Board of Supervisors Memorandum

May 13, 2014

Floodplain Use Permit for the Installation of a Waterline Related to Rosemont Copper Including an In-Lieu Fee Payment for a Riparian Habitat Mitigation Plan

Introduction

At the Board of Supervisors Meeting of April 1, 2014, the Board, at the Public Hearing, continued this matter to obtain additional information. The additional information is contained in the attached April 15, 2014 memorandum from the Regional Flood Control District Director.

Furthermore, the Board has received an April 21, 2014 letter from Attorney Scott McDonald, of Fennemore Craig, P.C., regarding the same matter.

The County Attorney, in Executive Session, will advise the Board regarding the letter and in-lieu fee payment for riparian habitat mitigation.

Recommendation

I recommend the Board of Supervisors approve the in-lieu fee payment for the riparian habitat mitigation related to the installation of a water supply line serving the proposed Rosemont Copper Project.

Respectfully submitted,

C.H. Huckelberry
County Administrator

CHH/anc – April 28, 2014

Attachments

c: Suzanne Shields, Director, Regional Flood Control District

Pima County Regional FLOOD CONTROL DISTRICT

MEMORANDUM

Director's Office
Regional Flood Control District

DATE: April 15, 2014

TO: C. H. Huckelberry
County Administrator

FROM: Suzanne Shields, P.E.
Director

SUBJECT: **Rosemont Water Line Floodplain Use Permit – April 1, 2014 Board of Supervisors Agenda Item Regarding a Riparian Habitat Mitigation Plan**

The Floodplain Use Permit application (FPUP #13-460) for the installation of a water supply line for the Rosemont Copper Mine included a riparian habitat mitigation plan. This Floodplain Use Permit application was submitted on November 19, 2013 and included an engineering analysis and construction plans, prepared by Clint Glass, P.E., with CMG Drainage Engineering, which provided the pipeline's horizontal and vertical location and burial depths necessary to protect it from flood hazards. Mr. Glass submitted the Floodplain Use Permit application, engineering analysis and water plans along with the Riparian Habitat Mitigation Plan prepared by Westland Resources.

The final approved plan for the water line meets Pima County's floodplain management and riparian mitigation regulations and standards. As with any other permit application, when plans are submitted to the Regional Flood Control District for review, state law requires that review and processing occurs within a predetermined period of time as provided in Arizona Revised Statutes (A.R.S.) §11-1605 and §48-3645.

The Pima County authority for floodplain management and issuance of Floodplain Use Permit s extends to the unincorporated areas of Pima County excluding federal lands. As provided in A.R.S. §48-3613, the following activities are exempt from regulation by the District:

- Agricultural activities including dams for watering livestock.
- Construction of tailing dams and waste disposal areas used in connection of mining and metallurgical operations.
- Construction and erection of poles, towers, foundations, support structures, guy wires and other facilities related to power transmission.

The Floodplain Use Permit (FPUP #13-460) is only for the water supply line, which is subject to floodplain regulations as provided in A.R.S. §48-3609.D. Upon approval of the Riparian Habitat Mitigation In-Lieu Fee Plan submitted to the Board of Supervisors, the District will issue Floodplain Use Permit (FPUP #13-460). The permit will contain numerous conditions to ensure that impacts are minimized, including requiring:

1) All necessary local, state, or federal permits for construction of the water supply line will be obtained including any permits required under the Clean Water Act prior to the commencement of construction.
2) Inspections during construction and the preparation of as-built drawings upon completion.

3) Acknowledgement that proceeding with the proposed construction of the water line is at the risk of the Permittee with no guarantee that the mine will be approved.
4) The Permittee shall minimize impacts by:
   a) Using existing roads for construction and access, where practicable.
   b) Retaining a qualified biologist to monitor all ground clearing and construction activities.
   c) Following published guidelines adopted by the Arizona Game and Fish Department (AGFD) and the United States Fish and Wildlife Service (USFWS) with regard to species designated as endangered as well as species of greatest conservation need as designated by AGFD.

The following additional information is being provided to address the questions in your memorandum dated April 1, 2014, regarding questions raised at the Board of Supervisor's meeting concerning the Riparian Habitat Mitigation Plan and in-lieu fee payment.

1. **How is the in-lieu fee payment calculated and how are the riparian areas classified?**

   The delineation of riparian habitat areas and their classifications are based on the Riparian Classification Maps adopted by the Board of Supervisors in 2005. The riparian areas, including Important Riparian Areas, were mapped as part of the development of the Sonoran Desert Conservation Plan and Conservation Lands System.

   The in-lieu fee calculation was based on the formula developed as part of the *Regulated Riparian Habitat Off-Site Mitigation Guidelines*. The calculation is based on the type of riparian habitation, area disturbed and the cost to mitigate in place along with costs for five (5) years of irrigation and maintenance. For the purposes of calculating disturbance, the entire easement width was used even though construction plans minimize the disturbance within the easement (see attached plan sheet as an example).

