



## COUNTY ADMINISTRATOR'S OFFICE

PIMA COUNTY GOVERNMENTAL CENTER  
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C.H. HUCKELBERRY  
County Administrator

April 17, 2019

The Honorable Ann Kirkpatrick  
US House of Representative, Arizona District 2  
309 Cannon House Office Building  
Washington, D.C. 20515

Re: **Rosemont Mine Approvals by the US Army Corps of Engineers and the US Forest Service**

Dear Congresswoman Kirkpatrick:

With the US Army Corps of Engineers (Corps) recent issuance of a Clean Water Act 404 permit and the US Forest Service Record of Decision authorizing the Mining Plan of Operations, the Rosemont Copper Project (Project) has obtained all its required federal permits. However, despite more than 10 years of significant investment of County resources to support a reasonable and proportionate outcome, these permits and authorizations fail to impose meaningful mitigation measures and do not establish a standard for "modern" or "sustainable" mining as was espoused by the Project proponent.

Unfortunately, this experience, as unsatisfying as it was, is just another disappointing case of a mining project receiving grossly preferential and undeserved treatment under the law, despite severe and long-lasting impacts on the region's natural and cultural resources and the potential degradation of the water supply to the surrounding community. I implore you to consider the specifics of the Rosemont Copper Project and do all within your power to:

- Investigate the Corps flip-flop decision to first deny and then approve the Project's 404 permit;
- Prevent the Project from moving forward until the Corps forthrightly addresses Project impacts;
- Lead a long over-due effort to overhaul this country's wholly inadequate mining regulations.

Below are more details on Pima County's efforts to add value to the federal approval processes, including requests for meaningful mitigation offsetting impacts to regional and national assets that were entirely feasible but yet unfulfilled, as well as legal inequities

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between how this type of mining project is treated under the law as compared to other, far less environmentally harmful activities.

**Pima County participated in good faith.**

Our efforts to seek meaningful mitigation in the event of federal approval began in October 2006 when we sent a letter to Augusta Resources, the Project's owner at the time, outlining the five most important performance criteria that this or any mining project must meet. These criteria were considered the minimum that must be done to adequately mitigate the Project's impacts. Augusta agreed to meet these performance criteria, which are discussed below.

In 2007, the US Forest Service invited Pima County and the Regional Flood Control District (RFCD) to participate as Cooperating Agencies in the development of an Environmental Impact Statement (EIS) for the Project. Our participation was logical considering that Pima County and the District own and manage conservation land downstream of the project area, and our staff has significant expertise with regard to the many resources likely to be impacted.

County and RFCD staff worked in good faith with the Forest Service and the Project owners to ensure accurate disclosure of impacts in the EIS. We reviewed technical work and contributed reams of technical data that would have otherwise been unavailable to the permitting agencies. County staff developed many alternative solutions and mitigation measures that would help the Project avoid, minimize, and mitigate its impacts with the expectation that this significant investment of County resources would be value-added and our input would be incorporated into the Project. Unfortunately, that is not what transpired. The substance of our input has been largely ignored by the permitting agencies.

**County's agreed-to performance criteria were ignored.**

Despite the Project owner's agreement to meet the five performance criteria outlined by the County in October 2006, all are inadequately provided for in the final project design:

***1. Adherence to County Conservation Policies. (Not met)***

Compliance with the County's Comprehensive Land Use Plan and Conservation Lands System requires mitigation for each acre of disturbance and that mitigation be provided largely within Pima County. In 2006, Project impacts triggered the need for 8,876 acres of mitigation. In 2014, the mitigation estimate increased to over 13,000 acres due to the increase in the Project impacts area. We provided both the Corps and the applicant information on lands in the Cienega watershed that were available. However, based on available information, the Corps required only 1,580 acres of mitigation, all of which are in a different watershed. There are no legal commitments to protect land owned by Hudbay that is near the mine

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site along Davidson Canyon or at Fullerton Ranch, and these would be far less than what is needed.

**2. *No impact to Water in the Cienega basin and Cienega Creek. (Not met)***

The Cienega basin, including Cienega Creek and its tributaries, is an incredibly important resource that provides drinking water for a portion of Pima County, supports several endangered species, and includes the nationally-recognized Las Cienegas National Conservation Area (LCNCA). Far from having no impact, the Final EIS acknowledges that the Project will greatly impact the Cienega Basin by reducing flows and groundwater levels, degrading water quality, and altering sediment input. The most disturbing fact is that the mine relies on pumped groundwater (from Sahuarita and the mine vicinity) and surface water diverted from the mine site, despite the availability of Central Arizona Project water.

**3. *Concurrent reclamation. (Unknown)***

Because the County contains a number of mine projects that have never been meaningfully reclaimed, the County asked that enforceable reclamation be provided concurrent to Project construction and operation, and that funds be provided at the start of the Project. The details of reclamation bonding and commitments have not yet been released to the public, but we remain concerned that the topsoil is inadequate to ensure that reclamation would be successful. The County has always suggested that partial pit backfilling to minimize the groundwater sink created by the pit would be beneficial to sustain the subsurface groundwater flows that contribute to downstream surface water flows and provide additional employment after mining.

