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# MEMORANDUM

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Date: August 13, 2019

To: The Honorable Chairman and Members  
Pima County Board of Supervisors

From: C.H. Huckelberry  
County Administrator

A handwritten signature in black ink, appearing to read "CH", is written over the printed name "C.H. Huckelberry".

Re: **Rosemont Mine - Mineral Validity Exam**

In 2006, the County made a request to then US Forest Service Supervisor Jeanine Derby that the US Forest Service undertake a mineral validity analysis of the unpatented mining claims related to Rosemont Copper. This validity analysis was never completed and is one of the key issues cited by Federal Judge James A. Soto in recent court actions sending the Rosemont proposal back to the US Forest Service.

The County again, on September 1, 2009 formally requested the validity of the claims be examined. This time the request was made to then Secretary of Agriculture, Thomas Vilsack, who initially responded that "No decisions have been made with respect to issuing a record of decision for the proposed mine and none will be made until we have completed a thorough review of the...validity of claims..." However, a few months later Secretary Vilsack backtracked on this statement by stating that it was the Secretary of the Interior's responsibility to evaluate mining claims that "the USDA is working closely with the Department of the Interior to ensure that our interpretation of policy is consistent with current laws and regulations."

Again, on January 4, 2011, the County advised then US Forest Supervisor Jim Upchurch to undertake a validity exam of the Rosemont unpatented claims and that the analysis was appropriate since the Forest Service initiated a discretionary validity exam of the limestone/marble quarry located just north of Helvetia and concluded those claims were invalid. We highlighted the inconsistency in not conducting a validity analysis of Rosemont's claim.

Attached are the referenced letters from this time, which was early in the Rosemont permitting process. In addition to these letters, and at every opportunity during the formal Environmental Impact Statement review process, the County included similar requests to review the validity of the claims or to at least disclose the fact that the Forest Service had made a decision not to verify the validity. Unfortunately, the mineral validity analysis was never conducted.

## Attachments

c: Carmine DeBonis, Jr., Deputy County Administrator for Public Works  
Suzanne Shields, Director, Regional Flood Control District  
Linda Mayro, Director, Office of Sustainability and Conservation  
Ursula Nelson, Director, Department of Environmental Quality  
Julia Fonseca, Environmental Planning Manager, Office of Sustainability and Conservation  
Nicole Fyffe, Executive Assistant to the County Administrator



## COUNTY ADMINISTRATOR'S OFFICE

PIMA COUNTY GOVERNMENTAL CENTER  
130 W. CONGRESS, TUCSON, AZ 85701-1317  
(520) 740-8661 FAX (520) 740-8171

C. H. HUCKELBERRY  
County Administrator

December 19, 2006

Janine Derby, Forest Supervisor  
Coronado National Forest  
300 West Congress  
Tucson, Arizona 85701

**Re: Rosemont Mine Validity of Claims**

Dear Ms. Derby:

I wrote to you on October 6, 2006 regarding Pima County's concerns with the July 31, 2006 Rosemont mining plan of operations submitted by Augusta. It was my understanding that the Forest Service had found the draft to be insufficient and in need of more detail. Since then, in a letter dated November 28, 2006 to the Pima County Board of Supervisors, Jaime Sturgess stated that Augusta is working on a Comprehensive Plan of Operations that is scheduled for completion during the first quarter of 2007.

I am writing to you today because of statements that have been made questioning the validity of Augusta's unpatented mining claims on Forest Service land. It is my understanding that for a claim to be valid, the claim must be valuable. In order to prove that the claim is valuable, the claimant must be able to show that the mineral can be extracted, removed and marketed at a profit, after accounting for costs of compliance with all applicable Federal, State and local laws.

Per Augusta's July 31<sup>st</sup> Plan of Operations, and in previous mining plans regarding this property, the claimants have proposed using the unpatented Forest Service claims to dump waste rock created after extracting valuable copper and other minerals on adjacent private lands (patented mining claims). Claimants do not propose to extract, remove, or market the minerals associated with the Forest Service claims. In my opinion, this brings up the very obvious question of whether the Forest Service claims are valuable if claimants do not propose to improve them, but instead propose to use them as a dumping ground.

Janine Derby  
Rosemont Mine Validity of Claims  
December 19, 2006  
Page 2

It would seem to me that the Forest Service could save itself, tax payers, interested parties and the claimant much time and money by requiring claimant to submit information proving the validity of the mining claims prior to accepting the next draft Plan of Operations for review. If claimant cannot prove these claims are valuable, then the Forest Service should refuse to accept and review the Plan of Operations and request that the Department of Interior and Bureau of Land Management initiate a mineral contest action. Such a request by the Forest Service is well within the agency's authority.