   The table used to establish in-lieu fees for each classification of riparian habitat is shown below:

   Cost per acre for riparian habitat mitigation based on classification of Xeroriparian Habitat XA, XB, XC, XD; Hydroriparian H; and Important Riparian Habitat by classification, IRA H, IRA XA, IRA XB, IRA XC, and IRA XD.

XA	XB	XC	XD	IRA/H	IRA/XA	IRA/XB	IRA/XC	IRA/XD
$17,000	$16,000	$14,000	$12,000	$40,000	$30,000	$28,000	$25,000	$22,000

   The calculations used to determine the in-lieu fee for this project are attached.

2. **How is the determination made that there were not sufficient areas for on-site mitigation?**

   The linear alignment lies within easements on state land and along existing and future roadways such as Santa Rita Road and Country Club. Besides the limited space for onsite

mitigation, there could not be any guarantee that mitigation would be permanent and not disturbed by future land use or roadway development. Finally, access for the transmission line and water line remain clear for maintenance and safety reasons.

3. **Can the Board of Supervisors make a conditional approval or delay approval?**

   The potential impact on riparian habitat is part of every Floodplain Use Permit application review. A Riparian Habitat Mitigation Plan then is not addressed as an independently permitted element, but as a condition of the Floodplain Use Permit. Any conditional approval or delay would apply to the issuance of the Floodplain Use Permit since the related Riparian Habitat Mitigation Plan or the alterative in-lieu fee proposal is one of the conditions of the permit. County Code provisions for Floodplain Use Permits do not allow discretionary delays; however, prior to approval, the Code does allow for a public hearing and review process for Floodplain Use Permits with Riparian Habitat Mitigation Plans for disturbances of Important Riparian Area or proposed in-lieu fees.

   Section 16.20.040(A)(1) allows the Chief Engineer to place conditions on a Floodplain Use Permit including the condition that, "All other required state and federal permits have been, or will be, obtained", however, that condition is not meant to suggest that the District can enforce the regulations of other jurisdictions. Floodplain Use Permits typically contain a condition requiring the receipt of any other required local state, or federal permits prior to construction of the improvements subject to the Floodplain Use Permit. This Floodplain Use Permit will do the same regarding the water supply line.

   Floodplain Use Permits are administrative permits that require action from the District when an applicant submits a complete and timely application that meets the standards for public safety. Once this is demonstrated, the District is obligated to issue the Floodplain Use Permit.

   The decision to issue or deny a Floodplain Use Permit application is delegated to the District's Chief Engineer per County Code, Sections 16.20.030.A and 16.20.050. This decision, considered a written finding of the Chief Engineer, may be appealed to the Flood Control District Board of Directors (16.56.010.D). As a separate matter, the Board of Directors must approve any Riparian Mitigation Plan when Important Riparian Areas are disturbed or when a riparian mitigation in-lieu fee is proposed per Section 16.30.050.

   The Board of Supervisors can approve the in-lieu fee for the water line or deny the in-lieu fee and require riparian habitat mitigation in the areas of impact.

4. **Why was the request processed now?**

   The Floodplain Use Permit application for the water supply line, engineering information and riparian habitat impact analysis were submitted on November 19, 2013. The application was determined to be administratively complete and a technical review was then undertaken. The technical information supporting the Floodplain Use Permit (FPUP #13-460), and technical information including riparian habitat impact meet the standard of

the Floodplain and Erosion Hazard Management Ordinance.

5. **What was the reasoning given by the Arizona Corporation Commission in their conditional approval of the water and power line along the alignment which is now subject to the Riparian Habitat Mitigation Plan?**

