for eggs, substrate for organisms fed on by tadpoles and adult frogs, escape cover for tadpoles and adults, and moist microhabitats for frogs, hence reducing the success of eggs, altering growth rates of tadpoles, reducing food for tadpoles and adults, and increasing the exposure of tadpoles and adults to vertebrate predation and desiccation (Southwest Endangered Species Act Team 2008). The term “possible” means there is definitely enough drawdown to impact a spring, but the water source of the spring is unknown. If the spring arises from the regional aquifer, then it would be impacted; however, if it is a localized spring that is not connected to the regional aquifer, then it may not be impacted at all.

Impacts to water quality and/or disruption of surface water flow resulting from the capture of runoff in the pit are only expected to occur along the Barrel Canyon drainage through Davidson Canyon to its confluence with Cienega Creek. The Chiricahua leopard frog is not known to currently occur in any of these reaches; however, lower Davidson Canyon Wash may provide suitable habitat for this species during high-water events. It is during these periods of connected surface flow that Chiricahua leopard frogs may disperse or be transported to downstream reaches of Cienega Creek and, from there, move upstream to temporary pools in Davidson Canyon Wash. If the placement of tailings in Barrel Canyon reduced the inundation time of these pools, the frogs will be affected.

The same types of effects described above can also affect Chiricahua Leopard Frog prey species as a result of the proposed project activities, hence altering their predator-prey relationships and resulting in additional effects to Chiricahua leopard frogs. Additionally, because the mine pit lake water quality could exceed wildlife standards (which do not actually apply to the water) for

three contaminants that are known to bioaccumulate (i.e., cadmium, mercury, and selenium), effects on this species could occur from eating winged aquatic invertebrates originating in and, via flight, being exported from the mine pit lake to sites where they may be preyed upon by Chiricahua leopard frogs. The results of geochemical modeling for the mine pit lake indicate that various contaminant levels that would result from these mining processes may exceed aquifer or surface water quality standards for wildlife. Cadmium is highly toxic to wildlife, is carcinogenic and teratogenic, and can have sublethal and lethal effects at low environmental concentrations (EPA 2011). It affects respiratory functions, enzyme levels, muscle contractions, growth reduction, and reproduction. Cadmium is known to bioaccumulate in the food chain. A portion of mercury released into the environment is transformed by abiotic and biotic chemical reactions to organic derivatives, such as methylmercury, which bioaccumulates in individual organisms, biomagnifies in aquatic food chains, and is the most toxic form of mercury to which wildlife are exposed (EPA 1997). Risks from selenium are primarily associated with aquatic species. Selenium is a bioaccumulative pollutant, and aquatic life is exposed to selenium primarily through diet (EPA 2004). Risks stem from aquatic life eating food that is contaminated with selenium, rather than from direct exposure to selenium in the water.

Within the portions of the action area that include designated critical habitat for the Chiricahua leopard frog, it is possible that the proposed project could indirectly impact some of the PCEs of critical habitat for this species within those areas. Chiricahua leopard frogs are known to occur at seven locations within proposed critical habitat within the action area. There are two known Chiricahua leopard frog locations in designated critical habitat that are supported by groundwater: Ophir Gulch Well and Empire Gulch Springs. Groundwater drawdown at Empire Gulch is modeled to be measurable beginning 50 years after mine closure; the timing or amount of groundwater drawdown at Ophir Gulch Well has been modeled but not specifically reported. Other locations in Cienega Creek in designated critical habitat that are supported by groundwater are modeled to experience groundwater drawdown, and impacts are modeled to be negligible and immeasurable in Cienega Creek until at least 50 years after mine closure. Impacts to an interrupted perennial system, such as Cienega Creek, could be much greater during critical periods of low flow and during critical times of the year (May and June), and even small flow reductions could cause some portions of Cienega Creek, or other aquatic areas, to stop flowing. These modeled decreases in groundwater (less than 1 foot) would occur over a long period of time but could cause changes in riparian vegetation extent or health, and the reduction in stream flow could impact designated critical habitat for this aquatic frog species, which needs standing or flowing water.

Cover vegetation at the edge of stock tanks in designated critical habitat, especially the areas of designated critical habitat near the proposed project area, could be negatively impacted by windborne fugitive dust coating leaves, resulting in reduced photosynthetic activity. Physical effects of dust on plants may include blockage and damage to stomata, shading, abrasion of leaf surface or cuticle, and cumulative effects (e.g., drought stress on already stressed species) (Goodquarry 2011). Reduced emergent vegetation cover or substrates could result in reduced of substrate for eggs, substrate for organisms fed upon by tadpoles and adult frogs, escape cover for tadpoles and adults, and moist microhabitats for frogs, hence reducing the success of eggs, altering growth rates of tadpoles, reducing food for tadpoles and adults, and increasing the

exposure of tadpoles and adults to vertebrate predation and desiccation (Southwest Endangered Species Act Team 2008). Comments submitted by the USFS (see USFS 2013d as cited in the Description of the Proposed Action), indicate that National Ambient Air Quality Standards (NAAQS) are not anticipated to be exceeded outside of the perimeter fence and thus, the aforementioned dust effects are unlikely to occur.

It is possible that the proposed mine and associated disturbances could also result in increases in populations of nonnative species and could create conditions suitable for the presence of *Bd*. *Bd* has been documented from Las Cienegas NCA (USFWS 2012b) but not confirmed from the Santa Rita Mountains; however, there is speculation that *Bd* may have been present in Tarahumara Frogs (*Lithobates tarahumarae*) in the Santa Rita Mountains in the past (Hale *et al.* 2005; Rorabaugh *et al.* 2005).

Effects from Conservation Measures

Numerous conservation measures are included in the proposed action; some that benefit the Chiricahua leopard frog directly and others, indirectly. Although most of these actions should be considered beneficial to the Chiricahua leopard frog in both the short- and long-term, brief but adverse effects are also associated with implementation of these activities. In some instances, conservation measures could pose more harm than good to the Chiricahua leopard frog and are therefore being replaced or modified by terms and conditions described below. Following, we discuss the effects associated with the proposed conservation measures.

Sonoita Creek Ranch – The general scope and purpose of proposed management on the Sonoita Creek Ranch is commensurate with ongoing recovery strategies outlined in the Chiricahua leopard frog Recovery Plan (FWS 2007); that is to say, management to benefit native aquatic species. We concur with the AGFD's recommendation in their letter dated February 14, 2013, that these two large ponds will be better managed for native vertebrates if they were reconstructed as a conglomeration of smaller bodies of water, after the removal of existing nonnative species. The construction of barrier fencing to restrict movement of bullfrogs was not included as part of this specific conservation measure. Without the construction of barrier fencing around these constructed water features, regional bullfrog populations are likely to infiltrate these ponds and render them useless for Chiricahua leopard frog conservation. Barrier fencing will allow these water features to act as self-sustaining source populations of Chiricahua leopard frogs by providing individuals, larvae, and egg masses for introductions elsewhere in the three affected frog management areas. It is likely that some level of larval Chiricahua leopard frog predation can be expected by interactions with Gila chub in ponds where both species are present. In general terms, conservation activities associated with introducing Chiricahua leopard frogs into these waters for conservation purposes will result in harassment of individuals and on rare occasion, injury or death of individuals from activities associated with capture, storage, transportation, and release of frogs in all life stages. These potential adverse effects are far outweighed by the benefits gained in recovery of the species. This conservation measure in its original form has been affectively modified by Term and Condition 4, below, to provide greater conservation value for Chiricahua leopard frogs.

Chiricahua Leopard Frog-Specific Measures – Anticipated effects to Chiricahua leopard frogs from general survey, capture, and relocation of frogs outlined in the Conservation Measures above may include harassment of individuals and on rare occasion, injury or death of individuals from activities associated with capture, storage, transportation, and release of frogs in all life stages. These potential adverse effects are far outweighed by the benefits gained in recovery of the species.

In addition to the known anticipated effects to Chiricahua leopard frogs from general survey, capture, and relocation of frogs discussed previously that we understand will precede any physical tank renovation work at a given site, we expect that a small percentage of adults and potentially numerous tadpoles may be injured or killed as a result of project implementation. These effects are in addition to harassment of frogs in any life stage present in selected sites from the capture, detainment, and potential relocation of resident frogs. It should be noted that improvements to a given tanks' ability to hold water for longer periods does not ultimately preserve the tanks suitability for occupation under medium- to long-term drought stress. Only installing an artificial water supply (such as a solar groundwater well) can warrant such a guarantee. For maximum conservation benefit, we supersede this conservation measure with Term and Condition 5, below, which: (1) requires that a guaranteed water supply shall be installed at each of the seven tanks being improved to secure against their drying during periods of prolonged drought conditions; and (2) adding that the location and selection of tanks for improvement should be a collaborative decision with the Chiricahua leopard frog local recovery group consisting of the Coronado National Forest, other entities, direct stakeholders, cooperating permitees, and FWS (local recovery group) as landscape and resource variables and regional threats are expected to change over the 25-year active life of the project and it may be necessary to focus such efforts at other sites within the affected management areas.

Anticipated effects to Chiricahua leopard frogs from general survey, capture, and relocation of frogs that are associated with the creation of additional water features to support Chiricahua leopard frogs may include harassment of individuals and on rare occasion, injury or death of individuals from activities associated with capture, storage, transportation, and release of frogs in all life stages to these new sites. Under the same premise as discussed immediately above, the location and selection of sites for creation should be a collaborative decision with the local recovery group for maximum conservation benefit.

Because effective nonnative species management is directly linked to surveys and monitoring, we expect resident Chiricahua leopard frogs in all life stages to be harmed or harassed as discussed previously where they occur in sites selected. We expect nonnative species management to occur in all three affected Chiricahua leopard frog Management Areas in Recovery Unit 2 (Santa Rita MA, Empire Cienega MA, and Redrock-Sonoita Creek MA) as appropriate.

Stormwater ponds were originally intended to be managed for Chiricahua leopard frogs as a conservation measure; however their management in such a manner is not consistent with the current recovery strategy for Chiricahua leopard frogs in Recovery Unit 2. The creation of stormwater ponds for the purpose of capturing precipitation runoff from the active mining area

for subsequent evaporation is a necessary component of the projects stormwater permit. However, specifically managing these features for the purpose of creating and/or maintaining habitat for Chiricahua leopard frogs actually enhances the likelihood and magnitude for take of frogs by drawing them closer to active mining operations, thus becoming an attractive nuisance for regional metapopulations and at worst becoming a regional population sink. Therefore, Terms and Conditions 2 and 3 supersede the Conservation Measure that promotes the use of stormwater ponds by Chiricahua leopard frogs and instead requires that stormwater pond management focus on their primary objective of capturing runoff and evaporating water as quickly as possible. We also require that monitoring of these stormwater ponds occur during the summer monsoon when frogs are most-likely to make overland movements; any frogs found within the ponds will be relocated to sites under coordination with local recovery stakeholders.

Because we understand that the presence of water on the landscape is an attractive and necessary element to the Chiricahua leopard frogs' natural history, it is likely that over the life of the proposed action, an unknown number of dispersing adults could move into exposed process water where they would be likely to be injured or killed from toxic exposure. Process water ponds will, however, be enclosed, covered, or otherwise managed to protect wildlife, livestock, and public safety, thus minimizing, if not removing, this threat.

Cumulative Effects - Chiricahua Leopard Frog

Cumulative effects include the effects of future State, tribal, local or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act.

Exceptions include continued road maintenance, grazing activities, and recreation in the action area, current and future development, other nearby mining projects, and unregulated activities on non-federal lands, such as trespass livestock, inappropriate use of off-highway vehicles (OHVs), and illegal introduction of nonnative aquatic species (e.g., bullfrogs, crayfish, and salamanders), which can cumulatively adversely affect the Chiricahua leopard frog and its designated critical habitat. Additional cumulative effects on Chiricahua leopard frogs include ongoing activities in the watersheds in which the species occurs such as livestock grazing and associated activities outside federal allotments, irrigated agriculture, groundwater pumping, stream diversion, bank stabilization, channelization, recreation without a federal nexus, and cross-border activities that include the following: human traffic; deposition of trash; new trails from human traffic; soil compaction and erosion; increased fire risk from human traffic; and water depletion and contamination. These impacts are somewhat attenuated by the relatively minor amount of non-Federal lands in the action area.

Conclusion - Chiricahua Leopard Frog

After reviewing the current status of the Chiricahua leopard frog, the environmental baseline for the action area, the effects of the proposed Rosemont Mine Project, and the cumulative effects, it is our biological opinion that the action, as proposed, is not likely to jeopardize the continued

existence of the Chiricahua leopard frog nor adversely modify its designated critical habitat. We make this finding for the following reasons:

1. The majority of the project activity likely associated with adverse effects from mine construction and operation is located on the northern-most edge of the recovery focus for the Santa Rita Management Area, and therefore, core metapopulation areas that have been the focus of recent recovery actions are spatially distant from the active mining area. This mitigates the likelihood for dispersing frogs to be present in the active mining area.
2. Conservation benefits from the suite of proposed conservation measures, if properly implemented, are expected to outweigh the adverse effects of mine construction and operation, through the creation and improvement of habitat and management of nonnative species, provided that predominate forces such as potential drought from regional climate change have been adequately forecasted over the life of the project (see the climate change analyses in the BA and in this document's Gila chub section). The most significant threats to Chiricahua leopard frogs in this area are drought (Santa Rita MA, Empire Cienega MA, and Redrock-Sonoita Creek MA), nonnative species (Redrock-Sonoita Creek MA), and Bd (Empire Cienega MA). Collectively, with the exception of the threat of *Bd*, the proposed conservation measures, with minor modifications, are likely to help secure the regional status of Chiricahua leopard frogs and enhance the achievement of recovery goals in this area.

The conclusions of this biological opinion are based on full implementation of the project as described in the "Description of the Proposed Action" section of this document, including any Conservation Measures that were incorporated into the project design.

INCIDENTAL TAKE STATEMENT - CHIRICAHUA LEOPARD FROG

Section 9 of the Act and Federal regulations pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. "Take" is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. "Harm" is further defined (50 CFR 17.3) to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. "Harass" is defined in the regulations as ``an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3). "Incidental take" is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement.

The measures described below are non-discretionary, and must be undertaken by the USFS so that they become binding conditions of any grant or permit issued to the applicant, as appropriate, for the exemption in section 7(o)(2) to apply. The USFS has a continuing duty to regulate the activity covered by this incidental take statement. If the USFS (1) fails to assume and implement the terms and conditions or (2) fails to require any applicant to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, the USFS must report the progress of the action and its impact on the species to the FWS as specified in the incidental take statement. [50 CFR 402.14(i)(3)].

Amount or Extent of Take - Chiricahua Leopard Frog

We anticipate that take of Chiricahua leopard frogs in the form of harm and harassment will occur at up to 6 known sites where the species is currently or formerly known, as a result of groundwater drawdown as reported in the Biological Assessment: Lower Stock Tank, Empire Gulch, Box Canyon Dam, Ophir Gulch Well, South Sycamore Canyon, Cienega Creek. As described in the BA, climate change models predict that over time, the southwest is likely to become hotter and drier, punctuated with more extreme drought (declines in winter precipitation) and intense flooding (summer precipitation). The Chiricahua leopard frog sites listed above are likely to respond differently over time to the effects of climate change and groundwater withdrawal. Some of these occupied or formally occupied sites have more recharge potential based upon the number or mechanism of recharge inputs (a stream or drainage with several tributaries versus a stock tank fed by ephemeral flow within a single drainage) and are more likely to persist longer under the stress of climate change and declining groundwater levels. Regardless of how these effects materialize, it is most likely that measurable dewatering effects will be most apparent in the latter half of the life of the project; when the radius of influence of groundwater decline intercepts recharge of these sites and when climate change effects may be more noticeable. We therefore predict that the most vulnerable sites will be lost to Chiricahua leopard frogs as suitable perennial habitat: Lower Stock Tank, Box Canyon Dam, Ophir Gulch Well, and South Sycamore Canyon. The proposed project area is generally located in the northernmost periphery of the core metapopulation area along the eastern bajada of the Santa Rita Mountains.

We anticipate and authorize the take of up to and including 50 Chiricahua leopard frogs and 2 egg masses in the form of harm or harassment from adverse effects associated with the mine construction and continued operations at the active mine site and access roads, including frogs' occurrence in aquatic sites subject to groundwater drawdowns and stormwater detention ponds (see the Chiricahua leopard frog-specific Conservation Measures). This number is our conservative estimate of the total number of frogs that could be taken within the active mining footprint and associated road use – including stormwater ponds - over the life of the mine. Currently there is no occupied Chiricahua leopard frog habitat within the footprint of the proposed mine. Rosemont will survey for Chiricahua leopard frogs prior to construction which will reduce the potential for take.

We are unable to anticipate the amount of take associated with indirect effects of potential contamination of prey species (winged insects) in the region because the data required to ascertain that figure are unavailable and not reasonably collected. However, we do not consider this form of take to be significant because winged insects that are heavily impacted by contamination are not likely to move appreciable distances and comprise a meaningful proportion of the region's Chiricahua leopard frogs' diet.

We anticipate a proportion of Chiricahua leopard frogs will be taken through the implementation of conservation measures, most likely from activities associated with capture, detainment, disease treatments, transportation, and release of frogs in all life stages. It is impractical to quantify actual numbers of individuals taken under these mechanisms and we are not going to limit this form of take because potential, short-term adverse effects are far less significant than the conservation value gained in recovery of the species in the area and because the net number of individuals potentially harmed is far exceeded by the number of individuals which are benefited or created by the implementation of these activities.

In summary, and stated differently, the maximum allowable incidental take of the Chiricahua leopard frog is 50 individuals and two egg masses.

Effect of the Take - Chiricahua Leopard Frog

In this biological opinion, we determine that these levels of anticipated take are not likely to result in jeopardy to the species or result in adverse modification of its designated critical habitat for the reasons stated in the Conclusions section.

Reasonable and Prudent Measures - Chiricahua Leopard Frog

Reasonable and prudent measures and terms and conditions should minimize the effects of take, and provide monitoring and reporting requirements [50 CFR 402.14(i)(3)].

<u>Chiricahua Leopard Frog</u>

The following reasonable and prudent measures are necessary and appropriate to minimize take of Chiricahua leopard frogs:

1. Rosemont shall monitor the incidental take resulting from the proposed action and report the findings annually to our office. The report shall include the findings of the monitoring with regard to nonnative species (such as bullfrogs, crayfish, and warn water spiny-rayed fishes) and adaptive management actions.

2. Rosemont shall ensure that necessary precautions are taken to minimize the potential for Chiricahua leopard frogs to become attracted to water features near the active mining area.

3. Rosemont shall ensure that long-term, secure breeding populations of Chiricahua leopard frogs are created to act as source populations for use in future introductions of frogs into sites within the three affected Management Areas.

Terms and Conditions - Chiricahua Leopard Frog

In order to be exempt from the prohibitions of section 9 of the Act, the USFS shall ensure that Rosemont complies with the following terms and conditions, which implement the reasonable and prudent measures described above and outline required reporting/monitoring requirements. These terms and conditions are non-discretionary.

Chiricahua Leopard Frog

1. Rosemont shall monitor the action area to ascertain take of individuals and report to our office (written correspondence, e-mail, or phone call), information regarding:

    a. The observed occurrence or the discovery of harmful nonnatives such as American bullfrogs, crayfish, or warm-water, spiny-rayed fish species in any sites created inadvertently by or as a conservation measure for the proposed action to provide for collaborative emergency planning and corrective action (within three days of the observation).

    b. The results of any monitoring efforts conducted and a summary of any situations (and their corrective actions), that occurred during project implementation. Under an adaptive management framework, the report shall also make recommendations for modifying or refining potential, future conservation measures for implementation of similar projects which are likely to provide greater conservation benefit to Chiricahua leopard frogs.

2. Rosemont shall monitor suitable habitat on National Forest System and Rosemont-owned land within one mile of the active operations area, including (but not limited to) roads, the utility corridor, and on-site stormwater ponds, twice monthly from July 1 through September 30, while the mine is in operation. The one-mile monitoring criterion is based on the species' overland dispersal distance (see Status of the Species, above). If Chiricahua leopard frogs are detected on site or within a mile of the active operations area, they will be relocated to suitable habitat within the management area under close coordination with the local recovery group. This Term and Condition augments Conservation Measures 2 and G-3 (3.1-3.6) with respect to Chiricahua leopard frogs.

3. Rosemont shall explore alternatives to traditional stormwater pond construction, operation, etc. in order to minimize water holding duration to the maximum extent practicable without compromising the primary function of the ponds; this is to reduce the

creation and maintenance of habitat in the active operations area that could become an attractive nuisance for frogs. This Term and Condition replaces Conservation Measure G-7 for Chiricahua leopard frogs.

4. Rosemont shall create small waters on the Sonoita Creek Ranch property and manage them as potential source populations of Chiricahua leopard frogs for future releases in the affected management areas. This will include renovation to remove harmful nonnative predators such as bullfrogs, crayfish, nonnative spiny-rayed fish and the construction and maintenance of frog barrier fencing, as necessary, to prevent bullfrogs from recolonizing these waters. Fencing gauge shall be chosen that will not entrap other small terrestrial vertebrates such as snakes, lizards, etc., such as 0.25" mesh size or smaller. Barrier fencing will be located in a manner to allow adequate terrestrial space for foraging or terrestrial habitat enhancements. Should future, unrelated conservation activities render Sonoita Creek free of bullfrogs, the barrier fencing could be removed to allow natural immigration and emigration from the site. Management of Chiricahua leopard frogs at this site shall be coordinated through the local recovery group. This Term and Condition augments Conservation Measure 6 with respect to Chiricahua leopard frog recovery activities on the Sonoita Creek Ranch.

5. Rosemont shall coordinate with the local recovery group in the identification and location of the seven sites to be specifically dedicated for Chiricahua leopard frog conservation. These sites may or may not include particular sites referenced in the conservation measures of the Biological Assessment, may or may not be located on grazing allotments managed by Rosemont, but will be located on Coronado National Forest lands within the Santa Rita Management Area. To protect against the threat of prolonged drought, each of the seven tanks that will be improved for permeability and retention shall also have an artificial water source provided, such as a solar groundwater well, to ensure permanency of water at improved sites. Any water features that are created in addition to these seven sites that may affect the status of Chiricahua leopard frogs in the action area will be chosen in consultation with the local recovery group to facilitate avoiding incidental adverse effects or creating conservation opportunities. This Term and Condition augments or replaces several Conservation Measures proposed, including Conservation Measures 5 (5.1 – 5.3), G-4 (4.1-4.6), and G-5 (5.1-5.3).

These reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize incidental take that might otherwise result from the proposed action. If, during the course of the action, the level of incidental take is exceeded, such incidental take would represent new information requiring review of the reasonable and prudent measures provided. The Coronado Nation Forest must immediately provide an explanation of the causes of the taking and review with our office the need for possible modification of the reasonable and prudent measures.

Conservation Recommendations - Chiricahua Leopard Frog

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

1. We recommend that the Coronado National Forest implement Forest-specific actions within the Chiricahua Leopard Frog Recovery Plan (FWS 2007).
2. We recommend the Coronado National Forest work with FWS and the other entities to continue to control nonnative aquatic organisms on the Forest, particularly bullfrogs, nonnative fish, and crayfish. We therefore encourage the Coronado National Forest to consider installing drains at each of the seven tanks that will be improved or created for use by Chiricahua leopard frogs described in Term and Condition 5. Drains can significantly assist resource managers in the management of harmful nonnative species such as bullfrogs in the event they colonize any one or more of the improved or created tanks.
3. We recommend that the Coronado National Forest continue to identify factors that limit the recovery potential of Chiricahua leopard frogs on lands under their jurisdiction and work to correct them.

In order for us to be kept informed of actions minimizing or avoiding adverse effects or benefiting listed species or their habitats, we request notification of the implementation of any conservation recommendations.

Effects to Aquatic Ecosystems

This section includes an analysis of the effects of the proposed action on fluvial aquatic ecosystems. The Gila chub and Gila topminnow occur in streams that are affected by the proposed action. The Huachuca water umbel is a semi-aquatic plant that occurs in and immediately adjacent to streams. The analyses contained herein will be incorporated via reference into the respective species' analyses. These analyses also, in part, inform the respective action area descriptions for the affected species.

The proposed action includes the excavation of an open pit to an elevation of approximately 3,050 feet, a level that will intersect regional groundwater and/or water-conducting subsurface fracture networks (USFS 2011). Subsurface water will therefore "daylight" and fill the excavated area. The need to dewater the pit during active mining operations and the post-mining existence of a lake from which water will evaporate mean that the pit will function as a well from which regional groundwater is removed from storage in the regional aquifer and, eventually, captured from discharges to springs, streams, and evapotranspiration (ET, the uptake of groundwater by vegetation) (Leake *et al.* 2008).

The effects of groundwater withdrawal on surface waters of interest may be evaluated with a model calibrated to local conditions. Groundwater models were prepared by Montgomery and Associates (2010) and Tetra Tech (2010), the results of which were incorporated into the Draft EIS. The BA and supplemental documents include analyses of effects to surface waters based on the outcomes of the Montgomery and Associates (2010) and Tetra Tech (2010) models, as well as an independent model prepared by Myers (2010). The validity of the Montgomery and Associates (2010) and Tetra Tech (2010) models was later evaluated by SRK Consulting at the request of the Forest Service (SRK 2012). The Myers (2010) model was not subjected to review by SRK.

Our review of DEIS comments submitted to the Coronado NF by the U.S. Geological Survey (USGS) (Port 2012), Pima County (Pima County 2012), and Sonoran Institute (Propst 2012), indicated that there were substantial uncertainties regarding the magnitude and timing of groundwater drawdowns, particularly as those drawdowns relate to potential reductions in discharges to springs and streams. These uncertainties were explored at length, culminating in an October 18, 2012, meeting between the Forest Service, consulting hydrologists, the USGS, the BLM, the USEPA, and the FWS. The technical discussions concluded with general consensus as to the validity of the models applied to evaluate the effects of the proposed action (FS 2012a).

Given the general agreement regarding the validity and utility of the Montgomery and Associates (2010) and Tetra Tech models, SWCA prepared a definitive impact analysis for seeps, springs, and riparian ecosystems for the Coronado NF and presented it to us on November 16, 2012 (SWCA 2012). The Coronado NF subsequently adopted the SWCA analysis in the second Supplemental BA (FS 2013a). These analyses are incorporated herein via reference.

We note that the models were based on the assumption that the local groundwater system exists as a porous media, rather than a system of individual fractures. The various hydrogeologic units were assigned different properties, such as hydraulic conductivity (the ease by which water can move through the material) and specific storage (which refers to the amount of water an aquifer can release from storage during changes in hydraulic head). There is a possibility that some portion of the regional groundwater is conducted through subterranean fractures and/or faults in the lithology in the project area, though we note that karst (limestone prone to formation of dissolution channels capable of relatively rapid groundwater movement) is unlikely to be present in or near the to-be-excavated area (USFS 2013b, SRK 2012). Knight (1996) described evidence of groundwater flow through fractures. If such a flow system is an appreciable component of the hydrogeology at and near the mine pit, or if mining results in loss of subterranean buoyant forces, new fractures could form. If such new fractures are localized, the flow of groundwater through them would still be encompassed by the existing flow models. If new fractures are of a scale that the groundwater flow system is fundamentally altered, the models' results may require reexamination.

Furthermore, it is not definitively known if or to what extent spring and stream baseflows are the result of discharges from: (1) the regional aquifer, which is affected by the proposed action; (2) a

geologically-isolated groundwater system, isolated from the effects of the action; or (3) a combination of these two sources. Also note that our use of the term baseflow refers only to the water discharged from the regional or local aquifer to a spring, stream or waterbody, or to riparian vegetation (in the form of evapotranspiration). The regional aquifer is understood to consist of the interconnected fractures and hydrogeologic units that contain the groundwater encountered throughout the larger Rosemont area. Local aquifers may consist of alluvial sediments, areas of perched groundwater, or smaller areas of fractures that are not regionally connected but still may contain groundwater.

Lastly, we are aware of the cautionary narrative in Leake (2011), which stated that capture of groundwater destined for discharge to streams or riparian ET does not depend on rates and directions of groundwater flow. Leake (2011) further stated that: (1) capture can occur in stream reaches both up- and downgradient of pumping locations [see also Cosgrove and Johnson (2005)]; (2) capture is not limited to the fraction of base flow that originates in the pumped area, even in streams with base flow derived from groundwater discharge; (3) capture still occurs even if a groundwater divide exists between the pumping location and the river or stream; (4) non-pumping transient events, such as episodic recharge from connected streams, do not affect capture; and (5) the geochemical signature of surface water, if different from the groundwater signature, is not necessarily an indication that pumping from a particular location does not affect that surface water. These precepts, in part, form the basis for our precautionary approach regarding the reductions of mountain front recharge (see Gardner Canyon and Empire Gulch analyses, specifically).

The natural hydrologic system to which the models have been applied also exhibits a relatively large degree of variation under current conditions. This background variation is unaffected by the proposed action but does experience impacts from both natural, climatic variation and existing water withdrawals. The hydrologic summary compiled by SWCA and transmitted by the Forest Service (SWCA 2012), includes the following statements regarding fluctuations in depth to groundwater in the area of interest:

- In a well in lower Davidson Canyon, groundwater levels have been observed to fluctuate by more than 10 feet in a single year.
- Two stock wells along Empire Gulch have been monitored by the Arizona Department of Water Resources for three to four decades, and the results show that water levels have varied between 4 to 4.5 feet.
- Similar stock wells along Cienega Creek show variation between 3 and 4 feet.
- Two wells immediately adjacent to lower Cienega Creek were monitored between 2007 and 2009 by the Pima Association of Governments and exhibited a fluctuation in water level of up to 5 feet seasonally.
- Montgomery and Associates (2010) conducted a similar analysis on a much greater number of wells located throughout the basin (not just near streams) and found that the average short-term fluctuation in groundwater levels was 7.1 feet and that the long-term fluctuation in groundwater levels was 19.7 feet.

It is important to note that the estimated groundwater drawdowns resulting from implementation of the proposed action will be in addition to the natural and anthropogenic variation noted above, and would be additive to (not masked by) any negative baseline effects (or offset by positive effects) already extant (or reasonably certain to occur), as well as the effects of cumulative (future, non-Federal, and within the action area) actions. Please see the climate change discussion appearing in the BA, this BO's Gila chub Status of the Species section, and to the same species' Cumulative Effects analysis for additional information.

Despite the inherent uncertainties in the hydrologic system and the groundwater modeling data derived from analyses of that system, we are aware of no other existing model results or empirical data that would more accurately inform our analyses. The existing groundwater models therefore represent the best available information with which we can analyze the groundwater-related effects of the proposed action.

The action area is drained by ephemeral, intermittent, and perennial watercourses that flow primarily in a northeasterly direction from high-elevation ridges on the eastern flank of the Santa Rita Mountains through foothills toward larger drainages located at lower elevations on the basin floor. Ephemeral refers to streams or portions of a stream that flow briefly in direct response to precipitation, and whose channel is at all times above the groundwater reservoir. Intermittent refers to a stream where portions flow continuously only at certain times of the year, for example when it receives water from a spring, groundwater source, or from a surface source such as melting snow (i.e., seasonal). At low flow, an intermittent stream may exhibit dry reaches alternating with flowing reaches. Perennial refers to a stream or portion of a stream that flows year-round and is considered a permanent stream, and for which base flow is maintained by groundwater discharge to the streambed. Discharge to the streambed from groundwater would be due to the groundwater elevation adjacent to the stream typically being higher than the elevation of the streambed, though artesian conditions can also support perennial streams.

Four major drainages occur in the primary area of disturbance: Wasp, McCleary, Scholefield, and Barrel Canyons. Scholefield, Wasp, and McCleary Canyons drain to Barrel Canyon, which then joins Davidson Canyon approximately 4 miles east of the project area. Davidson Canyon wash flows northwesterly between the Empire and Santa Rita Mountains into Cienega Creek, which eventually enters Pantano Wash outside of the action area. The distance from the confluence of Barrel and Davidson Canyons to the outlet of Davidson Canyon at Cienega Creek is approximately 14 miles. Drainage from these systems eventually reaches the Santa Cruz River north of Tucson.

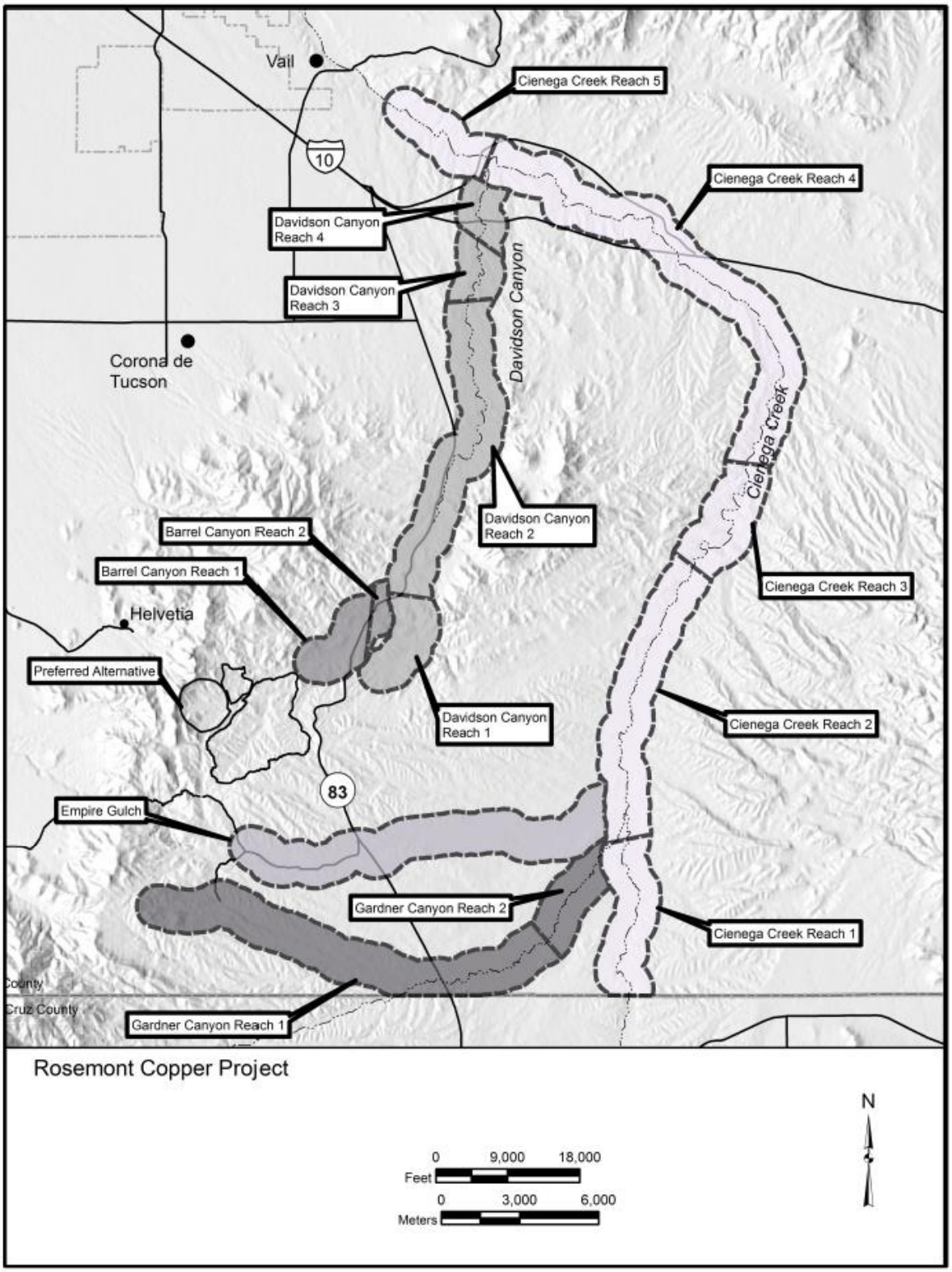

Figure A-1: Surface hydrology of the actions area (SWCA 2012)

Table A-1: Narrative descriptions of stream reaches adapted from SWCA (2012) and BLM (2013)

Reach	Location	Flow Regime
Cienega Creek 1	From headwaters to confluence with Gardner Canyon	Perennial
Cienega Creek 2	From confluence of Gardner Canyon to the Narrows	Spatially intermittent; some perennial reaches; contains U.S. Geological Survey gage no. 09484550
Cienega Creek 3	The Narrows	Spatially intermittent; some perennial reaches
Cienega Creek 4	From the Narrows to confluence with Davidson Canyon	Spatially intermittent; some perennial reaches; contains U.S. Geological Survey gage no. 09484560
Cienega Creek 5	From confluence with Davidson Canyon to Pantano Dam	Spatially intermittent; some perennial reaches
Cinco Wetlands	Located in Cienega Creek floodplain east of Gardner Canyon	Perennial Interior Marshland
Spring Water Wetland	Cienega Creek floodplain downstream of Spring Water Canyon confluence	Perennial Interior Marshland
Multiple Unnamed Wetlands	Cienega Creek floodplain between Spring Water and Gardner canyons	Perennial and Seasonal Interior Marshland
Gardner Canyon 1	Upper Gardner Canyon	Ephemeral
Gardner Canyon 2	Lower Gardner Canyon	Ephemeral
Empire Gulch	From headwaters to confluence with Cienega Creek	Spatially intermittent; some perennial reaches
Cieneguita Wetland Complex	Floodplain in lower Empire Gulch	Perennial Interior Marshland
Cienega Ranch Wetland	Cienega Creek floodplain west of Empire Gulch	Perennial Interior Marshland
Cold Water Spring	Large spring located upstream of Mattie Canyon confluence	Perennial
Cold Water Wetland	Large wetland associated with Cold Water Spring	Perennial
Mattie Canyon	Tributary to Cienega Creek	Interrupted Perennial
Davidson Canyon 1	From headwaters to confluence with Barrel Canyon	Ephemeral
Davidson Canyon 2	From Barrel Canyon to Davidson Spring	Ephemeral
Davidson Canyon 3	From Davidson Spring to Reach 2 Spring	Ephemeral
Davidson Canyon 4	From Reach 2 Spring to confluence with Cienega Creek	Has been intermittent or perennial in the past; recently has been intermittent; contains U.S. Geological Survey gage no. 09484590
Barrel Canyon 1	From mine site to State Route 83	Ephemeral; contains U.S. Geological Survey gage no. 09484580
Barrel Canyon 2	From State Route 83 to confluence with Davidson Canyon	Ephemeral

Watershed Overview

The action area encompasses a large proportion of the greater Cienega Creek watershed. The Whetstone and Mustang Mountains form the eastern watershed boundary, the Canelo Hills form the southern boundary, and the eastern and northern Santa Rita and eastern face of the Empire mountains bound the western portion of the Cienega Creek watershed. Gardner Canyon and Empire Gulch are the largest tributaries to the upper reaches of Cienega Creek, and enter the stream south of the Empire Mountains. Mattie Canyon originates in the Whetstone Mountains and enters Cienega Creek downstream of the Empire Gulch confluence. Downstream from these three tributaries, Cienega Creek enters the narrows, a confined, bedrock-dominated reach in

which alluvial and other sources of shallow groundwater are forced to the surface to contribute to discharges in the stream. Barrel Canyon and Davidson Canyon Wash arise in the Santa Rita Mountains and flow south along the western flanks of the Empire Mountains to join Cienega Creek well downstream of the narrows, south of Interstate 10.

The proposed mine will be situated within a portion of the watershed of Cienega Creek. Barrel Canyon watershed is the largest of the four major drainages that occur in the primary area of disturbance. Two sub-watersheds, Upper and Lower Barrel, total more than 2,300 acres and combine to make Barrel Canyon proper. Barrel Canyon is the largest of the watersheds affected by surface disturbance, extending almost 4 miles from its headwaters to its confluence with East Canyon; the average sandy-bottom channel width for washes in Barrel Canyon is estimated to be 51 feet. For comparison purposes, average wash widths in Wasp, McCleary, and Scholefield Canyons are approximately 38, 29, and 27 feet, respectively.

Somewhat smaller portions of additional watersheds occur within the perimeter fence. These watersheds include Oak Tree Canyon, Empire Gulch, and East Canyon. East, and Oak Tree Canyons are located east of the mine and drain east to join Cienega Creek. Empire Gulch is located southeast of the mine and also drains east to join Cienega Creek. Much of the land between the perimeter and security fences will remain undisturbed, though the primary access road, rerouted portion of the Arizona Trail, decommissioning of Forest Service Roads and secondary access road and utility ROW construction will result in effects to the Barrel canyon, East Canon, McCleary Canyon, and Wasp Canyon watersheds.

Groundwater and Surface Water Effects

The Montgomery and Associates (2010) and Tetra Tech (2010) models have variously predicted drawdowns greater than 100 feet in the immediate vicinity of the site; drawdowns of lesser magnitude are modeled to occur to the north along Davidson Canyon, to the east toward Cienega Creek, and to the south toward Empire Gulch. Specific drawdown estimates vary between models. The groundwater modeling by Montgomery and Associates (2010) and Tetra Tech (2010) involved creation of a number of scenarios, each scenario using different modeling parameters. Each individual parameter was varied within a reasonable range of values. This suite of modeling scenarios is known as the sensitivity analysis. Out of the suite of modeling scenarios, only one is considered the “best-fit”, or baseline, modeling scenario. The range of predicted drawdown from the rest of the modeling scenarios, however, are still considered possible or reasonable, just not as likely to occur.

The ability for groundwater models to accurately predict the propagation of drawdown away from the pit is limited due to the asymptotic nature (mathematical leveling-off) of the response to groundwater withdrawals at large distances and times (SRK 2012). The difficulty in employing groundwater models to predict changes over large temporal and spatial scales (here, at up to 1,000 years and over 10 miles) is further increased if the groundwater system of interest exists within geologic formations of low permeability, as exists in the hard rock-dominated lithology at and near the mine site (SRK 2012, FS 2011). For these reasons, SRK (2012) estimated that the Montgomery and Associates (2010) and Tetra Tech (2010) models can reliably predict

groundwater drawdowns of 5 feet or greater; changes of less magnitude have lower confidence (SRK 2012). It is unclear to us how modeled drawdowns of greater than five feet, but with increments of less than that amount, are inherently more reliable than incremental changes that do not meet the 5-foot threshold. We will therefore analyze the effects of all modeled drawdowns, and the effects that may result from those drawdowns, regardless of their magnitude.

Of the groundwater drawdowns predicted by Myers (2010), Montgomery and Associates (2010), and Tetra Tech (2010), the latter appear to be the most immediate and severe (see Table A-5). We feel that by emphasizing the results of the Tetra Tech (2010) model, our analyses will characterize the most conservative (i.e. maximum potential effect) levels of effects.