**4. *Visual Impacts. (Not met)***

State Route 83, designated as a scenic highway, is located next to the Project site. The County asked that "every effort be made to make sure the mining pit and facilities are not visible from the highway." However, the alternative chosen in the Final EIS – the Barrel Alternative – actually *increases* the visibility of the tailings pile from the highway as compared to other alternatives and greatly devalues the scenic highway designation.

**5. *Environmental Enhancement Endowment. (Inadequate)***

The County asked the Project to contribute \$25 million to a fund for purchasing mitigation lands and funding other necessary mitigation measures that would be provided up-front or deposited in a pay-as-you-go account reserved exclusively for environmental enhancement. It appears the Project will be required to provide \$2 million for riparian ecosystem mitigation in the Cienega Basin and a separate endowment for management of the Sonoita Creek land; the funding is far too little and too uncertain.

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**Significant Impacts to Cienega basin and LCNCA were ignored and will not be mitigated.**

Most egregiously, the Project will likely cause significant and permanent impacts to the Cienega basin, including severe impacts to the LCNCA, a national treasure. These impacts were outlined by the Corps in a letter recommending denial of the Project's Clean Water Act Section 404 permit. In 2016, the Corps found that the Project (1) would cause or contribute to violations of state water quality standards; (2) would result in significant degradation of waters of the U.S. and contribute to the degradation of Outstanding Arizona Waters; (3) offers inadequate minimization and mitigation measures and monitoring efforts; and (4) would be contrary to the public interest.

Despite these significant concerns, in 2019, the Corps reversed course and approved the 404 permit based solely on a significant narrowing of the scope of analysis to only the effects of initial vegetation clearing and surficial grading, not the adverse impacts of the mine development and operations. In other words, the full scope and scale of impacts were not meaningfully addressed; they were simply eliminated from consideration.

Since 1986, the County and RFCD have worked to conserve natural resources and protect watershed function in the Cienega basin, with acquisition costs of around \$64 million. Pima County owns three ranches in the watershed that protect vital wildlife linkages identified by Arizona Game and Fish Department, and supported the creation of Las Cienegas National Conservation Area.

We worked closely with the Corps, the Forest Service, and the Project owner to identify mitigation lands and water rights that could be purchased in the Cienega watershed. However, because the Corps evaded any responsibility for impacts in this area, the principal mitigation for impacts to watercourses and water quality under the Corps permit is the "establishment of approximately 1,580 acres of new conservation area" along the Sonoita Creek in Santa Cruz County. Given that Sonoita Creek is not even in the same watershed as Cienega Creek, this will do nothing to mitigate the impacts of the Project, which will degrade and destroy Cienega basin resources, undoing our years of hard work and investment to protect this watershed, which flows into the Tucson basin and aquifer.

**Mines receive grossly inequitable treatment under the law.**

We are extremely proud of our conservation work in the Cienega basin and across Pima County, where we have invested significant resources into minimizing and mitigating the impacts of our own development activities as well as those of the private sector. We spent two decades developing our award-winning Multi-species Conservation Plan outlining our commitments to meaningful mitigation and in 2016 received a Section 10 Permit under the Endangered Species Act for our efforts. The precedent we set in complying with the Endangered Species Act is nationally recognized as a model for providing meaningful mitigation while not sacrificing economic development.

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Given our own experience in successfully complying with challenging federal laws, we strongly object to the grossly preferential and inequitable treatment this Project, and mining activities in general, receive under the law. Mining constitutes some of the most environmentally harmful activities allowed on public lands, yet it remains virtually unregulated. As an example, this Project is not even required to comply with local standards, ordinances, and policies that are necessary for Pima County's compliance with federal laws. Adding insult to injury, communities like Pima County are often stuck with the price-tag for cleaning up after this billion dollar industry, which, unlike almost all other types of development, is not required to meaningfully mitigate the impacts of its activities or even provide fair value for resources extracted from public lands. Why such a double standard in the application of federal law and why does the US allow such damage to occur with virtually no compensation?

We therefore strenuously oppose the approval of the Project without any meaningful mitigation being required to offset the very significant and permanent impacts it will inflict on our region and our community. It is clear that the Corps 404 permit should not have been issued without requiring the Project to mitigate the significant impacts the Corps itself identified in its initial denial of the 404 permit, and we hope this dubious decision will be closely examined by both Congress and the courts. We also strongly believe this Project should serve as a wakeup call for decision-makers to start regulating this industry in a manner commensurate to the threat it poses to communities like Pima County.

### **Recommendations**

We respectfully request that the Arizona Congressional Delegation investigate the Corps decision to approve the 404 permit after strongly recommending that it be denied. The Corps, or any federal permitting agency, should not be allowed to narrow the scope of its analysis to simply exclude the most severe impacts of a project from oversight; this violates both the spirit and the letter of the law and undermines the public trust in these agencies. We encourage the Arizona Congressional Delegation do everything in its power to prevent this Project from moving forward until the agency addresses the impacts of this Project in a meaningful manner.