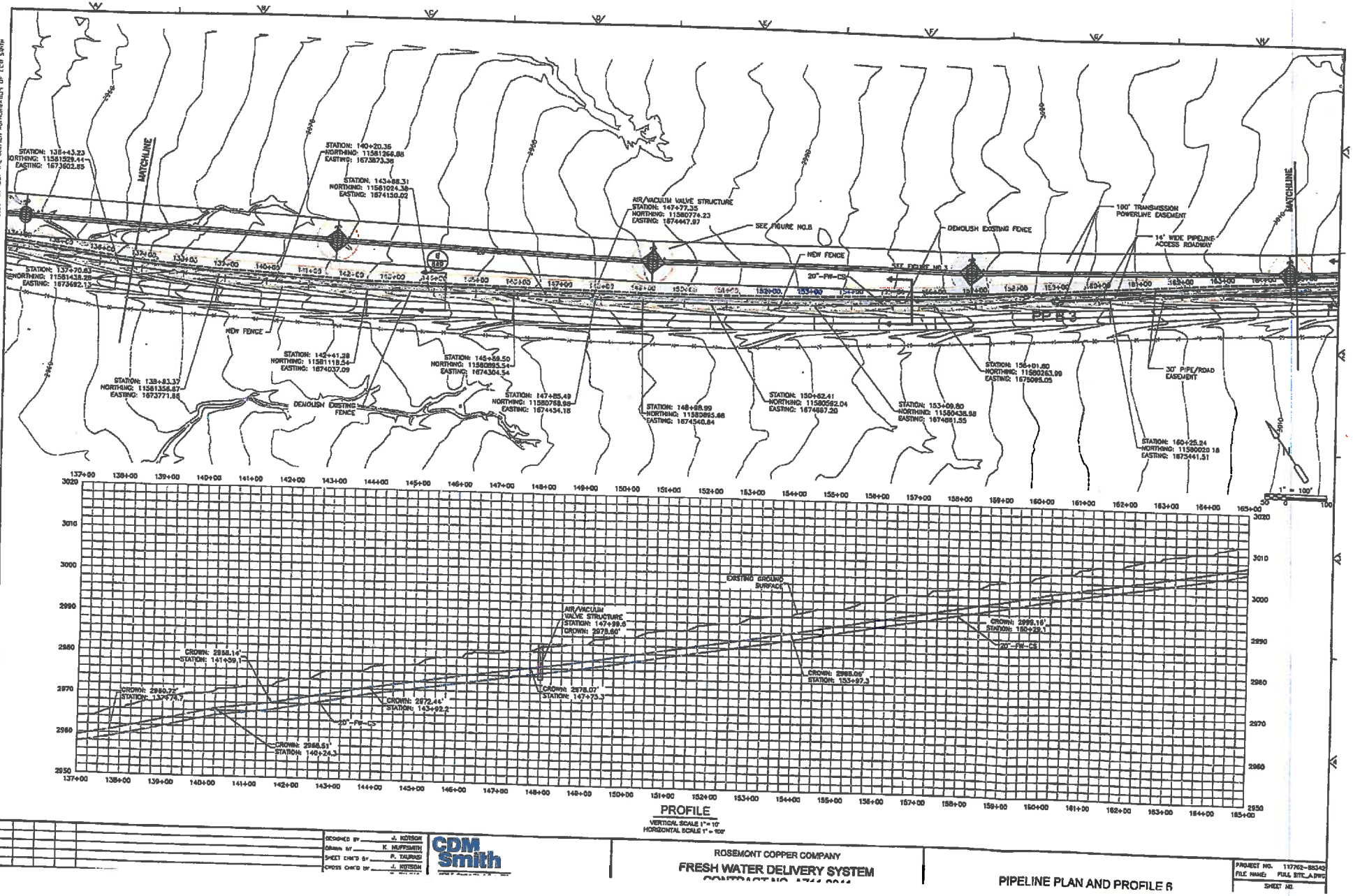
   The Arizona Corporation Commission approved the power line's preferred alignment which follows existing roadway alignments, specifically Santa Rita Road as well as portions of Cortaro Road and County Club Road. The conditional approval did include provisions requiring the construction to comply with federal Fish and Wildlife Service, Arizona Game and Fish.

I have attached information from the Floodplain Use Permit (FPUP #13-460) and permit conditions for the water line. Please let me know if you require any additional information.

SS/tj

Attachments

c: John Bernal, Deputy County Administrator – Public Works
Hal Gilbreath, Deputy County Attorney – County Attorney's Office
Bill Zimmerman, Deputy Director – Regional Flood Control District



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DESIGNED BY J. KOTSON
DRAWN BY K. MUFFSMITH
SHEET CHK'D BY P. TAURASI
CROSS CHK'D BY J. KOTSON

CDM Smith

ROSEMONT COPPER COMPANY

FRESH WATER DELIVERY SYSTEM

CONTRACT NO. 4711-0011

PIPELINE PLAN AND PROFILE 6

PROJECT NO. 117762-85342
FILE NAME: PLNL SITE_A.DWG
SHEET NO.

RIPARIAN HABITAT DISTRUBANCE CALCULATIONS FOR FPUP #13-640 ROSEMONT WATER SUPPLY LINE					
Crossing of Riparian Area, Disturbances	Plan Sheet Number on RHMP	Riparian Habitat Classification	Acres Disturbed	Cost to Mitigate Per Acre	Cost Calculated For this Disturbance
1	L 1.1	IRA - Xero B	0.55	$28,000	$15,400
2	L 1.2 & L 1.3	IRA- Xero C	1.58	$25,000	$39,500
3	L 1.4	IRA- Xero C	0.37	$25,000	$9,250
4	L 1.5	Xero C	0.6	$14,000	$8,400
5	L 1.5	Xero C	0.2	$14,000	$2,800
6	L 1.6	Xero C	0.04	$14,000	$560
7	L 1.7	Xero C	0.22	$14,000	$3,080
8	L 1.8	Xero C	0.28	$14,000	$3,920
9	L 1.9	Xero C	0.42	$14,000	$5,880
10	L 1.9	Xero C	0.55	$14,000	$7,700
11	L 1.10	Xero C	0.23	$14,000	$3,220
12	L 1.10	Xero B	0.34	$16,000	$5,440
13	L 1.10	IRA - Xero B	0.6	$28,000	$16,800
14	L 1.11	Xero B	0.65	$16,000	$10,400
15	L 1.12	IRA - Xero B	0.1	$28,000	$2,800
16	L 1.12	IRA - Xero B	0.15	$28,000	$4,200
17	L 1.12	IRA - Xero B	0.21	$28,000	$5,880
		Total Xero B	0.99		$15,840
		Total Xero C	2.54		$35,560
		Total IRA - Xero B	1.61		$45,080
		Total IRA - Xero C	1.95		$48,750
				Total In-Lieu Fee	$145,230

Permittee acknowledges that the subject property is located within a Special Study floodplain and/or erosion hazard area as shown in the report: #10, *Lee Moore Wash Basin Management Study* (dated September 2009)

Permit is for a water pipeline as shown on the site plan approved by the District on February 6, 2014. The activity is located within the Lee Moore Wash Basin Management Study.

