Date: January 28, 2022

To: The Honorable Chair and Members
From: Jan Lesher
Pima County Board of Supervisors
Acting County Administrator

Re: Rosemont Copper Project Update

Background

The intent of this memorandum is to provide a short history (Attachment 1) and an update on Pima County’s involvement with the proposal to extract mineral resources in the northern Santa Rita Mountains, otherwise known as the Rosemont project.

Pima County has a long history of mineral extraction, particularly copper mining. The industry remains an important component of our region’s economy. As such, our populace has more than the usual understanding of the benefits and risks of mining. Pima County’s objections to the Rosemont Copper proposal have never been to mining per se, but are rooted in the particulars of methods, locations, risks, and the County’s goals for appropriate protections and mitigations which have been rejected.

Pima County’s efforts to seek meaningful mitigation in the event of a federal approval began in 2006, even before the Coronado National Forest accepted Rosemont’s plan of operations for review. Augusta Resources, the mine’s owners, agreed to meet five performance criteria relating to the mine; however, these criteria were not productively discussed as to how these would be achieved.

1. Adherence to the County’s Conservation Land System Guidelines. (Pima County’s CLS guidelines for compensatory mitigation of the mine would amount to more than 13,000 acres).
2. No impact to water in the Cienega Basin and Cienega Creek. (Impacts are certain to occur in Las Cienegas National Conservation Area and Davidson Canyon. Proposed mitigation in Sonoita Creek is in a different watershed and in Santa Cruz County).
3. Concurrent reclamation and adequacy through bonding. (Concurrent reclamation is proposed, but the proposed bonding is inadequate to clean up any water contamination caused by the mine).
4. Visual impacts to Sonoita Highway. (Visual impacts and greatly increased traffic are certain to occur).
5. Environmental Enhancement Endowment. ($25 million to groups of their choosing)
In 2007, Pima County was invited by the Coronado National Forest (Forest Service) to participate as a cooperating agency in the National Environmental Policy Act (NEPA) process and related Environmental Impact Statement (EIS) for the proposed Rosemont Mine. For the next decade, the County’s focus was to ensure an accurate disclosure of impacts of the proposed mine, and to secure as many protective measures as possible to avoid, minimize, and mitigate impacts, should the mine be permitted. On December 13, 2013, the Forest Service issued their Final EIS.

When Hudbay acquired Augusta and the Rosemont Copper interests in 2014 following the issuance of the Final EIS, Pima County communicated 10 critical issues of concern to Hudbay management. These were:

1. Use Central Arizona Project (CAP) water directly for mine operations.
2. Minimize the footprint of future disturbance in the northern Santa Rita Mountains by renouncing future efforts to mine Copper World, Peach-Elgin, and Broadtop Butte deposits.
3. Replenish the aquifer downstream of the mine.
4. Reclaim the pit through partial backfill.
5. Acquire and protect important natural areas in the Cienega watershed.
6. Redesign storm water management systems and reduce seepage through waste tailings to reduce the risk for future water contamination.
7. Properly plan and manage soil resources to ensure reclamation success.
8. Fund additional safety, traffic and road repair improvements to Sahuarita Road and Highway 83.
9. Comply with local Dark Skies Outdoor Lighting Ordinance.
10. Acquire and use Tier 4 engines in all non-road diesel equipment to reduce air pollution.

While most of these items will not likely be achieved because no legally binding commitment exists, Pima County and the Regional Flood Control District continued to advocate for measures to reduce water quality impacts that would be caused by mining, which have helped to eliminate heap leach from the mine plan of operations and to route drainage from the mine site around the waste and tailings. The County’s participation in the EIS review resulted in a number of beneficial clarifications that would make it possible for the Forest Service to verify that mine construction and operation conform to certain conditions and assumptions that the federal agencies made in the EIS.

However, the EIS makes clear that the five performance criteria established by Pima County and the original owner will not be met. Most of the safeguards and meaningful mitigation that Pima County sought were not affirmed by federal or state agency requirements, or adopted by the proponents.
The scrutiny of multiple cooperating agencies and the public did result in the Final EIS for the Rosemont Project acknowledging more of the impacts that Pima County and others pointed out. Many of the mine's impacts are considered irreversible; meaning that society would forever lose future options or the flexibility to respond to new conditions. The EIS also discloses that the poorest among us, including Tohono O’odham, Pascua Yaqui, and certain Hispanic populations, may be disproportionately affected by this project. The EIS also acknowledges many uncertainties in the effects of the mine on groundwater, vegetation and the potential for successful reclamation; yet the document relies on optimistic outcomes predicted in the proponent’s studies, such as the belief there would be no irreversible loss of groundwater quality.

The decisions by Coronado National Forest and US Army Corps of Engineers (Corps) to approve the Rosemont Copper Project are contrary to Pima County’s many years of effort to encourage all parties to fully compensate for the adverse impacts of a new mine. The mine proposal in no way sets a standard for “modern” or “sustainable” mining, though that was an aspiration of the original mine proponent. The mine approval is the product of a reversal by the US Army Corps of Engineers and potentially unlawful interpretations of federal law (see attached chronology).

Update

The decisions by the federal agencies attracted lawsuits, currently five in number, that are slowly making their way through the court system. In July 2019, the United States District Court in Arizona vacated the Forest Service’s EIS and Record of Decision (ROD), finding that the Forest Service never established that Rosemont’s unpatented mining claims were valid and that dumping of waste rock and tailings on Forest Service land was not incidental to their development of the pit on their patented claims. This is precisely the point that Pima County Administrator, C.H. Huckelberry, and others argued from the beginning.

No work on Federal land can proceed until either the Judge’s decision is overturned by a higher court or the Forest Service revises the EIS and issues a new decision. Mine-related work on non-federal lands can proceed, unless authorization for that work is contingent on Rosemont acquiring a valid Forest Service permit.