Thank you for your continued assistance in this matter.

Sincerely,



C.H. Huckelberry  
County Administrator

CHH/dr

c: The Honorable Chairman and Members, Pima County Board of Supervisors  
The Honorable Congressman Raul Grijalva, United States Congress  
The Honorable Congresswoman Gabrielle Giffords, United States Congress  
Patrick Madigan, Tucson Field Office Manager, Bureau of Land Management  
Jamie Strugess, Augusta Resource Company



United States  
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Agriculture

Forest  
Service

Coronado National Forest  
Supervisor's Office

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File Code: 2810

Date: February 11, 2007

C. H. Huckelberry  
Pima County Administrator  
Pima County Administrator's Office  
130 W. Congress  
Tucson, AZ 85701-1317

Dear Mr. Huckelberry;

This is in response to your December 19, 2006 inquiry regarding the proposed Augusta Resource Corporation copper and molybdenum mine at Rosemont Junction. You suggested that the Coronado National Forest could challenge the validity of the corporation's mining claims. Your argument for claim validity challenge was based primarily on the fact that the company intends to use many of the claims for mill tailings and waste rock placement. I have received opinions on this topic from our Office of General Counsel and also from our Regional Geologist in Albuquerque.

Both opinions state that it is not common practice, nor is it Forest Service policy, to challenge mining claim validity, except when a) proposed operations are within an area withdrawn from mineral entry, b) when a patent application is filed, and c) when the agency deems that the proposed uses are not incidental to prospecting, mining, or processing operations. This last category includes such management concerns as illegal occupancy or use of mining claims for non-mining or non-mineral processing purposes. For operations proposed in accordance with our regulations, and where the above situations do not exist, there is no basis for pursuing a validity exam. The placement of waste rock and mill tailings on the Forest are considered to be activities connected to the mining and mineral processing per regulation 36CFR228 subpart A, and as such they are authorized activities regardless of whether they are on or off mining claims.

I appreciate your interest in protecting the environment. I have the same interest and will be giving particular attention to having an effective design for mine reclamation when we address the mine operating plan. Please feel free to contact Forest Geologist Beverley Everson at 388-8428 if you have further questions.

JEANINE A. DERBY  
Forest Supervisor





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C.H. HUCKELBERRY  
County Administrator

September 1, 2009

The Honorable Tom J. Vilsack, Secretary  
U.S. Department of Agriculture  
Jamie L. Whitten Federal Building RM 200-A  
12<sup>th</sup> & Jefferson Drive, SW  
Washington, DC 20250

Re: **Rosemont Mine**

Dear Secretary Vilsack:

The current memorandum of understanding (MOU) between the Coronado National Forest and Rosemont Copper (Attachment 1) is an abuse of the power and discretion of the U.S. Forest Service. Rosemont Copper is proposing to dump waste rock and tailings on National Forest land. We believe these proposed uses of National Forest land are based on invalid claims to the mineral estate of the Nation.

Rosemont Copper is proposing to dispose of mine waste and tailings on top of unpatented lode claims within National Forest (light beige color in Figure 1). Waste and tailings would be derived primarily from mining on their private lands, patented under the 1872 Mining Act.

We have repeatedly requested that the validity of the claims on Forest land be examined. The U.S. Forest Service has refused to request the examination of the claims. If the claims are invalid, then current basis for preparation of a draft Environmental Impact Statement (EIS) is flawed. The Coronado Forest Supervisor also believes that she does not have the legal right to choose a "no-action" mining alternative (Attachment 2) or alternatives that would restrict the waste and tailings to the private land.

Lode claims must be based on discovery of valuable mineral deposits. As evidence that Rosemont's claims are likely invalid, we note that neither Rosemont Copper nor previous mining companies have attempted to patent most of the area where the waste rock and tailings would be placed. In fact, some of the claims immediately adjacent to the patented land were unsuccessfully proposed for patenting. There is no new geological information that would lead one to believe that the waste disposal areas would qualify as valuable mineral deposits. Similarly, Rosemont's current mineral valuation estimates do not assign a value to "ore" below the proposed dumps.