Permittee acknowledges the risk of constructing the water pipeline prior to approval of the mine it is intended to serve, and that there is no guarantee that the mine will be approved.

Improvements to be performed/constructed in accordance with the engineering study/plan prepared for the permittee by; Clinton M. Glass, P.E., of CMG Drainage Engineering, Inc. dated January 21, 2014. Specifically, the following drainage crossings will be constructed so the top of the proposed pipeline will be at the listed depth below natural ground:

Concentration Point	Lateral Erosion Start Station	Lateral Erosion End Station	Scour Depth +2.0 Feet (ft)	Depth to Top of Water Line (ft)
1*	Undefined	Undefined	5.0	5.0+
4	29+00	40+00	5.0	6.0
5	69+50	74+00	6.4	7.2
6	115+75	121+25	6.5	6.8
7	191+30	197+10	5.3	6.0
8	249+00	250+60	6.9	6.9
9	372+25	374+50	6.2	6.5
10	462+50	467+40	6.3	6.3
11	474+10	476+20	6.9	7.4
12	494+00	494+80	6.9	8.0
13	515+95	518+50	5.8	7.6
14	519+35	525+33	5.8	7.8
15A	532+75	533+30	6.2	8.7
15B	540+00	541+00	6.2	7.0
16	546+23	546+75	5.0	10.6
17	550+01	552+27	8.0	9.5
18	555+53	556+75	5.0	6.0

* Concentration Point 1 is located in a sheet flood area without defined channel banks. Pipeline will remain at least 5.0 feet below natural grade in this area.

Construction inspections shall occur during the construction of the pipeline and an as-built certification letter from an Arizona registered professional civil engineer shall be provided confirming that the improvements were constructed in accordance with the recommendations of the engineer of record as noted on this permit. This certification must be provided within 30 days following completion of the erosion and flood control measures authorized by this permit, or prior to the expiration of this permit, whichever comes first. **A hold on the final building inspection (P2F) will be in place until this Certification is received and approved by the District.**

A Riparian Habitat Mitigation Plan has been approved for FPUP # 13-640 on March 4, 2014 by RFCD (staff) and by the Board of Supervisors on _____, 2014. A fee in-lieu of restoration has been provided. **Any and all work must comply with the approved Riparian Habitat Mitigation Plan. Any additional disturbance shall require a new floodplain use permit and a Riparian Habitat Mitigation Plan.**

It is the responsibility of the permittee to obtain any and all necessary local, state, or federal permits for construction of the water supply line including any permits required by the Clean Water Act prior to construction.

The permittee shall minimize impacts by:

a) Use existing roads for construction and access where practicable.
b) Retain a qualified biologist to monitor all ground clearing and construction activities.
c) Follow published guidelines adopted by AGFD and the United States Fish and Wildlife Service (USFWS) with regard to species designated as endangered as well as species of greatest conservation need as designated by AGFD.

Any additional improvements, including structures, fencing, block walls, swimming pools, etc., shall require a separate Floodplain Use Permit prior to construction. Other than as approved by this permit, natural drainage not to be disturbed.

Patricia Gilbert

From: Kathy Arnold <karnold@rosemontcopper.com>
Sent: Tuesday, March 04, 2014 9:07 AM
To: Patricia Gilbert
Subject: Re: Rosemont Flood Control Mitigation

Thank you Patricia. I will start process the request for the check right now.

Cheers!
Kathy

Kathy Arnold
VP Environmental & Regulatory Affairs
Rosemont Copper
(520) 495-3502

Sent from my iPad

On Mar 4, 2014, at 7:58 AM, "Patricia Gilbert" <Patricia.Gilbert@pima.gov> wrote:

> Hi Kathy,
>
> The District has reviewed the Riparian Habitat In-lieu Fee proposal and it has been accepted. When mitigation for disturbance within riparian habitat is through an in-lieu fee, approval from the Board of Supervisor's (BOS) is required. The proposal will be added to the agenda for the next BOS meeting scheduled once the in-lieu fee check is received by the District.
>
> A check for $145,230 must be received prior to approval of the Floodplain Use Permit FPUP 13-460ERP. The check shall be made out to "Pima County Treasurer" and reference the project name and FPUP 13-460. Please either submit the fee at our office, located at 97 E. Congress Street, 3rd floor or mail to Floodplain Management Riparian Review Staff at the following address:
>
> Pima County Regional Flood Control District
> c/o Floodplain Management; Patricia Gilbert
> 97 E. Congress Street, 2nd Floor
> Tucson, AZ 85701
>
> Please feel free to contact me if you have any additional questions.
>
> ---
>
> **From:** Kathy Arnold [mailto:karnold@rosemontcopper.com]
> **Sent:** Wednesday, February 12, 2014 3:49 PM
> **To:** Patricia Gilbert
> **Subject:** Rosemont Flood Control Mitigation
>
> Patricia
> As per our conversation this morning, please find my proposal attached.
>
> Regards,