The District Court ruling is now being reviewed by the Ninth Circuit Court of Appeals. If the ruling is upheld, the Forest Service will have discretion to prevent or truly limit the impacts of open-pit mining on this public land. The Forest Service would then have to consider a much smaller mine, or none at all in that particular location. In the event the Forest Service must renew its deliberations, Pima County and the Regional Flood Control District will continue to advocate for real alternatives and meaningful mitigation to address the effects
of mining and protect the health, safety, and welfare of County residents as has been done throughout the process.

In 2021, Hudbay submitted a reclamation plan to the State Mine Inspector’s office for Copper World for a set of three proposed open-pit mines on the crest and the west side of the Santa Rita Mountains (Figure 1). The extraction and processing of minerals would presumably be served by the same Sahuarita wellfield and TEP transmission line proposed in the original Rosemont EIS. Activities at Copper World would not be subject to any of the Forest Service stipulations in their ROD because of its location outside National Forest lands. Under this scenario, it is believed that Santa Rita Road through the Santa Rita Experimental Range would be the primary route access for construction and movement of materials to and from the Copper World suite of mines (Figure 1).

In the event that the District Court ruling is overturned at the highest level, the Forest Service prior approval would stand. Hudbay would use the Sonoita Highway as the primary access route for the Rosemont mine. Under this scenario, the Forest Service would also be allowed to alter the Coronado National Forest Plan to create a new mining zone, facilitating further mineral development within their proposed Management Area 16 that extends northwest to Copper World and other areas in the northern Santa Rita Mountains that Hudbay has identified for future mineral exploration and development. Copper World and new mining on National Forest could proceed in addition to Rosemont.

Under either scenario, the other pending court cases regarding the Clean Water Act and the Endangered Species Act will have to be decided before any mining on federal land at Rosemont could proceed.

JKL

Attachments

c: Carmine DeBonis, Deputy County Administrator for Public Works
   Suzanne Shields, Director, Regional Flood Control District
   Jackson Jenkins, Director, Regional Water Reclamation Department
   Carla Blackwell, Director, Development Services
   Linda Mayro, Director, Sustainability and Conservation
   Kathy Chavez, Water Policy, Sustainability and Conservation
   Julia Fonseca, Environmental Planning Manager, Sustainability and Conservation
1854  Gadsden purchase brings Santa Rita Mountains under dominion of US
1872  Mining Act adopted by U. S. Congress
1897  Organic act creating National Forest system
1966  National Historic Preservation Act enacted
1969  Congress requires Environmental Impact Statements (EIS) for federal actions
1974  University of Arizona begins environmental impact studies for land exchange of 16 square miles of National Forest for Anamax
1977  Anamax abandons effort to exchange Forest land at Rosemont
1983  Anamax attempts to patent Coronado Forest land at Rosemont; patent is not issued
1992  ASARCO submits new patent applications at Rosemont
1994  Congress approves moratorium on mining land patent applications, Federal government issues patent to some of ASARCO’s claims
1995  ASARCO initiates new effort to obtain Forest land at Rosemont
1997  Pima County Board of Supervisors opposes ASARCO land exchange
1998  ASARCO withdraws land exchange effort
2005  Augusta Resource Corporation acquires the Rosemont property
2006  Augusta Resource submits mining plan of operation for the Rosemont Mine to US Forest Service on July 31, 2006; ADWR issues groundwater withdrawal permits near Sahuarita
2005  County request for validity exam of claims rejected by Forest Supervisor Derby
2007  County Board issues resolution opposing the Rosemont mine
2008  16,000 comments received during Forest Service’s scoping of issues
2009  Tohono O’odham Legislative Council resolves to oppose the mine
2011  Pima County denies Rosemont air quality permit
2012  State assumes jurisdiction of air quality permit process
2013  Final EIS (FEIS) issued by Forest Service
2014 Hudbay acquires Augusta to take control of Rosemont copper project

2016 Pima County & Flood Control District appeal state’s certification that a Clean Water Act permit would not degrade water quality. Ultimately, state statutes do not provide standing to County or Flood Control to appeal.

2016 Army Corps of Engineers refers Clean Water Act permit application to South Pacific Division with recommendation for denial

2017 Forest Service publishes decision approving the Rosemont Mine

2017 Center for Biodiversity and others file suit on USFWS’s actions regarding Endangered Species Act

2017 Save the Scenic Santa Ritas (SSSR) and others file suit on Forest Service’s action in relation to Clean Water Act and NEPA

2018 Yaqui, Hopi and Tohono O’odham challenge Forest Service’s decision and FEIS, based on violations of Organic Administration Act and National Environmental Policy Act (NEPA).

2019 Army Corps of Engineers approves Clean Water Act permit for Rosemont Mine based on an extraordinary review reducing the scope of its analysis

2019 SSSR and tribes file suit against Corps, based on violations of Clean Water Act and NEPA

2019 Federal District Court finds Forest Service ignored facts and impermissibly excluded alternatives that would have reduced impacts; Army Corps of Engineers suspends the Clean Water Act permit for the Rosemont mine

2021 Army Corps of Engineers finds that no jurisdiction exists at the mine site under the new Clean Water Act rule issued by previous Administration

2021 U.S. District Court decision finds the new Clean Water Act rule unlawful

2021 Arizona District Court restores the previous interpretation of Clean Water Act jurisdiction; EPA and Army Corps of Engineers renew efforts to clarify Clean Water Act applicability

2021 Hudbay submits Copper World reclamation proposal to AZ State Mine Inspector

2022 CAWCD grants Rosemont’s request to store CAP water in Pima Mine Road over City of Tucson’s opposition; City retains right of first refusal at the storage location.