The values appearing in Table A-5 represent modeled drawdowns at location and time intervals of interest (SWCA 2012), but the models can also be employed to predict drawdowns at any location within the modeled domain and at any point in time (USGS 1997), such as at locations where monitoring wells have or will be placed. Also note that Table A-5 includes the results of sensitivity analyses performed during the development of the Montgomery and Associates (2010) and Tetra Tech (2010) groundwater models. In this BO, we have included the results of these sensitivity analyses to portray the range of values surrounding the predicted groundwater drawdowns that appear in Table A-5, and which, in part, form the basis of subsequent biological effects analyses.

The proposed action's effects to surface flows and groundwater occur in the southern and western portions of the greater Cienega Creek watershed. As stated previously, Gardner Canyon and Empire Gulch are tributaries to the upstream reaches of Cienega Creek. Barrel Canyon is a tributary to Davidson Canyon Wash which, in turn, is also a tributary to Cienega Creek. The effects to Barrel Canyon, Davidson Canyon Wash, Gardner Canyon, Empire Gulch and the upstream reaches of Cienega Creek represent incremental, additive effects to the lowermost reaches of Cienega Creek.

The stream-by-stream and reach-by-reach analyses that follow are arranged such that the uppermost portions of the watershed (Gardner Canyon, Empire Gulch, and upper Cienega Creek) appear first. The analyses then shift to Barrel Canyon and Davidson Canyon Wash, to which the former is the main, affected tributary. The individual analyses conclude with Lower Cienega Creek.

In addition to appearing in Table A-5, the Tetra Tech (2010) groundwater model-based analyses are employed in the stream- and reach-scale analyses, below as well as in the Effects to Riparian Ecosystems section, and in the respective effects analyses for Gila chub, Gila topminnow, Huachuca water umbel, and southwestern willow flycatcher. We again note that while the effects analyses contain reference to modeled, best-fit drawdown values, we have considered that those values are bracketed by the results of sensitivity analyses. Moreover, while it is possible, if not probable, that the actual, observed drawdowns will be less or greater than the modeled, best-fit values, our effects analyses conservatively consider only the possibility that the best-fit drawdown values will be exceeded, reaching the higher value noted in the sensitivity analysis. Subsequent tables and narratives will thus include only the higher values resulting from the

sesnsitivity analyses. If a larger, sensitivity analysis-derived drawdown is not referenced, it means that the best-fit value is equal to the highest value that resulted from the analysis.

Gardner Canyon

Gardner Canyon is anticipated to experience regional aquifer drawdowns of < 0.1 foot from the cessation of mining until 50 years later (or up to 0.15 foot at 50 years) (see Gardner/Cienega Confluence data in Table A-5). At 150 years after mining, the effect to Gardner Canyon increases to 0.2 foot (or, based on sensitivity analysis, up to 0.35 foot) and reaches 0.5 foot at 1,000 years.

We are concerned with the effects to mountain front recharge by the mine pit, though the ultimate fate of all sources of recharge differs between the Montgomery and Associates (2010) and Tetra Tech (2010) models. Mountain front recharge is water that originates as precipitation and which enters the regional aquifer via infiltration in uplands and channels. Huth (1996, as cited in Knight 1997) found that approximately 70 percent of the annual recharge in Cienega Creek originates from the Santa Rita Mountains, with the majority of that subsurface flow travelling down the Gardner Canyon corridor.

The Coronado National Forest reviewed a preliminary, administrative draft version of this section (USFS 2013b), wherein comments regarding alterations in recharge were provided. Tetra Tech (2010) predicts an increase in recharge because of the draining down of water from the tailings, and because of the flow-through drains would result in infiltration instead of runoff. This draining down of imported water may be appreciable; the proposed action will import over 5,000 acre-feet of water for application within the site (USFS 2013). Montgomery and Associates (2010) predicted a slight decrease in recharge post-closure (USFS 2013c).

For the purposes of NEPA analysis, the Coronado National Forest has assumed that the water that gets captured by the pit either as rainfall or runoff is a loss to mountain front recharge (USFS 2013). All other water not captured by the pit may become mountain front recharge either by infiltrating into fractures within the mine site and/or infiltrating into alluvial channels. The review comments indicated that there will be an estimated loss of approximately 35 to 127 acre-feet of recharge (USFS 2013c), which we presume is apportioned among all streams with headwaters and recharge zones close to areas appreciably affected by the pit. Regardless, such reductions in recharge were explicitly modeled by Tetra Tech (2010) and Montgomery and Associates (2010).

Empire Gulch

The proposed action will affect the subsurface and, eventually, the surface hydrology of Empire Gulch at the Upper Empire Gulch Springs site (see Upper Empire Gulch Springs data in Table A-5). Tetra Tech (2010) modeled the effects at this site to range from 0.1 foot (or up to 0.2 foot) of groundwater drawdown upon cessation of mining to 0.2 foot (or up to 0.5 foot) at 20 years, 0.5 (up to 1.8 foot) foot at 50 years, 2.5 feet (up to 5.0 foot) at 150 years, and 6 feet at 1,000 years.

Empire Gulch is a spring-fed system (Bodner and Simms 2008) and is thus vulnerable to alterations in the groundwater conditions that sustain the spring discharges. The appreciable groundwater drawdowns discussed above will likely diminish surface flows in the stream.

Also, while Huth (1996; a pers. comm. cited in Knight 1997) stated that approximately 70 percent of the annual recharge in Cienega Creek originates from the Santa Rita Mountains and flows down the Gardner Canyon corridor, it is reasonable to presume some smaller fraction of the Santa Rita Mountain front recharge travels down the Empire Gulch flow path. This would correspond to some portion of the estimated, potential 35 to 127 acre-feet mountain front recharge captured by the drawdown associated with the pit.

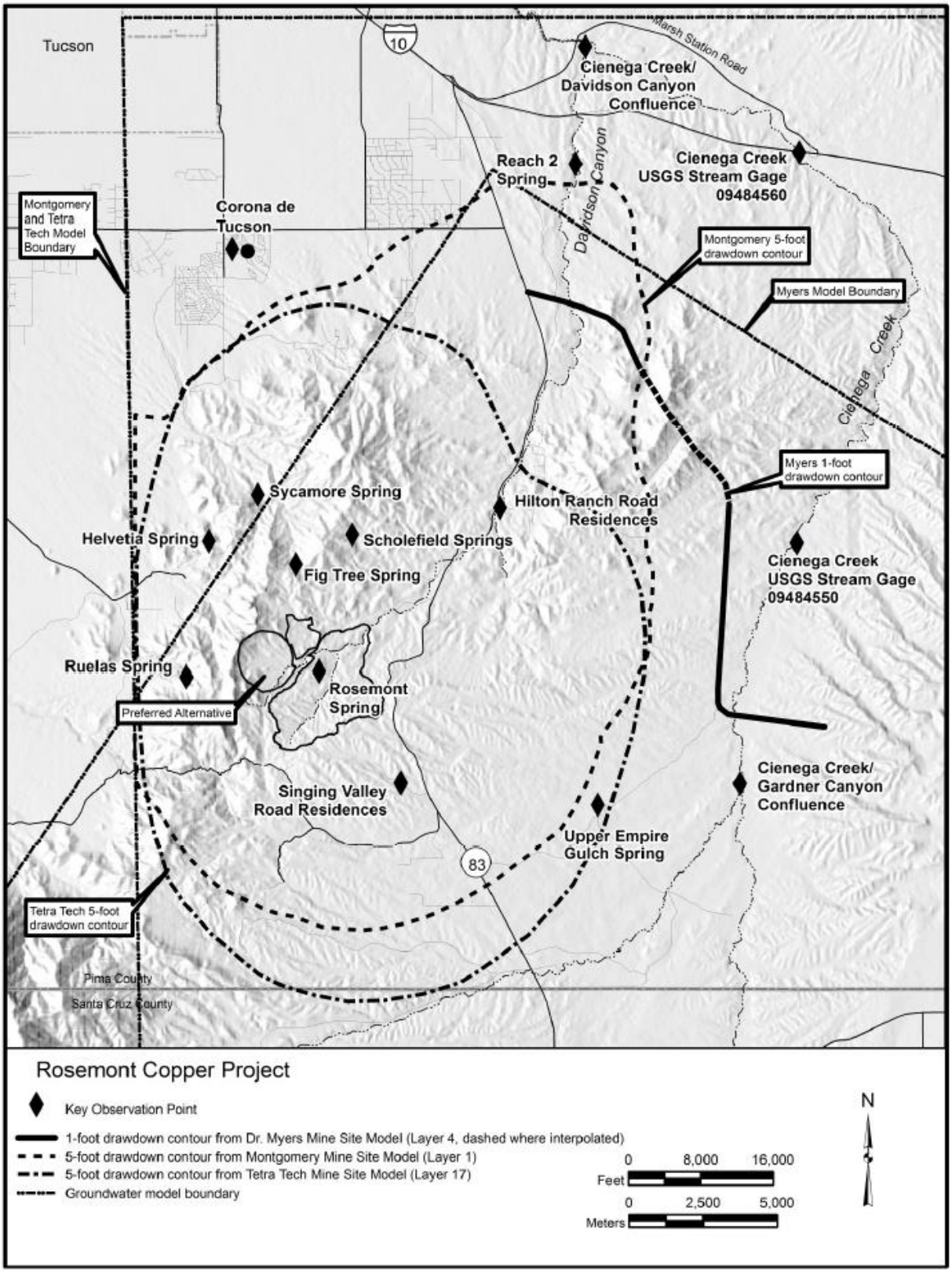

Figure A-2: Modeled groundwater drawdown contours

Upper Cienega Creek

Upper Cienega Creek is that portion of the stream in Reaches 1, 2, and 3 (the latter includes the narrows) (see Figure A-1). Gardner Canyon and Empire Gulch, along with Mattie Canyon are the major tributaries in this reach.

The USGS Cienega Creek stream gage (0948550) is situated near the narrows in the upstream portion of Reach 3 (see Figure A-1). Regional groundwater drawdowns at this site describe the effects to upper Cienega Creek. Tetra Tech (2010) modeled drawdowns of <0.1 foot from the end of mining and at 20, and 50 years later (or up to 0.15 foot at 50 years). Drawdowns reach 0.25 feet (or up to 0.35 foot) and 0.5 feet at 150 and 1,000 years, respectively .

Table 7 in Montgomery and Associates (2010) is a summary of various hydrologic and environmental effects resulting from the modeled drawdowns. Table A-2, below, excerpts the hydrologic effects analysis for upper Cienega Creek, including the narrows. The effects don't manifest until 1,000 years after the cessation of mining, but they become appreciable at that time.

Table A-2: Summary of Effects to Upper Cienega Creek, including the Narrows

Years after mining	Drawdown at perennial reach (feet)	Decrease in stream length (miles)	Decrease in baseflow (cfs)	Decrease in ET (afa)
0	0	0	0	0
20	0	0	0	0
150	0	0	0	0
1,000	0.01	0.16	0.02	51

Barrel Canyon

Barrel Canyon is proximal to the mine site. The primary effect of the proposed action on this stream is the reduced runoff that will result from the placement of mine tailings in its upper watershed and the retention of stormwater within the mine site, as opposed to the aquifer drawdowns that will occur deep beneath the stream bed (the ephemeral channel in this area does not receive discharge from the regional aquifer). SWCA (2012) included an estimate that ephemeral surface runoff in Barrel Canyon, under post-closure conditions, will be reduced approximately 17.2 percent. Greater effects – up to a 30 to 40 percent reduction in runoff- will occur during the first 10 years of mine construction (SWCA 2012), before concurrent reclamation activities that allow more water to move downstream are implemented.

The Coronado National Forest's review of the preliminary, administrative draft version of this section (USFS 2013) indicated that the placement of tailings in Barrel Canyon may have differing effects to mountain front recharge. As designed, the tailings lack flow-through drains, which would decreases the Tetra Tech (2010) model's potential for recharge within the mine site boundary. The Barrel alternative also lacks post-closure storage of water on site, which also decreases the potential for recharge within the mine site boundary. On the other hand, the Barrel alternative also moves more water downstream into ephemeral channels, within which mountain front recharge may be increased.

Davidson Canyon Wash

The uppermost reaches of Davidson Canyon Wash (Reaches 1 and 2) (see Figure A-1) are situated relatively close to the proposed mine pit and are situated in an area that will experience severe drawdowns (10 to 100 feet) in the regional aquifer; however, the primary water source in this area is precipitation runoff rather than regional aquifer discharge. These local sources of runoff will be unaffected and thus, the groundwater hydrology of Reaches 1 and 2 are not anticipated to be affected; Tetra Tech (2010) predicted drawdowns of <0.1 foot from the cessation of mining to 1,000 years.

Reaches 3 and 4 of Davidson Canyon Wash (see Figure A-1) may also be relatively unaffected by groundwater drawdowns. Tetra Tech predicted groundwater drawdowns in Davidson Canyon Wash at the downstream end of Reach 4 (see the Davidson/Cienega Confluence data in Table A-5) of <0.1 foot from 0 to 150 years after mining and 0.1 foot at 1,000 years (or up to 0.15 foot at 20 years, and 0.2 foot at both 50 and 150 years). These results assume a complete hydrologic connection between the regional aquifer and surface flows in the stream exists. However, when non-stormwater surface flows in Davidson Canyon Wash are present, they receive contributions from discharges at Reach 2 Spring and Escondido Spring (see Figure A-1). Tetra Tech (2010b) conducted an analysis, and based on geologic evidence, isotopic signatures in the springs, and the lack of consistent streamflow concluded that these springs likely derive their water from precipitation runoff-driven, ephemeral storm flows stored in the shallow alluvial stream sediments, which are then forced to the surface by bedrock constrictions in the stream channel. SRK conducted additional analyses (2012) and concluded that while some of the available evidence was anecdotal and less than certain, the available information also suggested that there is no connection between the Davidson Canyon springs and the regional aquifer. If surface flows in Davidson Canyon Wash are indeed derived from sources completely separate from the regional aquifer, then drawdowns caused by the proposed action could be of an even lower magnitude than those noted above.

Davidson Canyon Wash will, however, experience appreciable effects to its annual yield and peak flows. The stream's upper watershed will be subject to altered surface water runoff patterns due to the aforementioned placement of tailings and stormwater retention in the Davidson Canyon Wash tributary Barrel Canyon and retention of stormwater within the mine site. SWCA (2012), referencing Tetra Tech (2010) states that surface water runoff modeling on Barrel Canyon at Highway 83 indicated a post-closure runoff decrease (in acre-feet per annum) of approximately 17.2 percent under the proposed action. SWCA further extrapolates that this would equate to a 4.3 percent reduction of runoff (in acre-feet per annum) 12 miles downstream in the lower reaches of Davidson Canyon Wash. Modeled peak flow reductions (in cubic feet per second) are 22 percent at the Highway 83 Bridge, which extrapolates to 5.6 percent in Davidson Canyon Wash. Ephemeral channels (such as the upper and middle reaches of Davidson Canyon Wash (Reaches 1 and 2) can be characterized by stream flow losses (SWCA 2012), but the fate of surface waters that infiltrate into channel sediments varies. Some of the infiltrated runoff will be discharged to riparian vegetation via evapotranspiration, but some may remain in the sediment as subflow.

The lowermost reaches of Davidson Canyon Wash (Reaches 2, 3, and 4; see Figure A-1) will experience decreases in runoff volume. SWCA (2012) extrapolated the modeled 4.3 percent reduction in runoff to Cienega Creek reaches 3 and 4 and anticipated that it would have minimal effects to surface flows and riparian vegetation (as had been noted for reaches 1 and 2, above).

Lower Cienega Creek

Lower Cienega Creek extends from the narrows (Reach 3) to the Del Lago Diversion Dam, at which point the stream is referred to as Pantano Wash. Reach 4 is between the narrows and the Davidson Canyon Wash confluence while Reach 5 is downstream of the confluence (see Figure A-1). Tetra Tech (2010) modeled groundwater drawdowns of <0.1 foot at the USGS stream gage in Reach 5 (gage number 09484560) for all time steps from the cessation of mining to 1,000 years; this is to be expected at such a relatively large distance from the mine pit.

SWCA (2012), using data from the groundwater models and Pima County (Pima Association of Governments 2003b) has estimated that the anticipated reductions in Davidson Canyon Wash surface flow (and thus, subflow) are therefore anticipated, via extrapolation, to result in a 4.3 percent reduction in Cienega Creek subflow (SWCA 2012). This measurable reduction in subflow, in combination with other surface flow (both in yield and peak flow magnitude) reductions upstream (see Gardner Canyon, Empire Gulch, and Cienega Creek sections, above), the influence of climate change on baseline conditions over time, and the effects of cumulative actions, is likely to have detrimental effects to aquatic ecosystems in lowermost Cienega Creek.

As discussed above, Table 7 in Montgomery (2010) summarizes various hydrologic and environmental effects resulting from groundwater drawdowns. Table A-3, below, excerpts the Table 7 hydrologic effects analysis for Davidson Canyon Wash and lower Cienega Creek. Effects begin to appear 20 years after the conclusion of mining and become appreciable at 1,000 years. We note that Montgomery (2010) has predicted groundwater drawdowns of 0.31 foot at 20 years and 0.98 foot at 1,000 years, whereas Tetra Tech (2010) modeled drawdowns no greater than 0.1 foot at the same time steps.

Table A-3: Summary of Effects to Davidson Canyon Wash (based on Montgomery and Associates 2010)

Years after mining	Drawdown at perennial reach (feet)	Decrease in stream length (miles)	Decrease in baseflow (cfs)	Decrease in ET (afa)
0	0	0	0	0
20	0.01	0	0.01	0
150	0.31	0	0.02	8
1,000	0.98	0.29	0.04	22

Summary of Effects to Aquatic Ecosystems

The analyses, above, describe incremental changes to the groundwater and surface water systems that sustain a series of streams and their associated aquatic and riparian ecosystems. The effects of flow reductions will be in addition to any similar effects that result from changing baseline conditions (primarily ongoing drought and the future impacts of climate change) and the effects

of future, non-Federal cumulative actions in the area (primarily, groundwater withdrawal not associated with the proposed action). Table A-4, below, summarizes the proposed action's effects to streams.

Table A-4: Summary of effects to streams (based on Tetra Tech 2010 and SWCA 2012)

Stream	Drawdown (feet) with upper bounds of sensitivity analyses in parentheses (Tetra Tech 2010)		Primary Effects
	150 years	1,000 years	
Gardner Canyon	0.2 (0.35)	0.5 (Same)	Modest drawdown, potential reduction in mountain front recahrge
Empire Gulch	2.5 (5.0)	6.0 (Same)	Appreciable drawdown, reduced flows and stream length, potential reduction in mountain front recharge
Upper Cienega Creek	0.25 (0.35)	0.5 (Same)	Modest drawdown, reduced flows and stream length, potential reduction in mountain front recharge
Barrel Canyon	Isolated from regional aquifer		Reduced runoff from placement of tailings in channel, potential reduction in mountain front recharge
Davidson Canyon Wash			Reduced flows due to tributary impacts in Barrel canyon, above
Lower Cienega Creek	<0.1 (Same)	<0.1 (Same)	Minimal drawdown

Table A-5: Modeled groundwater drawdowns at key locations (adapted from SWCA 2012). Results in parenthese for Montgomery and Associates (2010) and Tetra Tech (2010) represent the range of drawdowns from sensitivity analyses (not the magnitude of variation from the stated, best-fit value). The term "same" means that the modeled drawdown at that location was not sensitive to alterations in the model's input parameters.

End of active mining			
Location	**Montgomery (2010)**	**Tetra Tech (2010)**	**Myers (2010)**
Gardner/Cienega Confluence	<0.1 (Same)	<0.1 (Same)	0
Upper Empire Gulch Springs	<0.1 (Same)	0.1 (<0.1 - 0.2)	0
Cienega near stream gage 09484550 (perennial reach)	<0.1 (Same)	<0.1 (Same)	0
Davidson/Cienega Confluence	<0.1 (Same)	<0.1 (Same)	Outside of model domain
Cienega near stream gage 09484560 (intermittent reach)	<0.1 (Same)	<0.1 (Same)	0
20 years after mine closure			
Location	**Montgomery (2010)**	**Tetra Tech (2010)**	**Myers (2010)**
Gardner/Cienega Confluence	<0.1 (Same)	<0.1 (Same)	0
Upper Empire Gulch Springs	<0.1 (<0.1 - 0.1)	0.2 (<0.1 - 0.5)	0
Cienega near stream gage 09484550 (perennial reach)	<0.1 (Same)	<0.1 (Same)	0
Davidson/Cienega Confluence	<0.1 (Same)	<0.1 (<0.1 - 0.15)	Outside of model domain
Cienega near stream gage 09484560 (intermittent reach)	<0.1 (Same)	<0.1 (Same)	0
50 years after mine closure			
Location	**Montgomery (2010)**	**Tetra Tech (2010)**	**Myers (2010)**
Gardner/Cienega Confluence	<0.1 (<0.1 - 0.1)	<0.1 (<0.1 - 0.15)	0
Upper Empire Gulch Springs	<0.1 (<0.1 - 0.5)	0.5 (<0.1 - 1.8)	0.2

Cienega near stream gage 09484550 (perennial reach)	<0.1 (Same)	<0.1 (<0.1 - 0.15)	0
Davidson/Cienega Confluence	<0.1 (Same)	<0.1 (<0.1 - 0.2)	Outside of model domain
Cienega near stream gage 09484560 (intermittent reach)	<0.1 (Same)	<0.1 (Same)	0
150 years after mine closure			
Location	**Montgomery (2010)**	**Tetra Tech (2010)**	**Myers (2010)**
Gardner/Cienega Confluence	<0.1 (<0.1 – 0.4)	0.2 (<0.1 – 0.35)	0.1
Upper Empire Gulch Springs	0.3 (0.1 – 1.4)	2.5 (0.5 – 5.0)	0.3
Cienega near stream gage 09484550 (perennial reach)	<0.1 (Same)	0.25 (<0.1 – 0.35)	0
Davidson/Cienega Confluence	<0.1 (Same)	<0.1 (<0.1 – 0.2)	Outside of model domain
Cienega near stream gage 09484560 (intermittent reach)	<0.1 (Same)	<0.1 (Same)	0
1,000 years after mine closure			
Location	**Montgomery (2010)**	**Tetra Tech (2010)**	**Myers (2010)**
Gardner/Cienega Confluence	<0.1 (<0.1 – 0.8)	0.5 (0.3 – 0.5)	2.2
Upper Empire Gulch Springs	3.3 (2.3 – 5.0)	6 (4.4 – 6.0)	4.3
Cienega near stream gage 09484550 (perennial reach)	<0.1 (Same)	0.5 (0.4 – 0.5)	0.2
Davidson/Cienega Confluence	<0.1 (Same)	0.1 (Same)	Outside of model domain
Cienega near stream gage 09484560 (intermittent reach)	<0.1 (Same)	<0.1 (Same)	0.3

Status of the Species – Gila Chub

Gila chub (*Gila intermedia*) was listed as endangered with critical habitat on November 11, 2005 (70 FR 51985). The final rule cites collection records, historical habitat data, the 1996 AGFD Gila chub status review (Weedman *et al.* 1996), and USFWS information documenting currently occupied habitat to conclude that Gila chub has been eliminated from 85 to 90 percent of formerly occupied habitat. It was also estimated that 90 percent of the currently occupied habitat is degraded due to the presence of nonnative species and land management actions. Due to fragmented and often small population sizes, extant populations are susceptible to environmental conditions such as drought, flood events, and wildfire. Primary threats to Gila chub such as predation by and competition with nonnative organisms and secondary threats identified as habitat alteration, destruction, and fragmentation are all factors identified in the final rule that contribute to the consideration that Gila chub is likely to become extinct throughout all or a significant portion of its range (70 FR 66664).

Background

Gila chub is a member of the roundtail chub (*Gila robusta*) complex that also includes headwater chub (*G. nigra*). The roundtail chub complex has had a turbulent and controversial taxonomic history that includes an assortment of classification schemes. Much of the debate has centered on whether the complex represents a number of nominal species or subspecies of *Gila robusta*. A nomenclatorial synonymy for Gila chub can be found in Minckley (1973).

Gila chub has long been recognized as distinct. Miller (1945), following the arrangement of Jordan and Evermann (1896), supported full generic rank for the genus *Gila* (Baird and Girard) with a "*Gila robusta* complex" that included Gila chub. Miller (1946) considered Gila chub to be an "ecological subspecies" of *G. robusta* (i.e., *G. r. intermedia*) characteristic of the small tributaries they inhabit. Rinne (1969, 1976), using univariate analyses of morphological and meristic characters, argued for recognition of both *G. robusta* and *G. intermedia* as distinct species and against the ecological subspecies concept. This approach was supported by some (e.g. Minckley 1973), but it was not until further evidence was generated by DeMarais (1986, 1995) that the specific status for *G. intermedia* was generally accepted. DeMarais (1995) supported continued recognition of *G. intermedia* based on the following arguments: 1) phenotypic extremes between *G. intermedia* and *G. robusta* are widely divergent and each possesses many morphologically uniform populations; (2) the geographic distributions of both species is an overlapping mosaic, therefore not satisfying traditional geographic criteria; and (3) contiguous populations of *G. intermedia* and *G. robusta* show no evidence of genetic exchange, thus each species maintains its evolutionary independence.

Gila chub is a thick-bodied species, chunky in aspect, whereas roundtail chub is slender and elongate, and headwater chub is intermediate in meristic and morphometric characteristics (Rinne 1969, 1976, Minckley 1973, DeMarais 1986, Minckley and DeMarais 2000, Marsh and Minckley 2009). Females can reach 250 mm (10 in) in total length (TL), but males rarely exceed 150 mm (6 in)(Minckley 1969, 1973: Rinne and Minckley 1991, Schultz and Bonar 2006). Body

coloration is typically dark overall, sometimes black or with diffuse, longitudinal stripes, with a lighter belly speckled with gray. The lateral scales often appear to be darkly outlined, lighter in center. Breeding males, and to a lesser extent females, develop red or orange on lower parts of the head and body and on bases of the pectoral, pelvic and anal fins.

While most reproductive activity by Gila chub occurs during late spring and summer, in some habitats it may extend from late winter through early autumn (Minckley 1973). Schultz and Bonar (2006) data from Bonita and Cienega creeks suggested that multiple spawning attempts per year per individual were likely, with a major spawn in late February to early March followed by a secondary spawn in autumn after monsoon rains. Reproductive activities in Monkey Spring (now extirpated) reportedly occurred for longer periods than in other populations, as breeding appeared to last virtually all season (Minckley 1969, 1973, 1985). Bestgen (1985) concluded that temperature was the most significant environmental factor triggering spawning.

Spawning probably occurs over submerged aquatic vegetation or root wads. Minckley (1973) observed a single female closely followed by several males over a bed of aquatic vegetation in a pond. Nelson (1993) suspected deep pools with vegetation in Cienega Creek were important sites for spawning but did not witness any associated behavior near submerged vegetation.

Gila chub is considered a habitat generalist (Schultz and Bonar 2006), and commonly inhabits pools in smaller steams, cienegas, and artificial impoundments throughout its range in the Gila River basin at elevations between 600 and 1,700 m (2,000 to 5,500 ft) (Miller 1946, Minckley 1973, Rinne 1975, Weedman et al. 1996). Common riparian plants associated with these populations include willows (*Salix* spp.), tamarisk (*Tamarix* spp.), cottonwoods (*Populus* spp.), seep-willow (*Baccharis glutinosa*), and ash (*Fraxinus* spp.). Typical aquatic vegetation includes watercress (*Nasturtium officinale*), horsetail (*Equisetum* spp.), rushes (*Juncus* spp.), and speedwell (*Veronica anagallis-aquatica*) (USFWS 1983, Weedman *et al.* 1996).

Gila chub is a highly secretive species, remaining near cover including undercut banks, boulders, root wads, fallen logs, and thick overhanging or aquatic vegetation in deeper waters, especially pools (Rinne and Minckley 1991; Nelson 1993, Weedman et al 1996). Recurrent flooding and a natural hydrograph are important in maintaining Gila chub habitats and in helping the species maintain a competitive edge over invading nonnative aquatic species (Propst *et al.* 1986, Minckley and Meffe 1987). They can survive in larger steam habitats, such as the San Carlos River, and artificial habitats, like the Buckeye Canal (Minckley *et al.* 1977, Minckley 1985, Rinne and Minckley 1991, Stout *et al.* 1970, Rinne 1976), and they interact with spring and small-stream fishes regularly (Meffe 1985).

Young Gila chub are active throughout the day and feed on small invertebrates, aquatic vegetation (especially filamentous algae) and organic debris (Bestgen 1985, Griffith and Tiersch 1989, Rinne and Minckley 1991). Adult chub are crepuscular feeders, consuming a variety of terrestrial and aquatic invertebrates, and fishes (Griffith and Tiersch 1989, Rinne and Minckley 1991). Benthic feeding may also occur, as suggested by presence of small gravel particles.

Gila chub evolved in a fish community with low species diversity and where few predators existed, and as a result developed few or no mechanisms to deal with predation (Carlson and Muth 1989). This species is known to be associated with speckled dace (*Rhinichthys osculus*), longfin dace (*Agosia chrysogaster*), desert sucker (*Pantosteus clarki*), Sonora sucker (*Catostomus insignis*), Gila topminnow (*Poeciliopsis occidentalis*), desert pupfish (*Cyprinodon macularius*), and Santa Cruz pupfish (*Cyprinodon arcuatus*). Before the widespread introduction of nonnative fishes, Gila chub was probably the most predatory fish within the habitats it occupied. In the presence of the nonnative green sunfish (*Lepomis cyanellus*) in lower Sabino Creek, Arizona, Gila chub failed to recruit young (Dudley and Matter 2000). Direct predation by green sunfish on young Gila chub was the acknowledged cause of this observation.

Many conservation and recovery efforts have been undertaken since species listing, largely by the Gila River Basin Native Fishes Conservation Program (Robinson 2010, 2011, 2012).

Status and Distribution

Historically, Gila chub was recorded from nearly 50 rivers, streams and spring-fed tributaries throughout the Gila River basin in southwestern New Mexico, central and southeastern Arizona, and northern Sonora, Mexico (Miller and Lowe 1967, Rinne and Minckley 1970, Minckley 1973, Rinne 1976, DeMarais 1986, Sublette *et al.* 1990, Varela-Romero *et al.* 1992, Weedman *et al.* 1996); and, occupancy of Gila chub throughout its range was more dense, and currently-occupied sites were likely more expansive in distribution (Hendrickson and Minckley 1985, Minckley 1985, Rinne and Minckley 1991). Gila chub now occupies an estimated 10 to 15 percent of its historical range (Weedman *et al.* 1996, 70 FR 66664) and these 25 localities are considered occupied, but all are small, isolated and face one or more threats (Weedman *et al.* 1996, 70 FR 66664). The biological status of several of these populations is uncertain, and the number of localities currently occupied may overestimate the number of remnant populations in that some might not persist if its core connected population was extirpated (eliminated).

Agua Fria River Subbasin

The Agua Fria subbasin is the system furthest downstream in the Gila River basin that currently supports or is historically known to have supported Gila chub. This subbasin sustains or recently sustained four remnant Gila chub populations. The Agua Fria River mainstem was historically occupied, but that population is considered extirpated. The four extant populations are Indian Creek, Little Sycamore Creek, Silver Creek (with replicates Larry and Lousy Canyon), and Sycamore Creek. In 1996, all remnant populations were considered threatened by Weedman *et al.* (1966), and two of the four were considered unstable.

In Silver Creek, a natural fish barrier (waterfall) has prevented invasion of green sunfish into the uppermost reaches, but the protected reach has only a few kilometers of perennial water, and the reach below is infested with nonnative green sunfish (Weedman *et al.* 1996). Natural barriers on Sycamore Creek have protected a portion of the population from warmwater nonnative fishes, but nonnative rainbow trout (*Oncorhynchus mykiss*) is present upstream, and Gila chub may be functionally extirpated below the lowermost barrier where a suite of warmwater nonnative fishes

reside (Weedman *et al.* 1996). The Gila chub population in Little Sycamore Creek inhabits two short perennial reaches totaling only about 1 km in length, but nonnative fishes have not been recorded there. The Indian Creek population was not detected until 1995, and in 2005 a portion of the population was salvaged as a precaution following the Cave Creek Complex Fire and later successfully returned. Weedman *et al.* (1996) noted that cattle grazing and recreational uses within some of the streams may be additional potential threats to the populations. The replicated populations in Lousy and Larry canyons seem to be doing well, and there are no threats from nonnative fishes.

Verde River Subbasin

The Verde subbasin drainage includes the north-central Gila River basin between the Agua Fria and Salt subbasins. The Verde mainstem downstream from Sullivan Lake is mostly perennial to its confluence, and several large tributary systems contribute perennial flows, primarily from the eastern portion of the drainage. Gila chub populations are recently known from only four remnant sites within the Verde subbasin: Red Tank Draw, Spring Creek, Walker Creek, and Williamson Valley Wash. A population historically collected from Big Chino Wash is considered extirpated. There have been no replications of any Verde subbasin populations.

Williamson Valley Wash was tentatively considered extirpated by Weedman *et al.* (1996), but Bagley (2002) captured 50 individuals there in 2001. Spring Creek appears stable, and no nonnative fishes recently have been recorded from above a low (~0.5 m) diversion dam located near the mouth. Walker Creek appears stable and nonnative-free based on a number of surveys between 1978 and 2001.

Santa Cruz River Subbasin

Gila chub populations are known from three remnant sites (Cienega Creek, Sabino Canyon, and Sheehy Spring) in the Santa Cruz subbasin. The population in Cienega Creek and Mattie Canyon are the largest and most geographically widespread. The Gila chub proposed listing rule (67 FR 66664), final listing rule (70 FR 66664), and Rosemont BA (USFS 2012) state that Gila chub were captured in Empire Gulch in 1995 and 2001. That is an erroneous report unsupported by other sources (Ehret and Simms 2009, Simms 2013, Service files). The Sabino Creek population experienced bottlenecking associated with post-fire runoff in 2003, although the population was replicated into nearby Romero Canyon in 2005. Sheehy Spring is a small system that likely never supports more than ~500 adults. Gila chub also was known historically from Monkey Spring and the mainstem Santa Cruz River, but these populations are now extirpated.

Cienega Creek is protected against nonnative fishes by at least two natural barriers, and the Gila chub population appears stable. However, headcutting along lower Wood Canyon threatens to capture Cienega Creek, which would initiate headward erosion up Cienega Creek that likely would significantly diminish Gila chub habitat. Gila chub habitat in Sabino Creek seems to be recovering since the Aspen Fire in 2003, and the stream is protected against upstream invasions of nonnative fishes by a low-head dam and multiple road crossings. Sheehy Spring has been invaded by nonnative mosquitofish, which has displaced Gila topminnow, but the species does

not appear to be significantly affecting Gila chub. Sheehy Spring, however, is a tiny drainage and is close to the mainstem Santa Cruz River, possibly enhancing its potential for upstream invasions. Green sunfish, largemouth bass, and black bullhead have been recorded in the Santa Cruz River downstream of Sheehy Spring in the last three years (Service files).

San Pedro River Subbasin

The San Pedro River Subbasin includes the entire San Pedro River watershed upstream from the confluence with Gila River. Gila chub populations are known from three remnant sites (Hot Springs Canyon, O'Donnell Canyon, and Redfield Canyon) in the San Pedro River Subbasin. Hot Springs Canyon and O'Donnell Canyon populations are protected behind constructed fish barriers, and a barrier on Redfield Canyon is expected to be constructed during 2013 or 2014. At least four and possibly as many as six, of the nine historically-known populations within the subbasin are considered extirpated.

Upper Gila River Subbasin

Upper Gila River Subbasin includes the entire Gila River watershed upstream of the Salt River confluence, exclusive of the Santa Cruz and San Pedro subbasins. Major subdrainages include the San Carlos, San Simon, San Francisco, and upper Gila rivers (including its three forks).

There are six remnant populations of Gila chub within this unit, and five historically-occupied streams are considered extirpated. The six populations are Blue River (San Carlos) Eagle, Bonita, Harden Cienega, and Dix creeks, Arizona; and, Turkey Creek, New Mexico. The Blue River (San Carlos) population is entirely on San Carlos Apache Tribal lands, and there is little information available regarding its status. There are constructed fish barriers on Bonita and Dix creeks, although nonnatives remain present in lower Bonita Creek. Harden Cienega appears free of nonnatives, although there is no barrier preventing their encroachment. The Eagle Creek population was significantly impacted by severe runoff following the 2011 Wallow Fire. The Turkey Creek population appears large and relatively stable, although rainbow trout inhabit the upper reaches and some warmwater nonnative species inhabit the lower reaches. Gila chub in Turkey Creek were affected by ash flows following the Miller Fire in 2011. Individuals were salvaged from the creek before the summer rains and were repatriated in 2012.

<u>Critical Habitat</u>

Critical habitat for Gila chub is designated for about 160.3 miles of stream reaches in Arizona and New Mexico that includes cienegas, headwaters, spring-fed streams, perennial streams, and spring-fed ponds. Critical habitat includes the area of bankfull width plus 300 feet on either side of the banks (70 FR 66664). The bankfull width is the width of the stream or river at bankfull discharge (i.e., the flow at which water begins to leave the channel and move into the floodplain) (Rosgen 1996). Critical habitat is organized into seven areas or river units:

Area 1 - Upper Gila River, Grant County, New Mexico, and Greenlee County, Arizona, includes Turkey Creek (New Mexico), Eagle Creek, Harden Cienega Creek, and Dix Creek;

Area - 2, Middle Gila River, Gila and Pinal Counties Arizona, consists of Mineral Creek;

Area - 3, Babocomari River, Santa Cruz County, Arizona includes O'Donnell Canyon and Turkey Creek (Arizona);

Area 4 - Lower San Pedro River, Cochise and Graham counties, Arizona, includes Bass Canyon, Hot Springs Canyon, and Redfield Canyon;

Area 5 - Lower Santa Cruz River, Pima County, Arizona, includes Cienega Creek, Mattie Canyon, Empire Gulch, and Sabino Canyon;

Area 6 - Upper Verde River, Yavapai County, Arizona, includes Walker Creek, Red Tank Draw, Spring Creek, and Williamson Valley Wash; and

Area 7 - Agua Fria River, Yavapai County, Arizona, includes Little Sycamore Creek, Sycamore Creek, Indian Creek, Silver Creek, Lousy Canyon, and Larry Creek (70 FR 66664).

There are seven primary constituent elements of critical habitat, which include those habitat features required for the physiological, behavioral, and ecological needs of the species:

1. Perennial pools, areas of higher velocity between pools, and areas of shallow water among plants or eddies all found in headwaters, springs, and cienegas, generally of smaller tributaries;
2. Water temperatures for spawning ranging from 63°F to 75 °F, and seasonally appropriate temperatures for all life stages (varying from about 50°F to 86 °F;
3. Water quality with reduced levels of contaminants, including excessive levels of sediments adverse to Gila chub health, and adequate levels of pH (e.g. ranging from 6.5 to 9.5), dissolved oxygen (i.e., ranging from 3.0 ppm to 10.0 ppm) and conductivity (i.e., 100 mmhos to 1,000 mmhos);
4. Prey base consisting of invertebrates (i.e., aquatic and terrestrial insects) and aquatic plants (i.e., diatoms and filamentous green algae);
5. Sufficient cover consisting of downed logs in the water channel, submerged aquatic vegetation, submerged large tree root wads, undercut banks with sufficient overhanging vegetation, large rocks and boulders with overhangs, a high degree of stream bank stability, and a healthy, intact riparian vegetation community;
6. Habitat devoid of non-native aquatic species detrimental to Gila chub or habitat in which detrimental nonnative species are kept at a level that allows Gila chub to continue to survive and reproduce; and
7. Streams that maintain a natural flow pattern including periodic flooding (70 FR 66664).

Consultation History

Our information indicates that, range wide, more than 32 consultations have been completed or are underway for actions affecting Gila chub. These opinions primarily include the effects of

grazing, water developments, fire, species control efforts, recreation, sport fish stocking, native fish restoration efforts, and mining.

Environmental Baseline – Gila Chub

The environmental baseline includes past and present impacts of all Federal, State, or private actions in the action area, the anticipated impacts of all proposed Federal actions in the action area that have undergone formal or early section 7 consultation, and the impact of State and private actions which are contemporaneous with the consultation process. The environmental baseline defines the current status of the species and its habitat in the action area to provide a platform to assess the effects of the action now under consultation.

Description of the Action Area

The action area for Gila chub encompasses all occupied or likely-to-be occupied reaches of stream within the Cienega Creek watershed, as these will be subject to the proposed action's effects to groundwater and surface flow hydrology. This area is described in detail in the Status of the Species and Critical Habitat within the Action Area section, below. The narrative that follows includes accounts of rangewide effects to Gila chub, its habitat, and its critical habitat as a means to describe similar factors affecting the species within the action area.

Europeans have influenced Southern Arizona for hundreds of years, and Native Americans have done so for much longer (Hastings and Turner 1965, Bahre and Hutchinson 1985, Bahre 1991, Tellman *et al.* 1997). Often-cited human impacts in the area include vegetation type conversion, dewatering surface waters and aquifers, erosion and channel down cutting, loss or reduction of native species, introduction and spread of nonnative species, and habitat loss. As with many of the river basins in the southwest, aquatic habitats and fish communities in the Gila basin have changed from historical conditions (Miller 1961, de la Torre 1970, Naiman and Soltz 1981, Miller *et al.* 1989, Minckley and Deacon 1991, Minckley and Marsh 2009). Aquatic habitats have been fragmented and reduced in quantity and quality due to diversion, groundwater mining, and natural and human-caused changes in the watershed and hydrologic regime (de la Torre 1970, Davis 1982, Tellman *et al.* 1997).

With the arrival of Europeans, major alterations began in the Gila River basin (Rea 1983). Beaver, which were a major influence on the structure of the Gila basin aquatic ecosystem, were almost extirpated. The introduction of livestock began very early and resulted in substantial alteration of the watershed and its soil and vegetation (York and Dick Peddie 1969, Humphrey 1987, Bahre 1991). Croplands increased, often along river terraces, resulting in destabilization and erosion of floodplains (Leopold 1946, Rea 1983). Roads and trails caused extensive erosion and substantial destruction of river channels (Leopold 1921, Dobyns 1981, Rutman 1997). Diversion of water, which was already practiced by Native Americans in some areas, increased in those areas and was initiated in others (Tellman *et al.* 1997). As diversion and irrigation increased, the demand for water storage increased, resulting in a variety of large and small dams and impoundments (Haddock 1980). Improper grazing, mining, timber harvest, hay harvesting, fire suppression, and other activities in the nineteenth century led to widespread erosion and

channel entrenchment in southeastern Arizona streams and cienegas when above-average precipitation and flooding occurred in the late 1800s and early 1900s after a drought (Bryan 1925, Martin 1975, Hendrickson and Minckley 1984, Sheridan 1986, Webb and Betancourt 1992, Hereford 1993, Turner *et al.* 2003). By the mid 1900's, large stretches of river in the Gila basin no longer had perennial flow, and the remaining areas were separated by long dry stretches, dams, and impounded water (Brown *et al.* 1977, Rea 1983, Hendrickson and Minckley 1984, Tellman *et al.* 1997).