Kathy

Katherine Ann Arnold, P.E. | Vice President Environmental and Regulatory Affairs
Direct: 520.495.3502 | Main: 520.495.3500 | Fax 520.495.3540
karnold@rosemontcopper.com

Rosemont Copper Company
P.O. Box 35130 | Tucson, AZ 85740-5130
2450 W. Ruthrauff Road, Suite 180 | Tucson, AZ 85705 | www.rosemontcopper.com

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ROSEMONT COPPER
REDEFINING MINING.

www.rosemontcopper.com

February 12, 2014

Ms. Patricia Gilbert
Principle Hydrologist
Pima County Regional Flood Control District
97 East Congress Street
Tucson, Arizona 85701-1797

Re: Response to February 6, 2014 Letter

Dear Ms. Gilbert:

In response to Mr. Graupmann's letter of February 6, 2014 asking for additional detail on our mitigation proposal, Rosemont is providing the following information. As per our conversation this morning, Rosemont wishes to use the Flat fee for mitigation as calculated using Table 2. ILF Development Project Flat Fee Table – Cost per Acre for RRH Disturbance. Using the disturbance as calculated by WestLand and applying the information on the table yields the following:

	Area Impacted (acres)	Cost per Acre ($)	Total Cost ($)
XB	0.99	$ 16,000	$ 15,840
XC	2.54	$ 14,000	$ 35,560
IRA/XB	1.61	$ 28,000	$ 45,080
IRA/XC	1.95	$ 25,000	$ 48,750
Total	7.09		$ 145,230

Based on the calculation, once approved, Rosemont would provide $145,230 to the Regional Flood Control district as mitigation for impacts to the riparian areas associated with the placement of our water line and electrical transmission line.

Please let me know if you require additional information.

Regards,

Katherine Ann Arnold, PE
Vice-President, Environmental and Regulatory Affairs

Doc. No. 009/14-15.10.4.2

PO Box 35130 Tucson, AZ 85740-5130 Office: (520) 495-3500 Fax: (520) 495-3540

Pima County Regional
FLOOD CONTROL
DISTRICT

PIMA COUNTY
REGIONAL FLOOD CONTROL DISTRICT
97 EAST CONGRESS STREET, THIRD FLOOR
TUCSON, ARIZONA 85701-1797

SUZANNE SHIELDS, P.E.
DIRECTOR

(520) 243-1800
FAX (520) 243-1821

February 6, 2014

Ms. Kathy Arnold
Rosemont Copper
P.O. Box 35130
Tucson, AZ 85740-5130

Re: Floodplain Use Permit No. 13-460
Placement of a Water Line and Electrical Distribution Line

Dear Ms. Arnold:

The Pima County Regional Flood Control District (District) has completed a substantive review of the engineering analysis titled: *Addendum to Floodplain Use Permit Application No. 13-460, Rosemont Copper – Water Line and Electric Distribution Line*, dated January 21, 2014 and sealed by Clinton M. Glass, P.E. of CMG Drainage Engineering. This Report is the second submitted in support of your application for Floodplain Use Permit (FPUP) No. 13-460 for a water pipeline and electrical distribution line. Upon completion of the review, the hydrology, hydraulics and scour calculations have been accepted by the District and plan set accurately reflects the depth and extent of the lateral migration

However, the District cannot issue the permit until the Riparian Habitat Mitigation Plan is completed. The District has accepted the disturbance calculations that have been provided by WestLand Resources, but has not been informed of or accepted the method of mitigation for this disturbance. The permit will issued upon successful resolution of this last outstanding issue.

The District will proceed with the review of the above project as soon as possible after receiving all of the requested information. Please be advised that there may be additional comments/requirements as a result of the review. Failure to submit the requested information within **90 days** may result in your application becoming void.

If you have any questions or if you would like to schedule a meeting, please contact me at 243-1800.

Sincerely,

Jeff Graupmann, PE, CFM
Civil Engineer
Floodplain Management Division

cc: Patricia Gilbert, Principal Hydrologist, RFCD

Mr. Clint Glass, PE
CMG Drainage Engineering, Inc.
P.O. Box 64880
Tucson, AZ 85728

Pima County Regional
FLOOD CONTROL
DISTRICT

PIMA COUNTY
REGIONAL FLOOD CONTROL DISTRICT
97 EAST CONGRESS STREET, THIRD FLOOR
TUCSON, ARIZONA 85701-1797

SUZANNE SHIELDS, P.E.
DIRECTOR

(520) 724-4600
FAX (520) 724-4621

December 17, 2013

Ms. Kathy Arnold
Rosemont Copper
P.O. Box 35130
Tucson, AZ 85740-5130

Re: Notice of Deficiency for Floodplain Use Permit No. 13-460
Placement of a Water Line and Electrical Distribution Line