The Honorable Tom J. Vilsack  
**Rosemont Mine**  
September 1, 2009  
Page 2

The previous owner of the Rosemont prospect, ASARCO, attempted to exchange land with the Forest Service to secure access for waste and tailings in the 1990's. During the conduct of their EIS for the ASARCO land exchange, the Coronado National Forest gave no reason to believe the mine had unchallenged access to use the lode claims for waste disposal. Subsequent to termination of that EIS process, Coronado National Forest adopted a Forest Plan that would be inconsistent with obliteration of the area by waste rock and tailings.

The current Forest Supervisor, by contrast, assumes free access to the Forest land for waste and tailings, without need for a land exchange. The Coronado National Forest's waiver of federal rights is an abuse of power afforded to the U.S. government through the Constitution's Property Clause, which says that "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States...."

U.S. Forest Service has entered into agreement with Rosemont Copper to produce an Environmental Impact Statement (EIS). The Forest's MOU with Rosemont was recently amended to require completion of the draft EIS by November 2009, before much of the information needed to inform alternatives analysis would be available, and without resolution of the validity issue.

We ask that you suspend the timeline for the EIS and request a validity examination for the Rosemont project. A request for validity examination is within the Forest Service's discretion. It would resolve the uncertain claims that Rosemont is making to disputed resources within the Coronado National Forest, and address a fairness issue that the public has identified through the scoping process. Once the validity examination has concluded, the MOU should be amended to allow the NEPA process to continue under new terms more favorable to the prosecution of Forest Service's duties and obligations.

Sincerely,



C.H. Huckelberry  
County Administrator

CHH/dr

#### Attachments

c: The Honorable Gabrielle Giffords, Member, United States House of Representatives  
The Honorable Raúl M. Grijalva, Member, United States House of Representatives  
The Honorable Chairman and Members, Pima County Board of Supervisors  
Jay Jensen, Deputy Under Secretary for Natural Resources & Environment  
Gail Kimbell, Chief of the Forest Service



United States Department of Agriculture

Office of the Secretary  
Washington, D.C. 20250

JAN 20 2010

Mr. C.H. Huckelberry  
County Administrator  
Pima County Governmental Center  
130 West Congress  
Tucson, Arizona 85701-1317

Dear County Administrator Huckelberry:

Thank you for your letter of September 1, 2009, regarding the memorandum of understanding (MOU) between Coronado National Forest and Rosemont Copper. I apologize for the delayed response, but it has allowed us to investigate the proposed actions firsthand.

As stated in your letter, the Coronado National Forest entered into a MOU with Rosemont Copper. The agreement allows articulation of the working arrangement whereby a third-party environmental contractor (Prime Consultant) will be chosen by the Forest Service, in consultation with the Proponent, to conduct an environmental analysis of the Rosemont Copper Project. This analysis serves as documentation of the Forest Service compliance with the National Environmental Policy Act (NEPA) of 1969.

As part of the NEPA process, the Forest Service is reviewing the issues surrounding the project and is examining both the proposed mine and a no-action alternative in its environmental impact statement. No decisions have been made with respect to issuing a record of decision for the proposed mine and none will be made until we have completed a thorough review of the proposed mine, the mine plane of operation, validity of claims, and any required mitigation.

As part of our ongoing review, Deputy Under Secretary for Natural Resources and Environment Jay Jensen toured the proposed mine area and attended town hall meetings with Congresswoman Giffords on October 24, 2009. The actions that the Forest Service has taken to date with respect to the proposed mine were reviewed. In addition, as part of this review, the proposed mine was examined in the context of the Department of Agriculture (USDA) regulations and any other applicable Federal statutes and regulations.

We need your continued engagement on this issue, and USDA looks forward to working with you and other relevant stakeholders as we address this proposed mine.

Again, thank you for writing.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Vilsack", written over a horizontal line.

Thomas J. Vilsack  
Secretary



## COUNTY ADMINISTRATOR'S OFFICE

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C.H. HUCKELBERRY  
County Administrator

March 25, 2010

The Honorable Tom J. Vilsack, Secretary  
U.S. Department of Agriculture  
1400 Independence Avenue S.W.  
Washington, DC 20250

Re: **Rosemont Mine**

Dear Secretary Vilsack:

Thank you for your January 20, 2010 letter regarding the Rosemont Mine proposed for the Santa Rita Mountains portion of the Coronado National Forest south of Tucson, Arizona. We also appreciated Jay Jensen's visit to this area last fall. We have been participating as a cooperating agency in the National Environmental Policy Act (NEPA) review process for the proposed mine. The draft Environmental Impact Statement (EIS) is scheduled to be released during the month of April.