As a result of these changes, the riverine habitats of the Gila basin, including the Santa Cruz River (de La Torre 1970, Logan 2002) and Cienega Creek (Bodner and Simms 2008), became fragmented, and connectivity was substantially reduced. Populations of fish or other aquatic species eradicated were not replaced by colonization (Minckley 1999, Hedrick *et al.* 2001). Habitat fragmentation contributes to the genetic isolation of populations (Parker *et al.* 1999). Population fragmentation can reduce genetic variation and viability (Minckley 1999). This, in turn, can increase the risk of extinction by reducing survival, reproduction, and dispersal. Isolation also precludes re-colonization should one or more populations be eliminated. When an inhospitable environment that imposes a high degree of threat on the remnant habitat surrounds isolated populations, these risks are compounded. This fragmentation has been a major factor in the decline of almost all of Arizona's native aquatic fauna and has resulted in the existing, where native aquatic species, particularly rarer ones, tend to be isolated in small headwater areas scattered across the tributaries of the basin (Hendrickson and Minckley 1984, Minckley 1985, Minckley and Marsh 2009).

Human disturbances of the watershed, floodplain, and stream channel change many of the factors determining channel configuration. Increased sediment off the watershed is a common result of human actions, and sediment is a major determinant of channel shape (Leopold 1997). When the dynamic equilibrium has been disrupted, the channel begins a process of adjustment as it attempts to restore a dimension, pattern, and profile that are consistent with controlling hydraulic variables (Rosgen 1996). These adjustments may lead to dramatic changes in the stream channel width, depth, and geometry that encroach on human activities, such as has occurred on the Verde River. As human activities are affected, additional flood control and channelization measures may occur, which exacerbate the problems in adjacent areas, and the channel will continue to become increasingly unstable. Some of these effects have been ameliorated in some areas, and several recovery projects are underway.

Nonnative species were imported by humans, starting with common carp (*Cyprinus carpio*) to Arizona in 1885 (Gilbert and Scofield 1898). Since that time, at least 50 species of nonnative fish have been introduced (ASU, Geographic Information Systems database of fish records, 2001) into the Gila River basin, and there are other records of incidental occurrences of another 10 to 15 species (Minckley and Marsh 2009). Many nonnative aquatic invertebrates, amphibians, reptiles, plants, and disease and parasite organisms (Sinderman 1993, Clarkson *et al.* 1997, Robinson *et al.* 1998, Bradley *et al.* 2002) have also been introduced. These species have been purposefully introduced for sport-fishing, bait, biocontrol, and ornamental fish use and releases through aquaculture, aquarium, and generalized "bait bucket" activities. They have also been accidentally introduced through interbasin water transfers (Davies *et al.* 1992, Meador

1992, 1996; Stefferud and Meador 1998, Claudi and Leach 2000), aquarium and pet releases (Welcomme 1988, Courtenay 1993, FAO 1998), and inclusion with other species being purposefully stocked (Marsh and Minckley 1982, Platz *et al.* 1990). Nonnative aquatic species have had major detrimental impacts on native aquatic fauna and were a major factor in the listing of topminnow and pupfish, as well as many other fishes native to the Gila basin (Desert Fishes Team 2003, 2006; USFWS 1984; 40 FR 29863, 50 FR 30188, 51 FR 10842, 51 FR 23769, 51 FR 39468, 52 FR 46400, 56 FR 13374). Introduction of nonnative pathogens, parasites (Wilson *et al.* 1996, Robinson *et al.* 1998, Weedman *et al.* 1996), plants, invertebrates, amphibians, and fish negatively affects the native fishes of the Southwest. Simms (1997) noted that stock tanks in the Cienega Creek watershed contained bullfrogs (*Lithobates catesbeiana*), goldfish (*Carassius auratus*), largemouth and smallmouth bass (*Micropterus salmoides* and *M. dolomieu*, respectively), and bluegill (*Lepomis macrochirus*). Fortunately, Cienega Creek appears to be free of nonnative fishes at present.

In summary, and given that Cienega Creek is within the Gila River basin as discussed above, the quality and quantity of suitable aquatic habitat for threatened and endangered fish in the action area has been affected through numerous past actions resulting in reduction of habitat, altered species composition, increased presence of nonindigenous aquatic species, decreased surface-water availability, changes in stream morphology, and other factors. A significant portion of the adverse impacts to the aquatic and riparian ecosystem come from the additive effect of small actions that individually may not threaten the system, but cumulatively result in continuing deterioration of the ecosystem.

Land ownership within the Cienega Creek watershed includes Forest Service, Bureau of Land Management, State Trust land, County land, and private land. Land use within and adjacent to where the proposed action will be implemented primarily consists of mining, livestock grazing, dispersed recreation (USFS 2012), and residential development (Hanson and Brott 2005). Barrel Canyon is the principal drainage system within the action area. Wasp, McCleary, and Scholefield Canyons discharge to Barrel Canyon, which discharges to Davidson Canyon and then to lower Cienega Creek in the northeastern part of the area. Empire Gulch and Gardner Canyon discharge into upper Cienega Creek in the southeastern portion of the action area.

Previous mineral exploration and production activities in the project area as well as within the watersheds in the larger action area have resulted in numerous landscape disturbances, such as mine prospects and adits, mine related access roads, and drilling sites. Additional anthropogenic disturbances have resulted from livestock grazing and all-terrain vehicle use. Within and near the action area, there are numerous wells in the Vail and Corona de Tucson areas that support residential and ranching uses (USFS 2012, PAG 2012b). Wells continue to be drilled in the lower Cienega-Davidson Canyon area, especially in the lower Cienega and Davidson Canyon areas (PAG 2012b). The drilling rate has also increased, with the number of wells drilled over the last 10-year period, greater than the previous 20 years (PAG 2012b). There has also been an upward trend in the amount of water pumped in the Cienega-Davidson area (Fonseca 2008), with about 804 acre-feet (af) withdrawn in 2010 (PAG 2012b). This area is within the Tucson Active Management Area, so groundwater restrictions and well reporting apply there. The number of wells in the Sonoita area has also increased in the last decade. In 2005 unpublished data, there

are over 100 wells listed for the Sonoita area (Service files). We know of no data or reports demonstrating impacts to upper Cienega Creek from wells in the Sonoita-Elgin area.

Upper and lower Cienega Creek, lower Davidson Canyon, Empire Gulch, and Gardner Canyon are all areas with shallow groundwater (Pima Association of Governments 2012b). As can be seen in Table GC-1, these shallow groundwater areas also support perennial and intermittent stream reaches, and hydro-meso- and xeroriparian vegetation (Pima County 2000, Pima Association of Governments 2012a, 2012b). Any reduction of the water table that supports these shallow groundwater areas will likely reduce all the parameters (except maybe xeroriparian) in Table A (Fonseca 2008) (also see Table GC-1, below), with perennial stream miles of most concern for Gila chub. The number of days with no flow (Hynes 1970), and the extent of flow in May and June are the limiting factors for fish (Fonseca 2008).

Table GC-1: Shallow groundwater areas in the Rosemont action area. Derived from Pima County (2000)

Area	Shallow groundwater (acres)	Perennial stream (miles)	Intermittent stream (miles)	Hydro-meso riparian vegetation (acres)	Xeroriparian vegetation (acres)
Upper Cienega	2,911	7.7[1]	4.6	897	160
Lower Cienega	1,651	2.7	4.8	577	56
Gardner	1,210	0	0.5	-	-
Davidson	907	0.7	1.3	-	-
Empire	-	1.4	-	-	-
Mattie	-	1.3	0.4	-	-

[1] Average of 4.1 miles since 2001; 3.3 miles in fiscal year 2009-2010 (PAG 2012a)

In Knight's 1996 Thesis A Water Budget and Land Management Recommendations For Upper Cienega Creek Basin, he presents data from Bota (1996) on mountain front recharge (Table GC-2). Most of that mountain front recharge comes down Gardner Canyon. Gardner Canyon does drain much of the east side of the Santa Rita Mountains, and begins at the highest elevations. Undoubtedly, Gardner Canyon contributes a large part of the recharge for upper Cienega Creek.

Table GC-2: Mountain front recharge for the upper Cienega Creek basin, Arizona. Adapted from Knight 1996; data from Bota 1996.

Recharge Area	Recharge (ac ft/yr)	Percent of recharge
Santa Rita and Empire Mountains	5,564	41
Whetstone Mountains	4,936	36
Mustang Mountains	1,516	11
Canelo Hills	1,508	11
Total	13,524	99

Las Cienegas National Conservation Area (NCA) was created by Congress to "conserve, protect, and enhance" biological and other natural resources. The BLM manages Las Cienegas NCA with restrictions on multiple use activities that would impair ecological processes on watershed and riparian areas, as described in the current resource management plan (BLM 2002). Cienega Creek is subject to a number of human uses, including livestock grazing, recreation, urban and suburban development, groundwater pumping, and roads. Before BLM acquired the Las

Cienegas NCA, the area was primarily used for grazing, and there were extensive agricultural fields along the creek as well (Eddy and Cooley 1983). These fields were irrigated by a system of canals and dams and protected by a canal ("the Panama Canal") that the BLM is removing to restore more natural geomorphic and hydrological conditions conducive to native fish habitat (USFWS 1998, Simms 2001). The NCA presently receives heavy human visitation, and most of Cienega Creek is readily accessible. Upstream of the NCA, the Cienega Creek watershed is primarily used for livestock grazing. However, there is extensive proliferation of ranchette development in the area surrounding Sonoita that has increased the number of wells. Several wineries and vineyards occur along the groundwater divide between Cienega Creek and Babocomari River basins. The vineyards use mostly groundwater. The environmental baseline of the Las Cienegas NCA is thoroughly discussed in the USFWS 2012 Las Cienegas Aquatic Species BO (File number 22410-2002-F-0162-R001), and USFWS 2002 Las Cienegas NCA Resource Management Plan BO (File number 22410-2002-F-0162), and are incorporated by reference (FWS 2002, 2012).

The Cienega Creek Natural Preserve is established and managed by Pima County for the protection of its unique natural and cultural resources. Although accommodated, public recreation and education activities are limited so they will not degrade these resources. A permit is required by all visitors to the Preserve. Permits are issued by the Pima County Natural Resources, Parks and Recreation Department with the intent to limit the number of daily visitors to the Preserve and to notify visitors of the restrictive and prohibited activities (Pima County Flood Control District 2013).

The Pima County Draft Multiple Species Conservation Plan (Pima County 2012a) commits Pima County to pursue the following management actions and conservation commitments for the Gila chub (and Gila topminnow)(Pima County 2012b):

- Seek to prohibit Pima County Health Department from using *Gambusia* for mosquito control in watersheds tributary to reintroduction sites and in the Cienega Creek watershed upstream of Colossal Cave Road;
- Support protection of Cienega Creek water quality via ADEQ's Outstanding Waters program;
- Identify and address management of nonnative aquatic organisms through management plans and ranch infrastructure projects on County-controlled mitigation lands in the Cienega watershed;
- Implement the Pima County Floodplain Ordinance as described in Chapter 4 (Pima County 2012a) to minimize loss of habitat for these species;
- Implement monitoring as described in Appendix O (Pima County 2012b), including recording and entering incidental observations in the Covered Species Information Database; and
- Following significant upgrades to the County's two wastewater facilities, the Santa Cruz River downstream of the facilities may show favorable conditions for the reestablishment of Gila topminnow, longfin dace, desert sucker, and Sonora sucker. Pima County will work with the USFWS following upgrades in 2016 and subsequent water-quality testing to determine if fish monitoring is a reasonable and prudent activity at that location. If so,

> Pima County will commit to monitoring every 5 years using electrofishing and seining using the same methods as employed by Clarkson *et al.* (2011).

The Cienega Creek Natural Preserve is part of what is referred to as the Missing Link, or Cienega Corridor. An assessment of the area, required under the legislation establishing the Las Cienegas National Conservation Area, was completed by the Sonoran Institute (Hanson and Brott 2005).

Status of the Species and Critical Habitat within the Action Area

The action-area status of the Gila chub was recently described in our 2008 and 2012 BOs that addressed effects of Aquatic Species Conservation at the San Pedro Riparian and Las Cienegas National Conservation Areas, Arizona (File numbers 22410-2008-F-0103, 22410-2002-F-0162-R001). The action areas for those BOs overlap with the action area of the proposed action; that information is updated here. The status of Gila chub in the action area continues to be stable since the 2008 and 2012 BOs were completed (USFWS 2008, 2012).

The Santa Cruz River has five tributaries with extant populations of Gila chub: Sabino Canyon, Bear Canyon, Romero Canyon (Pima County), and Sheehy Spring (Santa Cruz County) have unstable-threatened populations, and Cienega Creek (Pima and Santa Cruz counties) has the only known stable-secure population of Gila chub in existence. Lower Cienega Creek has a small population north of Interstate 10 on Pima County's Cienega Creek Natural Preserve. On the Las Cienegas NCA, the chub is found throughout Cienega Creek and lower Mattie Canyon but is absent from Empire Gulch (Ehret and Simms n.d., Simms 2013). All three creeks on the Las Cienegas NCA have designated critical habitat, and all of the critical habitat in the Cienega Creek watershed is within the action area. Regional drought has impacted stream flows in both Empire Gulch and Cienega Creek, and resulted in a decrease in the amount of perennial aquatic habitat (Duncan and Garfin 2006, Bodner *et al.* 2007, Bodner and Simms 2008).

There is no suitable habitat, or known occurrences of this species, within the actual footprint of the action; however, there is suitable, occupied habitat within the action area. Surveys for this species have not been conducted within the action area for the purposes of the proposed action. We report here on survey information for the potentially affected area including Cienega Creek and its tributaries. Gila chub have been reported recently, from the Las Cienegas NCA, and from the Cienega Creek Natural Preserve, upstream of the confluence of Cienega Creek with Davidson Canyon (70 FR 66664b, Ehret and Simms n.d., Simms 2009,); both of these reaches of Cienega Creek are located within the action area. In 2002, two Gila chub were collected in the Cienega Creek Natural Preserve upstream of "railroad bridge" from a "deep pool" in the area covered by the Rincon Peak quadrangle map, on which coverage of Cienega Creek begins about 1 mile upstream of the Davidson Canyon confluence (Reinthal 2009). In 2005 and 2006, five reaches of Cienega Creek were sampled for fish during annual stream flow mapping by Pima Association of Governments. Gila chub were "observed" in Stream Reach 3, immediately upstream of the Davidson Canyon confluence (70 FR 66664b, 2006). Although Stream Reach 2, immediately downstream of the Davidson Canyon confluence, is described as "the best habitat for chub and topminnow" (70 FR 66664b), no Gila chub were reported in this reach in either

2005 or 2006 (70 FR 66664b, USFWS 2005). As part of an ongoing program established by the U.S. Bureau of Reclamation, Cienega Creek had fish monitoring conducted from 2007 through 2010 (Kesner and Marsh 2010; Marsh and Kesner 2011). Sampling was conducted at two locations in Cienega Creek: Station 1 (upstream of the confluence of Davidson Canyon) and Station 2 (Three Bridges). No Gila chub were taken at either station in 2007 or 2008 (Kesner and Marsh 2010). One Gila chub was collected at Station 1 in 2009 (Kesner and Marsh 2010), and five Gila chub were collected at Station 1 in 2010 (Marsh and Kesner 2011).

Extensive surveys in 2009 and 2011 suggest that Gila chub continue to be abundant in upper Cienega Creek (Doug Duncan, USFWS, pers. comm). Surveys in 2007 demonstrated that Gila chub are recolonizing Mattie Canyon following heavy flooding and extreme sedimentation resulting from collapse of a grade control structure in 2001. No chub have ever been observed in Empire Gulch since BLM acquired Las Cienegas NCA in 1988.

Additionally, Gila chub have been documented within upper Cienega Creek during various survey efforts from 1985 to 1995 (Weedman *et al.* 1996, Bodner *et al.* 2007, Schultz 2009). The BLM conducted chub sampling efforts in 2005, 2007, and 2008 within both reaches of upper Cienega Creek and within Mattie Canyon in 2007 and 2008, and Gila chub were captured and abundant during each effort (Ehret and Simms n.d. [2009]). BLM has conducted fish sampling almost every year in the Las Cienegas NCA since 1989 (Bodner *et al.* 2007). As part of an effort intended to create, enhance, and protect habitat for at-risk aquatic species within the Las Cienegas NCA, Caldwell *et al.* (2011) identified numerous pond sites for Gila chub reestablishment.

Native fish species in Cienega Creek on Las Cienegas NCA include Gila topminnow, longfin dace (*Agosia chrysogaster*), and Gila chub (Bagley *et al.* l991, Simms and Simms 1992). Cienega Creek is one of the last places in Arizona supporting an intact native fish fauna uncontaminated by nonindigenous fish (Bodner *et al.* 2007). The lack of a nonnative fish community raises the conservation status of Cienega Creek and contributes to its stable-secure status.

Status of Gila Chub Critical Habitat

The action area is within the 48.1 km (29.9 mi) Lower Santa Cruz/Cienega Creek Critical Habitat Unit (Unit 5) for Gila chub as described in the Final Rule (70 FR 66664). Cienega Creek and its tributaries Mattie Canyon and Empire Gulch contribute 77 percent of that, or 37 km (23 mi). The designated critical habitat in the action area represents 14 percent of all designated critical habitat.

Approximately 14.2 km (8.8 mi) of this area of critical habitat occurs in lower Cienega Creek between Interstate 10 and where Cienega Creek becomes Pantano Wash (though the area at Pantano Dam is not included). Another 13.6 km (8.4 mi) of critical habitat occurs within the Las Cienegas NCA in upper Cienega Creek, with an additional 5.2 km (3.2 mi) in Empire Gulch and 4.0 km (2.5 mi) in Mattie Canyon, on BLM and State Trust lands. All these sections of designated critical habitat contain one or more PCE: perennial pools, the necessary vegetation

that provides cover, and adequate water quality. All of these sections are also within the action area of the proposed action. There are recent documented occurrences of Gila chub in both upper and lower segments of designated critical habitat within the action area and they are, therefore, considered occupied except for Empire Gulch. The populations within lower Cienega Creek are considered unstable, and those within upper Cienega Creek and Mattie Canyon are considered stable (Weedman *et al.* 1996, 70 FR 66664).

Factors affecting species environment and critical habitat within the action area

Primary threats to designated critical habitat and Gila chub include fire, nonnative species (both present and future), and water use in lower Cienega Creek; fire and nonnative species in upper Cienega Creek; fire, grazing, and nonnative species in Mattie Canyon; and fire and grazing in Empire Gulch (70 FR 66664). We describe activities that have occurred within and near the action area to qualify the environmental baseline and the state of critical habitat.

The seven PCEs of critical habitat include: (1) perennial pools; (2) appropriate water temperature; (3) good water quality; (4) adequate prey base; (5) sufficient cover; (6) no or minimal nonnative aquatic species; and (7) a natural hydrological cycle.

Water use

The over allocation of water resources in Arizona has already affected flows in many southern Arizona rivers (Hendrickson and Minckley 1983, Pool and Coes 1999, Logan 2002, Minckley and Marsh 2009). Groundwater pumping has eliminated habitat in the Santa Cruz River north of Tubac (Logan 2002), and threatens habitat in the San Pedro River. It is likely that some sites may not be viable in the future as a result of groundwater overdraft. The current drought has compounded the effects of pumping on vulnerable spring sources.

Haney *et al.* (2009) compared stream baseflow, current and projected populations, and different water use scenarios for 18 watersheds in Arizona. For the base population projection (least water use scenario; reduces water demand by 30 percent by 2050 and reduces population 25 percent below base projections), demand will equal base flows in the lower Cienega watershed by 2050, though we note that this projection included diversion and off-site use of water at Pantano Dam. The proposed action includes cessation of this diversion and recharge of the water through a Managed Underground Storage Facility. In all other scenarios, municipal water demand will exceed baseflow in lower Cienega Creek. The most aggressive scenario for amount of municipal water required increases population by 25 percent above base projections. We further note that the aforementioned recharge may offset some portion of the anticipated increases in groundwater pumping in the Vail and southeastern Tucson area.

In contrast to lower Cienega Creek, projected water demand is substantially less than base flow for the upper Cienega study watersheds for all four of the Haney *et al.* (2009) scenarios. Upper and lower Cienega Creek had the lowest water use (gal/person/day) of all 18 watersheds. Unfortunately, this also means water conservation would have less absolute impact on municipal water use.

Nonnative species

Most introductions of nonindigenous fishes and bullfrogs have been done illegally for many reasons (Aquatic Nuisance Species Task Force 1994, Rosen *et al.* 1995, USFWS 2008); the establishment of sport fish is an appreciable source of nonindigenous fishes (Rinne *et al.* 1998). Illegal introductions of nonindigenous fishes and other aquatic invasive species are routinely made by the public (e.g., red shiner, and guppies at Watson Wash). The release of nonindigenous fish, and likely bullfrogs, by the public has been a major factor in the spread of these species (Moyle 1976a, 1976b; Welcomme 1988). Nonindigenous fish are transported for bait and sporting purposes (Moyle 1976a, 1976b), for mosquito control (Meffe *et al.* 1983), and as aquarium fishes (Deacon *et al.* 1964, Moore *et al.* 1976, Shelton and Smitherman 1984). The population of Gila topminnow at Watson Wash was extirpated as a result of transfers of nonindigenous fish into topminnow habitat (Voeltz and Bettaso 2003). Refer to our May 15, 2008, BO on the Central Arizona Project for a discussion on the pathways and impacts of nonindigenous aquatic species to native fish, native frogs, and their habitats (file number 22410-2007-F-0081). We incorporate that BO by reference that discussion (USFWS 2008). Bullfrogs are present in Cienega Creek and its watershed.

Additionally, with increasing access and recreational use, the vulnerability of the stream and its native fish populations to nonindigenous species invasion is intensifying. The Cienega Creek basin has been closed to fishing by the Arizona Game and Fish Commission to reduce the potential for release of illegal fish and live bait. Finally, degradation of habitats is a well-recognized factor in establishment of nonnative species (Courtenay and Stauffer 1984, Arthington *et al.* 1990, Soule 1990, Aquatic Nuisance Species Task Force 1994, Meador *et al.* 2003). In the Cienega Creek watershed, largemouth bass, green sunfish, and bullheads have been found in off-channel waters (clay pits, stock tanks, private ponds). Nonnative fish have not been found in Cienega Creek, Mattie Canyon, or Empire Gulch.

Livestock grazing

Historically, improper livestock grazing and logging likely contributed to habitat modifications noted by Miller (1950). The historical occurrence of intensive grazing and resulting effects on the land are indicated in published reports dating back to the early 1900s (Rixon 1905, Rich 1911, Duce 1918, Leopold 1921, Leopold 1924).

Livestock grazing has been shown to increase soil compaction, decrease water infiltration rates, increase runoff, change vegetative species composition, decrease riparian vegetation, increase stream sedimentation, increase stream water temperature, decrease fish populations and change channel form (Meehan and Platts 1978, Kauffman and Kruger 1984, Schulz and Leininger 1990, Platts 1991, Fleischner 1994, Ohmart 1996). Although direct impacts to the riparian zone and stream can be the most obvious sign of livestock grazing, upland watershed condition is also important because soil compaction, changes in percent vegetation cover, and vegetative type can influence the timing and amount of water and sediment delivered to stream channels (Platts 1991, Ohmart 1996, Belsky and Blumenthal 1997). As a consequence, impacted streams are

more likely to experience flood events that negatively affect the aquatic and riparian habitats and are more likely to become intermittent or dry in the fall (groundwater recharge is less when water runs off quickly) (Platts 1991, Ohmart 1996).

Livestock grazing has been an ongoing disturbance in and around the footprint of the proposed mine for over 100 years; historically at much higher levels than at present. Rosemont holds term grazing USFS permits on four allotments: Rosemont, Thurber, Greaterville, and DeBaud. As part of its conservation measures, Rosemont and the USFS will develop modified allotment management plans for the grazing allotments to improve riparian areas and enhance water features. Livestock grazing within the perimeter fence will be assessed by Rosmeont and the USFS upon construction of mine facilities to determine whether grazing can continue during mine operations. If it is determined that grazing can continue within the inter-fence area, specific management prescriptions will be developed. Livestock grazing on the Las Cienegas NCA is managed by BLM to be compatible with the natural values of the area.

Fire

Since 2002, there have been several fires that have burned over 60,700 hectares (150,000 acres) in the Coronado National Forest that are near both occupied and designated CH for Gila chub. In May 2003, Gila chub were salvaged from Sabino Canyon during the Aspen Fire and were subsequently returned and now thrive in Sabino Creek. Gila chub continue to persist, post-fire in O'Donnel Creek. No fires appear to have impacted the Gila chub in Cienega Creek, though the 2005 Florida Fire burned in upper Gardner Canyon and its tributaries.

Direct fire-related fish mortalities are most likely during intense fires in small, headwater streams with low flows and high fuel-loads (less insulation and less water for dilution) (Gresswell 1999). In these situations, water temperatures can become elevated or changes in pH may cause immediate death (Cushing and Olson 1963). Spencer and Hauer (1991) documented 40-fold increases in ammonium concentrations during an intense fire in Montana. The inadvertent dropping of fire retardant in streams is another source of direct mortality of fish during fires.

Dr. Wayne Minshall (pers. comm., February 1995, Idaho State Univ.) has investigated the effects of fire on streams. Nutrients contributed from fires are phosphorous, which is associated with ash, and nitrogen/ammonia, which is associated with smoke. Ammonia is toxic to fish. In addition, incomplete combustion of materials creates charcoal and charcoal in the water can lead to deoxygenation. Minshall has done studies of effects of fire on water temperature (Minshall *et al.* 1989). They found small temperature changes in shallow ponds and small streams. They believed that the impact of fire on streams varied proportionally with the intensity and extent of burning of the watershed and the vegetation present.

Indirect effects of fire include ash and debris flows, increased water temperature, increased nutrient inputs, and sedimentation (Swanston 1991, Bozek and Young 1994, Gresswell 1999). Ash and debris flows can cause mortality months after fires occur when barren soils are eroded during precipitation (Bozek and Young 1994, Brown *et al.* 2001, Rinne 2004, Rhodes 2007). Fish can suffocate when their gills are coated with fine particulate matter, they can be physically

injured by rocks and debris, or they can be displaced downstream below impassable barriers into habitat occupied by nonnative fish. Ash and debris flows or severe flash flooding can also decimate aquatic invertebrate populations that fish may depend on for food (Molles 1985, Rinne and Medina 1992, Rinne 1996, Lytle 2000). In larger streams, refugia are typically available where fish can withstand short-term adverse conditions; small headwater streams are usually more confined, concentrating the force of water and debris (Pearsons *et al.* 1992, Brown *et al.* 2001).

The floodplains of both upper and lower Cienega Creek are well vegetated. However, the mesic nature of riparian floodplains should reduce impacts from wildfires in these areas. Because the Gila chub in the action area are not in isolated, small streams, are miles downstream from fuel-loads that create ash and debris, the impact of ash and debris flows should be small.

Climate change

The June 2012 BA contained a detailed discussion of the likely effects of climate change; the analysis is incorporated herein via reference and is expanded upon in the following paragraphs. That southeastern Arizona and much of the American southwest have experienced serious drought recently is well known (Garfin *et al*. 2013). What is known with far less certainty is how long droughts last. State-of-the-art climate science does not yet support multi-year or decade-scale drought predictions. However, instrumental and paleoclimate records from the Southwest indicate that the region has a history of multi-year and multi-decade drought (Hereford *et al.* 2002, Sheppard *et al.* 2002, Jacobs *et al.* 2005). Multi-decade drought in the Southwest is controlled primarily by persistent Pacific Ocean-atmosphere interactions, which have a strong effect on winter precipitation (Brown and Comrie 2004, Schneider and Cornuelle 2005); persistent Atlantic Ocean circulation is theorized to have a role in multi-decadal drought in the Southwest, particularly with respect to summer precipitation (Gray *et al.* 2003, McCabe *et al.* 2004, Wang *et al.* 2013). Given these multi-decade "regimes" of ocean circulation, and the severity and persistence of the present multi-year drought, there is a fair likelihood that the current drought will persist for many more years (Stine 1994, Seager *et al.* 2007), albeit with periods of high year-to-year precipitation variability characteristic of Southwest climate. There is high confidence the Southwest will experience exceptional, decades-long droughts, and they will be hotter than historical droughts (Overpeck *et al.* 2012).

The information on how climate change might impact southeastern Arizona is less certain than current drought predictions. However, virtually all climate change scenarios predict that the American southwest will get warmer during the 21st century (IPCC 2001, 2007; Overpeck *et al.* 2012). Precipitation predictions show a greater range of possibilities, depending on the model and emissions scenario, though precipitation is likely to be less (USGCRP 2001, Seager *et al.* 2007). To maintain the present water balance with warmer temperatures and all other biotic and abiotic factors constant, precipitation will need to increase to keep pace with the increased evaporation and transpiration caused by warmer temperatures.

Drought and climate change will also impact watersheds and subsequently the water bodies in those watersheds. Drought and especially long-term climate change will affect how ecosystems

and watersheds function. These changes will cause a cascade of ecosystem changes, which may be hard to predict and are likely to occur non-linearly (Seager *et al.* 2007).

Many of the predictions about the impacts of climate change are based on modeling, but many predictions have already occurred. In addition, many models have underestimated the increase in greenhouse gasses. The tree die-offs and fires that have occurred in the southwest early in this century show the impacts of the current drought. Because of drought, climate change, and human population growth, negative effects to aquatic habitat in the Gila basin will continue to occur. In addition, the basin's rivers, streams, and springs continue to be degraded (Overpeck *et al.* 2012), or lost entirely. Climate change trends are highly likely to continue (Overpeck *et al.* 2012), and the impacts on species will likely be complicated by interactions with other factors (e.g., interactions with nonnative species and other habitat-disturbing activities).

Increased water temperature

Kundzewicz *et al.* (2007) state that of all ecosystems, freshwater ecosystems will have the highest proportion of species threatened with extinction due to climate change. Species with narrow temperature tolerances will likely experience the greatest effects from climate change and it is anticipated that populations located at the margins of species hydrologic and geographic distributions will be affected first (Meisner 1990). High water temperatures suppress appetite and growth, foster disease, can influence behavioral interactions with other fish (Schrank *et al.* 2003), reduce reproductive success (Bonar *et al.* 2005), or be lethal (McCullough 1999). The temperature preferences and tolerances of Gila chub are less than 98.6 °F (37.0 °C)(Carveth *et al.* 2006).

Increased occurrence of extreme events

Extreme events such as drought, fires, and floods are predicted to occur more frequently because of climate change (IPCC 2007, Overpeck *et al.* 2012). It is anticipated that an increase in extreme events will most likely affect populations living at the edge of their physiological tolerances. The predicted increases in extreme temperature and precipitation events may lead to dramatic changes in the distribution of species or to their extirpation or extinction (Parmesan and Matthews 2006).

Decreased streamflow

Current models suggest a decrease in precipitation in the Southwest (Kundzewicz *et al.* 2007, Seager *et al.* 2007) which would lead to reduced streamflows and a reduced amount of habitat for Gila chub. Streamflow is predicted to decrease in the Southwest even if precipitation were to increase moderately (Nash and Gleick 1993, State of New Mexico 2005, Hoerling and Eischeid 2007). Winter and spring warming causes an increased fraction of precipitation to fall as rain, resulting in a reduced snow pack, an earlier snowmelt, and decreased summer base flow (Christensen *et al.* 2004, Stewart *et al.* 2004, Stewart *et al.* 2005, Regonda *et al.* 2005). Earlier snowmelt and warmer air temperatures can lead to a longer dry season. Warmer air temperatures lead to increased evaporation, increased evapotranspiration, and decreased soil moisture. These

three factors would lead to decreased streamflow even if precipitation increased moderately (Garfin 2005, Seager *et al.* 2007). The effect of decreased streamflow is that streams become smaller, intermittent or dry, and thereby reduce the amount of habitat available for aquatic species. A smaller stream is affected more by air temperature than a larger one, exacerbating the effects of warm and cold air temperatures (Smith and Lavis 1975). In addition, fish isolated in pools may be subject to increased predation from terrestrial predators (ORPI 2008).

Change in the hydrograph

In a warmer world an enhanced hydrologic cycle is expected; flood extremes could be more common resulting in larger floods; droughts may be more intense, frequent, and longer-lasting (Seager *et al.* 2007). Stewart *et al.* (2005) show that timing of spring streamflow in the western U.S. during the last five decades has shifted so that the major peak now arrives 1 to 4 weeks earlier, resulting in less flow in the spring and summer. They conclude that almost everywhere in North America, a 10 to 50 percent decrease in spring-summer streamflow fractions will accentuate the seasonal summer dry period with important consequences for warm-season water supplies, ecosystems, and wildfire risks (Stewart *et al.* 2005). Rauscher *et al.* (2008) suggest that with air temperature increasing from 37 to 41 °F (3 to 5 °C), snowmelt driven runoff in the western U.S. could occur as much as two months earlier than present. Changes in the hydrograph could potentially alter native fish assemblages. Variability in the hydrographs and greater flow volume has been shown to sustain native fishes (e.g., as seen for spikedace and loach minnow) over nonnatives between periodic flood events (Rinne and Miller 2006), although flooding has extirpated reintroduced Gila topminnow populations (Weedman 1999).

Drought

The Southwest U.S. is currently experiencing drought conditions (CLIMAS 2013). Almost 97 percent of Arizona was abnormally dry or drier (March 2013, CLIMAS 2013). The Cienega Creek basin is in moderate drought. Larger parts of New Mexico are in severe drought (89%)(CLIMAS 2013), including areas currently occupied by Gila chub. Although Gila chub evolved in the Southwest and have survived drought in the past, it is anticipated that a prolonged, intense drought would affect many populations, in particular those occupying small headwater streams which are likely to dry or become intermittent. In addition, there is a clear association between severe droughts and large fires in the Southwest (Swetnam and Baisan 1996) that can harm fish and their habitat.

The regional drought has impacted stream flows in both Empire Gulch and Cienega Creek, reducing the amount of perennial aquatic habitat (Bodner *et al.* 2007, Bodner and Simms 2008). Primary constituent elements one and three of critical habitat (perennial pools, areas of higher velocity between pools, and areas of shallow water; and water quality with reduced levels of contaminants, and adequate levels of pH, dissolved oxygen, and conductivity) have been negatively impacted by drought in the area. The solubility of oxygen into water is less with higher ambient temperatures (Wetzel 1983).

Fire

Since the mid-1980s, wildfire frequency in western forests has nearly quadrupled compared to the average of the period 1970 to 1986 (Westerling et al. 2006). The total area burned is more than six and a half times the previous level (Westerling *et al.* 2006). In addition, the average length of the fire season during 1987 to 2003 was 78 days longer compared to 1970 to 1986 and the average time between fire discovery and control increased from about 8 to 37 days for the same time (Westerling *et al.* 2006). McKenzie *et al.* (2004) suggest, based on models, that the length of the fire season will likely increase and fires in the western U.S. will be more frequent and severe. In particular, they found that fire in New Mexico appears to be acutely sensitive to summer climate and temperature changes and may respond dramatically to climate warming (McKenzie *et al.* 2004). The summer temperatures in the southwest are predicted to increase more than any other season (Garfin *et al*. 2013).

Furthermore, drought and climate change will cause changes in fire regimes in all southeastern Arizona vegetation communities (Kitzberger *et al.* 2006). The timing, frequency, extent, and destructiveness of wildfires are likely to increase (Westerling *et al.* 2006) and may facilitate the invasion and increase of nonindigenous plants. These changed fire regimes will change vegetation communities, the hydrological cycle, and nutrient cycling in affected watersheds (Brown *et al.* 2004). Some regional analyses conservatively predict that acreage burned annually will double with climate change (MacKenzie *et al.* 2004). Such watershed impacts could cause enhanced scouring and sediment deposition, more extreme flooding (quicker and higher peak flows), and changes to water quality due to increases in ash and sediment within stream channels. Severe watershed impacts such as these, when added to reductions in extant aquatic habitats, will severely restrict sites available for the conservation of native fish and other aquatic vertebrates and make management of extant sites more difficult.

Severe wildfires capable of extirpating or decimating fish populations are a relatively recent phenomena and result from the cumulative effects of historical or ongoing grazing, which removes the fine fuels needed to carry fire and fire suppression (Madany and West 1983, Savage and Swetnam 1990, Swetnam 1990, Touchan *et al.* 1995, Swetnam and Baisan 1996, Belsky and Blumenthal 1997, Gresswell 1999). Historical wildfires in the southwest were primarily cool-burning understory fires with return intervals of 3 to 7 years in ponderosa pine (Swetnam and Dieterich 1985). Cooper (1960) concluded that before the 1950s; crown fires were extremely rare or nonexistent in the region. Effects of fire may be direct and immediate or indirect and sustained over time (Gresswell 1999).

Effects to Aquatic Species

The June 2012 BA characterizes climate change as a threat to rare plants and animals, and the extensive analysis contained in that document are incorporated herein via reference. Climate change affects the habitats where the species occur and alters physical and biological factors with which species evolved. The most obvious effects are on aquatic and riparian resources: under a hotter and drier climate, surface water is generally less available than it was historically. There are numerous references that describe a decline in aquatic resources due to an altered climate (Lenart 2007, California Department of Water Resources 2008, Bogan and Lytle 2010,

MacDonald 2010, Reiman and Isaak 2010, Colorado River Basin Water Supply and Demand Study 2011,). The most at-risk group of threatened, endangered, and sensitive species on the Coronado National Forest are those associated with aquatic environments. Although there are many threats that affect aquatic organisms, climate change has been shown to be a causative agent in population declines.

Effects of the Action - Gila Chub

Groundwater pumping to support residential development (and other uses) in the Cienega Creek watershed was identified as a factor influencing Gila chub in the final rule (70 FR 66664). The proposed action represents an additional increment of groundwater impacts.

Despite the inherent uncertainties in the hydrologic system and the groundwater modeling data derived from analyses of that system, we are aware of no other model results or empirical data that would more accurately inform our analyses. The existing groundwater models therefore represent the best available information with which we can analyze the groundwater-related effects of the proposed action. Given the general agreement regarding the validity and utility of the Montgomery and Associates (2010), Tetra Tech (2010), and Myers (2012) models, SWCA prepared a definitive impact analysis for seeps, springs, and riparian ecosystems for the Coronado National Forest and presented it to us on November 16, 2012 (SWCA 2012). The Coronado National Forest subsequently adopted the SWCA analysis in the second Supplemental BA (USFS 2013a). These analyses were discussed in depth within the Effects to Aquatic Ecosystems section and are incorporated herein via reference. Also note that we relied primarily on the findings of Tetra Tech (2010); these are the largest in magnitude and therefore represent the most precautionary approach for the purposes of an effects analysis.

The aforementioned changes in groundwater elevations predicted by the models and, when applicable, the inferred and modeled losses of surface flows supported by surface or near-surface groundwater elevations, are measurable and reasonably certain to occur, but their precise impacts on aquatic ecosystems and riparian vegetation are difficult to quantify. The subsequent analyses will therefore be primarily qualitative in nature. In addition, as previously stated, the reliability of the models' estimated changes decreases over time.

Water withdrawals that reduce the surface and subsurface discharge of a stream are an adverse effect on fishes and other aquatic species. Any losses of surface water will decrease water depth and the wetted perimeter of aquatic habitat. A decrease in the wetted perimeter and depth of a stream is a loss of fish habitat. These losses would also reduce the amount of shallow waters, crucial habitat for small fishes such as Gila topminnow and young Gila chub. We also anticipate that reduced flow volumes resulting from groundwater withdrawal could result in increased summer water temperatures (Barlow and Leake 2012) and thus reductions in dissolved oxygen content (oxygen solubility is inversely related to water temperature). The proposed action will result in groundwater drawdowns and surface water reductions that will have varying magnitudes of effects to surface water quantity and quality and, as stated above, these effects are in addition to regional groundwater withdrawals.

Reduced water availability may also indirectly result in changes in riparian communities. We do not anticipate sudden mortality of vegetation, rather a gradual transition from more mesic to more xeric species assemblages in some areas. These changes to riparian vegetation can negatively affect bank stability, shading and cover, sediment transport, and water temperature. These impacts are discussed in greater detail within the Effects to Riparian Ecosystems section of this BO.

These modeled decreases in groundwater elevation would occur over a long time, but could cause changes in aquatic and riparian vegetation extent or health, and the reduction in stream flow could impact Gila chub and designated critical habitat (e.g., lower water level, more extensive dry reaches). As a result of groundwater drawdown, the amount or volume of water within perennial pools would decrease, and Gila chub in Cienega show a preference for pools. Reduced in-stream vegetative cover could result in reduced substrate for eggs, for prey, and escape cover for Gila chub, hence reducing the hatching rate of eggs, reducing food, and increasing the exposure of Gila chub to predation and desiccation. Changes in water volume and flow, and extent of flow could have similar effects, in addition to loss of habitat. Another indirect effect on Gila chub could also result from prey species being negatively impacted by groundwater drawdown, hence altering predator-prey relationships. If any changes to streamflow occur during normal low flows (May and June), impacts to fishes would be most significant. One day of no flow could potentially extirpate fish from a stream reach, though refugia would likely be present. More problematic would be extended no-flow, where refugia would be few or nonexistent. These effects may occur at upper and lower Cienega Creek, Mattie Canyon, and Empire Gulch. Lastly, these impacts would be amplified during exceptionally dry years that are expected to increasingly occur with continuing drought and climate change (Overpeck *et al.* 2012).

Regional impacts to groundwater quality and surface water runoff quality that could make it into perennial streams is not likely under the Aquifer Protection Permit. The cone of depression associated with the mine pit is predicted to capture water contaminants and prevent their movement to streams in the action area. Therefore, no impacts to Gila chub or designated critical habitat are expected to occur given the information in the various BAs. As stated in the Environmental Baseline section, above, Gila chub occur in Cienega Creek and 22.9 mi (37 km) miles of the mainstem and tributaries (Mattie Canyon and Empire Gulch) are designated as critical habitat.