Dear Ms. Arnold:

The Pima County Regional Flood Control District (District) has completed a substantive review of the engineering analysis (Report) and site plan submitted in support of your application for Floodplain Use Permit (FPUP) No. 13-460 for placement of a water line and Electrical Distribution Line from the Sanrita West and Sanrita South well sites to the Rosemont Copper mine. The Report is titled: *Floodplain Use Permit Application Report for the Rosemont Copper Offsite Water Line and Electrical Distribution Line*, is dated November 18, 2013, and was sealed by Clinton M. Glass, P.E. of CMG Drainage Engineering, Inc. This Report was received by the District on November 19, 2013, and is the first submitted in support of your application for Floodplain Use Permit. The Report included reduced copies of the plan and profile sheets provided by CDM Smith dated March 2013. The District's review of the Report and plan set produced the following comments, which must be addressed prior to further action on your application for Floodplain Use Permit.

1) The hydrology and hydraulics have been accepted by the District.

2) The limits of lateral migration shown on the plan and profile sheets appear to be measured from the centerline of the crossing rather than from the edge of the channel bank. The Report does call out the lateral erosion start and end stations in Table 4. The plan and profile sheets should incorporate this information. Please address.

3) Based on field inspection photographs provided by Copper State Engineering, Inc. and on oblique aerial photographs, the dirt road that forms the basis of the pipeline alignment appears to have been graded so that a number of washes have been filled in. The profiles reflect this, as some of the natural channels do not show up along the natural ground line. Because the road may wash out during a regulatory storm event, the depth to the crown of the pipe line should be measured from the bottom of the natural wash that existed before the road was graded. As it may be impossible to determine the exact geometry of the washes prior to the grading, a reasonable approximating using the slopes upstream and downstream of the crossings may be used. Please address.

If you have any questions or if you would like to schedule a meeting, please contact me at 724-4600.

Sincerely,

Jeff Graupmann, PE, CFM
Floodplain Management Division

cc: Mr. Clint Glass, PE
CMG Drainage Engineering, Inc.
P.O. Box 64880
Tucson, AZ 85728

CMG DRAINAGE ENGINEERING, INC.

LETTER OF TRANSMITTAL

To:	**Suzanne Shields P.E.**	**From:**	**Clint Glass**
	Pima County Regional Flood Control District	**Date:**	**11/19/2013**
	97 E. Congress Street, 3rd Floor	**CC:**	
	Tucson, Arizona 85701	**Job No.**	**12-038**
Re:	Floodplain Use Permit Application Report for the Rosemont Copper Offsite Water Line and Electrical Distribution Line		

RECEIVED
NOV 19 2013
RFCD

Item(s) We Are Sending:

Quantity	Description of Item
1	Floodplain Use Permit Application Report for the Rosemont Copper Offsite Water Line and Electrical Distribution Line

Item(s) Are:

☐ **For Your Use, As Req.** ☐ **For Approval** x☐ **For Review/Comment** ☐ **Being Returned**

Transmitted Via:

☐ **Pick-Up** x☐ **Delivery** ☐ **E-mail** ☐ **US Postal Service** ☐ **Express Mail**

Comments:

Suzanne, attached is one copy of the " Floodplain Use Permit Application Report for the Rosemont Copper Offsite Water Line and Electrical Distribution Line". CMG Drainage Engineering, Inc. is submitting this report to RFCD at the request of Rosemont Copper in support of the attached floodplain use permit application. Please let me know if you need anything else.

Received By: _____ Signature _____ Date

Sent By: _____ Signature 11/19/13 Date

IF ENCLOSURES ARE NOT AS NOTED, KINDLY NOTIFY US IMMEDIATELY

PIMA COUNTY FLOODPLAIN USE PERMIT APPLICATION

PIMA COUNTY REGIONAL FLOOD CONTROL DISTRICT
97 E. CONGRESS STREET, 3RD FLOOR
TUCSON, ARIZONA 85701-1797
(520) 243-1800

TO BE FILLED OUT BY APPLICANT (PLEASE PRINT CLEARLY):

DS ACTIVITY NUMBER

DATE	TOWNSHIP	RANGE	SECTION	TAX CODE
11/19/2013	17&18 S	14&15E	SEE MAP	NONE

PROPERTY OWNER'S LAST NAME	PROPERTY OWNER'S FIRST NAME	PROPERTY OWNER'S PHONE NUMBER
ROSEMONT COPPER	KATHY ARNOLD	495-3502

APPLICANT'S LAST NAME	APPLICANT'S FIRST NAME	APPLICANT'S PHONE NUMBER
CMG DRAINAGE ENGINEERING	CLINT GLASS	882-4244

PROJECT SITE ADDRESS	CITY	STATE	ZIP
NONE			

APPLICANT'S MAILING ADDRESS	CITY	STATE	ZIP
PO BOX 64880	TUCSON	AZ	85728

SUBDIVISION AND LOT NUMBER OR PARCEL LEGAL DESCRIPTION
NONE

DESCRIPTION OF WORK (A site plan DRAWN TO SCALE and showing ALL proposed work must be attached)
INSTALLATION OF 10.2 MILES OF UNDERGROUND WATER LINE AND ELECTRICAL DISTRIBUTION LINE