We understood from your letter and Mr. Jensen's comments during his visit, that you would be reviewing several items before the release of the draft EIS, including (1) the validity of Rosemont Copper's unpatented claims, (2) whether it is legal to deposit waste rock on such claims, and (3) whether there is a legal basis for enabling the Forest Service Supervisor to select the no-action alternative, essentially denying the mine, in light of competing interests for the protection of Forest Service lands.

From a recent cooperating agency meeting, Forest Service staff stated that they have not had any direction to evaluate this mining proposal any differently than had been their previous interpretation. Does this mean that you've found the claims valid? Will the Forest Service assume the claims are available for waste disposal under their current status as lode claims? Do you uphold the narrow interpretation of the Forest Service Supervisors decision-making authority or are you still reviewing these issues?

We are also wishing to better understand the roles of the Department of Interior and Agriculture with regard to the decisions to be made. While it is clear that U.S. Bureau of Land Management (BLM) would have to make a decision with regard to any direct impacts

The Honorable Tom J. Vilsack  
**Rosemont Mine**  
March 25, 2010  
Page 2

on BLM land, we would like to know what if any additional responsibilities the Department of Interior might have.

We would appreciate a timely response since the draft EIS is due out next month. Thank you for your continued attention to this matter.

Sincerely,



C.H. Huckelberry  
County Administrator

CHH/dr

c: The Honorable Gabrielle Giffords, Member, United States House of Representatives  
The Honorable Raúl M. Grijalva, Member, United States House of Representatives  
The Honorable Chairman and Members, Pima County Board of Supervisors  
Jay Jensen, Deputy Under Secretary for Natural Resources & Environment  
Jeanine Derby, Forest Supervisor, Coronado National Forest



United States Department of Agriculture

Office of the Secretary  
Washington, D.C. 20250

**MAY 12 2010**

Mr. C.H. Huckelberry  
County Administrator  
Pima County Government Center  
130 West Congress  
Tucson, Arizona 85701-1317

Dear Mr. Huckelberry:

Thank you for your letter of March 25, 2010, regarding our review of the Forest Service policies and procedures related to the proposed Rosemont Copper Mine and Environmental Impact Statement.

The U. S. Department of Agriculture's (USDA) Forest Service continues to evaluate the mining proposal using currently available policies and regulations. The Forest Service's actions are continuing to be reviewed to ensure they are consistent with USDA regulations and any other applicable Federal statutes and regulations, including the 1872 mining law, which, as you know, curtails our decision space.

Some of the specific items you raised in your letter are currently being litigated, and we are unable to respond to your request. The evaluations of the mining claims prior to approval of the plan of operations and whether it is legal to deposit waste on those claims are interpretations associated with the mining laws and fall under the primary jurisdiction of the Secretary of the Interior. However, the USDA is working closely with the Department of the Interior to ensure that our interpretation of policy is consistent with current laws and regulations.

Again, thank you for writing and for your interest in the management of your national forests. Please continue your involvement in the environmental process as it proceeds.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Vilsack", written over a faint, larger version of the same signature.

Thomas J. Vilsack  
Secretary



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C.H. HUCKELBERRY  
County Administrator

January 4, 2011

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

**Re: Mineral Validity Exam – Rosemont Lands**

Dear Mr. Upchurch:

On May 28, 2010, your office provided a response to our Freedom of Information Act request regarding a mineral validity exam conducted by the Forest Service on the limestone/marble quarry located just north of Helvetia. The validity exam was conducted July 1972. It concluded "that the subject mining claims are invalid under the provisions of Public Law 167."

As far as we can determine, this validity exam was conducted at the discretion of the U.S. Forest Service. There is no evidence in the responses from either the Forest Service or the U.S. Bureau of Land Management that the validity exam was related to an effort by the mining company to patent the land or modify their operation. Nor was a mineral withdrawal being proposed. As far as can be ascertained from the records, the validity exam was initiated by the Coronado in response to citizen complaints.

In your new capacity as Forest Supervisor, I hope you will consider Pima County's request to initiate a mineral validity exam for the use of the Rosemont lands as waste disposal sites. Given your office has in the past conducted discretionary mineral validity exams for mines that are far smaller than the proposed Rosemont mine, I believe such an examination of facts would be appropriate.