The lack of information on the effects of with- and post-project water quality in the BA makes it difficult for us to analyze water quality issues as they relate to biological systems. Rosemont Copper (2012), however, summarizes baseline water quality and models the proposed action's anticipated impacts. In brief, Rosemont Copper (2012) anticipates that surface runoff will meet Aquifer Water Quality Standards. Tetra Tech (2010) analyzed the potential for the project to exceed Surface Water Quality Standards and found that the proposed action was unlikely to cause an exceedance of these standards in downstream areas of Davidson Canyon wash and, therefore, lower Cienega Creek. We cannot ascertain if the water quality standards established by the Arizona Department of Environmental Quality are protective of Gila chub, as the specific levels have not been set yet (ADEQ 2012).

Gardner Canyon

Gardner Canyon is anticipated to experience regional aquifer drawdowns of < 0.1 foot from the cessation of mining until 50 years later (or up to 0.15 foot at 50 years) (see Gardner/Cienega Confluence data in Table A-5). At 150 years after mining, the effect to Gardner Canyon increases to 0.2 foot (or up to 0.35 foot) and reaches 0.5 foot at 1,000 years.

Impacts are expected to be negligible and immeasurable to groundwater at lower Gardner Canyon until at least 130 years after mine closure, at which time groundwater drawdown is modeled to be 0.8 ft (Tetra Tech 2010c). Groundwater drawdown would likely reduce spring and surface flow. The greatest effect to Gila chub from impacts to Gardner Canyon would be reduced surface or subsurface flows propagating downstream to both upper and then lower Cienega Creek (see discussion below).

Empire Gulch

The proposed action will appreciably affect Empire Gulch. The Upper Empire Gulch Springs data in Table A-5 in the Effects to Aquatic Ecosystems section displays the drawdowns modeled by Tetra Tech (2010); effects at this site to range from 0.1 foot (or up to 0.2 foot) of groundwater drawdown upon cessation of mining to 0.2 foot (or up to 0.5 foot) at 20 years, 0.5 (up to 1.8 foot) foot at 50 years, 2.5 feet (up to 5.0 foot) at 150 years, and 6 feet at 1,000 years. The spring-fed hydrology (Bodner and Simms 2008) of Empire Gulch render it particularly vulnerable to diminishment of the groundwater that may sustain the springs.

The modeled groundwater drawdown, would reduce the amount or volume of water in Empire Gulch itself, including perennial pools. This would impact the PCEs of water quantity and vegetative cover present within critical habitat there. However, since Gila chub are not known to occur in Empire Gulch, impacts to individual chub are not likely. Also, as long as Chiricahua leopard frogs occur at the headspring, it is very unlikely that Gila chub would be intentionally released there, as chub can prey on frog tadpoles and eggs.

It is possible, given the long time of the proposed action that Gila chub could naturally move into Empire Gulch. In that event, indirect effects on Gila chub habitat could impact breeding and foraging within these areas. These impacts would be more likely to occur near the confluence with Cienega Creek, which is expected to have less groundwater drawdown than the Empire Gulch headspring, and is closer to source populations in Cienega Creek.

Upper Cienega Creek

Upper Cienega Creek is that portion of the stream in Reaches 1, 2, and 3 (the latter includes the narrows) (see Figure A-1 in the Effects to Aquatic Ecosystems section). Gardner Canyon and Empire Gulch, along with Mattie Canyon, are the major tributaries in this reach.

The USGS Cienega Creek stream gage (0948550) is situated near the narrows in the upstream portion of Reach 3 (see Figure A-1). Regional groundwater drawdowns at this site describe the effects to upper Cienega Creek. Tetra Tech (2010) modeled drawdowns of <0.1 foot from the end of mining and at 20, and 50 years later (or up to 0.15 foot at 50 years). Drawdowns reach 0.25 feet (or up to 0.35 foot) and 0.5 feet at 150 and 1,000 years, respectively. Table A-2 in the Effects to Aquatic Ecosystems section is based on SWCA (2012) and describes the hydrologic effects to upper Cienega Creek. The effects don't manifest until 1,000 years after the cessation of mining, but at that point a 0.16-mile decrease in wetted stream length, a 0.02 cubic foot per second loss of discharge, and 51 acre-feet per annum of lost riparian evapotranspiration are predicted. Indirect effects to Gila chub, such as groundwater drawdowns and changes in riparian community composition, are reasonably certain to occur within the action area in upper Cienega Creek.

Davidson Canyon Wash

Barrel Canyon is a tributary to Davidson Canyon Wash. Barrel Canyon, in which Gila chub do not occur, will be primarily affected by the reduced runoff that will result from the placement of mine tailings in its upper watershed, rather than by drawdowns in the aquifer beneath the stream. SWCA (2012) estimated that ephemeral surface runoff yield in Barrel Canyon will be reduced from between 17.2 to 45.8 percent; the former value is associated with the Barrel Alternative (the proposed action). SWCA (2012) further extrapolated that this 17.2 percent reduction would equate to a 4.3 percent reduction of runoff 12 miles downstream in the lower reaches (2, 3, and 4) of Davidson Canyon Wash. Peak flows will also be affected; by 22 percent at the Highway 83 Bridge and an extrapolated 5.6 percent in Davidson Canyon Wash.

As stated in the Effects to Aquatic Ecosystems section, the uppermost reaches of Davidson Canyon Wash (Reaches 1 and 2) (see Figure A-1) are anticipated to experience minimal groundwater drawdowns of <0.01 foot from the cessation of mining to 1,000 years (Tetra Tech 2012). Reaches 3 and 4 of Davidson Canyon Wash (see Figure A-1) may also be relatively unaffected by groundwater drawdowns. Tetra Tech predicted groundwater drawdowns in Davidson Canyon Wash at the downstream end of Reach 4 (see the Davidson/Cienega Confluence data in Table A-5) of <0.1 foot from 0 to 150 years after mining and 0.1 foot at 1,000 years (or up to 0.15 foot at 20 years, and 0.2 foot at both 50 and 150 years).

Lower Cienega Creek

Lower Cienega Creek includes Reaches 4 and 5 as described in SWCA (2012) (see Figure A-1 in the Effects to Aquatic Ecosystems section). Tetra Tech (2010) modeled groundwater drawdowns of <0.01 foot at the USGS stream gage in Reach 5 for all time steps from the cessation of mining to 1,000 years; this is to be expected at such a relatively large distance from the mine pit.

Lower Cienega Creek, however, will also experience the accumulation of effects of groundwater drawdown and surface flow diminishment throughout the affected portion of its watershed. The effects to Barrel Canyon, Davidson Canyon Wash, Gardner Canyon, Empire Gulch, and the

uppermost reaches of Cienega Creek represent incremental, additive effects to the lower reaches of Cienega Creek.

The Pima Association of Governments (2003b) has estimated that Davidson Canyon Wash subflow contributes 8 to 24 percent of the baseflow in Lower Cienega Creek. Given SWCA's finding that Davidson Canyon Wash will experience a 4.3 percent reduction in surface flows from the placement of tailings in Barrel Canyon (a tributary) (see above), we anticipate a 0.3 to 1.0 percent reduction in lower Cienega Creek baseflows. Again, these anticipated reductions are to annual yields, and may not describe any reductions in the dry-season baseflows which are crucial to conserving Gila chub.

The minimal reduction in lower Cienega Creek subflow from the Barrel Canyon and Davidson Canyon Wash systems will occur in addition to surface flow reductions in other upstream areas (see Gardner Canyon, Empire Gulch, and Upper Cienega Creek sections, above as well as in the subsequent narrative), the influence of climate change on baseline conditions over time, and the effects of cumulative actions. The end result will be an incremental, detrimental effect on aquatic ecosystems in lowermost Cienega Creek.

Peak flow reductions will also result from the proposed action; these were discussed in the Effects to Aquatic Ecosystems section. We cannot ascertain the precise effect that reduced peak flows from Barrel Canyon (modeled to be 22 percent) and thence Davidson Canyon Wash (extrapolated to be 5.6 percent) will have on lower Cienega Creek (see Effects to Aquatic Ecosystems section). It is reasonable to assume the effects will be appreciably less than 5.6 percent, as flood flow hydrology will remain largely intact in the eastern portions of the Cienega Creek watershed (including Empire Gulch, Gardner Canyon, and Mattie Canyon).

We note, however, that peak flows are responsible for the movement of sediment. A small reduction in sediment transport has been modeled for Davidson Canyon and Cienega Creek below their confluence (SWCA 2012), but is not anticipated to have a large effect given the remaining, unaffected sediment supply present within channels and tributaries (Rosemont Copper Company 2012). There may nevertheless be interactions between the expected changes in both peak flow hydrology and available sediment supply (Simon et al. 2007), making it difficult to predict future changes in sediment-related channel geometry. We note that Rosemont Copper Company (2012) predicts a slight narrowing in channel top width. This seems reasonable, given that any reduction in the magnitude of peak flows will affect floods of all return intervals, including the approximately 1.5-year return interval events that constitute channel-forming flows (Rosgen 1994, Moody et al. 2003). It is not clear if the modeled change in sediment and the channel narrowing will affect Gila chub positively or negatively; effects will depend on multiple variables (e.g. timing, quantity, amount of flow in Barrel Canyon, Davidson Canyon Wash, and ultimately, the Gila chub habitat (and critical habitat) in Cienega Creek.

Gila chub have been recorded in Reach 5 of Cienega Creek (below the confluence with Davidson Canyon); there appears to be suitable habitat and it is designated critical habitat, and there is a nearby source population of Gila chub upstream. Therefore, it is reasonably certain that Gila chub will occur during the timeframe of the action. Thus, even though effects are expected to be

minimal in this area, effects may begin during mine operation, and continue for 1,000 years. Any loss of flow, wetted perimeter, and pool depth is an effect on Gila chub.

The groundwater modeling results do not discuss the potential for groundwater drawdowns to occur at Mattie Canyon; the site is outside of the 5-foot drawdown perimeter discussed in SWCA (2012). However, since lower Mattie Canyon is close to the stream gage, drawdown at the gage may also occur in the groundwater system associated with the tributary. As stated, Tetra Tech (2010) predicted groundwater drawdowns at the Cienega Creek gauge of 0.25 foot (or up to 0.35 foot) 150 years after mine closure and 0.5 foot (or up to 0.5 foot) 1,000 years after mine closure. Reductions of groundwater at Mattie Canyon may be slightly less than at the gage because Mattie Canyon is slightly further from the mine pit, and east of Cienega Creek. However, a reduction in groundwater that reduces surface flow and subflow, will affect Gila chub and critical habitat in Mattie Canyon as is discussed above.

Analyses undertaken by Westland Resources (2012) but not included in the three iterations of the BA or in SWCA (2012) correlated extent of surface flow in lower Cienega Creek with depth-to-groundwater in adjacent wells. Their results, partially based on averages in June, show there would be small decreases (<2% of average) in length of streamflow. Also, the extent of streamflow and proportional reduction in extent of streamflow could be greater than two percent in drier times.

Effect of the Proposed Conservation Measures – Gila Chub

The proposed action contains many conservation measures. Rosemont has agreed to monitor changes in groundwater and surface water quantity and quality and to update both groundwater and surface water models based on data obtained from monitoring efforts. Tracking what occurs with surface and groundwater will be crucial for determining any effects of the mine on water, and subsequently to species dependent on that water. The BA contained no additional conservation measures if monitoring shows groundwater drawdown greater than what was modeled. If this were to occur, reinitiation of consultation would likely be necessary.

Because the effects of the action to Gila chub will be long-term and off-site, conservation measures can only be realized off-site. The two conservations measures discussed below are outside the footprint of the mine, though one is in the action area. Other than the monitoring mentioned above, two conservation measures should promote conservation and recovery of Gila chub. A full description of the conservation measures can be found in the proposed action section of this BO.

The Cienega Creek Watershed Conservation Fund will fund $200,000 a year for 10 years for development and implementation of measures intended to preserve and enhance aquatic and riparian ecosystems and the federally listed aquatic and riparian species that depend on them. Projects may include surveys for and the removal of non-native species in the watershed. Funds can be used for restoration activities and adaptive management. Rosemont will acquire and close one well near the diversion dam in lower Cienega Creek. Also, Rosemont will acquire over 1100 af of water rights, and transfer and sever and transfer them for conservation purposes.

About 825 acre feet (af) annually will be used for aquifer recharge below Pantano Dam, either through an approved ILF mitigation program or through a "managed underground storage facility (MUSF)" permitted through the Arizona Department of Water Resources. This will allow surface water flows currently diverted for golf course irrigation to be captured and discharged back to the streambed below the Pantano Dam within the Cienega Creek Natural Preserve. Flow will be captured at the existing in-channel grated diversion, and then released into the stream channel below the dam. Gila topminnow and longfin dace have been observed right above the dam, on the dam, and in the scour pool below the dam. It is certain that fish have been and will continue to go into the diversion, and suffer death or injury. Though Gila chub have not been found within several miles, the possibility exists given the time-frame of analysis and the mitigating effects of Cienega Creek Watershed Conservation Fund before groundwater drawdown impacts lower Cienega Creek. The City of Tucson and Pima County (2009) expect that up to 3000 linear feet of riparian and aquatic habitat would form. Whether or not that habitat is suitable for chub, given the reduced stream gradient below the dam, remains to be seen. There would at least be a pool below the dam. The actions taken under this conservation measure should enhance the resiliency and suitability of Cienega Creek for Gila chub, especially in the lower creek, at least in the short-term. Under the threat of continuing long-term drought and climate change, enhancing system resiliency is a key component for adapting to climate change and reducing its affects (Overpeck *et al.* 2012).

Also, Rosemont will purchase about 1,200 acres of land along Sonoita Creek (Sonoita Creek Ranch) with about 590 af of certificated surface water rights from Monkey Spring. This is near Patagonia, and outside of the action area. It is anticipated that the land will be transferred either to a Corps-approved ILF program sponsor or to a conservation entity for long-term management of the property. In addition, unless an ILF program is developed, Rosemont will fund $150,000 a year for 10 years for resource management. An additional $100,000 ($20,000 annually for five years) will be provided for management against nonnative species, generally in the two existing ponds on the property that are maintained with water from Monkey Spring. At a minimum Gila chub and Gila topminnow will be established in the ponds after nonnatives are removed from them. Because this parcel is outside of the action area, this action represents recovery in lieu of threat removal (FWS 1994). The environmental baseline and recovery status of Gila chub should be improved by actions taken at Sonoita Creek Ranch. Also, the source of Monkey Spring appears to be the regional aquifer, which should be somewhat buffered from local groundwater pumping and climate change. The Cienega Creek Watershed Fund and Sonoita Creek Ranch conservation measures are essential to offset expected effects to Gila chub and their habitat.

Summary of Effects – Gila Chub

- Groundwater levels have historically been variable, but in a downward trend;
- The environmental baseline shows increasing trends in water use in parts of the action area;

- The current extended drought and climate change are highly likely to negatively impact many system components from the upper parts of the watershed to where Cienega Creek becomes Pantano Wash through:
    - Changes in upland vegetation and fire regime;
    - Higher ambient and water temperatures;
    - Increased variability in stream hydrographs;
    - More frequent severe climatic events (such as storms, droughts, wildlfires, etc.);
- The proposed conservation measures will not preclude all anticipated effects to surface water from occurring;
- The proposed conservation measures at Sonoita Creek Ranch will allow conservation in lieu of threat removal;
- Impacts to groundwater, and thus surface water, are reasonably certain to occur in designated critical habitat and areas occupied by Gila chub, and thus will negatively affect Gila chub; and
- Impacts to wetted stream perimeter and water depth are anticipated to occur well after mine closure (50-150 or more years after closure).

Cumulative Effects – Gila Chub

Cumulative effects include the effects of future State, tribal, local or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act.

In 1991, the American Fisheries Society adopted a position Statement regarding cumulative effects of small modifications to fish habitat (Burns 1991). Though the American Fisheries Society use of the term “cumulative” differs from the definition in the ESA, the statement concludes that accumulation of, and interaction between, localized or small impacts, often from unrelated human actions, pose a serious threat to fishes.

Unregulated activities on Federal and non-Federal lands, such as trespass livestock, inappropriate use of OHVs, illegal introduction of nonindigenous aquatic species, and residential and commercial development on lands within watersheds containing threatened and endangered aquatic animals, are cumulative effects and can adversely affect the species through a variety of avenues.

Other activities, such as recreation, are increasing. Increasing recreational, residential, or commercial use of non-Federal lands near or within the contributing watersheds of the riparian areas would likely result in increased cumulative adverse effects to occupied, as well as potentially-occupied native aquatic animal habitat through increased water use, increased pollution, increased movement of nonindigenous species, and increased alteration of the stream banks through riparian vegetation suppression, bank trampling, changing flow regimes, and erosion. We note that recreation use on Federal lands is not a cumulative effect and that much of the stream frontage along Cienega Creek is in Federal (BLM) ownership. Recreational use of Pima County lands, while restricted, is also a cumulative effect. Lastly, the right-of-way

vegetatation maintenance activities conducted by Tucson Electric Power, which result in nearly-complete removal of riparian vegetation in the affected area (Pima County Regional Flood Control District 2009), are also a cumulative effect.

Cumulative effects to native aquatic animals include ongoing activities in the watersheds in which the species occurs such as livestock grazing and associated activities outside of Federal allotments, irrigated agriculture, groundwater pumping, stream diversion, bank stabilization, channelization without a Federal nexus, and recreation. Some of these activities, such as irrigated agriculture, are declining and are not expected to contribute substantially to cumulative long-term adverse effects to native aquatic animals.

There are many conservation actions being considered by the AGFD for native fish and frogs in the Santa Cruz River basin. Two important conservation actions are the approved Safe Harbor Agreements for the Chiricahua leopard frog and the topminnow and pupfish. While these two agreements and any other conservation actions taken by AGFD are likely to be federally funded or approved, it is likely some of them will have no Federal nexus.

The U.S. Census predicts that Arizona will be the second fastest growing state in the country through 2030, adding an additional 5.6 million people (U.S. Census 2005). During the 2010 Census, Arizona maintained its standing as having the second fastest population growth rate by growing more than 20 percent between 2000 and 2010 (Pollard and Mather 2010). If these predictions hold true, already severe threats to Gila chub and its habitat will worsen, primarily due to increased human demand for surface and ground water and decreased supply. Water demands will increase as the population increases. Most of Arizona's developed areas' groundwater is pumped out faster than the aquifer can recharge (U.S. Environmental Protection Agency 2011). Groundwater pumping is likely to be the greatest impact cumulatively, since it is minimally regulated by the State.

Additionally, the majority of the lands in the Cienega Corridor are Arizona State Trust Lands, most of which are currently leased for cattle grazing. The Arizona State Constitution mandates that State Trust Lands produce the maximum economic benefit for the beneficiaries of the Trust, most of which are school districts. One of the primary ways in which the State Land Department raises funds is to auction its Trust Lands for commercial or residential development (Hanson and Brott 2005). Activities on residential and commercial inholdings within watersheds containing Gila chub can adversely affect the species through poor land management practices and water withdrawal. These effects have not been well quantified within the action area.

Conclusion – Gila Chub

After reviewing the current status of the Gila chub, the environmental baseline for the action area, the effects of the proposed action, and the cumulative effects, it is the FWS's biological opinion that the proposed action is not likely to jeopardize the continued existence of the Gila chub. Pursuant to 50 CFR 402.02, "jeopardize the continued existence of" means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both survival and recovery of a listed species in the wild by reducing the

reproduction, numbers, or distribution of that species. We present this conclusion for the following reasons:

1. No direct effects from operation of the mine are expected;
2. Rosemont will monitor groundwater drawdown and the USFS will compare observed drawdown to modeled drawdown. Groundwater drawdown greater than modeled may require reinitiation of section 7 consultation;
3. The Cienega Creek Watershed Conservation Fund will, for the short-term at least, protect and potentially increase habitat for Gila chub by funding actions management and restoration actions in the watershed, protecting water rights, and creating habitat;
4. The Cienega Creek Watershed Conservation Fund is likely to increase ecosystem resiliency in the face of the expected groundwater drawdown from Rosemont Mine, and impacts from climate change;
5. The severance and transfer downstream senior water rights to upstream reaches of Cienega Creek is proposed to occur by no later than January 1, 2016. If successfully executed, these *in situ* water rights may be employed to protect against future diversions of surface water by junior appropriators.
6. The Sonoita Creek Ranch will create new habitat for Gila chub from a reliable water source (Monkey Spring);
7. The Cienega Creek Watershed Fund and Sonoita Creek Ranch conservation measures are essential to offset expected effects to Gila chub and their habitat;
8. Indirect effects from groundwater drawdown are difficult to predict at the distances from the drawdown (Rosemont Mine), and over a long time (1,000 years);
9. Groundwater drawdown is not expected to be less than 0.25 ft at all of the modeled locations within and upstream of Gila chub habitat until 150 years after mine closure; and
10. Conservation and recovery actions have taken place since species listing, continue to occur, with more actions in planning. Therefore, we believe the status of the species is improving.
11. The magnitude of the proposed action's effects and the implementation of conservation measures (as described in Conclusions 2 - 6 above), mean that the recovery potential of Gila chub and the species critical habitat will not be diminished.

Based on the above analyses and summary, it is the FWS's biological opinion that the proposed action will not alter the ability of this CH to retain its PCEs and to function properly. As such, Gila chub designated Critical Habitat (CH) will remain functional to serve its intended conservation role for the species. Therefore, we conclude that the proposed action is not likely to destroy or adversely modify Gila chub designated CH nor affect its role in recovery of the species.

INCIDENTAL TAKE STATEMENT – GILA CHUB

Section 9 of the Act and Federal regulation pursuant to section 4(d) of the Act, prohibit take of endangered or threatened species, respectively, without special exemption. "Take" is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. "Harm" is further defined to include significant habitat modification or

degradation that results in death or injury to listed species by significantly impairing behavioral patterns, including breeding, feeding, or sheltering. "Harass" is defined in the regulations as ``an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering (50 CFR §17.3). Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the proposed action is not considered to be prohibited taking under the Act provided such taking is in compliance with this Incidental Take Statement.

The measures described below are non-discretionary, and must be included by the USFS as binding conditions of any grant or permit issued to the applicant, as appropriate, for the exemption in section 7(o)(2) to apply. The USFS has a continuing duty to regulate the activity that is covered by this Incidental Take Statement. If the USFS (1) fails to assume and implement the terms and conditions, or (2) fails to require the applicant to adhere to the terms and conditions of this incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, the USFS, or the applicant must report the progress of the action and its impact on the species as specified in the Incidental Take Statement (see 50 CFR 402.14(I)(3)).

Amount or Extent of Take Anticipated – Gila Chub

We anticipate that the proposed action will result in incidental take of Gila chub. Any reduction in stream discharge resulting from groundwater drawdowns attributable to the proposed action will reduce the extent and/or quality of aquatic habitat required by Gila chub; we are thus reasonably certain that take will occur.

Incidental take of Gila chub in Cienega Creek will be difficult to detect for the following reasons: population levels cannot be accurately described with existing information and techniques, dead animals are difficult to find, cause of death may be difficult to determine, and losses may be masked by seasonal fluctuations in numbers or other causes. The incidental take is expected to be in the form of harm through the loss of habitat from groundwater drawdown, and harm, harassment, and mortality from water diversion and management at Pantano Dam.

We recognize that providing a numerical estimate of incidental take is the preferred method of measuring take and that for some animals this method is biologically defensible as the ecology of the animal lends itself to them being more detectible (e.g., long-lived, territorial species such as the desert tortoise). However, it is impossible to quantify the number of individual Gila chub taken because: (1) dead or impaired individuals are almost impossible to find (and are readily consumed by scavengers and predators) and losses may be masked by seasonal fluctuations in environmental conditions; (2) the status of the species will change over time through disease, natural population variation, natural habitat loss, or the active creation of habitat through management; and (3) the species is small-bodied, well camouflaged, and occurs under water of varying clarity.

Gila chub are subject to an existing monitoring program in the Cienega Creek watershed on the Las Cienegas NCA. The currently used sampling techniques, however, do not result in population estimates, only relative abundance as catch-per-unit-effort. The sampling techniques used on Las Cienegas NCA are only sensitive enough to be statistically significant if the population doubles or is halved (Bodner *et al*. 2007). Monitoring in reaches downstream from the NCA (Marsh and Kesner 2011) is similarly unsuited to determining population trends. Gila chub population estimates can theoretically be acquired, but are difficult, time consuming, stressful to the fish (to the point of harm), and expensive. In addition, the number of Gila chub in any population are normally extremely variable during a year due to an r-selected (high fecundity, short generation time, wide dispersal of offspring) reproductive strategy, common in highly variable environments such as desert streams.

It is reasonable to assume that the abundance of Gila chub is correlated with the extent of suitable aquatic habitat provided by surface flows in the affected streams (see Status of the Species and Critical Habitat within the Action Area section). Baseflows maintain stream discharge when surface runoff is low or nonexistent, and these baseflows result from groundwater discharge. The discharge of groundwater to springs and streams is related to the elevation and gradient that regional groundwater exhibits relative to those surface waters. Decreases in groundwater elevation affect this gradient and thus, reduce the discharge of groundwater to streams (see Effects to Aquatic Ecosystems section). Groundwater elevations, which can be readily measured, are therefore effective surrogate measures for the incidental take of Gila chub.

The Effects to Aquatic Ecosystems and Effects to Riparian Ecosystems sections of this BO as well as the analysis of effects for the Gila chub, above, discuss the relationship between the proposed action, changes in groundwater elevation, and the volume and length of surface flow in streams. Changes in groundwater elevation have been modeled (Montgomery and Associates 2012, Myers 2010, and Tetra Tech 2012), and are summarized in Table A-5 in the Effects to Aquatic Ecosystems section. This document's analyses were based primarily on the drawdowns modeled by Tetra Tech (2010), including the results of sensitivity analyses. Sensitivity analysis is explained in the Effects to Aquatic Ecosystems section above, and is summarized, below.

The changes in groundwater elevation will result in reduced wetted lengths and volumes in reaches of stream maintained by discharges from the regional aquifer; surface flow effects are summarized in Tables A-2, A-3, and A-4 in the Effects to Aquatic Ecosystems section. Westland (2012) determined that there could be some reductions in the wetted length of lower Cienega Creek from groundwater drawdowns over the long term. We also anticipate that reduced flow volumes could result in increased summer water temperatures (Barlow and Leake 2012) and thus reductions in dissolved oxygen content (oxygen solubility is inversely related to water temperature), thus further adversely affecting (Bodner *et al*. 2007) the already-reduced numbers of Gila chub that would remain.

Therefore, the take of Gila chub is expressed in terms of the drawdowns noted in the locations and time frames (0, 20, 50, 150, and 1,000 years) discussed in analysis of the effects to the species, above, which are: (1) the Gardner/Cienega Confluence, representing effects to Gardner

Canyon; (2) Empire Gulch Springs, representing effects to Empire Gulch; (3) USGS stream gage No. 09484550, representing effects to upper Cienega Creek; (4) the Davidson/Cienega Confluence, representing effects to Davidson Canyon Wash; and (5) USGS stream gage No. 09484560 , representing effects to lower Cienega Creek. Further, take is expressed as the upper limits of the sensitivity analyses as this potentially larger drawdown was considered in the Effects of the Action section for Gila chub. The groundwater modeling involved the creation of a number of scenarios, each scenario using different modeling parameters (e.g. varying amounts of recharge, differing transmissivities, etc.). Each individual parameter was varied within a reasonable range of values. This suite of modeling scenarios known as the sensitivity analysis (in other words, determining which variables have the greatest influence on the model results). Out of the suite of modeling scenarios, only one was considered the "best-fit", or baseline, modeling scenario. The range of predicted drawdown from the rest of the modeling scenarios, however, is still considered possible or reasonable, though not as likely to occur. Since the entire range of results was considered in the Effects of the Proposed Action section for this species, take is expressed as the largest of the predicted drawdowns. Table GC-3, below, displays the anticipated amount or extent of take.

Table GC-3: Anticipated amount or extent of take for the Gila chub, based on Tetra Tech (2010, as referenced in SWCA 2012) and Table A-5 in the Effects to Aquatic Ecosystems section.

Location	**Maximum anticipated post-mining groundwater drawdown (in feet) by year[1]**				
	0	**20**	**50**	**150**	**1,000**
Gardner/Cienega Confluence	<0.1	<0.1	0.15	0.35	0.5
Upper Empire Gulch Springs	0.1	0.5	1.8	5.0	6.0
Upper Cienega Creek near stream gage No. 09484550	<0.1	<0.1	0.15	0.35	0.5
Davidson/Cienega Confluence	<0.1	0.15	0.2	0.2	0.1
Lower Cienega Creek near stream gage No. 09484560	<0.1	<0.1	<0.1	<0.1	<0.1

[1] Drawdowns described as less than 0.1 foot would be exceeded if they met or exceeded 0.1 foot.

The sites and time frames which appear in Tables GC-3 (above) and A-5 (in the Effects to Aquatic Ecosystems section), and are referred to throughout this BO's effects analyses, represent groundwater model outputs at locations and times of interest to biological resources. It is recognized, however, that the sites currently lack observation wells; groundwater elevations cannot be monitored at these locations. Moreover, these sites are proximal to streams and will experience confounding influences from recharge by runoff, riparian ET, and drought, rendering the sites relatively unsuited for groundwater monitoring – and unsuited for determining cause and effect relationships for hydrologic changes - even if wells were emplaced. It is also recognized that the time intervals for the reported drawdowns (0, 20, 50, 150, and 1,000 years post-mining) are not meaningful for monitoring take; the intervals are too infrequent and become even less frequent over time. The groundwater model, however, can be run such that drawdowns at any location within its domain (such as where groundwater monitoring wells have been or will be placed; see Table GC-4, below) and at any desired time interval can be determined (USGS 1997). Given that the drawdowns at alternative sites displayed in Table GT-4 (appropriate locations for monitoring wells) would be derived from the same model that resulted in the anticipated levels of take at the sites described in Table GC-3, the alternative sites can serve as directly-comparable proxies for the key locations noted in Table GC-3.

We also note that fluctuations in groundwater elevation can vary daily and seasonally from environmental factors. These daily fluctuations have the potential to exceed the smaller magnitude groundwater drawdowns displayed in table GC-3 (particularly those ≤0.1 foot). During the initial implementation phase (site construction, early pit construction) there is an opportunity to monitor daily and seasonal groundwater fluctuations for 2 to 4 years - under background conditions - before the anticipated effects from the pit dewatering are realized. The results from this initial monitoring will help determine the degree of background (baseline) variation in the observed groundwater elevations prior to the realization of Rosemont's effects. The data will also assist in discerning the groundwater drawdown attributable to the pit from unrelated environmental factors.

The USFS (2013b) has provided a list of well sites, already subject to monitoring for various environmental compliance purposes (see Monitoring Measure FS-BR-24 in the October 25, 2013, draft of Appendix B, the definitive version of which will appear in the Final EIS) that are likely to be suitable for monitoring the surrogate measure of incidental take (groundwater drawdown). The wells are located east of the crest of the Santa Rita Mountains, between the mine pit and Cienega Creek and Davidson Canyon Wash. Monitoring of some or all of these wells as proxies (for groundwater drawdown at the key locations in Table GC-3) will allow take of Gila Chub to be monitored immediately and during the active life of the mine, rather than waiting decades or centuries that it is modeled to take measurable drawdown to reach the affected streams, Cienega Creek and Empire Gulch. This suite of potential alternative monitoring sites has been reproduced in Table GC-4, below.

Table GC-4: Potential groundwater monitoring wells for compliance with the surrogate measure of incidental take (groundwater drawdown) described in Table GC-3, above. Groundwater drawdowns at a suite of these sites – once modeled and analyzed for their degree of natural variation – will serve as proxies for the drawdowns in Table GC-3.

Well Name	Direction from Mine Pit	Approximate Distance from Mine Pit (miles)
Potential Gardner Canyon monitoring wells to serve as a proxy for the Gardner/Cienega Confluence		
HC-6	S	0.5
17bdb	SE	3
RP-5	SSE	1.2
18ddb	SSE	3.2
16cbb	SE	3.4
Rosemont Ranch	SE	3.8
Potential Empire Gulch monitoring wells to serve as a proxy for Empire Gulch Springs		
DH-1541	ESE	2.6
Oaktree Windmill	ESE	4.1
Potential Davidson Canyon Wash monitoring wells to serve as a proxy for the Davidson/Cienega Confluence		
C-1	NE	0.5
HC-5B	NNE	0.6
P-899	NE	1
HC-4B	NE	1.6
RP-2C	ENE	2.5
RP-6	NE	3.8
RP-7	NE	4.5

Potential Cienega Creek monitoring wells to serve as proxies for Upper and Lower Cienega Creek		
RP-3B	E	1.5
RP-9	E	3.4
RP-8	ENE	4.5

In summary, and stated differently, the maximum allowable incidental take of Gila chub is represented by the surrogate measure of groundwater drawdowns at the sites and time intervals stated in Table GC-3, above. The to-be-modeled groundwater drawdowns at a suite of potential sites appearing in Table GC-4, above, will serve as proxies for the incidental take at the sites in Table GC-3. The manner by which Rosemont and the USFS shall monitor compliance with the amount of incidental take is described further in the Terms and Conditions, below.

Effect of the Take – Gila Chub

In this BO, the FWS determined that this level of anticipated take is not likely to result in jeopardy to the Gila chub.

Reasonable and Prudent Measures – Gila Chub

The FWS believes the following reasonable and prudent measures are necessary and appropriate to minimize impacts of incidental take of Gila chub:

1. Rosemont shall monitor groundwater levels (as a surrogate for take of Gila chub) at least annually;

2. Rosemont shall apply the funds identified for the Cienega Creek Watershed Fund and Sonoita Creek Ranch conservation measures solely to the identified conservation projects.

Terms and Conditions – Gila Chub

In order to be exempt from the prohibitions of section 9 of the Act, Rosemont and the USFS must comply with the following terms and conditions, which implement the reasonable and prudent measures described above and outline required reporting/monitoring requirements. These terms and conditions are non-discretionary.

1.1 Rosemont and the USFS shall select a representative group of the observation wells found in Table GC-4, above (USFS 2013b) at which groundwater levels, a surrogate for take of Gila chub, shall be monitored. Once the wells have been selected, Rosemont shall re-run the Tetra Tech (2010) groundwater model to obtain groundwater drawdowns (including sensitivity analyses) at all of the well sites. The time intervals shall be each year through closure of the mine, and thereafter, every 5 years. Monitoring will continue postclosure for a duration determined to be necessary by FWS and USFS based on data gathered during implementation and input from the team described in Term and Condition 1.5, below.

1.2 At the time construction of the mine commences (and prior to pit excavation), Rosemont shall initiate monitoring of the selected groundwater wells and report the results annually to the USFS and FWS through closure of the mine. Monitoring will continue postclosure for a duration determined to be necessary by FWS and USFS based on data gathered during implementation and input from the team described in Term and Condition 1.5, below.

1.3 During the initial implementation phase (site construction and early pit construction), Rosemont shall monitor the wells daily (or via continuous data collection devices) to determine the magnitude of daily and seasonal groundwater fluctuations prior to the onset of the anticipated effects of pit dewatering. The results from initial monitoring will help determine if and to what degree observed groundwater elevations vary due to natural fluctuations (baseline conditions). The magnitude of the observed fluctuations shall accompany the model results from Term and Condition 1.1 which will then be reported to the USFS and FWS.

1.4 Rosemont and the USFS shall compare the results of the monitoring described in Term and Condition 1.2 to the groundwater model results described in Term and Condition 1.1, including the variation noted from implementation of Term and Condition 1.3, and report the finding to FWS annually.

1.5 If it is determined at any time via monitoring that the observed groundwater drawdowns exceed the upper bounds of the sensitivity analyses for the modeled groundwater drawdowns, including consideration of applicable daily and seasonal fluctuations, then it is possible that the take of Gila chub described in Table GC-3 has been exceeded. In this event, the USFS shall convene a team consisting of Forest Service staff, FWS, Rosemont Copper, USGS, the University of Arizona, and the Bureau of Land Management to seek consensus on whether the exceedance can be attributable to Rosemont's activities and thus be considered an exceedance of the take authorized by this Incidental Take Statement. If a team cannot be convened or consensus is not reached, the USFS or FWS shall make the determination of whether reinitiation of consultation is appropriate.

2. The funds identified for the Cienega Creek Watershed Fund and Sonoita Creek Ranch conservation measures may only be used for projects as described in the Conservation Measures subsection of the Description of the Proposed Action Section, above. Indirect (overhead) costs must be funded separately.

Conservation Recommendations – Gila Chub

Section 7(a)(1) of the ESA directs federal agencies to utilize their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or CH, to help implement recovery plans, or to develop information. The FWS recommends the following conservation activities:

1. The Biological Monitor (see Description of the Proposed Conservation Measures) should coordinate directly with Rosemont and Rosemont's consultants on behalf of the Forest Service, and also coordinate with the Bureau of Land Management. If a Forest Service employee is unable to perform that task, funding should be made available for a BLM employee or contractor of BLM's choosing to coordinate projects that affect resources on Public Lands.

2. We recommend that Rosemont and the eventual owner or manager of Pantano Dam consider changing how water is diverted there to reduce fish entrainment. An infiltration gallery would be ideal to reduce entrainment;

3. We recommend that Rosemont and the eventual owner or manager of Sonoita Creek Ranch consider changing how water is diverted at Monkey Spring to reduce fish entrainment. An infiltration gallery would be ideal to reduce entrainment;

4. We recommend that the USFS coordinate with the Cienega Watershed Partnership, AGFD, the F.R.O.G. Project, and our office in an effort to work with private landowners to remove any source populations of nonnative aquatic species from the area;

5. We recommend that the USFS continue to assist us and the AGFD in conserving and recovering the Gila chub;

6. We recommend that the USFS assist us with the completion and implementation of the Gila chub recovery plan;

7. We recommend that the USFS and Rosemont acquire instream flow water rights to ensure perennial flow in streams with Gila chub;

8. We recommend that the USFS continue to work with the FWS and AGFD to remove nonnative species and reestablish Gila chub throughout its historical range in Arizona;

9. We recommend that the USFS continue fish surveys on National Forest lands to determine the extent that other chub, such as the headwater chub (*G. nigra*), may occupy those streams.

10. We recommend that the USFS continue to work cooperatively with us and AGFD to establish populations of Gila chub wherever possible.

For the FWS to be kept informed of actions minimizing or avoiding adverse effect or benefiting listed species or their habitats, the FWS requests notification of the implementation of any conservation recommendations.

Status of the Species – Gila Topminnow

Gila topminnow was listed as endangered in 1967 without critical habitat (32 FR 4001). Only Gila topminnow populations in the United States, and not in Mexico, are listed under the ESA. The reasons for decline of this fish include past dewatering of rivers, springs and marshlands, impoundment, channelization, diversion, regulation of flow, land management practices that promote erosion and arroyo formation, and the introduction of predacious and competing nonnative fishes (Miller 1961, Minckley 1985). Other listed fish suffer from the same impacts (Moyle and Williams 1990). Life history information can be found in the 1984 recovery plan (USFWS 1984), the draft revised Gila topminnow recovery plan (Weedman 1999), and references cited in the plans.

Gila topminnow are highly vulnerable to adverse effects from nonnative aquatic species (Johnson and Hubbs 1989). Predation and competition from nonnative fishes have been a major factor in their decline and continue to be a major threat to the remaining populations (Meffe *et al.* 1983, Meffe 1985, Brooks 1986, Marsh and Minckley 1990, Stefferud and Stefferud 1994, Weedman and Young 1997, Minckley and Marsh 2009). The native fish fauna of the Gila basin and of the Colorado basin overall, was naturally depauperate and contained few fish that were predatory on or competitive with Gila topminnow (Carlson and Muth 1989). In the riverine backwater and side-channel habitats that formed the bulk of Gila topminnow natural habitat, predation and competition from other fishes was essentially absent. Thus Gila topminnow did not evolve mechanisms for protection against predation or competition and is predator- and competitor-naive. Due to the introduction of many predatory and competitive nonnative fish, frogs, crayfish, and other species, Gila topminnow could no longer survive in many of their former habitats, or the small pieces of those habitats that had not been lost to human alteration. Both large (Bestgen and Propst 1989) and small (Meffe *et al.* 1983) nonnative fish cause problems for Gila topminnow as can nonnative crayfish (Fernandez and Rosen 1996) and bullfrogs.

It has long been known and thoroughly documented, that, western mosquitofish *Gambusia affinis* (mosquitofish) has major deleterious effect**s** on individual Gila topminnow and their populations (Minckley *et al.* 1977, Meffe *et al.* 1983, Minckley *et al.* 1991, Minckley 1999, Voeltz and Bettaso 2003). These publications and others (Miller 1961, Meffe *et al.* 1982, Duncan 2013) have made it abundantly clear that mosquitofish negatively impact topminnow, and documented the likely mechanisms responsible (Schoenherr 1974, Meffe 1984, 1985).

The Sonoran topminnow (*Poeciliopsis occidentalis*) was listed in 1967. The species was later revised to include two subspecies, *P. o. occidentalis* and *P. o. sonoriensis* (Minckley 1969, 1973). *P. o. occidentalis* was known as the Gila topminnow, and *P. o. sonoriensis* was known as the Yaqui topminnow. *P. occidentalis*, including both subspecies, was collectively known as the Sonoran topminnow. Both subspecies are protected under the ESA. Minckley (1999) stated that the Yaqui topminnow and Gila topminnow are separate species named *P. sonoriensis* and *P. occidentalis*, respectively (Nelson *et al.* 2006). Other researchers make the same argument

(Quattro *et al.* 1996, Hedrick *et al.* 2001, Hedrick and Hurt 2012). The name change has not been made to 50 CFR 17.11.

Historically, the Gila topminnow was abundant in the Gila River drainage in Arizona and was one of the most common fishes of the Colorado River basin, particularly in the Santa Cruz system (Hubbs and Miller 1941). Gila topminnow also were recorded from the Gila River basin in New Mexico (Minckley and Marsh 2009). In the last 50 years, they were reduced to only 16 naturally occurring populations. Presently, only 8 of the 16 known natural Gila topminnow populations are considered extant (Table GT-1)(Weedman and Young 1997, Voeltz and Bettaso 2003, Duncan 2013). There have been at least 200 wild sites stocked with Gila topminnow, however, topminnow persist at only 33 of these localities (Table GT-2). Of these, two sites are outside topminnow historical range and one contains nonnative fish (Voeltz and Bettaso 2003). All of these sites except two are in New Mexico. Many of the reestablished sites are very small and may not contain viable populations, as defined in the draft revised recovery plan (Weedman 1999). In addition several of the 33 sites have been reestablished in the last few years, and their eventual disposition is unknown.

The *Sonoran Topminnow Recovery Plan* (USFWS 1984) established criteria for down- and de-listing. Criteria for down-listing were met for a short period. However, due to concerns regarding the status of several populations, down-listing was delayed.