DESCRIPTION OF SUPPORTING INFORMATION BEING SUBMITTED
REPORT BY CMG DRAINAGE ENGINEERING, INC. TITLED "FLOODPLAIN USE PERMIT APPLICATION REPORT FOR ROSEMONT COPPER OFFSITE WATER & ELECTRIC"

IF THIS PERMIT IS FOR A STRUCTURE, METHOD OF PROTECTION FROM FLOODING MUST BE INDICATED (CHECK ALL THAT APPLY)
If residence has an attached garage, is the garage FFE below the elevation of the residence? (circle one) Yes No

ELEVATED ON FILL: ☐	ELEVATED ON STEM WALL (DOES NOT INCL. BLOCK SKIRTING): ☐	ELEVATED ON PIERS: ☐ (NOTE PIER TYPE ON PLAN)	VENTED AND/OR FLOODPROOFED ☐	OTHER (EXPLAIN)
EXTENDS 25 FT FROM STRUCTURE: ☐	BACKFILLED ☐	NO SKIRTING ☐	BLDG AREA(SQFT):	
ENGINEERED ALTERNATIVE: ☐	FLOOD-VENTED ☐	BREAK-AWAY SKIRTING ☐	(SHOW SIZE/LOCATION OF VENTS ON SITE PLAN)	
		BLOCK SKIRTING ☐		

By signing this permit application, the undersigned applies for a permit pursuant and subject to the requirements to the FLOODPLAIN AND EROSION HAZARD MANAGEMENT ORDINANCE NO. 2005-FC2 and hereby agrees to abide by all the Covenants, Conditions, and Restrictions contained or referred to herein and to indemnify, defend, and hold harmless Pima County and the Regional Flood Control District and their agents from and against any and all suits, claims, or demands associated with the approval of this application.

APPLICANT SIGNATURE

This application becomes a valid permit only when completed and signed approved by the Regional Flood Control District below and accepted by applicant on reverse. Validated permit is subject to the conditions indicated on the reverse and attachments (if any).

THIS PORTION AND REVERSE TO BE COMPLETED BY PIMA COUNTY REGIONAL FLOOD CONTROL DISTRICT

PREP BY	AREA	PERMIT NUMBER	CODE	ZONE	PANEL/DATE	ENGINEERING INCLUDED IN FILE	STATUS	DATE
	4	13-460	UTL	Sheet Flow X	3470L 4/16/11		REC'D	11/19/13

AS BUILT		MH INSTALL. CERTIFICATION		ELEV. CERT OR FLOOD PROOF		COVENANTS R A B S		YES	NO
REQ'D	COMP	REQ'D	COMP	REQ'D	COMP	REQ'D	COMP	RIPARIAN HABITAT	

AMOUNT OF RIPARIAN DISTURBANCE(SQ FT):	CUMMULATIVE RIPARIAN DISTURBANCE (SQ FT):	H A B C D N/A IRA? Y/N PLAN? Y/N

APPROVED	DATE

2/15/2006

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April 21, 2014

Chuck Huckelberry
Pima County Administrator's Office
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Tucson, Arizona 85701

Supervisor Ally Miller, District 1
Pima County Board of Supervisors
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Supervisor Richard Elías, District 5
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Re: Rosemont Copper Company's Riparian Habitat Mitigation Plan
Floodplain Use Permit FPUP 13-460ERP

Dear Chairwoman Bronson, Members of the Board of Supervisors, and Mr. Huckelberry:

Fennemore Craig represents Rosemont Copper Company ("Rosemont"). In the last two years, the Pima County Board of Supervisors (the "Board"), sitting as the Pima County Regional Flood Control District ("Flood Control"), approved twenty-five riparian habitat mitigation plans without a single continuance. Yet on April 1, 2014, the Board voted unanimously to continue Rosemont's proposed riparian habitat mitigation plan for ninety days to research alleged concerns or questions raised at the hearing. For the reasons below, the issues raised by the Board and Mr. Huckelberry are without merit, and Rosemont requests that the Board consider its habitat mitigation plan at the May 6 or 13, 2014 hearing.

I. ARIZONA CORPORATION COMMISSION

In May 2012, the Arizona Corporation Commission ("ACC") voted unanimously to allow electrical **transmission lines** to serve Rosemont. The transmission lines are exempt from the County's floodplain management regulations under Pima County Code §§ 16.12.010 and 16.12.020. As such, Rosemont did not and need not apply for a floodplain use permit for the electrical transmission lines.