We also ask that the Arizona Congressional Delegation take all necessary measures to impose further mitigation requirements on this Project to acquire 10,000 acres of land and water rights adjacent to Cienega Creek and Las Cienegas National Conservation Area as compensatory mitigation to offset the massive impacts this mine will cause to southern Arizona.

In an effort to rectify the legal inequities highlighted by this project, we also ask that the Arizona Congressional Delegation introduce legislation that requires federal agencies to comply with local standards, ordinances and policies that are necessary for local government compliance with federal laws.

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Finally, we ask that the Arizona Congressional Delegation lead the effort to overhaul this country's wholly inadequate mining regulations, which put communities, wildlife and water at great risk. It is clear that the permitting agencies and the applicant ignored our reasoned pleas for meaningful mitigation simply because they are allowed to under current law. This is simply not right, and it is long past time for this industry to be held accountable for its actions, just like the rest of us are.

The Board of Supervisors at a public meeting on April 16, 2019 passed and adopted the enclosed resolution opposing the Project and requested several mitigation actions.

We appreciate your consideration.

Sincerely,



C.H. Huckelberry  
County Administrator

CHH/mp



WHEREAS, Pima County and the Regional Flood Control District avoid and minimize impacts and provide meaningful mitigation commensurate with the impacts of their activities; and

WHEREAS, the proponent and the federal agencies have backslid on protecting the environment and the community in specific ways that resulted in more risk and less safety; and

WHEREAS, the proposed mine places undue costs and adverse impacts on the taxpayers of Pima County with few local tax benefits, and is therefore unacceptable;

NOW, THEREFORE, UPON MOTION DULY MADE, SECONDED AND CARRIED, BE IT RESOLVED THAT:

1. The Pima County Board of Supervisors reaffirms its 2007-15 resolution opposing the Rosemont mine;
2. The Board of Supervisors and Regional Flood Control District Board of the Directors (the Boards) direct the County Administrator and staff to:
  - a. Provide information as needed to document the County and District's continuing concerns about the impacts of the Rosemont mine as the project evolves;
  - b. Take all necessary measures to protect the health, safety and welfare of southern Arizonans using or enjoying County or District infrastructure affected by the mine;
  - c. Take all necessary measures to protect the health, safety and welfare of people using the air and water resources affected by the mine;
  - d. Take all necessary measures to protect the County and District conservation and Multi-species Conservation Plan mitigation lands that are affected by the mine.
3. The Board of Supervisors and Regional Flood Control District Board of the Directors (the Boards) request that the southern Arizona Congressional delegation including Representative Grijalva and Representative Kirkpatrick, as well as Senator McSally and Senator Sinema:
  - a. Introduce legislation that requires federal agencies to comply with local standards, ordinances, and policies that are necessary for the local government's compliance with federal laws, particularly when those local standards have been developed to comply with the requirements of existing federal laws.
  - b. Take all necessary measures to impose further mitigation requirements on the Rosemont mine proponent Hubday to acquire and protect 10,000 acres of land, including State Trust Lands, and water rights adjacent to Cienega Creek and Las Cienegas National Conservation Area as compensatory mitigation to offset the massive impacts this mine will cause to southern Arizona.
  - c. Reform grossly antiquated mining laws and regulations to protect public health, safety and welfare as well as the Nation's air, water and lands.
  - d. Impose a federal severance tax on metal mining occurring on federal lands.
4. Request Hubday convey acquired water rights in the Cienega Basin to Pima County or the Regional Flood Control District, including conveyance of the real property and the pertinent improvements of the Pantano Dam site.




**PASSED AND ADOPTED** by the Board of Supervisors of Pima County, Arizona, this 16<sup>th</sup> day of April 2019.



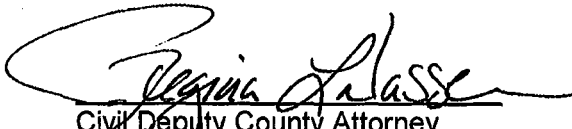
Chairman, Pima County Board of Supervisors

**APR 16 2019**

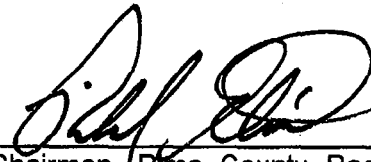
ATTEST:

  
Clerk of the Board

APPROVED AS TO FORM

  
Civil Deputy County Attorney  
**REGINA NASSEN**


**PASSED AND ADOPTED** by the Board of Directors of the Pima County Regional Flood Control District, this 16<sup>th</sup> day of April 2019.




Chairman, Pima County Regional Flood Control District Board of Directors

**APR 16 2019**

ATTEST:

  
Clerk of the Board

APPROVED AS TO FORM

  
Civil Deputy County Attorney  
**REGINA NASSEN**