I am aware it is not common practice for the Forest Service to challenge or contest the validity of mining claims and that the placement of waste and tailings on the Forest is

Mr. Jim Upchurch  
Re: Mineral Validity Exam – Rosemont Lands  
January 4, 2011  
Page 2

considered to be mining activity. However, you must also be aware that neither ASARCO nor its predecessors ever tried to patent the subject claims; they instead sought a land exchange to perfect their title to the waste disposal sites, which ultimately failed. History suggests and extant geology could confirm the lack of a mineral discovery on the lands proposed as dumping grounds.

Because the examination could have profound consequences for the range of alternatives and for your discretion as Forest Supervisor in the Rosemont National Environmental Policy Act (NEPA) process, we ask that you consider contesting the claims.

In addition, the geologist reported tremolite at the marble mine. Other reports have noted tremolite in the host rock in the Rosemont project area. Thus, I ask your office to consider the potential for asbestiform minerals to be released into the atmosphere. Only the fibrous forms of tremolite and several other minerals may contribute to asbestosis or other lung impairments; however, there has been no work, to my knowledge, to define the occurrence and risks of asbestiform minerals in the Rosemont NEPA process. Pima County would like to consider this information in relation to air quality permitting under the Clean Air Act. County staff is available to discuss potential methods of investigation.

Sincerely,



C.H. Huckelberry  
County Administrator

CHH/mjk

c: The Honorable Chairman and Members, Pima County Board of Supervisors  
Nicole Fyffe, Executive Assistant to the County Administrator  
Julia Fonseca, Environmental Planning Manager



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File Code: 2810

Date: February 11, 2007

C. H. Huckelberry  
Pima County Administrator  
Pima County Administrator's Office  
130 W. Congress  
Tucson, AZ 85701-1317

Dear Mr. Huckelberry;

This is in response to your December 19, 2006 inquiry regarding the proposed Augusta Resource Corporation copper and molybdenum mine at Rosemont Junction. You suggested that the Coronado National Forest could challenge the validity of the corporation's mining claims. Your argument for claim validity challenge was based primarily on the fact that the company intends to use many of the claims for mill tailings and waste rock placement. I have received opinions on this topic from our Office of General Counsel and also from our Regional Geologist in Albuquerque.

Both opinions state that it is not common practice, nor is it Forest Service policy, to challenge mining claim validity, except when a) proposed operations are within an area withdrawn from mineral entry, b) when a patent application is filed, and c) when the agency deems that the proposed uses are not incidental to prospecting, mining, or processing operations. This last category includes such management concerns as illegal occupancy or use of mining claims for non-mining or non-mineral processing purposes. For operations proposed in accordance with our regulations, and where the above situations do not exist, there is no basis for pursuing a validity exam. The placement of waste rock and mill tailings on the Forest are considered to be activities connected to the mining and mineral processing per regulation 36CFR228 subpart A, and as such they are authorized activities regardless of whether they are on or off mining claims.

I appreciate your interest in protecting the environment. I have the same interest and will be giving particular attention to having an effective design for mine reclamation when we address the mine operating plan. Please feel free to contact Forest Geologist Beverley Everson at 388-8428 if you have further questions.

JEANINE A. DERBY  
Forest Supervisor





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Forest  
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Deaf & Hearing Impaired 711

File Code: 1950/2810

Date: February 25, 2011

C. H. Huckelberry  
County Administrator  
Pima County  
130 W. Congress  
Tucson, AZ 85701

Dear Mr. Huckelberry;

This is in response to your January 4, 2011 letter to me requesting that I initiate a mineral exam to contest the validity of the Rosemont Copper Company claims. You suggest that I review past opinions on this matter to see if I have a different interpretation on this issue.

Please refer to Forest Supervisor Derby's February 11, 2007 response to your previous request to initiate a mineral exam on claims at Rosemont. I have reviewed the findings contained in this original response to you and I concur with the policy described in the February 11, 2007 letter. The reasoning follows agency direction and policy per Forest Service regulation at 36 CFR 228, Subpart A, and Section 2800 of the Forest Service Manual concerning administration of locatable minerals on Forest Service System lands.

I would add that contesting claim validity is not a tool that the Forest Service has historically used except in cases where mineral withdrawal has occurred as in wilderness designation or where the activity is not consistent with mining operations. In the case of the Rosemont Copper Project, a reasonable progression of mineral exploration and ore deposit development has taken place.

In order to assist you in obtaining the information that you've asked for on the occurrence of tremolite and other asbestiform minerals in the project area, I will request that Rosemont Copper Company provide that information to you directly.

Sincerely,

  
JIM UPCHURCH  
Forest Supervisor