Rosemont has applied for a flood plain use permit for the electrical distribution lines and water lines. The ACC has not and will not review or approve the electrical distribution lines because it only regulates electric transmission lines with a voltage of 115kV or above. *See* A.R.S. §§ 40-360 – 360.13. Further, the ACC has not and will not review or approve the water lines because it only regulates "public service corporations," as defined in Article 15, Section 2 of the Arizona Constitution, and does not regulate the construction and/or use of private lines such as those at issue here. Therefore there are no issues relating to the ACC that affect the floodplain use permit application or riparian mitigation plan.

II. COMPUTATION OF IN LIEU FEE

Rosemont deposited an in lieu fee of $145,320, the amount of which was computed based on Pima County's *Regulated Riparian Habitat Offsite Mitigation Guidelines.* Rosemont submitted a detailed Riparian Habitat Mitigation Plan showing the disturbed riparian area, which was reviewed by Flood Control staff and presented to the Board. The proposed fee was arrived by multiplying the acres of impact by Flood Control's predetermined per acre fee corresponding to the type of riparian habitat impacted. Flood Control's Director, Suzanne Shields, recommended approval of Rosemont's Riparian Habitat Mitigation Plan and in-lieu fee, and the calculations supporting the proposed fee were set forth in the memo provided to the Board prior to the hearing.

III. CONTINGENT OR CONDITIONAL APPROVAL OF PERMIT

Under A.R.S. § 48-3644, "[a] district shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule, regulation, ordinance, executive order or delegation agreement." There is no statute, rule, regulation, ordinance, executive order or delegation agreement that would permit Flood Control to grant a conditional approval of Rosemont's Riparian Habitat Mitigation Plan subject to approval of other Federal permits, such as a 404 Permit or Record of Decision. Flood Control should approve Rosemont's Riparian Habitat Mitigation Plan.

IV. WHETHER REGULATED RIPARIAN HABITAT AREAS CANNOT REASONABLY BE AVOIDED

Rosemont seeks approval of approximately twelve miles of electrical distribution lines and water lines. The route generally parallels the Santa Rita Road alignment. The Arizona State Land Department selected this alignment from a number of alternative alignments as the most appropriate route, because it created a consolidated utility corridor and minimized disturbance. The route follows the existing road alignment, as well as the transmission power line alignment selected by the ACC and its Line Siting Committee in part because the route had the least impact on the Santa Rita Experimental Range and its operations.

Moreover, even setting aside the fact that the route corresponds to that favored by both the Line Siting Committee and the Arizona State Land Department, the project is a twelve-mile long linear development. An alternative route that avoids riparian habitat is not available.

V. FLOOD CONTROL'S FAILURE TO ACT WITHIN THE REGULATED TIMEFRAME ENTITLES ROSEMONT TO A REFUND OF THE FEE PAID.

A.R.S. § 48-3645(J) required Flood Control to approve or deny Rosemont's plan pursuant to the licensing time frames adopted by the County for processing floodplain use permit applications. If Flood Control fails to approve or deny the plan within the specified time frame, it "shall refund to the applicant all fees charged for reviewing and acting on the application for the license and shall excuse payment of any fees that have not yet been paid." A.R.S. § 48-3645(K). Flood Control stated the "$145,230 must be received prior to approval of the Floodplain Use Permit FPUP 13-460ERP," which is consistent with the *Regulated Riparian Habitat Offsite Mitigation Guidelines*. Accordingly, the $145,230 in-lieu fee is "charged for . . . acting on the application." The Board's 90 day delay in approving Rosemont's mitigation plan ensures that the licensing time frames will be exceeded. Consequently, Flood Control will be required to refund the fee "within thirty working days after the expiration of the overall time frame or the time frame extension." A.R.S. § 48-3645(K). The refund does not alter Flood Control's obligation to consider and approve Rosemont's Riparian Habitat Mitigation Plan.

VI. CONCLUSION

Just as the other twenty-five riparian habitat mitigation plans approved by the Board in the past two years, Rosemont's plan should be approved.

If Flood Control does not put Rosemont's Riparian Habitat Mitigation Plan on the May 6 or 13, 2014 agendas and refund the in-lieu fee, Rosemont is prepared to file a lawsuit, including challenging the legality of Pima County's riparian habitat mitigation regulation. Arizona law is clear that a special taxing district may "only exercise those powers that are statutorily delegated to [it]." The powers delegated to Flood Control are set forth in A.R.S. §§ 48-3601 to 48-3628.

Those powers include the authority to "adopt and enforce floodplain regulations as provided in section 48-3609." The statutes do not define floodplain to include riparian habitat, nor is riparian habitat even mentioned in the statutes authorizing flood control districts. The statutes only grant Flood Control the authority to "adopt and enforce regulations governing floodplains and floodplain management." The statutes authorizing Flood Control do not expressly authorize districts to regulate non-floodplain lands for management of potential erosion or to regulate lands for riparian plants and animals; the enabling statutes are focused on minimizing losses due to flooding. Pima County is the only County in Arizona that attempts to regulate riparian areas to this degree, and has exceeded its authority with its riparian habitat mitigation regulations.

Sincerely,

FENNEMORE CRAIG, P.C.

Scott McDonald

SMCD/

cc: Chris Straub, Deputy County Attorney, Pima County Attorney's Office