A draft revised recovery plan for the Gila topminnow is available (Weedman 1999). The plan's short-term (i.e. survival-related) goal is to prevent extirpation of the species from its natural range in the US and reestablish it into suitable habitat within historical range. The plan's longer-term goal (i.e. the reclassification criteria) include quantitative measures of the species persistence at a specific number of sites over time.

The draft revised recovery plan states that, before considering the Gila topminnow for reclassification, survival of the species in the U.S. must be ensured according to the following criteria:

I. Remaining natural populations and occupied habitat in the U.S. should be secured. Natural populations, as previously identified from the fourteen localities in which extant Gila topminnow populations have been found, will be managed as eight metapopulations:

   A. Upper Santa Cruz (Sharp Spring and upper Santa Cruz River in U.S.)
   B. Middle Santa Cruz River (north of Nogales)
   C. Upper Sonoita Creek (Cottonwood Spring and upper Sonoita Creek)
   D. Redrock Canyon
   E. Monkey Spring
   F. Lower Sonoita Creek (Coal Mine and Fresno Canyons and Sonoita Creek below Patagonia Lake)
   G. Cienega Creek (population on BLM and State property and one on Cienega Creek Preserve)
   H. Bylas Spring Complex (Bylas and Middle springs and Salt Creek)

II. The surviving reestablished populations within historical range (Appendix C of the draft revised recovery plan) are also considered necessary for the survival of the species. They should receive the same protections as natural populations.
III. Refuge stocks should be maintained for each of the eight natural metapopulations (changes may be made to this requirement in the future as new genetic information is developed).
IV. Population monitoring plans as outlined below should be developed and implemented.

The draft revised recovery plan further states that the Gila topminnow will be considered for reclassification as threatened when:

I. Criteria detailed under Survival Criteria (above) have been met to ensure survival;
II. The eight natural metapopulations (Level 1 populations; levels are described in the draft revised recovery plan) are replicated, established, and viable within historical range as Level 2 and Level 3 populations as described in Task 2 (below). In addition, mixed populations are established as Level 2 and Level 3 populations as identified in Task 2. Each of the existing eight natural metapopulations will be replicated in at least four level 2 sites equaling at least 32 level 2 populations. In addition, at least 20 level 2 populations of mixed origin will be established. Level 2 populations will not be considered established until they have persisted a minimum of 10 years with little to no human intervention. A minimum of 60 level 3 populations are required. Level 3 populations count as soon as they are established;
III. Plans for monitoring populations and their habitats, and periodic assessment of genetic integrity, are developed and implemented, including regular reporting of results; and,
IV. The genetic protocol delineated in Task 4 (as described in the draft revised recovery plan outline) is implemented to allow exchange of genetic material among reestablished populations.

While the draft revised recovery plan has not yet been approved, the criteria listed above are nevertheless useful for evaluating the effects of a given proposed on the conservation (survival and recovery) of the species.

The status of the species is mixed. An active recovery program actively stocks Gila topminnow in Arizona and New Mexico, reestablishing topminnow in “new” sites (Robinson 2010, 2011, 2012). However, natural sites continue to slowly decline. Gila topminnow has gone from being one of the most common fishes of the Gila basin to one that exists at about 41 localities (8 natural and 33 stocked). Many of these localities are small and highly threatened. The theory of island biogeography can be applied to these isolated habitat remnants, as they function similarly (Meffe 1983, Laurenson and Hocutt 1985). Species on islands are more prone to extinctions than continental areas that are similar in size (MacArthur and Wilson 1967). Meffe (1983) considered extirpation of Gila topminnow populations almost as critical as recognized species extinctions. Moyle and Williams (1990) noted that fish in California that are in trouble tend to be endemic, restricted to a small area, part of fish communities with fewer than five species, and found in isolated springs or streams. Gila topminnow has most of these characteristics.

Table GT-1. Status of natural Gila topminnow populations in the US.

Site	Ownership	Extant?[1, 8]	Nonnatives?	Mosquitofish?	Habitat Size[2]	Threats[3]
Bylas Spring[5]	San Carlos	YES	NO[4]	NO[4]	S D	M/ N G
Cienega Creek	BLM/County	YES	NO	NO	L	H/ R N W U M
Coal Mine Spring	AGFD	YES	NO	NO	S	L/ G
Cocio Wash	BLM	NO 1982	DRY	DRY	S	H/ M
Cottonwood Spring	Private	YES	NO	NO	S	M/ N W
Fresno Canyon[7]	State Parks	YES	NO[9]	NO[4]	M	H/ N U
Middle Spring[5]	San Carlos	YES	NO[4]	NO[4]	S	H/ N G
Monkey Spring	Private	YES	NO	NO	S	L/ W U
Redrock Canyon	USFS	NO 2008[10]	YES	YES	M D	H/ W R G N
Salt Creek[5]	San Carlos	YES	NO[4]	NO[4]	S	M/ N G
San Pedro River	Private	NO 1976	YES	YES	-	H/ W N G R
Santa Cruz River San Rafael Tumacacori	Private, State Parks, TNC	 NO[6] NO 2003	 YES YES[4]	 YES YES	L D	H/ W N R G C U
Sharp Spring	State Parks	NO 2004	YES	YES	M	H/ N G
Sheehy Spring	TNC	NO 1987	YES	YES	S	H/ N G
Sonoita Creek	Private, TNC, State Parks	YES	YES	YES	L D	H/ W N G

[1] if no, last year recorded
[2] Size L = large M= medium S = small D = disjunct
[3] Immediacy H = high M = moderate L = low
Type W = water withdrawal C = contaminants R = recreation N = nonnatives
G = grazing M = mining U = urbanization
[4] none recently, they have been recorded
[5] renovated
[6] in Mexico 2006, US in 1993
[7] includes Sonoita Creek below Patagonia Lake
[8] Recent records are those less than 10 years old
[9] Fresno Canyon renovated in 2007 and is free of nonnatives- Sonoita Creek has many nonnatives
[10] Stefferud and Stefferud 2008
The Bylas Springs complex, Bylas Spring, Middle Spring, and Salt Creek count as one natural site.

Table GT-2. Reestablished wild populations of Gila topminnow that are likely extant. In Arizona unless noted otherwise (Voeltz and Bettaso 2007, FWS files).

Site Name	Year stocked (discovered)	Mixed/pure	Lineage(s)	Fish From:
AD Wash	1993	Pure	Sharp Spring	Dexter NFH
Ben Spring	2011	Pure	Cottonwood Springs	Bubbling Ponds
Bleak Spring	2005	Pure	Bylas	San Carlos
Bonita Creek (upper)	2010	Pure	Bylas Spring	Dudleyville pond
Buckhorn Spring	2011	Pure	Sharp Spring	
Burro Cienega, NM	2008	Pure	Bylas Spring	Dudleyville pond
Campaign Creek	1983 - **Failed**	Mixed	Monkey/Bylas/Cocio	BTA
	2001	Mixed	Sharp/Cienega	ASU ARC
Cement Spring	2005	Pure	Bylas	San Carlos
Chalky Spring	2009	Pure	Sharp Spring	
Charlebois Spring	1983	Mixed	Monkey/Bylas/Cocio	BTA
Cherry Spring (Muleshoe)	2007-2008	Pure	Bylas Spring	Dudleyville pond
Cieneguita Wetland	2013	Pure	Cienega Creek	
Cold Spring (#85)	1985	Pure	Monkey Springs	BTA
Cottonwood Spring (Goldfield Mountains)	2008	Mixed	Monkey Springs	Boyce Thompson Arboretum
Cottonwood Artesian	1982 - **Failed**	Mixed	Monkey/Bylas/Cocio	BTA
	2001	Pure	Bylas Springs	ASU ARC
Dutchman Grave Spring	1983- **Failed**	Mixed	Monkey/Bylas/Cocio	BTA
	2006	Mixed	Monkey/Bylas/Cocio	BTA
Empire Tank	2013	Pure	Cienega Creek	
Fossil Creek (#280)	2007-2010	Pure	Sharp Spring	
Headquarters Spring (Muleshoe)	2008	Pure	Bylas Spring	Dudleyville pond
Horse Thief Draw	2011	Pure	Cottonwood Springs	Bubbling Ponds
Howard Well	2008	Pure	Bylas Spring	Dudleyville pond
Larry Creek trib	2005	Pure	Coalmine Spring	Coalmine Spring
Lime Creek	Dispersal from Lime Cabin Spring (1996)	Mixed	Monkey/Bylas/Cocio (Lime Cabin Spring stocked in 1982)	BTA
Little Nogales Spring	2013	Pure	Cienega Creek	
Lousy Canyon	1999, 2006	Pure	Coalmine Spring	Coalmine Spring
Morgan City Wash	2009	Pure	Sharp Spring	
Mud Springs	1982	Mixed	Monkey/Bylas/Cocio	BTA
Murray Spring	2011	Pure	Cottonwood Springs	Bubbling Ponds
Nogales Spring	2013	Pure	Cienega Creek	
O'Donnell Creek	1974	Pure	Monkey	Monkey
Pasture 2 Tank	2013	Pure	Sharp Spring	Robbins Butte
Redrock Wildlife Area NM	2010	Pure	Bylas Spring	Dudleyville pond
Road Canyon Tank	2012	Pure	Cienega Creek	Robbins Butte
Rock Spring	2013	Pure	Santa Cruz (Peck)	Phoenix Zoo
Secret Spring (#331, Muleshoe)	2007	Pure	Bylas Spring	Dudleyville pond
Springwater Wetland	2013	Pure	Cienega Creek	
Swamp Spring (Muleshoe)	2007-2008	Pure	Bylas Spring	Dudleyville pond
Tule Creek	1981	Mixed	Monkey/Bylas/Cocio	BTA
Unnamed Drainage 68b	Dispersal from Mesquite Tank #2 (1985)	Mixed	Monkey/Bylas/Cocio (Mesquite Tank @ stocked in 1982)	BTA
Walnut Spring (Mesa Ranger District)	1982	Mixed	Monkey/Bylas/Cocio	BTA

Walnut Spring (Tonto Basin Ranger District)	2013	Pure	Redrock Canyon	ASU & Desert Harbor
Usery Park	2011	Pure	Cottonwood Springs	

Consultation History

Our information indicates that, range wide, over 100 formal consultations have been completed for actions affecting Gila topminnow. These opinions primarily include the effects of grazing, water developments, fire, species control efforts, recreation, land management planning, native fish restoration efforts, and mining.

Environmental Baseline – Gila Topminnow

The portion of the action area associated with Gila topminnow encompasses all occupied or likely-to-be occupied reaches of stream within the Cienega Creek watershed, as these will be subject to the proposed action's effects to groundwater and surface flow hydrology. This area is described in detail in the Status of the Species and Critical Habitat within the Action Area section, below. The narrative that follows includes accounts of rangewide effects to Gila topminnow and its habitat as a means to describe similar factors affecting the species within the action area.

The environmental baseline for the action area, and specifically for aquatic species, was thoroughly discussed in the Gila chub section of this BO. It is incorporated here by reference; specifics for the Gila topminnow will be discussed here.

Status of the Species within the Action Area

The action area for the Gila chub encompasses the occupied stream reaches in the Cienega Creek watershed. The action-area status of the Gila topminnow was described in our 2008 and 2012 BOs that addressed effects of Aquatic Species Conservation at the San Pedro Riparian and Las Cienegas National Conservation Areas, Arizona (File numbers 22410-2008-F-0103, 22410-2002-F-0162-R001). The action areas for those BOs overlap with the action area of the proposed action; that information is updated here. Other background information can be found in the Gila chub section of this BO. There is no designated critical habitat for Gila topminnow.

The natural population of Gila topminnow in Las Cienegas continues to be the only extant one on public lands and it is by far the largest of all remaining natural populations in the United States (Simms and Simms 1992, Bodner *et al.* 2007). The only other public land population, Redrock Canyon on the Coronado National Forest, was extirpated in 2008 (Duncan 2013). The first repatriation of Gila topminnow into the upper Cienega Creek watershed took place in October 2001 at Empire Gulch, followed with additional releases. However, reestablishment of Gila topminnow at Empire Gulch has failed (Simms 2010, Service files). This is likely due to high levels of aquatic vegetation and aquatic invertebrate predators of Gila topminnow in Empire Gulch (Bodner *et al.* 2007).

On May 7, 2012, AGFD stocked 974 Gila topminnow and 656 desert pupfish *Cyprinodon macularius* (lower Colorado River stock), were stocked into Road Canyon Tank in the Las Cienegas NCA. Gila topminnow were acquired from Cienega Creek, and hence were Cienega Creek lineage. The AGFD's Nongame Branch and BLM staff visited Road Canyon Tank on July 9, 2012 and reported seeing hundreds of topminnow and about 20 desert pupfish (Robinson 2013).

On May 8, 2012 AGFD and BLM staff stocked 833 Gila topminnow into one pool in Nogales Spring and 910 into two pools in Little Nogales Spring. Fish were collected from Cienega Creek (and hence were Cienega Creek lineage) earlier in the day. AGFD Nongame Branch and BLM staff visited the two springs on July 10, 2012. Between 50 to 100 Gila topminnow, of which about 37 were juveniles, were observed in Nogales Spring. In the upper stocking pool in Little Nogales Spring, about 100 Gila topminnow were observed, about half of which were juveniles. Adults and juveniles were also observed in the stream for several hundred meters below the upper stocking location. In the lower stocking pool over 100 Gila topminnow were observed (Robinson 2013).

BLM management actions that have improved riparian and aquatic habitat for other species on Cienega Creek, coupled with drought, have caused topminnow to become significantly rarer in the upper perennial reach (Bodner *et al.* 2007, Duncan 2013). The lower reach of upper Cienega Creek appears to have a stable Gila topminnow population (Bodner *et al.* 2007). There are also perennial sections of Cienega Creek north (downstream) of Interstate 10 that hold topminnow (Kesner and Marsh 2010).

Gila topminnow was first documented from Cienega Creek in the 1970's. In addition to Gila topminnow, Cienega Creek supports two other native fishes (Bagley *et al.* 1991, Simms and Simms 1991), the longfin dace and the endangered Gila chub. Cienega Creek is one of the last places in Arizona supporting an intact native fish fauna uncontaminated by nonindigenous fish and is one of the natural Gila topminnow populations not contaminated by mosquitofish (Weedman 1999, Voeltz and Bettaso 2007, Duncan 2013).

Cienega Creek and its Gila topminnow habitat are subject to a number of human uses, including livestock grazing, recreation, urban and suburban development, groundwater pumping, and roads. Before BLM acquired the area, it was primarily used for grazing, but there were also extensive agricultural fields along the creek (Eddy and Cooley 1983). These fields were irrigated by a system of canals and dams that locally destroyed Gila topminnow habitat and created severe erosion. The BLM is removing these developments and has reconstructed part of the creek to restore more natural geomorphic and hydrologic conditions (USFWS 1998a, Simms 2001).

The lower reach of upper Cienega Creek appears to have a stable Gila topminnow population, but because of how data were collected, even that is uncertain (Bodner *et al.* 2007). The Cienega Creek topminnow population is still considered a viable population, and it is still the largest by far in the U.S.

Gila Topminnow populations in upper Cienega Creek as a whole have declined by 15.6 percent per (Bodner *et al.* 2007). They found this trend to be highly significant, although it only explained 10 percent of the variation in fish abundance. Trends were vastly different between the upper and lower reaches. Topminnow populations in the lower reach were stable over this 16-year period. However, Gila topminnow numbers in the upper reach declined dramatically over the same time.

Gila topminnow was discovered on Pima County's Preserve in 2002, as was Gila chub. Longfin dace also occur there. Use of the Preserve is only recreation, which is limited to 20 people per day. Several clay pits, sand and gravel mines, and other mineral development occurs or is planned in the area. Some of the clay pits close to the preserve have been known to contain water and nonindigenous fish and bullfrogs. Fortunately, to date no nonindigenous fish have been found in Cienega Creek in the Preserve. There is a diversion at the downstream-most end of perennial flow. All base flow is diverted down a grate.

In 2004, AGFD personnel captured 30 Gila topminnow at the confluence of Davidson Canyon and Cienega Creek (Voeltz 2004). As part of an ongoing program established by the U.S. Bureau of Reclamation, Cienega Creek is one location where fish monitoring was conducted from 2007 through 2010 (Kesner and Marsh 2010, Marsh and Kesner 2011). Sampling was conducted at two locations in Cienega Creek: Station 1 (upstream of the confluence of Davidson Canyon) and Station 2 (downstream of the confluence with Davidson Canyon). They caught 26 Gila topminnow in 2007, 96 in 2008, 61 in 2009, and 255 in 2010. Gila topminnow were captured by the BLM within the lower and upper reaches of upper Cienega Creek in 2005, 2007, and 2008. Many topminnow were observed in Mattie Canyon in 2006, and one was captured within Mattie Canyon in 2007 (Bodner *et al.* 2007); however, none were observed in 2008 (Ehret and Simms 2009). As part of an effort intended to create, enhance, and protect habitat for at-risk species within the Las Cienegas NCA, Caldwell *et al.* (2011) identified numerous new suitable renovated pond sites for Gila Topminnow reestablishment within Upper and Lower Cienega Creek and within other portions of the Empire Valley.

Monkey Spring

Monkey Spring is located 1.2 mi (2 km) south of Cottonwood Spring and 100 feet east of Sonoita Creek. It originates on a sideslope above Monkey Canyon, a tributary of Sonoita Creek. Before diversion, the spring flowed through a marsh then over a travertine terrace that resulted in a waterfall of about 40 ft (12 m) into the canyon (Minckley 1973). In the late 1800's a dam was built across the terrace and the flow diverted into a ditch (see also Chamberlain 1904). The artificial pond later drained when attempts to deepen it resulted in breaking the seal on the bottom. The springhead and a short reach are excluded from livestock grazing. The spring continues to be diverted into a cement ditch, and then pipes, that take it to the Sonoita Creek floodplain for irrigation. Some flow periodically drains into the pond and provides transient Gila topminnow habitat.

Monkey Spring is privately owned and is not accessible to the public. The ranch on which it is located was once threatened with development but is being acquired as part of the proposed

action. Although the to-be-acquired lands do not actually contain Monkey Spring proper, the water rights to the spring's outflow are appurtenant to the lands and will thus also be acquired and protected.

Gila topminnow was first documented in Monkey Spring in 1904 (Chamberlain). Monkey Spring is the most genetically differentiated of the Gila topminnow populations (Hedrick and Parker 1998, Hedrick *et al.* 2001, Parker *et al.* 1999) in the Gila basin. Historically, two other native fish occurred in Monkey Spring, the Santa Cruz pupfish (*Cyprinodon arcuatus*) and Gila chub (Minckley 1973). The pupfish went extinct, and Gila chub was extirpated after nonindigenous sport fish were introduced (Minckley 1973). Yaqui catfish, a native of the Rio Yaqui basin to the east and south, were introduced into a reservoir fed by Monkey Spring in 1899, but died out sometime after 1950 (Chamberlain 1904, Minckley 1973). At present, there are no nonindigenous fish in Monkey Spring (Voeltz and Bettaso 2003). Previous landowners introduced the nonindigenous fish in the past, but this is now less likely given that the site will enter conservation ownership and be actively managed for native species as part of the proposed action.

Factors affecting species environment within the action area

The action-area status of the Gila topminnow was described in our 2008 and 2012 BOs that addressed effects of Aquatic Species Conservation at the San Pedro Riparian and Las Cienegas National Conservation Areas, Arizona (File numbers 22410-2008-F-0103, 22410-2002-F-0162-R001). The action areas for those BOs overlap with the action area of the proposed action; that information is updated here. The factors affecting the Gila chub are the same ones affecting the Gila topminnow; so that section of this BO is incorporated here by reference. There is no designated critical habitat for Gila topminnow.

Effects of the Action - Gila Topminnow

The effects of the action to Gila topminnow will be very similar to those described for Gila chub. Therefore, that discussion in this BO is incorporated here by reference. Any effects that may affect the Gila topminnow differently than Gila chub, will be discussed below.

Climate change may be less problematic for Gila topminnow compared to Gila chub. Gila topminnow have about a 2° C higher tolerance of water temperature than Gila chub (Carveth *et al.* 2006). Gila topminnow are also likely to respond better to reduced dissolved oxygen in the water; topminnow can survive with dissolved oxygen at 1ppm, while chub require at least 3ppm. Also, amount of stream flow is a factor in dissolved oxygen; generally the less the flow, the less the amount of dissolved oxygen.

As for how the modeled groundwater drawdowns will impact Gila topminnow, many of the impacts will be the same as for Gila chub. However, a reduction in the wetted perimeter will be more deleterious for topminnow than Gila chub, since Gila topminnow prefer and use shallow waters much more than chub. Therefore, habitat that is likely to be occupied by topminnow in the future (when drawdowns occur) will be lost or reduced by the proposed action. Losses of

habitat resulting from the groundwater drawdown associated with the proposed action may impact Cienega Creek north of I-10 (The Preserve), Cienega Creek on Las Cienegas NCA, and Mattie Canyon. The modeled loss of surface water in the northern reaches of upper Cienega Creek is more of a concern than the southern reaches, because the best topminnow populations on the NCA occur there (Bodner *et al.* 2007). In addition, BLM's Cieneguita wetland project in the lower Empire Gulch drainage is slated to receive Gila topminnow (BLM 2007) in the next two years. Groundwater losses near the confluence of Empire Gulch and Cienega Creek could impact the Cieneguita wetlands.

Since attempts to establish Gila topminnow in Empire Gulch have failed, the modeled groundwater decline at the Empire Gulch Spring is not likely to impact Gila topminnow, at least certainly not in the near term. There are no discussions on releasing topminnow into any part of Empire Gulch. The problems with excess aquatic vegetation and shade in the spring run would need to change before Gila topminnow releases were entertained.

Since the effects of the action to Gila topminnow will be off-site, conservation measures can only be effectively realized off-site. The two conservations measures discussed below are outside the footprint of the mine, though one is in the action area. Other than the monitoring mentioned above, two conservation measures should promote conservation and recovery of Gila topminnow. A full description of the conservation measures can be found in the proposed action section of this BO.

The Cienega Creek Watershed Conservation Fund will provide $200,000 a year for 10 years for development and implementation of measures intended to preserve and enhance aquatic and riparian ecosystems and the federally listed aquatic and riparian species that depend on them. The funds can be used to support approved management efforts by Pima County and others to control invasive aquatic species that presently occur (bullfrogs), or may occur later. Funds can be used for restoration activities and adaptive management. Rosemont will acquire and close one well near the diversion dam in lower Cienega Creek. Also, Rosemont will acquire over 1100 af of water rights, and transfer them for conservation purposes, or sever them.

About 825 acre-feet per annum (afa), will be used for aquifer recharge below Pantano Dam, either through a Corps approved ILF mitigation program or through a "managed underground storage facility (MUSF)" permitted through the ADWR. This will allow surface water flows currently diverted for golf course irrigation to be captured and discharged back to the streambed below the Pantano Dam within the Cienega Creek Natural Preserve. Flow will be captured at the existing in-channel grated diversion, and then released into the stream channel below the dam. Gila topminnow and longfin dace have been observed right above the dam, on the dam, and in the scour pool below the dam. It is certain that fish have been and will continue to go into the diversion, and suffer death or injury. How much habitat will be suitable for topminnow remains to be seen, but it is highly likely suitable topminnow habitat will form below the dam. The actions taken under this conservation measure should enhance the resiliency and suitability of Cienega Creek for Gila topminnow, especially in the lower creek, at least in the short-term. Under the threat of continuing long-term drought and climate change, enhancing system resiliency is a key component for adapting to climate change and reducing its affects (Overpeck

et al. 2012).

Also, Rosemont will purchase about 1,200 acres of land along Sonoita Creek (Sonoita Creek Ranch) with about 590 afa of certificated surface water rights from Monkey Spring. This is near Patagonia, and outside of the action area. It is anticipated that the land will be transferred either to a Corps-approved ILF program sponsor or to a conservation entity for management of the property. In addition, unless an ILF program is developed Rosemont will fund $150,000 a year for 10 years for resource management. An additional $100,000 ($20,000 annually for five years) will be provided for management against nonnative species, generally in the two existing ponds on the property that are maintained with water from Monkey Spring. An evolutionary significant unit of Gila topminnow occurs in Monkey Spring (Hedrick *et al.* 2001); acquisition of even part of the water rights will provide some protection to this natural topminnow population. Gila chub and Gila topminnow will be established in the ponds after nonnatives are removed from them. Because this parcel is outside of the action area, this action represents recovery in lieu of threat removal. The environmental baseline and recovery status of Gila topminnow should be improved by actions taken at Sonoita Creek Ranch. Also, the source of Monkey Spring appears to be the regional aquifer, which should be somewhat buffered from local groundwater pumping and climate change.

The environmental baseline and recovery status of Gila topminnow should be improved by actions taken at Sonoita Creek Ranch. The proposed action is implements tasks in the draft revised Gila topminnow recovery plan (Weedman 1999). This is a vitally important area for Gila topminnow conservation, because many natural topminnow populations are in the area, and reestablishment sites are limited there. The Cienega Creek Watershed Fund and Sonoita Creek Ranch conservation measures are essential to offset expected effects to Gila topminnow and their habitat.

Lastly, there exists a draft revised recovery plan for Gila topminnow (Weedman 1999; see Status of the Species section, above), which contains Survival and Reclassification Criteria. The proposed action will affect the habitat for and the population of Gila topminnow in Cienega Creek, the securing of which is described in Survival Criterion I(A), but we anticipate, as previously stated, that the Cienega Creek Watershed Fund will be effective in conserving Gila topminnow in this system. Survival Criteria II, III, and IV will not be affected.

Reclassification Criterion I is met when the Survival Criteria have been met. Given that the proposed action supports Survival Criterion I and does not affect Survival Criteria II, III, or IV, we anticipate that the ability to reclassify (downlist) Gila topminnow will not be precluded by the proposed action. Reclassification Criterion II refers to the replication, establishment, and survival of populations within the Gila topminnow's historical range. The acquisition and restoration of the Sonoita Creek Ranch will contribute to the implementation of this criterion, thus supporting reclassification from endangered to threatened, a meaningful increment towards recovery of the species. Reclassification Criterion III refers to monitoring of populations and periodic assessments of genetic integrity. The restoration of and likely reestablishment of Gila topminnow to the Sonoita Creek Ranch will be monitored; genetic assessments are beyond the scope of the proposed action and will most likely be pursued at the species-wide scale by AGFD,

FWS, and academia. Reclassification Criterion IV requires that a genetic protocol that allows for the exchange of genetic material between populations; this too is beyond the scope of the proposed action and will most likely be pursued by wildlife agencies and researchers.

Summary of Effects – Gila Topminnow

- Groundwater levels have historically been variable;
- The environmental baseline shows increasing trends in water use in some areas of the action area;
- The current extended drought and climate change are highly likely to negatively impact many system components from the upper parts of the watershed to where Cienega Creek becomes Pantano Wash through:
    - Changes in upland vegetation and fire regime;
    - Higher ambient and water temperatures;
    - Increased variability in stream hydrographs;
    - More frequent severe climatic events (such as storms, droughts, wildlfires, etc.);
- The proposed conservation measures will not preclude all anticipated effects to surface waters from occurring;
- Acquisition of Sonoita Creek Ranch is a significant benefit to a critically important natural Gila topminnow population;
- Impacts to groundwater, and thus surface water, are reasonably certain to impact areas occupied by Gila topminnow, and thus will negatively impact Gila topminnow; and
- Impacts to wetted stream perimeter and water depth are anticipated to be long-term (50-150 or more years after closure).

Cumulative Effects – Gila Topminnow

The cumulative effects for the action area, and specifically for aquatic species, was thoroughly discussed in the Gila chub section of this BO. It is incorporated here by reference.

Conclusion – Gila Topminnow

After reviewing the current status of the Gila topminnow, the environmental baseline for the action area, the effects of the proposed action, and the cumulative effects, it is the FWS's biological opinion that the proposed action is not likely to jeopardize the continued existence of the Gila topminnow. Pursuant to 50 CFR 402.02, "jeopardize the continued existence of" means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species. We present this conclusion for the following reasons:

1. No directs effects from operation of the mine are expected;
2. Rosemont will monitor groundwater drawdown and the USFS will compare observed drawdown to modeled drawdown. Groundwater drawdown greater than modeled may require reinitiation of section 7 consultation;

3. The Cienega Creek Watershed Conservation Fund will, for the short-term at least, protect and potentially increase habitat for Gila chub by funding actions management and restoration actions in the watershed, protecting water rights, and creating habitat;
4. The Cienega Creek Watershed Conservation Fund is likely to increase ecosystem resiliency in the face of the expected groundwater drawdown from Rosemont Mine, and impacts from climate change;
5. The Sonoita Creek Ranch will create new habitat for Gila topminnow that is created from a reliable water source (Monkey Spring);
6. The Sonoita Creek Ranch will provide additional protection to an evolutionarily significant unit of Gila topminnow, and proposes to implement actions in the draft revised Gila topminnow recovery plan;
7. The Cienega Creek Watershed Fund and Sonoita Creek Ranch conservation measures are essential to offset expected effects to Gila topminnow and their habitat;
8. Indirect effects from groundwater drawdown are difficult to predict at the distances from the drawdown (Rosemont Mine), and will not occur until well after mine closure.
9. Groundwater drawdown is not expected to be more than 0.1 ft in any of the modeled locations until 150 years after mine closure; and
10. Conservation and recovery actions have taken place since the species was listed, continue to occur, with more actions in planning. Therefore, we believe the status of the species is static or improving.
11. The magnitude of the proposed action's effects and the implementation of conservation measures, as described in Conclusions 2 - 6, above) mean that the recovery potential of Gila topminnow (per the draft revised recovery plan) will not be diminished.
12. Critical habitat has not been designated for the Gila topminnow; none will be affected.

INCIDENTAL TAKE STATEMENT – GILA TOPMINNOW

Section 9 of the Act and Federal regulation pursuant to section 4(d) of the Act, prohibit take of endangered or threatened species, respectively, without special exemption. "Take" is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. "Harm" is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns, including breeding, feeding, or sheltering. "Harass" is defined in the regulations as ``an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering (50 CFR §17.3). Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the proposed action is not considered to be prohibited taking under the Act provided such taking is in compliance with this Incidental Take Statement.

The measures described below are non-discretionary, and must be included by the USFS as binding conditions of any grant or permit issued to the applicant, as appropriate, for the exemption in section 7(o)(2) to apply. The USFS has a continuing duty to regulate the activity that is covered by this Incidental Take Statement. If the USFS (1) fails to assume and implement the terms and conditions, or (2) fails to require the applicant to adhere to the terms and

conditions of this incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, the USFS, or the applicant must report the progress of the action and its impact on the species as specified in the Incidental Take Statement (see 50 CFR 402.14(I)(3)).

Amount or Extent of Take Anticipated – Gila Topminnow

We anticipate that the proposed action will result in incidental take of Gila topminnow. Any reduction in stream discharge resulting from groundwater drawdowns attributable to the proposed action will reduce the extent and/or quality of aquatic habitat required by Gila topminnow; we are thus reasonably certain that take will occur.

Incidental take of Gila topminnow in Cienega Creek will be difficult to detect for the following reasons: population levels cannot be accurately described with existing information and techniques, dead animals are difficult to find, cause of death may be difficult to determine, and losses may be masked by seasonal fluctuations in numbers or other causes. The incidental take is expected to be in the form of harm through the loss of habitat from groundwater drawdown, and harm, harassment, and mortality from water diversion and management at Pantano Dam.

We recognize that providing a numerical estimate of incidental take is the preferred method of measuring take and that for some animals this method is biologically defensible as the ecology of the animal lends itself to them being more detectible (e.g., long-lived, territorial species such as the desert tortoise). However, it is impossible to quantify the number of individual Gila topminnow taken because: (1) dead or impaired individuals are almost impossible to find (and are readily consumed by scavengers and predators) and losses may be masked by seasonal fluctuations in environmental conditions; (2) the status of the species will change over time through disease, natural population variation, natural habitat loss, or the active creation of habitat through management; and (3) the species is small-bodied, well camouflaged, and occurs under water of varying clarity.

Gila topminnow are subject to an existing monitoring program in the Cienega Creek watershed on the Las Cienegas NCA. The currently used sampling techniques result in an index of fish abundance per sampling site, as catch-per-unit-effort per pool. The sampling techniques used on Las Cienegas NCA are only sensitive enough to be statistically significant if the population doubles or is halved (Bodner *et al*. 2007). Monitoring in reaches downstream from the NCA (Marsh and Kesner 2011) is even less suited to determining population trends. Gila topminnow population estimates can theoretically be acquired, but are difficult, time consuming, stressful to the fish (to the point of harm), and expensive. In addition, the number of Gila topminnow in any population are normally extremely variable during a year due to an r-selected (high fecundity, short generation time, wide dispersal of offspring) reproductive strategy, common in highly variable environments such as desert streams.

It is reasonable to assume that the abundance of Gila topminnow is correlated with the extent of suitable aquatic habitat provided by surface flows in the affected streams (see Status of the

Species within the Action Area section). Baseflows maintain stream discharge when surface runoff is low or nonexistent, and these baseflows result from groundwater discharge. The discharge of groundwater to springs and streams is related to the elevation and gradient that regional groundwater exhibits relative to those surface waters. Decreases in groundwater elevation affect this gradient and thus, reduce the discharge of groundwater to streams (see Effects to Aquatic Ecosystems section). Groundwater elevations, which can be readily measured, are therefore effective surrogate measures for the incidental take of Gila topminnow.

The Effects to Aquatic Ecosystems and Effects to Riparian Ecosystems sections of this BO as well as the analysis of effects for the Gila chub, above, discuss the relationship between the proposed action, changes in groundwater elevation, and the volume and length of surface flow in streams. Changes in groundwater elevation have been modeled (Montgomery and Associates 2012, Myers 2010, and Tetra Tech 2012), and are summarized in Table A-5 in the Effects to Aquatic Ecosystems section. This document's analyses were based primarily on the drawdowns modeled by Tetra Tech (2010), including the results of sensitivity analyses. Sensitivity analysis is explained in the Effects to Aquatic Ecosystems section above, and is summarized, below.

The changes in groundwater elevation will result in reduced wetted lengths and volumes in reaches of stream maintained by discharges from the regional aquifer; surface flow effects are summarized in Tables A-2, A-3, and A-4 in the Effects to Aquatic Ecosystems section. Westland (2012) determined that there could be some reductions in the wetted length of lower Cienega Creek from groundwater drawdowns over the long term. We also anticipate that reduced flow volumes could result in increased summer water temperatures (Barlow and Leake 2012) and thus reductions in dissolved oxygen content (oxygen solubility is inversely related to water temperature), thus further adversely affecting (Bodner *et al*. 2007) the already-reduced numbers of Gila topminnow that would remain.

Therefore, the take of Gila topminnow is expressed in terms of the drawdowns noted in the locations and time frames (0, 20, 50, 150, and 1,000 years) discussed in analysis of the effects to the species, above, which are: (1) the Gardner/Cienega Confluence, representing effects to Gardner Canyon; (2) Empire Gulch Springs, representing effects to Empire Gulch; (3) USGS stream gage No. 09484550, representing effects to upper Cienega Creek; (4) the Davidson/Cienega Confluence, representing effects to Davidson Canyon Wash; and (5) USGS stream gage No. 09484560 , representing effects to lower Cienega Creek. Further, take is expressed as the upper limits of the sensitivity analyses as this potentially larger drawdown was considered in the Effects of the Action section for Gila topminnow. The groundwater modeling involved the creation of a number of scenarios, each scenario using different modeling parameters (e.g. varying amounts of recharge, differing transmissivities, etc.). Each individual parameter was varied within a reasonable range of values. This suite of modeling scenarios known as the sensitivity analysis (in other words, determining which variables have the greatest influence on the model results). Out of the suite of modeling scenarios, only one was considered the "best-fit", or baseline, modeling scenario. The range of predicted drawdown from the rest of the modeling scenarios, however, is still considered possible or reasonable, though not as likely to occur. Since the entire range of results was considered in the Effects of the Proposed Action section for this species, take is expressed as the largest of the predicted drawdowns. Table GT-3,

below, displays the anticipated amount or extent of take.

Table GT-3: Anticipated amount or extent of take for the Gila topminnow, based on Tetra Tech (2010, as referenced in SWCA 2012) and Table A-5 in the Effects to Aquatic Ecosystems section.

Location	**Maximum anticipated post-mining groundwater drawdown (in feet) by year[1]**				
	0	**20**	**50**	**150**	**1,000**
Gardner/Cienega Confluence	<0.1	<0.1	0.15	0.35	0.5
Upper Empire Gulch Springs	0.1	0.5	1.8	5.0	6.0
Upper Cienega Creek near stream gage No. 09484550	<0.1	<0.1	0.15	0.35	0.5
Davidson/Cienega Confluence	<0.1	0.15	0.2	0.2	0.1
Lower Cienega Creek near stream gage No. 09484560	<0.1	<0.1	<0.1	<0.1	<0.1

[1] Drawdowns described as less than 0.1 foot would be exceeded if they met or exceeded 0.1 foot.

The sites and time frames which appear in Tables GT-3 (above) and A-5 (in the Effects to Aquatic Ecosystems section), and are referred to throughout this BO's effects analyses, represent groundwater model outputs at locations and times of interest to biological resources. It is recognized, however, that the sites currently lack observation wells; groundwater elevations cannot be monitored at those locations. Moreover, these sites are proximal to streams and will experience confounding influences from recharge by runoff, riparian ET, and drought, rendering the sites relatively unsuited for groundwater monitoring – and unsuited for determining cause and effect relationships for hydrologic changes - even if wells were emplaced. It is also recognized that the time intervals for the reported drawdowns (0, 20, 50, 150, and 1,000 years post-mining) are not meaningful for monitoring take; the intervals are too infrequent and become even less frequent over time. The groundwater model, however, can be run such that drawdowns at any location within its domain (such as where groundwater monitoring wells have been or will be placed; see Table GT-4, below) and at any desired time interval can be determined (USGS 1997). Given that the drawdowns at the alternative sites displayed in Table GT-4 (appropriate locations for monitoring wells) would be derived from the same model that resulted in the anticipated levels of take at the sites described in Table GT-3, the alternative sites can serve as directly-comparable proxies for the key locations noted in Table GT-3.

We also note that fluctuations in groundwater elevation can vary daily and seasonally from environmental factors. These daily fluctuations have the potential to exceed the smaller magnitude groundwater drawdowns displayed in table GT-3 (particularly those ≤0.1 foot). During the initial implementation phase (site construction, early pit construction) there is an opportunity to monitor daily and seasonal groundwater fluctuations for 2 to 4 years - under background conditions - before the anticipated effects from the pit dewatering are realized. The results from this initial monitoring will help determine the degree of background (baseline) variation in the observed groundwater elevations prior to the realization of Rosemont's effects. The data will also assist in discerning the groundwater drawdown attributable to the pit from unrelated environmental factors.

The USFS (2013b) has provided a list of well sites, already subject to monitoring for various environmental compliance purposes (see Monitoring Measure FS-BR-24 in Appendix B) that are likely to be suitable for monitoring the surrogate measure of incidental take (groundwater drawdown). The wells are located east of the crest of the Santa Rita Mountains, between the mine pit and Cienega Creek and Davidson Canyon Wash. Monitoring of some or all of these wells as proxies (for groundwater drawdown at the key locations in Table GT-3) will allow take of Gila Topminnow to be monitored immediately and during the active life of the mine, rather than waiting decades or centuries that it is modeled to take measurable drawdown to reach the affected streams, Cienega Creek and Empire Gulch. This suite of potential alternative monitoring sites has been reproduced in Table GT-4, below.

Table GT-4: Potential groundwater monitoring wells for compliance with the surrogate measure of incidental take (groundwater drawdown) described in Table GC-3, above. Groundwater drawdowns at a suite of these sites – once modeled and analyzed for their degree of natural variation – will serve as proxies for the drawdowns in Table GC-3.

Well Name	Direction from Mine Pit	Approximate Distance from Mine Pit (miles)
Potential Gardner Canyon monitoring wells to serve as a proxy for the Gardner/Cienega Confluence		
HC-6	S	0.5
17bdb	SE	3
RP-5	SSE	1.2
18ddb	SSE	3.2
16cbb	SE	3.4
Rosemont Ranch	SE	3.8
Potential Empire Gulch monitoring wells to serve as a proxy for Empire Gulch Springs		
DH-1541	ESE	2.6
Oaktree Windmill	ESE	4.1
Potential Davidson Canyon Wash monitoring wells to serve as a proxy for the Davidson/Cienega Confluence		
C-1	NE	0.5
HC-5B	NNE	0.6
P-899	NE	1
HC-4B	NE	1.6
RP-2C	ENE	2.5
RP-6	NE	3.8
RP-7	NE	4.5
Potential Cienega Creek monitoring wells to serve as proxies for Upper and Lower Cienega Creek		
RP-3B	E	1.5
RP-9	E	3.4
RP-8	ENE	4.5

In summary, and stated differently, the maximum allowable incidental take of Gila topminnow is represented by the surrogate measure of groundwater drawdowns at the sites and time intervals stated in Table GT-3, above. The to-be-modeled groundwater drawdowns at a suite of potential sites appearing in Table GT-4, above, will serve as proxies for the incidental take at the sites in Table GT-3. The manner by which Rosemont and the USFS shall monitor compliance with the amount of incidental take is described further in the Terms and Conditions, below.

Effect of the Take – Gila Topminnow

In this BO, the FWS determined that this level of anticipated take is not likely to result in jeopardy to the Gila topminnow.

Reasonable and Prudent Measures – Gila Topminnow

The FWS believes the following reasonable and prudent measures are necessary and appropriate to minimize impacts of incidental take of Gila topminnow:

1. Rosemont shall monitor groundwater levels (as a surrogate for take of Gila topminnow) at least annually;

2. Rosemont shall apply the funds identified for the Cienega Creek Watershed Fund and Sonoita Creek Ranch conservation measures solely to the identified conservation projects.

Terms and Conditions – Gila Topminnow

In order to be exempt from the prohibitions of section 9 of the Act, Rosemont and the USFS must comply with the following terms and conditions, which implement the reasonable and prudent measures described above and outline required reporting/monitoring requirements. These terms and conditions are non-discretionary.

1.1 Rosemont and the USFS shall select a representative group of the observation wells found in Table GT-4, above (USFS 2013b) at which groundwater levels, a surrogate for take of Gila topminnow, shall be monitored. Once the wells have been selected, Rosemont shall re-run the Tetra Tech (2010) groundwater model to obtain groundwater drawdowns (including sensitivity analyses) at all of the well sites. The time intervals shall be each year through closure of the mine, and thereafter, every 5 years. Monitoring will continue postclosure for a duration determined to be necessary by FWS and USFS based on data gathered during implementation and input from the team described in Term and Condition 1.5, below.

1.2 At the time construction of the mine commences (and prior to pit excavation), Rosemont shall initiate monitoring of the selected groundwater wells and report the results annually to the USFS and FWS through closure of the mine. Monitoring will continue postclosure for a duration determined to be necessary by FWS and USFS based on data gathered during implementation and input from the team described in Term and Condition 1.5, below.

1.3 During the initial implementation phase (site construction and early pit construction), Rosemont shall monitor the wells daily (or via continuous data collection devices) to determine the magnitude of daily and seasonal groundwater fluctuations prior to the onset of the anticipated effects of pit dewatering. The results from initial monitoring will help determine if and to what degree observed groundwater elevations vary due to natural

fluctuations (baseline conditions). The magnitude of the observed fluctuations shall accompany the model results from Term and Condition 1.1 which will then be reported to the USFS and FWS.

1.4 Rosemont and the USFS shall compare the results of the monitoring described in Term and Condition 1.2 to the groundwater model results described in Term and Condition 1.1, including the variation noted from implementation of Term and Condition 1.3, and report the finding to FWS annually.

1.5 If it is determined at any time via monitoring that the observed groundwater drawdowns exceed the upper bounds of the sensitivity analyses for the modeled groundwater drawdowns, including consideration of applicable daily and seasonal fluctuations, then it is possible that the take of Gila topminnow described in Table GT-3 has been exceeded. In this event, the USFS shall convene a team consisting of Forest Service staff, FWS, Rosemont Copper, USGS, the University of Arizona, and the Bureau of Land Management to seek consensus on whether the exceedance can be attributable to Rosemont's activities and thus be considered an exceedance of the take authorized by this Incidental Take Statement. If a team cannot be convened or consensus is not reached, the USFS or FWS shall make the determination of whether reinitiation of consultation is appropriate.

2. The funds identified for the Cienega Creek Watershed Fund and Sonoita Creek Ranch conservation measures may only be used for projects as described in the Conservation Measures subsection of the Description of the Proposed Action Section, above. Indirect (overhead) costs must be funded separately.

Conservation Recommendations – Gila Topminnow

Section 7(a)(1) of the ESA directs federal agencies to utilize their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species, to help implement recovery plans, or to develop information. The FWS recommends the following conservation activities:

1. We recommend that the USFS and Rosemont coordinate with the Cienega Watershed Partnership, AGFD, the F.R.O.G. Project, and our office in efforts to work with private landowners to remove populations of nonnative aquatic species from lands in the area;

2. We recommend that the USFS continue to assist us and the AGFD in conserving and recovering the Gila topminnow;

3. We recommend that the USFS assist us with the completion and implementation of the Gila topminnow revised recovery plan;

4. We recommend that Rosemont consider releasing Gila topminnow into water features on

the mine site, when the site is suitable, and the release of topminnow would not conflict with other conservation actions;

5. We recommend that Rosemont and the eventual owner or manager of Sonoita Creek Ranch consider changing how water is diverted at Monkey Spring to reduce fish entrainment. An infiltration gallery would be ideal to reduce entrainment;

6. We recommend that Rosemont consider acquiring the remaining water rights for Monkey Spring and the fee title property with Monkey Spring;

7. We recommend that Rosemont consider acquiring the water rights for Cottonwood Spring;

8. We recommend that the USFS acquire instream flow water rights to ensure perennial flow in streams with Gila topminnow;

9. We recommend that the USFS continue to work cooperatively with the FWS and AGFD to remove nonnative species and reestablish Gila topminnow whenever possible throughout its historical range in Arizona; and

10. We recommend that the USFS continue fish surveys on NFS lands to determine the extent that Gila topminnow occupy those streams.

For the FWS to be kept informed of actions minimizing or avoiding adverse effect or benefiting listed species or their habitats, the FWS requests notification of the implementation of any conservation recommendations.

Status of the Species - Huachuca Water Umbel

The Huachuca water umbel (*Lilaeopsis schaffneriana* var. *recurva*) (umbel) is an herbaceous, semi-aquatic to occasionally fully aquatic, perennial plant with slender, erect leaves that grow from creeping rhizomes. The leaves are cylindrical, hollow with no pith, and have septa (thin partitions) at regular intervals. The yellow/green or bright green leaves are generally 0.04 to 0.12 inch in diameter and often 1 to 2 inches tall, but can reach up to 8 inches tall under favorable conditions. Three to ten very small flowers are borne on an umbel that is always shorter than the leaves. The fruits are globose, 0.06 to 0.08 inch in diameter, and usually slightly longer than wide (Affolter 1985).

On January 6, 1997, we listed the umbel as an endangered species (62 FR 665; FWS 1997). Critical habitat was designated on the upper San Pedro River, Garden Canyon on Fort Huachuca, Scotia Canyon and other areas of the Huachuca Mountains, the San Rafael Valley, and Sonoita Creek on July 12, 1999 (64 FR 37441; FWS 1999). No recovery plan has been developed, but a draft recovery plan is anticipated to be complete in 2013.

Distribution/Abundance

Umbel has been documented from sites in Santa Cruz, Cochise, and Pima counties, Arizona, and in adjacent Sonora, Mexico, west of the continental divide (Haas and Frye 1997, Saucedo-Monarque 1990, Warren *et al.* 1989, Warren *et al.* 1991, Warren and Reichenbacher 1991, Anderson 2006). The plant has been extirpated from six sites. The extant sites occur primarily in five major watersheds - San Pedro River, Santa Cruz River, Río Yaqui/Bavispe, Río Sonora, and Río Magdalena. All sites are between 3,500 and 7,250 feet in elevation.

Habitat

The umbel grows in cienegas (marshy wetlands), and along streams, rivers, and springs in southeastern Arizona and northeastern Sonora, Mexico, typically in mid-elevation wetland communities often surrounded by relatively arid environments. These wetland communities are usually associated with perennial springs and stream headwaters, have permanently or seasonally saturated highly organic soils, and have a low probability of flooding or scouring (Hendrickson and Minckley 1984). The water umbel can grow in saturated soils or as an emergent in water depths up to about 10 inches. Cienegas support diverse assemblages of animals and plants, of which many species are of limited distribution, such as the umbel (Hendrickson and Minckley 1984). The surrounding non-wetland vegetation can be desert scrub, grassland, oak woodland, or conifer forest (Arizona Game and Fish Department 1997).

Umbel has an opportunistic strategy that ensures its survival in healthy riverine systems, cienegas, and springs. In upper watersheds that generally do not experience scouring floods, umbel occurs in microsites where interspecific plant competition is low. At these sites, umbel occurs on wetted soils interspersed with other plants at low density, along the periphery of the wetted channel, or in small openings in the understory. In stream and river habitats, umbel can occur in backwaters, side channels, and nearby springs. The upper Santa Cruz River and associated springs in the San Rafael Valley, where a population of umbel occurs, is an example of a site that meets these conditions. The types of microsites required by umbel were generally lost from the main stems of the San Pedro and Santa Cruz rivers when channel entrenchment occurred in the late 1800s.

Habitat on the upper San Pedro River is recovering, and umbel has recently recolonized small reaches of the main channel. Cienegas, perennial streams, and rivers in the desert southwest are extremely rare. The Arizona Game and Fish Department (1993) estimated that riparian vegetation associated with perennial streams comprises about 0.4% of the total land area of Arizona, with present riparian areas being remnants of what once existed. The State of Arizona (1990) estimated that up to 90 percent of the riparian habitat along Arizona's major desert watercourses has been lost, degraded, or altered. The physical and biological habitat features essential to the conservation of umbel include a riparian plant community that is fairly stable over time and not dominated by non-native plant species, a stream channel that is relatively stable but subject to periodic, non-scouring flooding, refugial sites (sites safe from catastrophic flooding), and a substrate (soil) that is permanently wet or nearly so, for growth and reproduction of the plant.

Life History

The umbel flowers from March through October with most flowering in June through August (Arizona Game and Fish Department 1997). The species reproduces sexually through flowering and asexually from rhizomes, the latter probably being the primary reproductive mode. The umbel is also suspected of self-pollination (Johnson *et al.* 1992). An additional dispersal opportunity occurs as a result of the dislodging of clumps of plants, which then may re-root in a different site along aquatic systems. Fruits develop from July through September, and water disperses the seeds (Arizona Game and Fish Department 1997). Seeds from plants grown in an aquarium have been seen sticking to the aquarium sides and germinating 1-2 weeks after falling from the parent plant (Johnson *et al.* 1992).

After a flood, umbel can rapidly expand its population and occupy disturbed habitat until interspecific competition exceeds its tolerance. This response was recorded at Sonoita Creek in August 1988, when a scouring flood removed about 95% of the umbel population (Gori *et al.* 1990). One year later, the umbel had recolonized the stream and was again codominant with watercress (*Rorippa nasturtium-aquaticum*, Warren *et al.* 1991). However, two patches of umbel on the San Pedro River were lost during a winter flood in 1994, and the species had still not recolonized that area as of May 1995, demonstrating the dynamic and often precarious nature of occurrences within a riparian system (Al Anderson, Grey Hawk Ranch, in litt. 1995). The expansion and contraction of umbel populations appear to depend on the presence of "refugia" where the species can escape the effects of scouring floods, a watershed that has an unaltered hydrograph, and a healthy riparian community that stabilizes the channel.

Density of umbel plants and size of populations fluctuate in response to both flood cycles and site characteristics. Some sites, such as Black Draw, have a few sparsely distributed clones, possibly due to the dense shade of the even-aged overstory of trees, dense non-native herbaceous layer beneath the canopy, and deeply entrenched channel. The Sonoita Creek population occupies 14.5 percent of a 5,385 square foot patch of habitat (Gori *et al.* 1990). Some populations are as small as 11 to 22 square feet. The Scotia Canyon population, by contrast, has dense mats of leaves. Scotia Canyon contains one of the larger umbel populations, occupying about 57% of the 4,756 foot perennial reach (Gori *et al.* 1990, Falk and Warren 1994).

While the extent of occupied habitat can be estimated, the number of individuals in each population is difficult to determine because of the intermeshing nature of the creeping rhizomes and the predominantly asexual mode of reproduction. A "population" of umbel may be composed of one or many genetically distinct individuals.

Threats

Overgrazing, mining, hay harvesting, timber harvest, fire suppression, and other activities in the nineteenth century led to widespread erosion and channel entrenchment in southeastern Arizona streams and cienegas when above-average precipitation and flooding occurred in the late 1800s and early 1900s (Bryan 1925, Martin 1975, Hastings and Turner 1980, Dobyns 1981, Hendrickson and Minckley 1984, Sheridan 1986, Bahre 1991, Webb and Betancourt 1992,

Hereford 1993). A major earthquake near Batepito, Sonora, approximately 40 miles south of the upper San Pedro Valley, resulted in land fissures, changes in groundwater elevation, and spring flow, and may have preconditioned the San Pedro River channel for rapid flood-induced entrenchment (Hereford 1993,

Geraghty and Miller, Inc. 1995). These events contributed to long-term or permanent degradation and loss of cienega and riparian habitat on the San Pedro River and throughout southeastern Arizona and northeastern Sonora. Much habitat of the umbel and other cienega-dependent species was presumably lost at that time.

Wetland degradation and loss continues today. Human activities such as groundwater overdrafts, surface water diversions, impoundments, channelization, improper livestock grazing, chaining, agriculture, mining, sand and gravel operations, road building, non-native species introductions, urbanization, wood cutting, and recreation all contribute to riparian and cienega habitat loss and degradation in southern Arizona. The local and regional effects of these activities are expected to increase with the increasing human population.

Limited numbers of populations and the small size of populations make the umbel vulnerable to extinction as a result of stochastic events that are often exacerbated by habitat disturbance. For instance, the restriction of this taxon to a relatively small area in southeastern Arizona and adjacent areas of Mexico increases the chance that a single environmental catastrophe, such as a severe tropical storm or drought, could eliminate populations or cause extinction. Populations are in most cases isolated, as well, which makes the chance of natural recolonization after extirpation less likely. Small populations are also subject to demographic and genetic stochasticity, which increases the probability of population extirpation (Shafer 1990, Wilcox and Murphy 1985).

Critical Habitat

Seven Critical Habitat units have been designated for umbel; all are in Santa Cruz and Cochise counties, Arizona, and include stream courses and adjacent areas out to the beginning of upland vegetation. The Scotia, Sunnyside, and Bear canyon units (3, 4, and 6) are within the Coronado National Forest. The remaining Units are in lands adjacent to Forest lands. The following general areas are designated as critical habitat (see legal descriptions for exact critical habitat boundaries):

Unit 1 Approximately 1.25 mile of Sonoita Creek southwest of Sonoita;
Unit 2 Approximately 2.7 miles of the Santa Cruz River on both sides of Forest Road 61, plus approximately 1.9 miles of an unnamed tributary to the east of the river;
Unit 3 Approximately 3.4 miles of Scotia Canyon upstream from near Forest Road 48;
Unit 4 approximately 0.7 mile of Sunnyside Canyon near Forest Road 117 in the Huachuca Mountains;
Unit 5 Approximately 3.8 miles of Garden Canyon near its confluence with Sawmill Canyon;
Unit 6 Approximately 1.0 mile of Rattlesnake Canyon and 0.6 mile of an unnamed canyon, both of which are tributaries to Lone Mountain Canyon; approximately 1.0 mile of Lone

Mountain Canyon; and approximately 1.0 mile of Bear Canyon; an approximate 0.6-mile reach of an unnamed tributary to Bear Canyon; and

Unit 7 Approximately 33.7 miles of the San Pedro River from the perennial flow reach north of Fairbank (Arizona Department of Water Resources 1991) to 0.13 mile south of Hereford, San Pedro Riparian National Conservation Area.

The primary constituent elements of critical habitat for umbel include, but are not limited to, the habitat components that provide:

1. Sufficient perennial base flows to provide a permanently or nearly permanently wetted substrate for growth and reproduction of umbel;
2. A stream channel that is relatively stable, but subject to periodic flooding that provides for rejuvenation of the riparian plant community and produces open microsites for umbel expansion;
3. A riparian plant community that is relatively stable over time and in which non-native species do not exist or are at a density that has little or no adverse effect on resources available for umbel growth and reproduction; and
4. In streams and rivers, refugial sites in each watershed and in each reach, including but not limited to springs or backwaters of mainstem rivers that allow each population to survive catastrophic floods and recolonize larger areas.

Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of umbel is appreciably diminished. Such activities are also likely to jeopardize the continued existence of the species.

Environmental Baseline - Huachuca Water Umbel

The action area for the Huachuca water umbel includes the occupied portions of the Cienega Creek watershed, as described below. Prior to 2001, the sole Huachuca water umbel metapopulation known from the action area was in Empire Gulch in Las Cienegas National Conservation Area (NCA) [Engineering and Environmental Consultants (EEC) 2001, Pima County 2001]. Since that time, the species has been found in other locations within the action area: in a small patch along Cienega Creek in the county's reserve upstream from of the confluence of Cienega Creek and Davidson Canyon (EEC 2001, Pima County 2001); in Las Cienegas NCA, from the confluence of Cienega Creek with Gardner Canyon north to the northern boundary of the NCA; in middle reaches of Cienega Creek (AGFD 2011); and, via recent transplants, in the Cieneguita Wetland in lower Empire Gulch (BLM 2013). The Huachuca water umbel metapopulations within Las Cienegas NCA include (BLM 2011): (1) 19 patches recorded between the headwaters of Cienega Creek near the southern boundary of the NCA, north to the confluence of Cienega Creek with Gardner Canyon; (2) 61 patches recorded between the confluence of Cienega Creek with Mattie Canyon, north to Powerline Road; (3) 16 patches recorded within Cienega Creek between the Narrows Powerline Road, north to the Narrows; (4) one patch recorded within Lower Empire Gulch between Rattlesnake Tank and the

confluence with Cienega Creek; and (5) three patches recorded within Mattie Canyon between the spring source and the confluence with Cienega Creek. Much of the extensive wetlands that border Empire Gulch and upper Cienega Creek (see the Aquatic Vegetation subsection in the Description of the Proposed Action section and Table A-1) are likely to be suitable sites for Huachuca water umbel, even if the species has not been specifically detected throughout the reaches. There is no critical habitat for Huachuca water umbel in the action area.

The Pima Association of Governments (PAG) monitors ecological conditions on Cienega Creek within the Pima County Cienega Creek Preserve and reports the data to the Pima County Regional Flood Control District (RFCD) (Mier 2012 pers. comm.). Recent drought conditions and anthropogenic alterations have affected the stream's hydrology. As of the summer of 2012, the length of wetted stream within the Preserve was 1.24 miles, the shortest in a period of record going back to 1975. This contrasts to the wet years of the early 1980s when up 9.5 miles of the creek within the Preserve exhibited perennial flow. PAG has found that stream discharge and groundwater levels are correlated to streamflow length, matching the rise and fall of the seasons and the downward trend with drought. Since September 2009, when the region lacked a monsoon season, the wells have remained at 5-7 feet below their pre-drought levels, with levels in June 2012 slightly below last June 2011 and 7 feet below pre-drought. Stream volume is at 14% of pre-drought flow (similar to flow length's comparison), with 0.12 cfs flowing.

Cienega Creek is thus susceptible to inter-annual changes in weather as well as longer-term changes in the regional climate. Anthropogenic impacts act to further reduce the stream's hydrologic resilience. For example, PAG stated that the Arizona Department of Transportation pumped water from the alluvium while constructing a new overpass at Marsh Station Road in 2010 and 2011, and this withdrawal appears to have been a factor contributing to approximately 10 feet of groundwater decline in the two wells nearest the pumping site. PAG also noted that there has been some recovery since that time.

We have completed one other formal consultation (and a reinitiation thereof) within the action area for a project affecting Huachuca water umbel: our February 21, 2012, *Reinitiated Biological Opinion on Aquatic Species Conservation at the San Pedro Riparian and Las Cienegas National Conservation Areas, Arizona* (File number 22410-2012-F-0162-R001), and its predecessor consultation, our December 31, 2008, *Biological Opinion on Aquatic Species Conservation at the San Pedro Riparian and Las Cienegas National Conservation Areas, Arizona* (File number 22410-2008-F-0103). These proposed actions included measures to restore Huachuca water umbel to sites within the San Pedro Riparian National Conservation Area (RNCA) and within Las Cienegas National Conservation Area (NCA); the latter is within the action area for the proposed action. To date, the species has only been reestablished within the San Pedro RNCA.

Effects of the Action - Huachuca Water Umbel

Huachuca water umbel is an aquatic to semi-aquatic plant that requires adjacency to open water and very moist substrates. As such, the effects to the species are in many respects similar to those of threatened and endangered fishes as well as to the woody riparian vegetation that serves as a nesting and foraging substrate for obligate riparian birds. The sections of this BO pertaining

to the effects of the proposed action to Gila chub and southwestern willow flycatcher describe the process whereby stream flows would be diminished to the extent that aquatic habitat is reduced and riparian vegetation reduced in vigor and areal extent, respectively. These analyses are hereby incorporated into this section via reference.

Leenhouts *et al.* (2005) examined interactions between hydrologic processes and riparian vegetation within the San Pedro RNCA on the San Pedro River, a neighboring watershed situated east of the Cienega Creek system. The specific objectives of the study were to: (1) determine the water needs of riparian vegetation through the riparian growing season; (2) to quantify the total water use of riparian vegetation; and (3) to determine the source of water used by key riparian plant species. The authors integrated analyses of vegetation functional groups, groundwater and surface water hydrology, and spatial and temporal variations thereof.

Although Huachuca water umbel occurs in the San Pedro RNCA, this species was not specifically evaluated by Leenhouts *et al.* (2005). Huachuca water umbel would fall within the authors' Hydric Herbaceous Perennial functional group which includes smooth scouring rush (*Equisetum laevigatum*), hardstem bulrush (*Schoenoplectus acutus*), Torrey rush (*Juncus torreyi*), cattail (*Typha latifolia* and *T. domingensis*), watercress (*Rorippa nasturtium-aquaticum*), water speedwell (*Veronica anagallis-aquatica*), sand spikerush (*Eleocharis montevidensis*), and Baltic rush (*J. arcticus* var. *balticus*). Leenhouts *et al.* (2005) found that cover of hydric perennial herbs was most abundant in an approximately 1-meter wide strip along the channel margins; these species depend on shallow, inflowing ground water to sustain stream base flows and moisten surface soils. This group had high abundance only at sites with perennial or near-perennial streamflow, declining sharply in abundance as flows became intermittent as well as across floodplains of increasing elevation above the stream. While the Leenhouts *et al.* (2005) study was conducted on the San Pedro River, the physiologic needs of hydric perennial plants would indicate similar ecological responses within any stream in which they occur, including the nearby Cienega Creek system.

Leenhouts *et al.* (2005) also examined the spatial arrangement of plants in relation to streamflow permanence (as a surrogate for depth to groundwater) in order to assess the changes that could occur under conditions of declining groundwater levels. As streamflow became more intermittent and depth to the alluvial ground-water table increased, herbaceous species, such as bulrush and rushes, declined in abundance. In addition, streamside-zone species composition shifted towards more mesic herbaceous species, including the nonnative rhizomatous perennial Bermuda grass (*Cynodon dactylon*). This sod-forming species is relatively drought- and flood-tolerant and became the most common mesic riparian perennial as stream flow became intermittent (Stromberg *et al.* 2005).

Huachuca water umbel, with its shallow root system, is a poor competitor; population numbers tend to be lower in areas with a high density of native or nonnative plant species competition (Titus *et al.* 2002). As Huachuca water umbel is sensitive to interspecific competition, requiring both ample light penetration and little competition for nutrients (Zuhlke *et al.* 2002, Vernadero 2011, USFWS 2001), competition from Bermuda grass will hasten the decline of the listed species in sites where alluvial groundwater levels have declined but still occasionally remain

within the range that would otherwise support a hydric herbaceous perennial plant community. Other researchers studying Huachuca water umber in the San Pedro RNCA have noted that Bermuda grass presence reduces the number of exploitable sites for Huachuca water umbel making it a threat to umbel dispersal (Vernadero 2011).

Effects to the Aquatic and Riparian Ecosystems - Huachuca Water Umbel

The section in this BO entitled Effects to Aquatic Ecosystems describes the hydrologic basis for effects to the streams in which Huachuca water umbel occurs. The subsequent analysis of effects to riparian vegetation, of which the species is a component, appears in the Effects to Riparian Ecosystems section. These prior analyses are incorporated herein via reference.

Based on these prior analyses, we are particularly concerned with the modeled drawdowns in Empire Gulch, in the vicinity of Empire Gulch's confluence with Cienega Creek, and at the Gardner Canyon/Cienega Creek confluence within Las Cienegas NCA, as well as within the lowermost reaches of Cienega Creek, such as in the Pima County Cienega Creek Preserve. The relevant aspects of these analyses are reiterated in the narrative that follows.

Gardner Canyon

Gardner Canyon is anticipated to experience regional aquifer drawdowns of < 0.1 foot from the cessation of mining until 50 years later (or up to 0.15 foot at 50 years) (see Gardner/Cienega Confluence data in Table A-5). At 150 years after mining, the effect to Gardner Canyon increases to 0.2 foot (or up to 0.35 foot) and reaches 0.5 foot at 1,000 years.

Empire Gulch

Tetra Tech (2010) modeled the effects at this site to range from 0.1 foot (or up to 0.2 foot) of groundwater drawdown upon cessation of mining to 0.2 foot (or up to 0.5 foot) at 20 years, 0.5 (up to 1.8 foot) foot at 50 years, 2.5 feet (up to 5.0 foot) at 150 years, and 6 feet at 1,000 years (see Table A-5).

Upper Cienega Creek

The USGS Cienega Creek stream gage (0948550) is situated near the narrows in the upstream portion of Reach 3 (see Figure A-1). Tetra Tech (2010) modeled drawdowns of <0.1 foot from the end of mining and at 20, and 50 years later (or up to 0.15 foot at 50 years). Drawdowns reach 0.25 feet (or up to 0.35 foot) and 0.5 feet at 150 and 1,000 years, respectively. Table A-2, also found in the Effects to Aquatic Ecosystems section, is based on SWCA (2012), and describes appreciable effects to upper Cienega Creek, including an 0.16-mile decrease in stream length, a decrease in baseflow of 0.02 cfs, and a decrease in riparian ET of 51 afa.

Lower Cienega Creek

Tetra Tech (2010) modeled groundwater drawdowns of <0.01 foot at the lowermost USGS

stream gage in Cienega Creek at all intervals from the cessation of mining to 1,000 years; this is to be expected at such a large distance from the mine pit. The loss of runoff from the placement of tailings in Barrel Canyon has a relatively greater effect.

Given SWCA's finding that Davidson Canyon Wash will experience a 4.3 percent reduction in runoff (surface flows) from the placement of tailings in its watershed and the Pima Association of Governments' (2003b) estimate that the wash contributes 8 to 24 percent of the baseflow in Lower Cienega Creek, we anticipate that there will be a 0.3 to 1.0 percent reduction in the latter stream.

As discussed above, Table 7 in SWCA (2012) (also see Table A-5 in this document) summarizes various hydrologic and environmental effects resulting from groundwater drawdowns. Table A-3, in the Effects to Aquatic Ecosystems section, includes the SWCA (2012) findings wherein lower Cienega Creek will experience 0.31 foot of drawdown, no loss of stream length, a 0.02 cfs loss of discharge, and 8 afa in reduced riparian ET at 150 years after mining. By 1,000 years, SWCA (2012) predicted 0.98 foot of drawdown, a 0.29-mile reduction in stream length, a 0.04 cfs loss of discharge, and 221 afa in reduced riparian ET. The latter effects are appreciable.

Summary of Adverse Effects - Huachuca Water Umbel

We reiterate that the 5-foot threshold for reliably modeling changes in ground water elevation posited by SRK (2012) does not mean we cannot consider changes of less than that magnitude. Moreover, the results of the groundwater models have much greater utility in determining trends in groundwater elevation than in determining actual values and/or magnitudes of change. In this regard, the aquatic habitat of the Huachuca water umbel (occupied areas in Empire Gulch and Cienega Creek) is likely to experience a contraction in wetted length and a reduced wetted perimeter (which may also be expressed as a narrowing of top-width).

As discussed in the effects analysis for the southwestern willow flycatcher (see below), reduced surface flows characterize the most visible aspect of riparian effects, but don't describe their full extent. Moreover, the flycatcher analysis was concerned primarily with the sustenance and recruitment of woody riparian vegetation; the effects to a near-aquatic plant such as Huachuca water umbel would be more immediate and severe. Surface flows in alluvial reaches of Cienega Creek exist in locations where the thalweg (lowest elevation portion of the channel) of the stream intersects the alluvial water table. A longitudinal contraction in surface flows would be a component of a more-lengthy (and also longitudinal) reduction in shallow, subsurface flows, with alluvial groundwater in areas adjacent to dewatered reaches also dropping below critical depths for Huachuca water umbel. In areas where the depth to groundwater has exceeded the species' ability to access water, individual patches would senesce and eventually die unless they could: (1) reproduce asexually and access more moist microsites via the spread of rhizomes; and/or (2) colonize new, well-watered reaches via the spread of seeds generated in occupied sites upstream. A longitudinal contraction in surface flows would also be accompanied by a narrowing of the stream's top width, and such a narrowing of a stream can be expected to result in Huachuca water umbel rooting closer to the centerline of the channel, as the water-dependent plant grows towards the remaining, available water. Additionally, plants tolerant of drier

conditions, potentially including nonnative species, could colonize the less-well watered lateral sites and indirectly or directly compete with Huachuca water umbel. This is problematic in that the proposed action will leave flood flows in reaches above Davidson Canyon Wash largely unaffected. Vegetation that establishes itself in a narrowed low-flow channel will be subject to scouring from peak flows. Flood scour could be further exacerbated if the larger herbaceous and woody vegetative communities suffer mortality sufficient to reduce the stability of the stream's banks, where Huachuca water umbel occurs. While Huachuca water umbel requires low to moderate severity floods to create niches for colonization, excessive flooding is intolerable to populations and may result in extinctions locally (Warren *et al.* 1991; Warren *et al.* 1989).

Effects of the Proposed Conservation Measures - Huachuca Water Umbel

The proposed action includes: (1) eight conservation measures specifically pertaining to aquatic species; (2) a Cienega Creek Watershed restoration and water right protection program; and (3) the restoration of wetlands within the Sonoita Creek Ranch (see the Aquatic Species: Gila Chub, Gila Topminnow, and Huachuca Water Umbel; Cienega Creek Watershed; and Sonoita Creek Ranch subsections in the Description of the Proposed Conservation Measures section, above).

Six of the eight aquatic species conservation measures' stated purpose is to implement various monitoring programs to: (1) verify groundwater model results (via monitoring wells in key locations); (2) to ensure the chemical integrity of the regional groundwater (via the Aquifer Protection Permit) and streams (via the Arizona Department of Environmental Quality's National Pollution Discharge Elimination System permit: NPDES); and (3) assess alterations in channel geomorphology that may result from altered peak flow hydrology and sediment dynamics. The benefit of well monitoring is to obtain empirical data related to changes in groundwater storage, which may then be used to verify or update the groundwater models. The primary benefit of the monitoring of water quality is to provide an early warning and recommendation for corrective actions prior to the onset of gross changes in chemistry or geomorphology that would be most likely to kill or displace Huachuca water umbel. Successful implementation of these measures will help ensure that water quality remains within applicable standards, but we note that the tolerance of Huachuca water umbel to metals, changes in acidity/basicity, and other factors is not known.

The Cienega Creek Watershed conservation measure contains two elements: (1) severance and transfer of water rights; and (2) establishment of the Cienega Creek Watershed Conservation Fund. The program commits to: (1) transfer 150 acre-feet of water rights to a suitable entity for *in situ* use to preserve and enhance the aquatic and riparian ecosystem use in the upper Cienega Creek watershed area and an additional 100 acre-feet to Pima County for similar uses within the Cienega Creek Preserve; (2) transfer 825 acre-feet per annum to aquifer recharge and riparian restorations downstream from Pantano Dam (at which point lower Cienega Creek becomes Pantano Wash); and (3) make annual payments of $200,000 for 10 years to a Conservation fund managed and controlled by a designated conservation partner.

The Cienega Creek Watershed program may eventually have appreciable value in conserving Huachuca water umbel if the effort results in the retention of water in occupied areas. The

mitigative value of the water rights- related component of the conservation measure must be considered speculative at this time, as the action depends on the successful navigation of complex administrative and legal proceedings involving the Arizona Department of Water Resources and other State agencies, BLM, and, potentially, other permitted and certificated water rights holders. Recognizing this uncertainty, the Rosemont may require until January 1, 2016, to fully implement this proposed conservation measure.

The proposed establishment and funding of the Cienega Creek Watershed Conservation Fund is anticipated to be beneficial to Huachuca water umbel, but its exact mitigative value is prospective and cannot be ascertained in advance. We presume that actions beneficial to the aquatic environment in which Huachuca water umbel occur will be implemented, and while we cannot know if such actions will be implemented, we note that reestablishment of Huachuca water umbel is feasible (Environment and Natural Resource Division 2012). Similarly, the anticipated 3,000 linear feet of surface flow that will be made available below Pantano Dam may permit the establishment of a Huachuca water umbel metapopulation, though it is not clear if Cienega Creek Watershed Conservation Fund monies could be applied at this downstream site.

Rosemont has also acquired the right to purchase approximately 1,200 acres of land along Sonoita Creek with approximately 590 acre-feet of certificated surface water rights from Monkey Spring along Sonoita Creek. These lands and appurtenant water rights will be protected in perpetuity and made available to a suitable aganecy, land trust, or conservation organization. As is the case with Cienega Creek, above, the site, if deemed biologically appropriate, could provide a site for establishment of Huachuca water umbel. Given the current lack of specific plans to restore and maintain Huachuca water umbel at this site, we must also consider the mitigative value of this conservation measure to be somewhat speculative.

Effects to Recovery

There is no final recovery plan for the Huachuca water umbel, so it is difficult to determine at what point recovery of the species may be achieved. It is similarly difficult to determine at what point recovery would be precluded by the implementation of a proposed action. The Rosemont Copper Mine's effects will likely reduce the wetted perimeter and length of streams occupied by Huachuca water umbel, but the streams will not be completely dewatered (see . Effects of the Action - Huachuca Water Umbel and subsequent analyses, above). We must therefore compare these unquantifiable reductions in abundance to the overall status of the species as well as to the mitigative value of the proposed conservation measures.

The Cienega Creek system is one of several medium-scale watersheds in which Huachuca water umbel occurs (the others being situated within the larger San Pedro River watershed, the upper Santa Cruz River watershed, and in the Rio Yaqui watershed. These systems are all likely to experience diminished environmental conditions from regional climate change and increasing withdrawals of groundwater for human needs. At the most coarse scale, we feel that it is reasonable to assume that recovery of Huachuca water umbel would be precluded if the species were to be extirpated from one or more of these watersheds. Such extirpation would likely require long-term losses of surface water in habitats occupied by the species. Conversely, we feel

that recovery of the species could be achieved if the surface flows in these watersheds were secured, if not increased in volume and length, in perpetuity. We caution that this is not a *de facto* recovery criterion; downlisting and delisting criteria, as applicable, will be fully developed during recovery planning. Neverthless, we feel that the diminished flows in the Cienega Creek system that are likely to result from the proposed action are not of sufficient scale (stream length and potential number of individuals) to preclude recovery. We also feel that the Cienega Creek Watershed Fund and the acquisition and restoration of the Sonoita Creek Ranch, should they achieve their stated goals and incorporate the species into their plans, will make incremental contributions to Huachuca water umbel recovery.

Cumulative Effects - Huachuca Water Umbel

The Cumulative Effects sections for the Gila chub and southwestern willow flycatcher are incorporated herein via reference. In brief, of the cumulative actions relevant to the proposed action, we are primarily concerned with the withdrawal of groundwater from wells in vicinity of Cienega Creek, Sonoita, and Elgin.

Conclusion - Huachuca Water Umbel

The magnitude of the proposed action's adverse effects is difficult to ascertain in light of natural variability and uncertainties regarding baseline conditions that may change independently from the effects of the proposed action change over time, but all three groundwater models indicate that the proposed action will result in a small – but measurable - downward trend in groundwater availability and surface discharges. We anticipate that an indeterminate number of individual Huachuca water umbel patches will fail to persist in Cienega Creek and Empire Gulch over time, and that Huachuca water umbel metapopulations will be reduced in extent at the scale of the stream reach. It is, however, unlikely that the proposed action will result in large reductions of perennial stream reaches in the action area and thus, Huachuca water umbel is unlikely to be extirpated from the Cienega Creek watershed. Lastly, the mitigative value of the proposed conservation measures is currently speculative, but could result in the restoration of Huachuca water umbel to new sites and long-term protection of stream flows.

After reviewing the current status of Huachuca water umbel, the environmental baseline for the action area, the effects of the proposed action, and the cumulative effects, it is our biological opinion that the proposed Rosemont Mine project is not likely to jeopardize the continued existence of the species. Our rationale for this conclusion is as follows:

1. Modeled declines groundwater elevation will result in decrease in stream length, wetted perimeter and baseflows in the Cienega Creek Watershed at time scales varying from 20 to 1,000 years. If groundwater model results and the associated deceases in stream length and baseflow are valid, these losses will be potentially severe in Empire Gulch, minimal in the upper and low reaches of the mainstem of Cienega Creek, and will reduce the vigor and extent of Huachuca water umbel in the affected areas.

2. These effects to Huachuca water umbel are not likely to jeopardize the species because it occurs elsewhere in the Santa Cruz, San Pedro, and Yaqui river watersheds in sites unaffected by the proposed action.
3. The relatively wide distribution of the Huachuca water umbel within distinct watersheds and the low likelihood that the proposed action will extirpate the species entirely from the Cienega Creek watershed mean that the proposed action is unlikely to preclude recovery.
4. Rosemont will monitor water quality and quantity as well as channel geometry within Davidson Canyon Wash (a tributary to Cienega Creek), any or all of which may help validate model results and provide advanced notice for unforeseen effects to the aquatic environment. Unforeseen effects to aquatic and riparian ecosystems may necessitate reinitiation of formal consultation.
5. Rosemont will sever and transfer downstream senior water rights to upstream reaches of Cienega Creek by no later than January 1, 2016. If successfully executed, these *in situ* water rights may be employed to protect against future diversions of surface water by junior appropriators. Rosemont will also fund a conservation program to implement to-be-determined projects within the Cienega Creek watershed. If the water rights cannot be successfully severed and transferred, reinitiation of formal consultation may be warranted.
6. Rosemont has also acquired the rights to purchase the Sonoita Creek Ranch and, upon transfer to a suitable entity, the site will undergo aquatic, wetland, and riparian restorations. These projects will be vetted by FWS and other appropriate entities, and may include the reestablishment of Huachuca water umbel**.**
7. Critical habitat has been designated for Huachuca water umbel, but none is present in the action area. Critical habitat will not be affected nor will that critical habitat's ability to function in the recovery of the species be impaired.

INCIDENTAL TAKE STATEMENT - HUACHUCA WATER UMBEL

Sections 7(b)(4) and 7(o)(2) of the Act generally do not apply to listed plant species. However, limited protection of listed plants from take is provided to the extent that the Act prohibits the removal and reduction to possession of Federally listed endangered plants from areas under Federal jurisdiction, or for any act that would remove, cut, **di**g up, or damage or destroy any such species on any other area in knowing violation of any regulation of any State or in the course of any violation of a State criminal trespass law.

Conservation Recommendations - Huachuca Water Umbel

Sections 2(c) and 7(a)(1) of the Act direct Federal agencies to use their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of listed species. Conservation recommendations are discretionary agency activities to minimize or avoid effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

1. We recommend that the FS participate in recovery planning efforts for the Huachuca water umbel. We will be preparing a recovery plan in the near future and would like to incorporate agency expertise.
2. We recommend that the FS continue with its ongoing efforts to arrest erosion and restore ecosystems on streams on the Coronado National Forest within which Huachuca water umbel occurs.
3. We recommend that the FS participate in genetic studies, such as those underway by Fort Huachuca, in order to determine population and metapopulation dynamics of Huachuca water umbel throughout its range.

To be kept informed of actions minimizing or avoiding adverse effects or benefiting listed species or their habitats, we request notification of the implementation of any conservation recommendations.

Effects to Riparian Ecosystems

This section includes an analysis of the effects of the proposed action on riparian ecosystems. The southwestern willow flycatcher is an obligate riparian bird and the Huachuca water umbel is a semi-aquatic plant that occurs in streams and riparian areas; the analyses contained herein are incorporated via reference into the respective species' analyses.

Effects to the riparian ecosystems must be based on a classification system. Riparian vegetation may be classified in various ways. Brown (1982), National Wetlands Inventory (2013) methods are widely applied, but available maps are outdated and are of insufficiently fine resolution to be applicable to the action area. Three sources of riparian mapping are available for the area of analysis: Pima County, the Forest Service, and WestLand Resources Inc. (the latter conducted on behalf of Rosemont Copper). Each source represents different techniques, definitions, and geographic coverage. The Draft EIS used a combination of these mapping sources, primarily relying on mapping by WestLand Resources Inc. for the mine site and on Pima County mapping to define hydroriparian and mesoriparian areas elsewhere along major stream corridors.

The Coronado NF considered both public comments and input from cooperating agencies regarding riparian classification and has determined to employ the Pima County riparian mapping source in the eventual Final EIS. The Forest Service's own mapping coverage was considered too limited in geographic extent and largely ignored xeroriparian areas. The Pima County mapping was largely based on remote photographic analysis and generally encompassed a wider swath along washes than the mapping efforts conducted by WestLand Resources Inc., which were based in part on field surveys. However, the underlying purpose of the Pima County riparian mapping was to identify corridors of overall wildlife habitat, whereas the site-specific mapping by WestLand Resources Inc. focused on identifying the extent of specific vegetation species. Determining the presence of wider habitat corridors and their impact to biological resources was one of the primary purposes of analyzing impacts to riparian vegetation for NEPA purposes, and this largely informed the Coronado NF's decision to select the Pima County

mapping. Use of the Pima County mapping offers three benefits: an appropriate focus on habitat corridors, consistency across the area of analysis, and extensive geographic coverage. It is for these reasons that we have adopted the same riparian classification method in this BO.

It is recognized that discrepancies have arisen between the Pima County and WestLand Resources, Inc. mapping efforts. WestLand Resources Inc. (2010) noted that Pima County mapping overestimated riparian resources 86% of the time in 43 riparian area widths measured in Barrel and Scholefield Canyons. These differences in acreage were determined by the Coronado NF to be acceptable for NEPA analysis, given the different criteria used by Pima County. However, in several reaches of Barrel and Davidson Canyons, discrepancies were also evident concerning the overall species types indicated by Pima County mapping and those observed in the field by WestLand Resources Inc. In these cases, acreages were not been changed, but the overall type of habitat was reinterpreted from that used by Pima County. For the purposes of the analyses contained in this BO, the areal extent of impacts to riparian vegetation represents the maximum anticipated effect of the proposed action.

There are a total of approximately 22,106 acres of riparian vegetation in the analysis area (Pima County 2012; USFS 2012d, as cited in the Description of the Proposed Action section). These vegetation communities are present in drainages within the analysis area and along downstream portions of Box, McCleary, Sycamore, Scholefield, Wasp, Barrel, Davidson, and Gardner Canyons; Empire Gulch; and Cienega Creek. In addition to the riparian vegetation listed below as occurring in riparian areas in the analysis area, Emory oak, Mexican blue oak, and Arizona white oak are common in Box, McCleary, Sycamore, Scholefield, Wasp, and Barrel Canyons. While many springs support some individuals of species considered to indicate hydroriparian habitat, only two springs had large mappable areas of hydroriparian vegetation: Scholefield No. 1 spring supports about 0.3 acre of wetland, and Fig Tree spring supports about 0.5 acre of riparian habitat, with a very limited wetland area. These water sources provide habitat for aquatic species within the analysis area. Pima County's riparian mapping source is used for this project, and the following riparian habitat types are mapped within the analysis area (Pima County 2013). Detailed descriptions of the respective communities are found in the Vegetative Communities subsection of the Description of the Proposed Action section.

Hydroriparian

Hydroriparian habitats are generally associated with perennial watercourses and/or springs. The following drainages and associated riparian habitat contain stretches that are mapped as hydroriparian: Cienega Creek, Gardner Canyon, Empire Gulch, Davidson Canyon, and Barrel Canyon. Approximately 7,325 acres of hydroriparian habitat are located within the action area.

Aquatic vegetation that is unique to the springs and seeps is also present within the analysis area. Vegetation at these springs and seeps includes obligate wetland plants. Within the analysis area, moist soil or surface water (both lentic and lotic systems) and associated aquatic vegetation are known to occur at the several springs (e.g., Deering, Upper Empire Gulch, Fig Tree, Mudhole, Oak, Ojo Blanco, Rosemont, Scholefield No. 1, Sycamore, and Water Develop) (WestLand Resources Inc. 2011j). Areas of aquatic habitats are too small to map; therefore, they do not

appear on Figure I-4, below.

Xeroriparian

Xeroriparian habitats are generally associated with an ephemeral water supply. These communities typically contain plant species also found in upland habitats; however, these plants are typically larger and/or occur at higher densities than adjacent uplands. Approximately 14,781 acres of xeroriparian habitat are located within the action area. Xeroriparian habitat is further divided into four subclasses to reflect the amount of vegetation present. Pima County Regional Flood Control District's Regulated Riparian Habitat Mitigation Standards and Implementation Guidelines (Pima County Department of Transportation and Flood Control District 2001; Pima County Regional Flood Control District 2011) define the xeroriparian subcategories as follows:

• Xeroriparian A: The most dense xeroriparian subcategory with a total vegetative volume greater than 0.856 m^3/m^2. Xeroriparian A habitat is present in stretches of Cienega Creek, Empire Gulch, and Davidson Canyon where vegetation consists of mesquite and netleaf hackberry. Approximately 145 acres of xeroriparian A habitat is located within the analysis area.

• Xeroriparian B: Moderately dense xeroriparian subcategory with a total vegetative volume less than or equal to 0.856 m^3/m^2 and greater than 0.675 m^3/m^2. Xeroriparian B habitat is present in stretches of Cienega Creek, Gardner Canyon, Empire Gulch, Davidson Canyon, and Barrel Canyon where vegetation consists of mesquite, scattered cottonwood, netleaf hackberry, burrobrush, juniper, and acacia. Approximately 7,116 acres of xeroriparian B habitat is located within the analysis area.

• Xeroriparian C: Less dense xeroriparian subcategory with a total vegetative volume less than or equal to 0.675 m^3/m^2 and greater than 0.500 m^3/m^2. Xeroriparian C habitat is present in stretches of Cienega Creek, Gardner Canyon, Empire Gulch, and Davidson Canyon where vegetation consists of mesquite, desert broom, burrobush, desert willow, hackberry, and juniper. Approximately 7,345 acres of xeroriparian C habitat is located within the analysis area.

• Xeroriparian D: Less to sparse plant density xeroriparian subcategory that provides hydrologic connectivity to other riparian habitat areas with a total vegetative volume less than or equal to 0.500 m^3/m^2. Xeroriparian D habitat is present in stretches of Cienega Creek and Davidson Canyon where vegetation consists of acacia and desert broom. Approximately 174 acres of xeroriparian D habitat is located within the analysis area.

Aquatic Vegetation

Aquatic vegetation is unique to the springs and seeps within the action area and includes obligate wetland plants (i.e., almost always occurs under natural conditions in wetlands). Within the action area, moist soil or surface water (both lentic and lotic systems) and associated aquatic vegetation are known to occur at the following springs (WestLand 2011a): Basin, Deering, Empire Gulch, Fig Tree, Mudhole, Oak, Ojo Blanco, Rosemont, Scholefield, Sycamore, and

Mr. Jim Upchurch, Forest Supervisor

Water Develop.

Information provided by the BLM during the review of the draft version of the BO notes that these aquatic vegetation communities, along with those present along cienega-like reaches of Cienega Creek and its tributaries should be classified as Interior (Sonoran) Marshland (Brown 1982). These Cienega communities (Minckley and Brown 1982, Hendrickson and Minckley 1984) are prevalent in the Las Cienegas NCA; the area contains over 30 jurisdictional wetlands, both perennial and seasonal. Most of these wetlands occur on the Cienega Creek floodplain between Cinco Canyon and Oak Tree Canyon. Named wetland complexes include Cieneguita Wetland, Spring Water Wetland, Cinco Ponds Wetland. Another series of wetlands occurs upstream of the Mattie Canyon confluence on Cienega Creek (Cold Spring Wetland). These wetlands cover tens of acres. An inventory of wetlands has been completed by the Arizona Botanical Garden with a report anticipated to be transmitted in September 2013.

Areas of aquatic habitats were considered too small to map by USFS; therefore, they do not appear on Figure I-4, below. The BLM, in comments on the content of the Draft BO, stated that Cienaga Cienega Creek exhibits approximately 7 miles of surface flow. In addition, Empire Gulch has approximately 0.5 mile, Empire Spring approximately 1,000 feet, and Mattie Canyon approximately 1 mile. The BLM also stated that large blocks of wetland also occur which could easily be delineated on a map. We note that aquatic habitat in the context of this section refers to vegetative communities, not solely wetted areas. While we agree that mapping cold be improved, it is likely that the aquatic vegetative community mapping was superseded by mapping of the dominant overstory (i.e. xerioriparian or hydroriparian) that may co-occur with the understory of Interior Marshland in many sites.

Again, more-detailed descriptions of the riparian communities appears in the Vegetative Communities subsection of the Description of the Proposed Action section, above. Table R-1, below, summarizes the acreages of riparian vegetation within the affected streams, using the reach-by-reach classification found in Figure A-1 in the Effects to Aquatic Ecosystems section.

Table R-1. Riparian affected environment adapted from SWCA (2012)

Reach Name	Acres	Pima County Class	Dominant Riparian Plants
Cienega Creek 1	695.13	Hydroriparian	Cottonwood and Goodding's willow**
Cienega Creek 1	364.69	Xeroriparian B	Large mesquites and scrub mesquites with scattered cottonwoods**
Cienega Creek 2	2,086.96	Hydroriparian	Mature cottonwood and Goodding's willow**
Cienega Creek 2	323.98	Xeroriparian B	Acacia, desert willow, ironwood, paloverde, mesquite, soapberry*
Cienega Creek 2	65.58	Xeroriparian C	Acacia, desert willow, ironwood, paloverde, mesquite, soapberry*
Cienega Creek 3	382.27	Hydroriparian	Mature cottonwood and Goodding's willow with young velvet ash**
Cienega Creek 3	35.88	Xeroriparian B	Mesquite and netleaf hackberry**
Cienega Creek 3	126.96	Xeroriparian C	Mesquite with desert broom and burrobrush**
Cienega Creek 3	0.78	Xeroriparian D	Acacia, desert willow, ironwood paloverde, mesquite, soapberry*
Cienega Creek 4	11.15	Xeroriparian A	Mature mesquite and netleaf hackberry**
Cienega Creek 4	179.52	Xeroriparian B	Mesquites with burrobrush**
Cienega Creek 4	656.81	Xeroriparian C	Less dense mesquites with burrobrush**
Cienega Creek 4	38.58	Xeroriparian D	Acacia, desert willow, ironwood, paloverde, mesquite, soapberry*
Cienega Creek 4	2138.93	Hydroriparian	Mature cottonwoods and ash with some Goodding's and seep willow**
Cienega Creek 5	4.86	Xeroriparian A	Mesquite**
Cienega Creek 5	21.75	Xeroriparian B	Mesquites with burrobrush**
Cienega Creek 5	168.15	Xeroriparian C	Less dense mesquites with desert broom and burrobrush**
Cienega Creek 5	49.91	Xeroriparian D	Acacia, desert willow, ironwood, paloverde, mesquite, soapberry*
Cienega Creek 5	463.95	Hydroriparian	Cottonwood and willow gallery forest**
Gardner Canyon 1	422.26	Xeroriparian B	Acacia, desert willow, ironwood, paloverde, mesquite, soapberry*

Gardner Canyon 1	381.08	Xeroriparian C	Acacia, desert willow, ironwood, paloverde, mesquite, soapberry*
Gardner Canyon 1	523.96	Hydroriparian	Cottonwood, willow, seepwillow, sycamore, hackberry*
Gardner Canyon 2	129.29	Xeroriparian B	Acacia, desert willow, ironwood, paloverde, mesquite, soapberry*
Gardner Canyon 2	121.51	Hydroriparian	Cottonwood, willow, seepwillow, sycamore, hackberry*
Empire Gulch	86.00	Xeroriparian A	Acacia, desert willow, ironwood, paloverde, mesquite, soapberry*
Empire Gulch	631.39	Xeroriparian B	Acacia, desert willow, ironwood, paloverde, mesquite, soapberry*
Empire Gulch	127.90	Xeroriparian C	Acacia, desert willow, ironwood, paloverde, mesquite, soapberry*
Empire Gulch	407.46	Hydroriparian	Large cottonwood willow gallery**
Davidson Canyon 1	84.03	Xeroriparian B	Acacia, desert willow, ironwood, paloverde, mesquite, soapberry*
Davidson Canyon 1	99.20	Hydroriparian***	Large ash trees**
Davidson Canyon 2	355.61	Xeroriparian B	Mesquites, hackberry**
Davidson Canyon 2	31.23	Xeroriparian C	Small mesquites, desert willow**
Davidson Canyon 2	33.95	Xeroriparian D	acacia, desert broom**
Davidson Canyon 2	570.38	Hydroriparian***	Seep willow, Arizona walnut, cottonwood**
Davidson Canyon 3	0.50	Xeroriparian B	Juniper**
Davidson Canyon 3	28.93	Xeroriparian C	Mesquite, hackberry**
Davidson Canyon 3	26.21	Xeroriparian D	Desert broom, acacia**
Davidson Canyon 3	71.05	Hydroriparian***	Willows, ash, tamarisk**
Davidson Canyon 4	5.71	Xeroriparian A	Large mesquite, hackberry**
Davidson Canyon 4	5.05	Xeroriparian B	Mesquite**
Davidson Canyon 4	50.42	Xeroriparian C	Small mesquite, juniper**
Davidson Canyon 4	3.27	Xeroriparian D	Desert broom, acacia**
Davidson Canyon 4	174.78	Hydroriparian	Willows, ash, tamarisk, and cottonwood**
Barrel Canyon 1	192.54	Hydroriparian***	Large mesquites, oak, juniper, desert willow, sumac**
Barrel Canyon 1	21.74	Xeroriparian B	Small mesquites, juniper, hackberry**
Barrel Canyon 2	12.39	Hydroriparian***	Seep willow**
Total Hydroriparian	**7,940.51**		
Total Xeroriparian A	**107.72**		
Total Xeroriparian B	**2,575.69**		
Total Xeroriparian C	**1,637.06**		
Total Xeroriparian D	**152.7**		
* From generic Pima County habitat type descriptions (Pima County Regional Flood Control District 2011). Note that BLM (2013) states that the habitat associations in Empire Gulch are not known to be present			
** From actual field observations (WestLand Resources Inc. 2010, 2012a).			
*** The Pima County habitat designation does not match field descriptions of species types; for purposes of analysis, these areas are onsidered xeroriparian/mesoriparian instead of hydroriparian			

General Effects to Riparian Ecosystems

The proposed action will affect riparian systems via the withdrawal of groundwater from the aquifer that sustains portions of springs and streams as well as by alterations in surface runoff patterns within the watershed of the streams. The hydrologic basis for these effects is discussed in detail within the Effects to Aquatic Ecosystems section, and is incorporated herein via reference.

The effect of increased depth to groundwater on riparian vegetation has been investigated by Stromberg *et al.* (1996), Scott *et al.* (1999), Horton *et al.* (2001b), and Merritt and Bateman 2012. Others have investigated riparian response to spatial variations in groundwater depth (i.e. as stream courses changed from perennial to intermittent along their course) (Leenhouts *et al.* 2005, Stromberg *et al.* 2005; Stromberg *et al.* 2007a and 2007b), or changes resulting from the operation of impoundments (Horton *et al.* 2001a, Shafroth *et al.* 2002). It is also important to note that riparian vegetation tends to develop in response to local conditions; communities that exist in sites with highly variable alluvial groundwater levels tend to have rooting depths capable of withstanding relatively larger variations in groundwater level than sites where groundwater elevations are more consistent (Shafroth *et al.* 2000). The streams in the action area exhibit high

variability. The variation was described by SWCA (2012), and was summarized in the Effects to Aquatic Ecosystems section.

It is difficult to apply these prior investigations' quantitative results directly to the action area, but one key finding is that increasing depths to groundwater will eventually result in downgrades of a given sites' riparian community (i.e., hydroriparian communities would suffer decreased vigor and extent, eventually transitioning to a xeroriparian community). It is also possible that the groundwater declines resulting from the proposed action, while seemingly minor, will increase current or future levels of hydrologic variation to the point that present-day riparian communities cannot perpetuate themselves.

Maintenance of existing stands of cottonwood and/or willow forests requires the presence of relatively shallow groundwater. Lite and Stromberg (2005) found that cottonwood and Goodding's willow plants were able to compete successfully with non-native saltcedar plants when the maximum depth to groundwater was less than or equal to 8 feet. Leenhouts *et al.* (2005) found that cottonwoods and willow forests on the upper San Pedro River were dense and multiaged among sites where annual maximum ground-water depths averaged less than about 3 meters (9.8 feet) (and where streamflow permanence was greater than about 60 percent, and intra-annual ground-water fluctuation was less than about 1 meter). Others have found the ideal depth appears to be approximately 3 to 5 feet, depending on the species and soil conditions at the site (Parametrix 2008). Cottonwood and willow growth and survival suffer from water stress when groundwater declines below key depth thresholds, particularly if the declines are rapid; the proposed action's effects do not exhibit such immediacy. Seasonal declines of 1 meter have caused mortality of saplings of cottonwood and willow (Shafroth *et al.* 2000). Mature cottonwood trees have been killed by abrupt, permanent drops in the water table of 1 meter, with lesser declines (0.5 meter) reducing stem growth (Scott *et al.* 1999, 2000).

The aforementioned depths to groundwater were in reference to the needs of mature willows and cottonwoods. The recruitment of new individuals requires near-surface levels of groundwater during seed germination, followed by a relatively gradual decline in depth that allows roots to pursue the retreating alluvial groundwater. Leenhouts *et al.* (2005) state that manner in which cottonwoods and willows become established is linked to flood flow hydrology. Both species are relatively short-lived (about 100 to 150 years) and have vernally adapted reproduction strategies. Conditions for establishment are not consistently favorable at any given location year after year, so cohorts of these trees establish only during occasional favorable years. The timing of floodflows is critical, as both species produce seeds that are viable during the relatively brief period when high spring flows are usually declining and exposing base, damp sediments (Fenner *et al.* 1984). A typical pattern is for fall or winter floods to scour and redeposit flood-plain sediments, creating potential seed beds for these plants to establish without competition from an existing overstory; seed beds are then moistened by elevated (flood flows). Goodding's willow disperses seeds somewhat later in the season than does cottonwood (although the dispersal periods overlap) and, as the flood waters recede, establishes on sites that are lower and closer to the stream.

The rates of flood-water recession (i.e. the descending limb of the hydrograph) and subsequent decline in alluvial water table elevation influence seedling survival in Fremont cottonwood, Goodding's willow and other *Populus* and *Salix* species. During spring when flood waters are receding and seedlings are establishing on sediment bars, ground-water declines of greater than 1 to 3 centimeters per day can cause seedling death (Segelquist *et al.* 1993, Mahoney and Rood, 1998, Shafroth *et al.* 1998, Amlin and Rood 2002). Rood and Mahoney (1990) and Tyree *et al.* (1994) found that gradual decline of stream discharge after flooding allowed cottonwood seedlings' root systems to maintain contact with the ground water and avoid cavitation (gaps in the water flowing within xylem). In locations where the proposed action will appreciably reduce groundwater elevations beneath streams, we would expect the descending limb of spring hydrographs to steepen (declining less gradually), as discharge-driven channel recharge would first need to saturate a greater volume of alluvium relative to the more well-saturated alluvium present in an unaffected stream.

Sustained ground-water declines throughout the summer to depths greater than 1 or 2 meters below land surface (depending on soil texture, weather, and species) also can preclude establishment of the new cohort (Kalischuk *et al.* 2001, Amlin and Rood 2002). Willow seedlings are less tolerant of water-table decline than cottonwood seedlings (and more tolerant of inundation) and show greatest growth under no water-table decline (continually saturated soils; Horton and Clark, 2001, Amlin and Rood 2002).

Merritt and Bateman (2012) examined Cherry Creek, a central Arizona tributary of the upper Salt River, and modeled changes in riparian vegetation as a result of increasing the depth of groundwater from the surface. The relative frequency of riparian forest to shrubland decreased significantly as a function of increasing depth to groundwater, ranging from 58 percent (%) at base groundwater level to 5% at 6.6 feet (2 meters) below base level. A simulated groundwater decline of 6.6 feet (2 meters) below base level resulted in a nearly complete loss of riparian forest and conversion of the valley bottom to shrubland. Predicted loss of riparian forest averaged 4% per 4 inches (.33 feet) (10 centimeters) of groundwater decline.

We are aware of the difference in time scales between the aforementioned studies and the temporal progression of the modeled effects of the proposed action. Some of the referenced investigations were intra-annual and none were performed over the up-to-1,000-year terms of the modeling for the proposed action. Again, we refer to Shafroth *et al.* (2000), which would seem to indicate that riparian vegetation communities could adapt to a slow progression of groundwater elevation over a lengthy time period (as is often the case in the reach-specific sections, below), provided that maximum depths to groundwater were not exceeded.

Gardner Canyon

As indicated by the Gardner/Cienega Confluence data in Table A-5 in the Effects to Aquatic Ecosystems section, Tetra Tech's (2010) maximum modeled effect scenario predicts that Gardner Canyon is anticipated to experience regional aquifer drawdowns of < 0.1 foot from the cessation of mining until 50 years later (or up to 0.15 foot at 50 years). At 150 years after mining, the effect to Gardner Canyon increases to 0.2 foot (or up to 0.35 foot) and reaches 0.5

foot at 1,000 years. The groundwater drawdowns in the aquifer supplying Gardner Canyon are not likely to be solely capable of measurably reducing the extent or health of the approximately 645 acres of hydroriparian and 933 acres of xeroriparian (Classes B and C) vegetation in Reaches 1 and 2 of Gardner Canyon, but will be additive to other effects, primarily drought and long-term climate change.

Empire Gulch

The proposed action will measurably affect the hydrology of Empire Gulch at the Upper Empire Gulch Springs site (see Upper Empire Gulch Springs data in Table A-5). Effects are modeled to range from 0.1 foot (or up to 0.2 foot) of groundwater drawdown upon cessation of mining to 0.2 foot (or up to 0.5 foot) at 20 years, 0.5 (up to 1.8 foot) foot at 50 years, 2.5 feet (up to 5.0 foot) at 150 years, and 6 feet at 1,000 years (Tetra Tech 2010). As stated in the Effects to Aquatic Ecosystems section, the spring-fed nature of the stream within Empire Gulch is relatively more vulnerable to alterations in the groundwater conditions that sustain the spring discharges. The appreciable groundwater drawdowns discussed above will likely reduce the resilience of ground- and surface water-dependant vegetation in the near term (0 to 20 years). The appreciably increased depths to groundwater and diminished surface flows anticipated to occur in the 150 to 1,000-year timeframe will have more serious, deleterious effects.

The groundwater declines resulting from the proposed action are likely to diminish surface flows in Empire Gulch and cause mortality and/or a downward community transition of some portion of the stream's approximately 407 acres of hydroriparian vegetation. The lost hydroriparian vegetation may be replaced by xeric species, resulting in an increase in the 845 acres of Class A, B, and C xeroriparian vegetation present in Empire Gulch. There is also the potential that some portions of existing xeroriparian vegetation that are partially replying on alluvial groundwater will suffer educed vigor.

Lastly, the current depth to groundwater in Empire Gulch in areas maintained by spring discharge (but not immediately adjacent to the springs) is not known. If ongoing drought has already resulted in decreased groundwater elevations (as might be anticipated from reduced spring discharges), mortality thresholds for riparian plants could be exceeded appreciably sooner and/or the aerial extent of effects could be greater.

Upper Cienega Creek

Upper Cienega Creek in Reaches 1, 2, and 3, contains approximately 3,164 acres of hydroriparian vegetation. This riparian community will be affected by modeled drawdowns of <0.1 foot from the end of mining and at 20, and 50 years later (or up to 0.15 foot at 50 years). Drawdowns reach 0.25 feet (or up to 0.35 foot) and 0.5 feet at 150 and 1,000 years, respectively. Upper Cienega Creek's 917 acres of xeroriparian vegetation in Classes B, C, and D may increase in extent as it replaces lost hydroriparian vegetation, though some effects to xeroriparian plant species facultatively using alluvial groundwater might also occur.

Table A-2, which appears in the Upper Cienega Creek subsection of the Effects to Aquatic Ecosystems section, displays a decrease in riparian evapotranspiration (ET) of 51 acre feet per annum (AFA) at 1,000 years. The decreased riparian ET corresponds to a loss of riparian vegetation, though we cannot determine if the loss would be the result of mortality, conversion to more xeric types, or a combination of the two.

Barrel Canyon

As stated in the Effects to Aquatic Ecosystems section, the proposed action will affect Barrel Canyon primarily by the placement of tailings in the stream channel and its watershed, which will reduce surface runoff by approximately 17.2 percent over the long term. The largest effects will occur prior to the implementation of concurrent reclamation activities.

Barrel Canyon contains approximately 205 acres of hydroriparian and 22 acres of Class-B xeroriparian vegetation, though SWCA (2012) noted that the areas mapped as hydroriparian were more xeric and should likely be classified as xeroriparian.

Davidson Canyon Wash

Tetra Tech predicted groundwater drawdowns in Davidson Canyon Wash at the downstream end of Reach 4 (see the Davidson/Cienega Confluence data in Table A-5) of <0.1 foot from 0 to 150 years after mining and 0.1 foot at 1,000 years (or up to 0.15 foot at 20 years, and 0.2 foot at both 50 and 150 years).

The Effects to Aquatic Ecosystems section discusses the effects of changed runoff patterns in Davidson Canyon Wash. The stream's upper watershed will be subject to altered surface water runoff patterns due to the aforementioned placement of tailings and stormwater retention in Barrel Canyon and retention of stormwater within the mine site. SWCA (2012) extrapolated a 4.3 percent reduction in runoff in the lower reaches of Davidson Canyon Wash. The effect of this small, but measurable reduction in runoff on the recruitment, retention, and succession of riparian communities is difficult to predict, particularly because the 4.3 percent reduction is in average annual yield, which cannot describe discharge-based effects during crucial, low flow periods.

Lower Cienega Creek

Lower Cienega Creek (Reaches 4 and 5 in Figure A-1) supports approximately 2,603 acres of hydroriparian and 1,131 acres of Class A, B, C, and D xeroriparian vegetation. Tetra Tech (2010) modeled groundwater drawdowns of <0.1 foot at the USGS stream gage in Reach 5 (09484560) for all time steps from the cessation of mining to 1,000 years. Drawdowns of such low magnitude, absent other effects, are not anticipated to affect riparian vegetation.

Reach 5, which we again note is downstream of the Davidson Canyon Wash confluence, is nevertheless anticipated to experience the full suite of the proposed action's accumulated, adverse effects. While recognizing the potential for these effects, the fate of diminished surface

flows is uncertain, as infiltration and/or riparian evapotranspirative losses vary spatially and temporally. The effects have nevertheless been modeled and represent the best available information.

The effects to riparian vegetation in lowermost Cienega Creek include all drawdown-driven surface flow alterations in upstream reaches (and in Empire Gulch in particular) as well as runoff reductions from the placement of tailings within the upper reaches of Barrel Canyon. Pima County's estimation that Davidson Canyon subflow contributes 8 to 24 percent of baseflow in Reach 5 of Cienega Creek and SWCA's (2012) interpolation that the subflow reduction could be approximately from 0.3 to 1.0 percent makes it reasonable to anticipate at least limited effects to riparian vegetation in the lowermost reaches of Cienega Creek (Reach 5). We refer to Table A-3 in the Lower Cienega Creek subsection of the Effects to Aquatic Ecosystems section, wherein Montgomery [(2010, cited in SWCA (2012)] predicted a 221 afa decrease in riparian ET in lower Cienega Creek 1,000 years after mining.

Westland (2012b) conducted an analysis of existing data pertaining to depth to groundwater and surface flows in a reach of lower Cienega Creek to determine the degree to which impoundment of surface runoff at the mine site and the modeled drawdowns might affect surface flows in lower Cienega Creek. The findings of Westland (2012b) are that there will be an estimated, immediate reduction of approximately 24 linear feet of wetted stream in lower Cienega Creek as a result of reduced runoff from areas impounded by the mine (and the stormwater capture within). After 100 years, an additional 88 feet of wetted stream, for a total of 112 feet, of lower Cienega Creek could be lost due to groundwater drawdown. Should regional drought conditions persist, these changes would be in addition to the ongoing reductions in stream flow extent measured by the Pima Association of Governments (2012).

We caution that reduction in the length of wetted channel does not necessarily characterize the potential full extent of riparian effects. Surface flows in alluvial reaches of Cienega Creek exist in locations where the thalweg (deepest part) of the stream intersects the alluvial water table. A longitudinal contraction in surface flows would necessarily be accompanied by a more-lengthy, longitudinal reduction in shallow, subsurface flows, with alluvial groundwater in some areas potentially dropping below critical depths for emergent, shallow-rooted plants, herbaceous shrubs, as well as broadleaf riparian trees.

The longitudinal contraction in surface flows would also be accompanied by a narrowing of the riparian strand and/or a transition to more xeric types (i.e. tamarisk, desert broom, etc.). The diminished lateral extent of shallow groundwater would also reduce the wetted perimeter of the stream. Stream top-width is a useful surrogate for wetted perimeter, and such a narrowing of a stream can be expected to result in vegetative recruitment encroaching closer to the centerline of the channel. This is problematic since the proposed action will leave flood flows in reaches above Davidson Canyon Wash largely unaffected. Vegetation that establishes itself in a narrowed low-flow channel is likely to be subject to scouring from the still-intact peak flows. Flood scour could be further exacerbated if vegetative communities suffer mortality sufficient to reduce streambank stability.

Status of the Species – Southwestern Willow Flycatcher

A complete description of the biology of the southwestern willow flycatcher (*Empidonax traillii extimus*) is contained in the *Southwestern Willow Flycatcher Recovery Plan* (FWS 2002); a summary of the information appears below.

Description

The southwestern willow flycatcher is a small grayish-green passerine bird (Family Tyrannidae) measuring approximately 5.75 inches. The song is a sneezy "fitz-bew" or a "fit-a-bew", the call is a repeated "whit." It is one of four currently recognized willow flycatcher subspecies (Phillips 1948, Unitt 1987, Browning 1993). It is a neotropical migrant that breeds in the southwestern U.S. and migrates to Mexico, Central America, and possibly northern South America during the non-breeding season (Phillips 1948, Stiles and Skutch 1989, Peterson 1990, Ridgely and Tudor 1994, Howell and Webb 1995). The historical breeding range of the southwestern willow flycatcher included southern California, Arizona, New Mexico, western Texas, southwestern Colorado, southern Utah, extreme southern Nevada, and extreme northwestern Mexico (Sonora and Baja) (Unitt 1987).

Listing and Critical Habitat

The southwestern willow flycatcher was listed as endangered, without critical habitat on February 27, 1995 (FWS 1995). Critical habitat was later designated on July 22, 1997 (FWS 1997a). A correction notice was published in the Federal Register on August 20, 1997 to clarify the lateral extent of the designation (FWS 1997b).

On May 11, 2001, the 10th circuit court of appeals set aside designated critical habitat in those states under the 10th circuit's jurisdiction (New Mexico). The FWS decided to set aside critical habitat designated for the southwestern willow flycatcher in all other states (California and Arizona) until it could re-assess the economic analysis.

On October 19, 2005, the FWS re-designated critical habitat for the southwestern willow flycatcher (FWS 2005). A total of 737 river miles across southern California, Arizona, New Mexico, southern Nevada, and southern Utah were included in the final designation. The lateral extent of critical habitat includes areas within the 100-year floodplain.

On August 15, 2011, the FWS proposed a revision to the critical habitat designation, identifying stream segments in each of the 29 Management Units where there are recovery goals (FWS 2011). These segments totaled 2,090 stream miles. Similar to the 2005 rule, the lateral extent of critical habitat includes only the riparian areas within the 100-year floodplain. About 790 stream miles were identified as areas we will consider for exclusion from the final designation under section 4(b) (2) of the ESA.

The 2005 critical habitat designation remained in place until the final rule was published on January 3, 2013 (78 FR 344). The final rule designated approximately 208,973

acres of streams and riparian areas within the 100-year floodplain or flood-prone areas along approximately 1,975 stream miles in California, Nevada, Utah, Colorado, Arizona, and New Mexico.

A final recovery plan for the southwestern willow flycatcher was signed by the FWS Southwestern Region Director and released to the public in March, 2003 (FWS 2002). The Plan describes the reasons for endangerment, current status of the flycatcher, addresses important recovery actions, includes detailed issue papers on management issues, and provides recovery goals. Recovery is based on reaching numerical and habitat related goals for each specific Management Unit established throughout the subspecies range and establishing long-term conservation plans (FWS 2002).

Habitat

The southwestern willow flycatcher breeds in dense riparian habitats from sea level in California to approximately 8,500 feet in Arizona and southwestern Colorado. Historical egg/nest collections and species' descriptions throughout its range describe the southwestern willow flycatcher's widespread use of willow (*Salix* spp.) for nesting (Phillips 1948, Phillips *et al.* 1964, Hubbard 1987, Unitt 1987). Currently, southwestern willow flycatchers primarily use Geyer willow (*S. geyeriana*), coyote willow (*S. exigua*), Goodding's willow (*S. gooddingii*), boxelder (*Acer negundo*), saltcedar (*Tamarix* sp.), Russian olive (*Elaeagnus angustifolio*), and live oak (*Quercus agrifolia*) for nesting. Other plant species less commonly used for nesting include: buttonbush (*Cephalanthus* sp.), black twinberry (*Lonicera involucrata*), cottonwood (*Populus* spp.), white alder (*Alnus rhombifolia*), blackberry (*Rubus ursinus*), and stinging nettle (*Urtica* spp.). Based on the diversity of plant species composition and complexity of habitat structure, four basic habitat types can be described for the southwestern willow flycatcher: monotypic willow, monotypic exotic, native broadleaf dominated, and mixed native/exotic (Sogge *et al.* 1997).

The flycatcher's habitat is dynamic and can change rapidly: nesting habitat can grow out of suitability; saltcedar habitat can develop from seeds to suitability in about four to five years; heavy runoff can remove/reduce habitat suitability in a day; or river channels, floodplain width, location, and vegetation density may change over time. The flycatcher's use of habitat in different successional stages may also be dynamic. For example, over-mature or young habitat not suitable for nest placement can be occupied and used for foraging and shelter by migrating, breeding, dispersing, or non-territorial southwestern willow flycatchers (McLeod *et al.* 2005, Cardinal and Paxton 2005). Flycatcher habitat can quickly change and vary in suitability, location, use, and occupancy over time (Finch and Stoleson 2000).

Tamarisk is an important component of the flycatcher's nesting and foraging habitat in the central part of the flycatcher's breeding range in Arizona, southern Nevada and Utah, and western New Mexico. In 2001 in Arizona, 323 of the 404 (80 percent) known flycatcher nests (in 346 territories) were built in a tamarisk tree (Smith *et al.* 2002). Tamarisk had been believed by some to be a habitat type of lesser quality for the southwestern willow flycatcher, however comparisons of reproductive performance (FWS 2002), prey populations (Durst 2004) and

physiological conditions (Owen and Sogge 2002) of flycatchers breeding in native and exotic vegetation has revealed no difference (Sogge *et al.* 2005). The southwestern willow flycatcher is an insectivore, foraging in dense shrub and tree vegetation along rivers, streams, and other wetlands.

The introduced tamarisk leaf beetle was first detected affecting tamarisk within the range of the southwestern willow flycatcher in 2008 along the Virgin River in St. George, Utah. Initially, this insect was not believed to be able to move into or survive within the southwestern United States in the breeding range of the flycatcher. Along this Virgin River site in 2009, 13 of 15 flycatcher nests failed following vegetation defoliation (Paxton *et al.* 2010). As of 2012, the beetle has been found in southern Nevada/Utah and northern Arizona/New Mexico within the flycatcher's breeding range. Because tamarisk is a component of about 50 percent of all known flycatcher territories (Durst *et al.* 2008), continued spread of the beetle has the potential to significantly alter the distribution, abundance, and quality of flycatcher nesting habitat and impact breeding attempts.

Breeding biology

Arizona Distribution and Abundance

While numbers have significantly increased in Arizona (145 to 459 territories from 1996 to 2007) (English *et al.* 2006, Durst *et al.* 2008), overall distribution of flycatchers throughout the state has not changed much. Currently, population stability in Arizona is believed to be largely dependent on the presence of two large populations (Roosevelt Lake and San Pedro/Gila River confluence). Therefore, the result of catastrophic events or losses of significant populations either in size or location could greatly change the status and survival of the bird. Conversely, expansion into new habitats or discovery of other populations would improve the known stability and status of the flycatcher.

Fire

The evidence suggests that fire was not a primary disturbance factor in southwestern riparian areas near larger streams (FWS 2002). Yet, in recent time, fire size and frequency has increased on the lower Colorado, Gila, Bill Williams, and Rio Grande rivers. The increase has been attributed to increasing dry, fine fuels as a result of the cessation of flood flows and human caused ignition sources. The spread of the highly flammable plant, tamarisk, and drying of river areas due to river flow regulation, water diversion, lowering of groundwater tables, and other land practices is largely responsible for these fuels. A catastrophic fire in June of 1996, destroyed approximately a half mile of occupied tamarisk flycatcher nesting habitat on the San Pedro River in Pinal County. That fire resulted in the forced dispersal or loss of up to eight pairs of flycatchers (Paxton *et al.* 1996). Smaller fires have occurred along the upper most portion of the San Pedro River closer to the Mexico Border and another large fire occurred on the lower San Pedro River at the Nature Conservancy's San Pedro Preserve between Winkelman and Dudleyville in 2004. Recreationists cause over 95 percent of the fires on the lower Colorado River (FWS 2002).

Mortality and Survivorship

There are no extensive records for the actual causes of adult southwestern willow flycatcher mortality. Incidents associated with nest failures, human disturbance, and nestlings are typically the most often recorded due to the static location of nestlings, eggs, and nests. As a result, nestling predation and brood parasitism are the most commonly recorded causes of southwestern willow flycatcher mortality. Also, human destruction of nesting habitat through bulldozing, groundwater pumping, and aerial defoliants has been recorded in Arizona (T. McCarthey, AGFD, pers. comm.). Human collision with nests and spilling the eggs or young onto the ground have been documented near high use recreational areas (FWS 2002). A southwestern willow flycatcher from the Greer Town site along the Little Colorado River in eastern Arizona, was found dead after being hit by a vehicle along SR 373. This route is adjacent to the breeding site (T. McCarthey, AGFD, pers. comm.).

Past Consultations

Since listing in 1995, approximately 210 Federal agency actions have undergone (or are currently under) formal section 7 consultation throughout the flycatcher's range. This list of consultations can be found in the administrative record for this consultation. Since flycatcher critical habitat was finalized in 2005, at least 33 formal opinions have been completed in Arizona (within and outside designated critical habitat). While many opinions were issued for the previous critical habitat designation, the stream reaches and constituent elements have changed.

Activities continue to adversely affect the distribution and extent of all stages of flycatcher habitat throughout its range (development, urbanization, grazing, recreation, native and non-native habitat removal, dam operations, river crossings, ground and surface water extraction, etc.). Introduced tamarisk eating leaf beetles were not anticipated to persist within the range of the southwestern willow flycatcher. However, they were detected within the breeding habitat (and designated critical habitat) of the flycatcher in 2008 along the Virgin River near the Town of St. George, Utah. In 2009, beetles were also known to have been detected defoliating habitat within the range of flycatcher habitat in southern Nevada, and along the Colorado River in the Grand Canyon and near Shiprock in Arizona. Stochastic events also continue to change the distribution, quality, and extent of flycatcher habitat.

Conservation measures associated with some consultations and Habitat Conservation Plans have helped to acquire lands specifically for flycatchers on the San Pedro, Verde, and Gila rivers in Arizona and the Kern River in California. Additionally, along the lower Colorado River, the U.S. Bureau of Reclamation is currently attempting to establish riparian vegetation to expand and improve the distribution and abundance of nesting flycatchers. A variety of Tribal Management Plans in California, Arizona, and New Mexico have been established to guide conservation of the flycatchers. Additionally, during the development of the critical habitat rule, management plans were developed for some private lands along the Owens River in California and Gila River in New Mexico. These are a portion of the conservation actions that have been established across the subspecies' range.

Environmental Baseline – Southwestern Willow Flycatcher

The southwestern willow flycatcher is an obligate riparian bird and thus, the status of riparian ecosystems within the action area is crucial to the species' Environmental Baseline. The riparian vegetative communities present in the action area are described in Table R-1 within the Effects to Riparian Ecosystems section. Table SWF-1, below, displays the subset of sites from Table R-1 that constitute the southwestern willow flycatcher habitat (and critical habitat) affected by the proposed action. We again note that the determination to employ the Pima County riparian mapping may overestimate the exact acreage of the various classes of riparian vegetation.

Table SWF-1. Riparian affected environment within Southwestern Willow Flycatcher habitat and critical habitat adapted from SWCA (2012) and based on Pima County (2012) mapping

Reach Name	Acres	Pima County Class	Dominant Riparian Plants
Cienega Creek 1	695.13	Hydroriparian	Cottonwood and Goodding's willow**
Cienega Creek 1	364.69	Xeroriparian B	Large mesquites and scrub mesquites with scattered cottonwoods**
Cienega Creek 2	2,086.96	Hydroriparian	Mature cottonwood and Goodding's willow**
Cienega Creek 2	323.98	Xeroriparian B	Acacia, desert willow, ironwood, paloverde, mesquite, soapberry*
Cienega Creek 2	65.58	Xeroriparian C	Acacia, desert willow, ironwood, paloverde, mesquite, soapberry*
Cienega Creek 3	382.27	Hydroriparian	Mature cottonwood and Goodding's willow with young velvet ash**
Cienega Creek 3	35.88	Xeroriparian B	Mesquite and netleaf hackberry**
Cienega Creek 3	126.96	Xeroriparian C	Mesquite with desert broom and burrobrush**
Cienega Creek 3	0.78	Xeroriparian D	Acacia, desert willow, ironwood paloverde, mesquite, soapberry*
Empire Gulch	86.00	Xeroriparian A	Acacia, desert willow, ironwood, paloverde, mesquite, soapberry*
Empire Gulch	631.39	Xeroriparian B	Acacia, desert willow, ironwood, paloverde, mesquite, soapberry*
Empire Gulch	127.90	Xeroriparian C	Acacia, desert willow, ironwood, paloverde, mesquite, soapberry*
Empire Gulch	407.46	Hydroriparian	Large cottonwood willow gallery**
Total Hydroriparian in upper Cienega Creek and Empire Gulch			**3571.82**
Total Xeroriparian A in upper Cienega Creek and Empire Gulch			**86**
Total Xeroriparian B in upper Cienega Creek and Empire Gulch			**1355.94**
Total Xeroriparian C in upper Cienega Creek and Empire Gulch			**320.44**
Total Xeroriparian D in upper Cienega Creek and Empire Gulch			**0.78**
* From generic Pima County habitat type descriptions (CITE PIMA COUNTY RIPARIAN APPENDIX).			
** From actual field observations (WestLand Resources Inc. 2010d, 2012a, 2012b).			

Status of the Flycatcher in the Action Area

The action area includes the streams and associated riparian communities affected by the proposed action, as detailed within the Effects to Aquatic Ecosystems and Effects to Riparian Ecosystem section, above. Flycatcher surveys and detections have been limited within the action area. AGFD (Ellis *et al.* 2008) reported the results of flycatcher presence and absence surveys occurring between 1993 and 2006 along five reaches of Cienega Creek (in order from upstream to downstream, are Empire/ Cienega–Cienega Creek, Cienega Creek near Cross Hill, Cienega Narrows, Cienega Creek–Narrows to Coldwater, and Cienega Creek). Most recently, in 2011 the BLM (Radke 2011) conducted surveys along lower Empire Gulch and upper Cienega Creek and from 2010 to 2012, Pima County (Rodden 2010, 2011,2012) conducted flycatcher surveys along a mile portion of lower Cienega Creek.

Between 1993 and 2006, the reach of Cienega Creek in which territorial flycatchers were documented was the uppermost portion (Cienega Creek), where a pair and nest were located in

2001 (within the critical habitat segment). Two migrant flycatchers were documented in the same reach of Cienega Creek—one in 1999 and one in 2003. A willow flycatcher of an unknown subspecies (*Empidonax traillii ssp.*) was documented at the Empire Gulch Monitoring Avian Productivity and Survivorship (MAPS) station in July 2006 (Institute for Bird Populations 2006). Please note that the subsequent use of the term "willow flycatcher" refers to birds for which the subspecies cannot be definitively determined; these are individuals that are during migration. The term "flycatcher" is used throughout this document when a bird has been identified as a southwestern willow flycatcher based on observation of territorial behavior and breeding activity in the subspecies' known range.

A single flycatcher territory was detected along Cienega Creek in 2001 (Smith *et al.* 2002). An individual flycatcher was documented on Cienega Creek during formal surveys in August 2003 (Keith Hughes, BLM files, as cited in BLM 2013).

A flycatcher (or flycatchers) were documented with the "fitz-bew" call on a territory just west of net 10 of the Empire Gulch Monitoring Avian Productivity and Survivorship (MAPS) station on June 8 and 17, 2011; the detection was listed as "probable breeder-song" for these dates (BLM 2012, BLM 2013, Paxton 2012). An after-hatch-year flycatcher was caught in net 10 on June 17, 2011, and a hatch-year bird was caught on August 6, 2011, in net 7 of the same MAPS station (M. Radke, pers. obs., as cited in BLM 2013). Flycatchers were also listed as "likely breeder" for the 2011 year status for the Empire Gulch MAPS station (M. Radke, pers. obs., as cited in BLM 2013).

From 2010 to 2012, an approximately 1-mile length of the so-called Claypit Reach of Cienega Creek was surveyed by Pima County in order to evaluate a potential Partners for Fish and Wildlife project that would remove tamarisk. No flycatchers were detected the three seasons that this portion of lower Cienega Creek was surveyed (Rodden 2010, 2011, 2012).

Status of Flycatcher Critical Habitat in the Action Area

We revised the flycatcher critical habitat designation in 2013, including reaches of Cienega Creek and Empire Gulch within the Las Cienegas National Conservation Area in Pima County. Specifically, we designated a 17.9-km (11.1-mi) segment of Cienega Creek and two segments of Empire Gulch; an isolated 0.4-km (0.3-mi) upper segment of Empire Gulch and a second 1.3-km (0.8-mi) lower segment of Empire Gulch that connects to Cienega Creek. The Cienega Creek portion of the critical habitat is located within Reaches 1, 2, and 3 (see Figure A-1). Empire Gulch was not subdivided for groundwater modeling purposes, so groundwater decline-driven effects to the two portions of critical habitat in the stream cannot be described separately.

Cienega Creek was identified in the Recovery Plan as an area with substantial recovery value (FWS 2002, p. 91), while the adjacent Empire Gulch was not identified in the Plan, but was only

recently reported as likely having a flycatcher territory. These stream segments fall within the Santa Cruz Management Unit and were designated (along with a portion of the Santa Cruz River) to follow and meet the geographic and territory and habitat-related goals described in the Plan (FWS 2002). The Santa Cruz Management Unit is, in turn, a component of the Gila Recovery Unit. These areas, as are all critical habitat segments, are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. We also designated critical habitat to support the feeding and sheltering needs of migratory and dispersing flycatchers. Overall, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation.

The areas designated as flycatcher critical habitat are designed to provide sufficient riparian habitat for breeding, non-breeding, territorial, dispersing, and migrating flycatchers in order to reach the geographic distribution, abundance, and habitat-related recovery goals described in the Recovery Plan (FWS 2002, pp. 77–85).

In general, the physical or biological features (PBF) of critical habitat for nesting flycatchers are found in the riparian areas within the 100-year floodplain or flood-prone area. Flycatchers use riparian habitat for feeding, sheltering, and cover while breeding, migrating, and dispersing. It is important to recognize that flycatcher habitat is ephemeral in its presence, and its distribution is dynamic in nature because riparian vegetation is prone to periodic disturbance (such as flooding) (FWS 2002, p. 17). Even with the dynamic shifts in habitat conditions, one or more of the primary constituent elements (elements of the physical and biological factors) described below are found throughout each of the units that we designated as critical habitat.

Flycatcher habitat may become unsuitable for breeding through maturation or disturbance of the riparian vegetation, but it may remain suitable for use during migration or for foraging. This situation may be only temporary, and vegetation may cycle back into suitability as breeding habitat (FWS 2002, p. 17). Therefore, it is not practical to assume that any given breeding habitat area will remain suitable over the long term or persist in the same location (FWS 2002, p. 17). Thus, flycatcher habitat that is not currently suitable for nesting at a specific time, but is useful for foraging and migration, can still be important for flycatcher conservation. Feeding sites and migration stopover areas are important components for the flycatcher's survival, productivity, and health, and they can also be areas where new breeding habitat develops as nesting sites are lost or degraded (FWS 2002, p. 42). These successional cycles of habitat change are important for long-term persistence of flycatcher habitat.

Based on our current knowledge of the life history and ecology of the flycatcher and the relationship of its life-history functions to its habitat, it is important to recognize the interconnected nature of the physical or biological features that provide the primary constituent elements of critical habitat. Specifically, we consider the relationships between river function, hydrology, floodplains, aquifers, and plant growth, which form the environment essential to flycatcher conservation.

The hydrologic regime (stream flow pattern) and supply of (and interaction between) surface and subsurface water is a driving factor in the long-term maintenance, growth, recycling, and regeneration of flycatcher habitat (FWS 2002, p. 16). As streams reach the lowlands, their gradients typically flatten and surrounding terrain opens into broader floodplains (FWS 2002, p. 32). In these geographic settings, the stream-flow patterns (frequency, magnitude, duration, and timing) will provide the necessary stream-channel conditions (wide configuration, high sediment deposition, periodic inundation, recharged aquifers, lateral channel movement, and elevated groundwater tables throughout the floodplain) that result in the development of flycatcher habitat (Poff *et al.* 1997, pp. 770–772; FWS 2002, p. 16). Allowing the river to flow over the width of the floodplain, when overbank flooding occurs, is integral to allow deposition of fine moist soils, water, nutrients, and seeds that provide the essential material for plant germination and growth. An abundance and distribution of fine sediments extending farther laterally across the floodplain and deeper underneath the surface retains much more subsurface water, which in turn supplies water for the development of the vegetation that provides flycatcher habitat and micro-habitat conditions (FWS 2002, p. 16). The interconnected interaction between groundwater and surface water contributes to the quality of riparian vegetation community (structure and plant species) and will influence the germination, density, vigor, composition, and the ability of vegetation to regenerate and maintain itself (Arizona Department of Water Resources 1994, pp. 31–32).

Considering these issues and other information regarding the biology and ecology of the species, we have determined that the flycatcher requires the essential physical or biological features (PBF) described below.

*Space for Individual and Population Growth and for Normal Behavi*or

Streams of lower gradient and more open valleys with a wide or broad floodplain are an essential physical or biological feature of flycatcher habitat. In some instances, streams in relatively steep, confined areas can also support flycatcher breeding habitat (FWS 2002, p. D-13). These areas support the abundance of riparian vegetation used for flycatcher nesting, foraging, dispersal, and migration.

Streams of lower gradient and more open valleys with a wide and broad floodplain are the geological settings that are known to support flycatcher breeding habitat from near sea level to about 2,600 m (8,500 ft) in elevation in southern California, southern Nevada, southern Utah, southern Colorado, Arizona, and New Mexico (FWS 2002, p. 7). Sometimes, the low-gradient wider floodplain exists only at the habitat patch itself within a stream that is otherwise steeper in gradient (FWS 2002, p. D-12). Flycatchers can occupy and breed in very small, isolated habitat patches and may occur in fairly high densities within those small patches.

Many willow flycatchers are found along streams using riparian habitat during migration (Yong and Finch 1997, p. 253; FWS 2002, p. E-3). Migration stopover areas can be similar to breeding habitat or riparian habitats with less vegetation density and abundance compared to areas for nest placement (the vegetation structure is too short or sparse or the patch is too small) (FWS 2002, p. E-3). Such migration stopover areas, even though not used for breeding, are critically important resources affecting productivity and survival (FWS 2002, p. E-3). The

variety of riparian habitat occupied by migrant flycatchers ranges from small patches with shorter and sparser vegetation to larger more complex breeding habitats.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Food

The presence of a wide range of invertebrate prey, including flying and ground- and vegetation-dwelling species of terrestrial and aquatic origins is an essential physical or biological feature of flycatcher habitat.

The flycatcher is somewhat of an insect generalist (FWS 2002, p. 26), taking a wide range of invertebrate prey including flying, and ground- and vegetation-dwelling species of terrestrial and aquatic origins (Drost *et al.* 2003, pp. 96–102). From an analysis of the flycatcher diet along the South Fork of the Kern River, California (Drost *et al.* 2003, p. 98), flycatchers consumed a variety of prey from 12 different insect groups. Flycatchers have been identified targeting seasonal hatchings of aquatic insects along the Salt River arm of Roosevelt Lake, Arizona (Paxton *et al.* 2007, p. 75).

Flycatcher food availability may be largely influenced by the density and species of vegetation, proximity to and presence of water, saturated soil levels, and microclimate features such as temperature and humidity (FWS 2002, pp. 18, D-12). Flycatchers forage within and above the tree canopy, along the patch edge, in openings within the territory, over water, and from tall trees as well as herbaceous ground cover (Bent 1960, pp. 209–210; McCabe 1991, p. 124). Flycatchers employ a “sit and wait” foraging tactic, with foraging bouts interspersed with longer periods of perching (Prescott and Middleton 1988, p. 25).

Water

Flowing streams with a wide range of stream flow conditions that support expansive riparian vegetation is an essential physical feature of flycatcher habitat. The most common stream flow conditions are largely perennial (persistent) stream flow with a natural hydrologic regime (frequency, magnitude, duration, and timing). However, in the Southwest, hydrological conditions can vary, causing some flows to be intermittent, but the floodplain can retain surface moisture conditions favorable to expansive and flourishing riparian vegetation. These appropriate conditions can be supported by managed water sources and hydrological cycles that mimic key components of the natural hydrologic cycle. Flycatcher nesting habitat is largely associated with perennial (persistent) stream flow that can support the expanse of vegetation characteristics needed by breeding flycatchers, but there are exceptions. Flycatcher nesting habitat can persist on intermittent streams that retain local conditions favorable to riparian vegetation (FWS 2002, p. D-12).

In the Southwest, hydrological conditions at a flycatcher breeding site can vary remarkably within a season and between years (FWS 2002, p. D-12). At some locations, particularly during drier years, water or saturated soil is only present early in the breeding season (May and part of

June) (FWS 2002, p. D-12). At other sites, vegetation may be immersed in standing water during a wet year but be hundreds of meters from surface water in dry years (FWS 2002, p. D-12). Where a river channel has changed naturally, there may be a total absence of water or visibly saturated soil for several years. In such cases, the riparian vegetation and any flycatchers breeding within it may persist for several years (FWS 2002, p. D-12).

Sites for Germination or Seed Dispersal

Elevated subsurface groundwater tables and appropriate floodplain fine sediments are essential physical or biological features of flycatcher habitat. These features provide water and seedbeds for the germination, growth, and maintenance of expansive growth of riparian vegetation needed by the flycatcher.

Subsurface hydrologic conditions may in some places (particularly at the more arid locations of the Southwest) be equally important to surface water conditions in determining riparian vegetation patterns (Lichivar and Wakely 2004, p. 92). Where groundwater levels are elevated to the point that riparian forest plants can directly access those waters, it can be an area for breeding, non-breeding (unpaired), territorial, dispersing, foraging, and migrating flycatchers. Elevated groundwater helps create moist soil conditions believed to be important for nesting conditions and prey populations (FWS 2002, pp. 11, 18), as further discussed below.
Depth to groundwater plays an important part in the distribution of riparian vegetation (Arizona Department of Water Resources 1994, p. 31) and, consequently, flycatcher habitat. The greater the depth to groundwater below the land surface, the less abundant the riparian vegetation (Arizona Department of Water Resources 1994, p. 31). Localized, perched aquifers (a saturated area that sits above the main water table) can and do support some riparian habitat, but these systems are not extensive (Arizona Department of Water Resources 1994, p. 31).

The abundance and distribution of fine sediment deposited on floodplains is critical for the development, abundance, distribution, maintenance, and germination of the plants that grow into flycatcher habitat (FWS 2002, p. 16). Fine sediments provide seed beds to facilitate the growth of riparian vegetation for flycatcher habitat. In almost all cases, moist or saturated soil is present at or near breeding sites during wet and non-drought years (FWS 2002, p. 11). The saturated soil and adjacent surface water may be present early in the breeding season, but only damp soil is present by late June or early July (FWS 2002, p. D-3). Microclimate features (temperature and humidity) facilitated by moist or saturated soil, are believed to play an important role where flycatchers are detected and nest, their breeding success, and availability and abundance of food resources (FWS 2002, pp. 18, D-12).

Cover or Shelter

Riparian tree and shrub species that provide cover and shelter for nesting, breeding, foraging, dispersing, and migrating flycatchers are essential physical or biological features of flycatcher habitat.

Riparian vegetation provides the flycatcher cover and shelter while migrating and nesting. Placing nests in dense vegetation provides cover and shelter from predators or nest parasites that would seek out flycatcher adults, nestlings, or eggs. Similarly, using riparian vegetation for cover and shelter during migration provides food-rich stopover areas, a place to rest, and shelter or cover along migratory flights (FWS 2002, pp. D-14, F-16). Riparian vegetation used by migrating flycatchers can sometimes be less dense and abundant than areas used for nesting (FWS 2002, p. D-19). However, migration stopover areas, even though not used for breeding, may be critically important resources affecting local and regional flycatcher productivity and survival (FWS 2002, p. D-19).

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Reproduction and Rearing of Offspring

A variety of riparian tree and shrub species is an essential physical or biological feature of flycatcher habitat. Typically, dense, expansive riparian forests provide habitat to place nests. Riparian vegetation with these characteristics, with a mosaic of open spaces, typically surrounds locations to place nests or along river segments and provides vegetation for foraging, perching, dispersal, and migration, and habitat that can develop into nesting areas through time. Riparian habitat characteristics such as dominant plant species, size and shape of habitat patches, tree canopy structure, vegetation height, and vegetation density are important parameters of flycatcher breeding habitat, although they may vary widely at different sites (FWS 2002, p. D-1).

Flycatchers nest in thickets of trees and shrubs ranging in height from 2 m to 30 m (6 to 98 ft) (FWS 2002, p. D-3). Nest sites typically have dense foliage at least from the ground level up to approximately 4 m (13 ft) above ground, although dense foliage may exist only at the shrub level, or as a low, dense tree canopy (FWS 2002, p. D-3). Regardless of the plant species' composition or height, breeding sites usually consist of dense vegetation in the patch interior, or an aggregate of dense patches interspersed with openings creating a mosaic that is not uniformly dense (FWS 2002, p. 11).

Canopy density (the amount of cover provided by tree and shrub branches measured from the ground) at various nest sites ranged from 50 to 100 percent (FWS 2002, p. D-3). Flycatcher breeding habitat can be generally organized into three broad habitat types—those dominated by native vegetation (typically willow), by exotic (nonnative) vegetation (typically salt cedar), and those with mixed native and those dominated by exotic plants (typically salt cedar and willow). These broad habitat descriptors reflect the fact that flycatchers inhabit riparian habitats dominated by both native and nonnative plant species.

Flycatchers have been recorded nesting in patches as small as 0.1 ha (0.25 ac) along the Rio Grande, and as large as 70 ha (175 ac) in the upper Gila River, New Mexico (FWS 2002, p. 17). The mean reported size of flycatcher breeding patches was 8.6 ha (21.2 ac), with the majority of sites toward the smaller end, as evidenced by a median patch size of 1.8 ha (4.4 ac) (FWS 2002, p. 17).

With only some exceptions, flycatchers are generally not found nesting in confined floodplains (typically those bound within a narrow canyon) (Hatten and Paradzick 2003, p. 780) or where only a single narrow strip of riparian vegetation less than approximately 10 m (33 ft) wide develops (FWS 2002, p. D-11).

While riparian vegetation too mature, too immature, or of lesser quality in abundance and breadth may not be used for nesting, it can be used by breeding flycatchers for foraging (especially if it extends out from larger patches) or during migration for foraging, cover, and shelter (Sogge and Tibbitts 1994, p. 16; Sogge and Marshall 2000, p. 53).

Primary Constituent Elements for Flycatcher

Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.
Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determined that the primary constituent elements specific to the flycatcher are:

(1) Primary Constituent Element 1— *Riparian vegetation.* Riparian habitat along a dynamic river or lakeside, in a natural or manmade successional environment (for nesting, foraging, migration, dispersal, and shelter) that is comprised of trees and shrubs (that can include Goodding's willow, coyote willow, Geyer's willow, arroyo willow, red willow, yewleaf willow, pacific willow, boxelder, tamarisk, Russian olive, buttonbush, cottonwood, stinging nettle, alder, velvet ash, poison hemlock, blackberry, seep willow, oak, rose, sycamore, false indigo, Pacific poison ivy, grape, Virginia creeper, Siberian elm, and walnut) and some combination of:

> (a) Dense riparian vegetation with thickets of trees and shrubs that can range in height from about 2 to 30 m (about 6 to 98 ft). Lower-stature thickets (2 to 4 m or 6 to 13 ft tall) are found at higher elevation riparian forests and tall-stature thickets are found at middle- and lower-elevation riparian forests;
> (b) Areas of dense riparian foliage at least from the ground level up to approximately 4 m (13 ft) above ground or dense foliage only at the shrub or tree level as a low, dense canopy;
> (c) Sites for nesting that contain a dense (about 50 percent to 100 percent) tree or shrub (or both) canopy (the amount of cover provided by tree and shrub branches measured from the ground);
> (d) Dense patches of riparian forests that are interspersed with small openings of open water or marsh or areas with shorter and sparser vegetation that creates a variety of habitat that is not uniformly dense. Patch size may be as small as 0.1 ha (0.25 ac) or as large as 70 ha (175 ac).

(2) Primary Constituent Element 2— *Insect prey populations.* A variety of insect prey populations found within or adjacent to riparian floodplains or moist environments, which can

include: flying ants, wasps, and bees (Hymenoptera); dragonflies (Odonata); flies (Diptera); true bugs (Hemiptera); beetles (Coleoptera); butterflies, moths, and caterpillars (Lepidoptera); and spittlebugs (Homoptera).

Effects to Southwestern Willow Flycatchers

The section in this BO entitled Effects to Aquatic Ecosystems describes the hydrologic basis for effects to streams. The subsequent analysis of effects to riparian vegetation appears in the Effects to Riparian Ecosystems section. These prior analyses are incorporated herein via reference.

Direct Effects to Southwestern Willow Flycatchers

There are no known flycatcher territories or areas anticipated to have or to develop flycatcher breeding habitat within the proposed footprint of the Rosemont Mine; the project area is predominately uplands and directly affected streams (i.e. Barrel Canyon) are ephemeral and lacking in suitable hydroriparian vegetation. As a result, we do not anticipate that any breeding flycatchers will be directly affected by the construction or operation of the mine.

Migratory flycatchers have been detected along nearby Cienega Creek and Empire Gulch and are known to occur in a wider variety of habitat types and locations than are territorial, breeding individuals. The Rosemont Mine site is situated between the Cienega Creek watershed and, to the south, the Sonoita Creek watershed. Given that flycatchers are a neo-tropical migrant and migrate between North American breeding locales and wintering sites in subtropical and tropical latitudes, it is probable that migratory or dispersing flycatchers will intermittently occur in the area of Rosemont Mine during construction or its operation. Because of the length of time the mine is expected to operate, it is reasonable to anticipate that migratory or dispersing flycatchers will transit the mine site. The mine site (in its pre-, during- and post-operation states) lacks the stopover habitat known to be preferred by migratory or dispersing flycatchers, so it is unlikely that the birds would be harmed or harassed to a greater degree than they would be when crossing other, unsuitable habitats.

Indirect Effects to Southwestern Willow Flycatchers

The Effects to Aquatic Ecosystems section discusses the proposed action's effect to regional groundwater and the volume and linear extent of surface flows in area streams. The relationship between flood flow hydrology, depth to groundwater, and the recruitment, maturation, and retention of the riparian forests in which flycatchers occur was analyzed in the section entitled Effects to Riparian Ecosystems. These prior narratives are incorporated herein via reference.

The drawdown of groundwater can negatively influence the ability for riparian plants to germinate, grow, and persist (Stromberg *et al.* 1996, Scott *et al.* 1999, Horton *et al.* 2001, and Merritt and Bateman 2012) (see Effects to Riparian Ecosystems section). Small reductions in stream flow or ground water levels can cause plants to undergo physiological stress and lose productivity, with possible adverse implications for southwestern willow flycatchers (FWS

2002). Even short-term loss of surface flows may reduce bio-productivity and habitat quality by stressing those insects with aquatic larval forms, a portion of the southwestern willow flycatcher's food base (FWS 2002). Nesting flycatchers do not rely on just the existence of riparian plants, but the persistence of this vegetation in abundant and dense quantities, requiring groundwater near the surface that creates conditions for abundant plant germination, growth, and persistence.

As discussed in the Effects to Aquatic Ecosystems section, the proposed action will appreciably, adversely affect the subsurface and, eventually, the surface hydrology of Empire Gulch at the Upper Empire Gulch Springs site (see Upper Empire Gulch Springs data in Table A-5). Tetra Tech (2010) modeled the effects at this site to range from 0.1 foot (or up to 0.2 foot) of groundwater drawdown upon cessation of mining to 0.2 foot (or up to 0.5 foot) at 20 years, 0.5 (up to 1.8 foot) foot at 50 years, 2.5 feet (up to 5.0 foot) at 150 years, and 6 feet at 1,000 years.

The modeled groundwater drawdowns at upper Cienega Creek (Reaches 1, 2, and 3) are of lesser magnitude than in Empire Gulch. The USGS Cienega Creek stream gage (0948550) is situated near the narrows in the upstream portion of Reach 3 (see Figure A-1). Tetra Tech (2010) modeled drawdowns of <0.1 foot from the end of mining and at 20, and 50 years later (or up to 0.15 foot at 50 years). Drawdowns reach 0.25 feet (or up to 0.35 foot) and 0.5 feet at 150 and 1,000 years, respectively.

We caution that the distance of these areas from the mine site, the present lack of definitive information regarding the regional aquifer, and the precision (or lack thereof) of the models used, mean there is no reasonable certainty regarding the exact magnitude of the drawdowns or of the exact manner in which groundwater declines will affect riparian ecosystems in either the near or long terms. Groundwater models are more useful in determining the magnitude of trends rather than absolute groundwater elevations. Regardless, the combined result of the effects to regional groundwater, changes in the baseflow hydrology of streams, decreases in stream length, and reduced riparian ET is a likely decrease in the quality of the flycatcher's Environmental Baseline along Empire Gulch and upper Cienega Creek.

Moreover, we have highlighted the aforementioned trends in increasing groundwater drawdown specifically because Merritt and Bateman (2012), modeling hydrology and riparian vegetation relationships on Cherry Creek in Central Arizona, found that a 0.33-foot drop in groundwater translated into a 4% loss of riparian forest in that location.

Brand *et al.* (2010) examined the upper San Pedro River and found that canopy nesting and insectivorous birds reached their highest densities and levels of nesting success in cottonwood stands along intermittent and perennial reaches. While southwestern willow flycatchers are insectivorous, the species is rare on the upper San Pedro River and was not specifically investigated.

Brand *et al.* (2011) conducted analyses intended to determine changes in riparian condition class as described in Leenhouts *et al.* (2005) under varying groundwater scenarios. Scenarios involving groundwater depletion were found to result in reduced abundance of

cottonwood/willow vegetation and increased abundance of less phraetophytic species such as tamarisk. While southwestern willow flycatchers are known to occur in high densities in salt tamarisk in the southwestern U.S., the sites are generally associated with perennial river reaches maintained by releases from dams. We also note that Brand *et al.* (2010, 2011) found that densities of brown-headed cowbirds - a nest parasite of the southwestern willow flycatcher - increased in abundance under decreasing groundwater levels, increasing flow intermittency, and increasing density of tamarisk.

The streams studied by these investigators differ from Cienega Creek in myriad ways, but the findings all document that depletions of groundwater are likely to result in reductions in the quality and quantity of habitat for the southwestern willow flycatcher.

Approximately 3,572 acres of hydroriparian habitat were mapped within Empire Gulch and Reaches 1, 2, and 3 of Cienega Creek by Pima County; some or all of this acreage will be affected by the proposed action (see Table C-1). It is likely that the single 2001 Cienega Creek flycatcher territory and the presumed 2011 Empire Gulch territory were situated within areas mapped as hydroriparian habitat. The anticipated effects to these hydroriparian sites may reduce their suitability to serve as nesting substrates in the future. Conversely, the erratic occurrence of southwestern willow flycatchers in these sites means that we cannot be reasonably certain that birds will be incidentally taken if and when the anticipated effects occur.

It is likely that some fraction of the approximately 1,763 acres of Class A though D xeroriparian habitat mapped by Pima County in Empire Gulch and Reaches 1, 2, and 3 of Cienega Creek are important for flycatchers, providing either: (1) marginal nesting substrate (especially where cottonwoods are interspersed within a mesquite bosque) or foraging and dispersal habitat; or (2) a buffer between more hydric sites and the adjacent, xeric uplands, which decreases the edge/interior ratio of a given hydroriparian patch. Again, the sporadic use of Empire Gulch and upper Cienega Creek by flycatchers for breeding does not support a reasonable certainty that birds will be incidentally taken. Moreover, xeroriparian vegetation may increase in extent if and as hydroriparian communities diminish.

Effect to Southwestern Willow Flycatcher Critical Habitat

The analyses contained in the Effects to Aquatic Ecosystems and Effects to Riparian Ecosystems sections as well as the preceding analysis of adverse effects to the flycatcher inform the analysis of the effects to critical habitat, and are incorporated herein by reference.

To summarize the prior analyses, the proposed action will adversely affect critical habitat via small, future declines in groundwater elevation which, in turn, will decrease the wetted length of stream, and reduce the vigor and extent of riparian vegetation. These effects would be in addition to relatively larger effects of natural variation. Alternately, if natural conditions recover (i.e. drought ceases), the effects of the proposed action would slightly reduce the magnitude of the improvement. The former scenario, which is more likely given climate change, represents effects to the PCEs of critical habitat: (1) riparian vegetation; and (2) insect prey population.

Within Pima and Santa Cruz Counties, Arizona, we designated flycatcher critical habitat along Cienega Creek, Empire Gulch, and the Santa Cruz River; only the former two sites are within the action area. The Cienega Creek designation includes a 17.9-km (11.1-mi) segment of Cienega Creek above the Narrows within the Las Cienega NCA. There are two segments of critical habitat in Empire Gulch; an isolated 0.4-km (0.3-mi) upper segment of Empire Gulch and a second 1.3-km (0.8-mi) lower segment of Empire Gulch that connects to Cienega Creek. The "Gardner/Cienega Confluence", "Upper Empire Gulch Springs", and "Cienega near Stream Gage 09484550" groundwater drawdown modeling points in Table SWF-2 and the Upper Cienega and the Narrows impact summaries in Table SWF-3 are informative.

As stated in prior analyses, the effects to riparian and aquatic ecosystems are appreciable and, to the extent that the available models permit, have been quantified (see Tables A-2, A-3, A-5, and SWF-1). Table SWF-2, below, is an excerpt from Table A-5, and includes the 20 to 1,000-year modeled groundwater drawdowns for Empire Gulch and Cienega Creek within critical habitat. The data for the time of mine closure (0 years) are omitted because modeled drawdowns are 0.1 feet or less. Table SWF-2 shows that from the cessation of mining to 150 years, many groundwater drawdowns are <0.1 foot, though Tetra Tech (2010) consistently predicts larger drawdowns than either Montgomery (2010) or Myers (2010). The most extreme effects are at the 1,000-year timeframe, where Tetra Tech (2010) has modeled a 6-foot drawdown at Upper Empire Gulch Springs. Our prior analyses have characterized this relatively large drawdown as having a limited effect to individual southwestern willow flycatchers; the sporadic use of the reach for nesting means that even large effects are unlikely to harm birds. This represents, however, an appreciable adverse effect to critical habitat. The drawdown is likely to result in the loss of riparian vegetation for nesting and foraging and a reduction in wetted stream, which, in turn, will reduce the export of aquatic insects.

The Effects to Riparian Ecosystems sections describes the work of Merritt and Bateman (2012) at Cherry Creek in central Arizona, where it was found that a simulated groundwater decline of 6.6 feet (2 meters) below base level resulted in a nearly complete loss of riparian forest and conversion of the valley bottom to shrubland. We cannot directly compare Cherry Creek and Empire Gulch using the hydrology, geomorphology, or riparian mapping data that are available to us, nor do we know the current, drought-affected groundwater elevations in Empire Gulch, but the effects noted at the former site indicate that relatively small drawdowns can cause appreciable reductions in riparian vegetation. The 2.5-foot (or up to 5.0 feet) and 6-foot modeled decline that has been predicted at Upper Empire Gulch Springs at 150 and 1,000 years, respectively (Tetra Tech 2010) - given uncertainties regarding ongoing drought and climate change – could result in an appreciable loss of riparian vegetation (PCE 1) within some portion of the 0.4-km (0.3-mi) upper segment and 1.3-km (0.8- mi) lower segment of Empire Gulch, with lesser effects in the 17.9-km (11.1-mi) segment of mainstem Cienega Creek.

Table SWF-2. Modeled groundwater drawdowns within flycatcher critical habitat, including the limits of sensitivity analyses in parentheses.

20 years after mine closure			
Location	**Montgomery (2010)**	**Tetra Tech (2010)**	**Myers (2010)**
Gardner/Cienega Confluence	<0.1 (Same)	<0.1 (Same)	0
Upper Empire Gulch Springs	<0.1 (<0.1 - 0.1)	0.2 (<0.1 - 0.5)	0
Cienega near stream gage 09484550 (perennial reach)	<0.1 (Same)	<0.1 (Same)	0
50 years after mine closure			
Location	**Montgomery (2010)**	**Tetra Tech (2010)**	**Myers (2010)**
Gardner/Cienega Confluence	<0.1 (<0.1 - 0.1)	<0.1 (<0.1 - 0.15)	0
Upper Empire Gulch Springs	<0.1 (<0.1 - 0.5)	0.5 (<0.1 - 1.8)	0.2
Cienega near stream gage 09484560 (intermittent reach)	<0.1 (Same)	<0.1 (Same)	0
150 years after mine closure			
Location	**Montgomery (2010)**	**Tetra Tech (2010)**	**Myers (2010)**
Gardner/Cienega Confluence	<0.1 (<0.1 – 0.4)	0.2 (<0.1 – 0.35)	0.1
Upper Empire Gulch Springs	0.3 (0.1 – 1.4)	2.5 (0.5 – 5.0)	0.3
Cienega near stream gage 09484550 (perennial reach)	<0.1 (Same)	0.25 (<0.1 – 0.35)	0
1,000 years after mine closure			
Location	**Montgomery (2010)**	**Tetra Tech (2010)**	**Myers (2010)**
Gardner/Cienega Confluence	<0.1 (<0.1 – 0.8)	0.5 (0.3 – 0.5)	2.2
Upper Empire Gulch Springs	3.3 (2.3 – 5.0)	6 (4.4 – 6.0)	4.3
Cienega near stream gage 09484550 (perennial reach)	<0.1 (Same)	0.5 (0.4 – 0.5)	0.2

Table SWF-3, below, repeats the content of Table A-2, above; both are based on SWCA (2012). Table SWF-3 includes only the sites within critical habitat. There are anticipated to be no drawdowns, decreases in the wetted length of stream, decreases in baseflow, or decreases in riparian ET within the vicinity of flycatcher critical habitat at up to 150 years. At 1,000 years, drawdown is modeled to reach 0.01 foot, 0.16 mile (845 feet) of stream will be lost, baseflow will be diminished by 0.02 cfs, and riparian ET will decrease by 51afa. The loss of 845 feet of stream length and 51 afa of riparian ET will result in losses of riparian vegetation within and both up- and downstream from the affected reach.

The predictions found in Table SWF-3, which were performed by Montgomery (2010) and referenced in SWCA (2012) , are not as severe as those that might be expected to result from the worst-case, 1,000-year scenario associated with Tetra Tech's (2010) modeling, and they do provide spatial information regarding the affected stream length. If it is assumed that the 0.16 mile of lost stream length represents the maximum extent of impacts to PCE 1 (riparian

vegetation), then that loss represents 1.3 percent of the 12.2 miles of critical habitat in the Cienega Creek watershed, 0.56 percent of the critical habitat in the 28.8-mile Santa Cruz Management Unit, and immeasurably small fractions of both the Gila Recovery Unit (of which the Santa Cruz Management Area is a subdivision) and the rangewide critical habitat designation. These small-scale effects are incapable of diminishing the Management Unit, Recovery Unit, or the critical habitat's respective abilities to contribute to the recovery of the species.

Table SWF-3. Summary of effects to streams within southwestern willow flycatcher critical habitat

	Upper Cienega Creek and the Narrows			
Years after mining	**Drawdown at perennial reach**	**Decrease in stream length (miles)**	**Decrease in baseflow (cfs)**	**Decrease in ET (afa)**
0	0	0	0	0
20	0	0	0	0
150	0	0	0	0
1,000	0.01	0.16	0.02	51

Cumulative Effects – Southwestern Willow Flycatcher

The primary cumulative effects to the riparian vegetation in which southwestern willow flycatchers occur and to the aquatic environment that supports an appreciable amount of the species prey are the stresses associated with decreases in water availability due to non-Federal actions. The aforementioned right-of-way vegetation maintenance activities conducted by Tucson Electric Power, which result in nearly-complete removal of riparian vegetation in the affected area of lower Cienega Creek (Pima County Regional Flood Control District 2009), are also a cumulative effect. This suite of cumulative effects were described in detail in the section containing descriptions of general effects to aquatic and riparian ecosystems and in the cumulative effects analysis for Gila chub; the findings in these prior analyses are incorporated herein via reference.

CONCLUSION

After reviewing the current status of the flycatcher and its critical habitat, the environmental baseline for the action area, the effects of the Rosemont Copper Mine, and the cumulative effects, it is the FWS's biological opinion that the Rosemont Mine, as proposed, is not likely to jeopardize the continued existence of the flycatcher, and is not likely to destroy or adversely modify designated flycatcher critical habitat. We present this conclusion for the flycatcher for the following reasons:

- We anticipate that the proposed action may result in immeasurably small losses of riparian vegetation in Empire Gulch and upper Cienega Creek from the conclusion of mining until 150 years later. We anticipate, however, that there will be appreciable losses of hydroriparian vegetation in Empire Gulch and lesser losses in upper Cienega Creek by 1,000 years after the conclusion of mining. Empire Gulch supported a likely southwestern willow flycatcher territory in 2011; upper Cienega Creek hosted a

definitively-known territory in 2001. The low frequency of flycatcher breeding in the affected reaches makes it unlikely birds will be harmed or harassed by riparian vegetation losses resulting from implementation of the proposed action.

- The low number, infrequent detections, and lack of persistent flycatcher territories along Empire Gulch and upper Cienega Creek can be contrasted with the population numbers for the greater Gila Recovery Unit, which contained 659 territories as of 2008 (the last year for which comprehensive, area-wide surveys were conducted) (Durst *et al.* 2008, p. 12).
- Southwestern willow flycatcher critical habitat exists in Empire Gulch and along Cienega Creek; effects to the critical habitat parallel the effects to the species. The proposed action will likely result in a significant loss of riparian vegetation (PCE 1) within some portion of the 0.4-km (0.3-mi) upper segment and 1.3-km (0.8- mi) lower segment of Empire Gulch, with lesser effects in the 17.9-km (11.1-mi) segment of mainstem Cienega Creek.
- If the 0.16 mile of lost stream length at 1,000 years after mining calculated by Montgomery (2010) represents the maximum extent of impacts to PCE 1 (riparian vegetation), then it represents 1.3 percent of the 12.2 miles of critical habitat in the Cienega Creek watershed, 0.56 percent of the critical habitat in the 28.8-mile Santa Cruz Management Unit, and immeasurably small fractions of both the Gila Recovery Unit (of which the Santa Cruz Management Area is a subdivision) and the rangewide critical habitat designation. These small-scale, long-delayed effects are incapable of diminishing the recovery value of the Management Unit, Recovery Unit, or the total area designated as critical habitat. The proposed action therefore will not adversely modify or destroy southwestern willow flycatcher critical habitat.

The conclusions of this biological opinion are based on full implementation of the project as described in the Description of the Proposed Action and Description of the Proposed Conservation Measures sections of this document.

INCIDENTAL TAKE STATEMENT – SOUTHWESTERN WILLOW FLYCATCHER

Section 9 of the Act and Federal regulations pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. “Take” is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. “Harm” is further defined (50 CFR 17.3) to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. “Harass” is defined in the regulations as ``an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3). “Incidental take” is defined as take that is incidental to, and not the purpose of, the

carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement.

Amount or Extent of Take – Southwestern Willow Flycatcher

As demonstrated in the Environmental Baseline and Effects of the Proposed Action sections, above, southwestern willow flycatchers are unlikely to be harmed or harassed as a result of the proposed action. While available habitat within the project's action area may change due to reductions in groundwater elevations and surface water flows, these changes will occur on a relatively small scale over hundreds of years, and are not anticipated to disrupt the species' essential behavioral patterns. As discussed previously, habitat occupied by flycatchers is dynamic and can vary widely in suitability, location, and occupancy over relatively short periods of time. We, therefore, do not anticipate that implementation of the proposed action will result in the incidental take of any individuals of the species.

CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

1. We recommend that the Forest Service and Rosemont Copper Company facilitate implementing more consistent flycatcher presence/absence surveys, including nest searching and monitoring along lower Empire Gulch, upper Cienega Creek, and the Santa Cruz Management Unit using the latest accepted protocols to better understand the status of the flycatcher within the overall action area and the Management Unit.

2. We recommend implementing long-term monitoring of groundwater resources in the Action Area, especially areas where the groundwater models were less than certain in their conclusions. We recommend employing a third party entity that has experience designing, collecting, and analyzing these types of data which can be held to high scientific scrutiny, such as the U.S. Geologic Survey. At a minimum, we recommend establishing baseline information to better understand how groundwater moves through the watershed, existing groundwater elevations, and other groundwater and surface water uses in the watershed, and subsequently tracking the Rosemont Copper Mine's use of water and its comparative impact to the watershed.

3. If impacts from Rosemont Mine are different from that those anticipated in this biological opinion, we recommend implementing measures to offset those impacts such as acquiring and retiring other water diversion or groundwater stressors.

Disposition of Dead or Injured Listed Species

Upon locating a dead, injured, or sick listed species initial notification must be made to the FWS's Law Enforcement Office (FWS OLE, Resident Agent In Charge, 4901 Paseo del Norte NE, Suite D, Albuquerque, New Mexico 87113; telephone: (505) 248-7889) within three working days of its finding. Written notification must be made within five calendar days and include the date, time, and location of the animal, a photograph if possible, and any other pertinent information. The notification shall be sent to the Law Enforcement Office with a copy to this office. Care must be taken in handling sick or injured animals to ensure effective treatment and care, and in handling dead specimens to preserve the biological material in the best possible state.

REINITIATION NOTICE

This concludes formal and conference consultation on the actions outlined in your request. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

The Incidental Take Statements for the lesser long-nosed bat, jaguar, Chiricahua leopard frog, Gila chub, and Gila topminnow contain Reasonable and Prudent Measures and Terms and Conditions that implement those measures. We reiterate that such measures are non-discretionary, and must be included by the USFS as binding conditions of any grant or permit issued to the applicant, as appropriate, for the exemption in section 7(o)(2) to apply. The USFS has a continuing duty to regulate the activity that is covered by the respective Incidental Take Statements. If the USFS (1) fails to assume and implement the terms and conditions, or (2) fails to require the applicant to adhere to the terms and conditions of the Incidental Take Statements through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, the USFS, or the applicant must report the progress of the action and its impact on the species as specified in the Incidental Take Statement [see 50 CFR 402.14(I)(3)].

Regarding the proposed action's effects to proposed jaguar critical habitat, you may request the FWS to confirm the conference opinion as a biological opinion issued through formal consultation if the jaguar critical habitat is designated. The request must be in writing. If the

Mr. Jim Upchurch, Forest Supervisor

FWS reviews the proposed action and finds that there have been no significant changes in the action as planned or in the information used during the conference, the FWS will confirm the conference opinion as the biological opinion on the project and no further section 7 consultation will be necessary.

In keeping with our trust responsibility to American Indian Tribes for an action proposed by an agency not in the Department of Interior, subject to section 7 consultation, that may affect Indian lands, tribal trust resources, or tribal rights, we encourage you to coordinate with the Tohono O'odham Nation and the Hopi, Pascua Yaqui, and Yavapai Apache tribes and the Bureau of Indian Affairs (BIA).

If you have questions or concerns about this consultation or the consultation process in general, feel free to contact Jean Calhoun (520) 670-6150 (x223) or Steve Spangle at (602) 242-0210 (x244). Please refer to consultation number 22410-2009-F-0389 in future correspondence concerning this project.

Sincerely,

/s/ Steven L. Spangle
Field Supervisor

cc (electronic):
Brenda Smith, Assistant Field Supervisor, Fish and Wildlife Service, Flagstaff, AZ
Jean Calhoun, Assistant Field Supervisor, Fish and Wildlife Service, Tucson, AZ
Marjorie Blaine, Senior Project Manager, U.S. Army Corps of Engineers, Tucson, AZ

Chief, Habitat Branch, Arizona Game and Fish Department, Phoenix, AZ
Raul Vega, Regional Supervisor, Arizona Game and Fish Department, Tucson, AZ

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Mexican Spotted Owl (see Appendix A)

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Appendix A: Concurrence for the Mexican Spotted Owl

Species Information

A complete description of the biology of the Mexican spotted owl appears in our November 2012 *Mexican Spotted Owl Recovery Plan, First Revision* (FWS 2012). The rangewide status of the species appears in our April 11, 2013, *Biological Opinion on the Aravaipa Ecosystem Management Plan* (File number 02EAAZ00-2012-F-0282).

Background for Determination of Effects:

The action area for this analysis is based on: (1) the area of the mine footprint; (2) areas outside the mine footprint that may be affected by noise, dust, light pollution, and other mining activities; (3) all areas for which mining activity may affect groundwater and surface water; and (4) other areas outside the footprint that are related to mining activity, such as road modifications, power lines, and pipelines (i.e., connected actions). The action area totals approximately 145,513 acres, including the footprints of the Barrel Alternative and utility corridor. The action area is located primarily in Pima County, but also encompasses a small portion of Santa Cruz County; 65,215 acres within the action area are on Forest Service and Bureau of Land Management (BLM) lands, and the remaining 80,298 acres within the action area on Arizona State Land Department State Trust land and private land. The larger action area was drawn to consider the impacts of noise, dust, light pollution, groundwater drawdown, and surface water reduction.

There are three Mexican spotted owl protected activity centers (PACs) adjacent to the larger action area (see Table MSO-1, below). The project area does not contain Mexican spotted owl nest/roost habitat as defined in the Recovery Plan for the Mexican spotted owl (FWS 2012). The Coronado National Forest compiled all known Mexican spotted owl locations from the Santa Rita Mountains, and there are no records of owls within the action area. The closest occupied area is the Ramanote Canyon PAC, which is located approximately 0.7 mile to the west-southwest. The larger action area includes approximately 430 acres of critical habitat unit BR-W-12.

Table MSO-1. Mexican spotted owl PACs near the action area for the Rosemont Project.

PAC Name (Number)	Distance from Project Area	Distance from Action Area
Ramanote Canyon (#0502019)	4.8 miles	0.7 mile
Sawmill Canyon (#0502013)	5.6 miles	1.3 miles
Florida Spring (#0503001)	6.4 miles	2.5 miles

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Determination of Effects:

We concur with your determination that the proposed action may affect, but will not likely adversely affect, the Mexican spotted owl. We base our concurrence on the following:

- The proposed action will not directly affect the key habitat components of Mexican spotted owl nest/roost habitat. The project and action areas contain desert, semi-desert grasslands, and Madrean encinal woodlands, which are not habitats used by Mexican spotted owls for nesting and/or roosting (FWS 2012).
- The project area is located approximately 4.8 miles northeast of the nearest PAC and the action area is located approximately 0.7 mile northeast of the nearest PAC. Therefore, the project will not result in noise disturbance to Mexican spotted owls during the breeding season (March 1 through August 31).
- The aforementioned level of effects are insignificant and discountable and will not reduce the potential to achieve recovery of the Mexican spotted owl.
- There is no Mexican spotted owl critical habitat in the action area; therefore, none will be affected.