

ATTACHMENT C



DEPARTMENT OF THE ARMY
SOUTH PACIFIC DIVISION, U.S. ARMY CORPS OF ENGINEERS
Phillip Burton Federal Building
Post Office Box 36023
450 Golden Gate Avenue
SAN FRANCISCO, CALIFORNIA 94102

23 August 2019

Regulatory Division (SPL-2008-00816-MB)

Rosemont Copper Company
Attn: Ms. Katherine Ann Arnold, P.E.
5255 East Williams Circle, Suite 1065
Tucson, Arizona 85711
kathy.arnold@hudbayminerals.com

NOTICE OF PERMIT SUSPENSION

Dear Ms. Arnold:

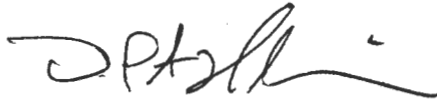
I am writing to inform you that I am suspending your Department of the Army (DA) permit, issued on March 8, 2019, for the Rosemont Copper project (SPL-2008-00816-MB). This suspension is effective immediately. The permit authorized the permanent and temporary discharge of fill material into 48.48 acres of waters of the U.S. through clearing, grubbing, and grading activities on the Rosemont Mine site, construction of off-site roads and utility lines, and construction of compensatory mitigation at the Sonoita Creek Ranch/Rail X Ranch site, Gunsight Pass stock tank, McCleary Canyon stock tank, Rosemont Crest stock tank, and Barrel Canyon East stock tank. The project areas are located in Pima and Santa Cruz Counties, Arizona.

The U.S. Forest Service (USFS), as the lead federal agency for compliance with the National Environmental Policy Act, prepared an Environmental Impact Statement (EIS) for the proposed action, with the U.S. Army of Corps of Engineers (Corps) as a cooperating agency. Within our March 8, 2019, Record of Decision for the project, the Corps adopted the EIS prepared by the USFS. As you know, on July 31, 2019, the U.S. District Court for the District of Arizona vacated and remanded the Final EIS prepared by the USFS. Because the Corps relied on the Final EIS in approving the DA permit, I have determined it is in the public interest to suspend the permit in accordance with our regulations at 33 C.F.R. § 325.7(c). You are not authorized to discharge dredged or fill materials in waters of the U.S.

You may request a meeting with me and/or a public hearing within 10 days of receipt of this notice of suspension to present information in this matter. If a public hearing is requested, normal procedures of 33 C.F.R. Part 327 will be followed. In addition, while the permit is suspended, the Corps will not make any determinations on requests for approvals related to the permit, to include the proposed financial assurance and restrictive covenant. Any future actions to reinstate, modify, or revoke the permit will be conducted in accordance with the procedures found in 33 CFR § 325.7.

If you have any questions about this decision, please contact Wade Eakle, Regulatory Program Manager for the South Pacific Division, at telephone (415) 503-6577 or by email at Wade.L.Eakle@usace.army.mil.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Peter Helmlinger', with a stylized flourish at the end.

D. Peter Helmlinger, P.E.
Brigadier General, USA
Division Commander,
Northwestern Division

Copy Furnished:

Mr. Kerwin Dewberry, Forest Supervisor, United States Forest Service, Coronado National Forest, 300 West Congress St., Tucson, AZ 85701

Mr. Jeffery A. Humphrey, Field Supervisor, United States Fish and Wildlife Service, Arizona Ecological Services Office, 9828 North 31st Avenue, Suite C3, Phoenix, AZ 85051

Mr. Michael Stoker, Regional Administrator, United States Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105

ATTACHMENT D



April 28, 2022

SENT VIA FEDERAL EXPRESS

Tori White
Chief, Operations and Regulatory
U.S. Army Corps of Engineers, South Pacific Division
Phillip Burton Federal Building
450 Golden Gate Avenue
San Francisco, California 94102

RE: Rosemont Copper Company Section 404 Permit, Corps Permit No. SPL-2008-0816-MB

Dear Ms. White:

On behalf of Rosemont Copper Company, I hereby surrender the above-referenced Section 404 permit. The permit was issued by the South Pacific Division on March 8, 2019 but has been suspended since August 23, 2019. No work authorized by the permit has been conducted.

Please do not hesitate to reach out to me if you have any questions about Hudbay's Arizona projects.

Sincerely,

A handwritten signature in black ink, appearing to be "J. Del Rio", with a long horizontal stroke extending to the right.

Javier Del Rio
Vice President, South America and USA

ATTACHMENT E



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
SOUTH PACIFIC DIVISION
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102

May 4, 2022

SUBJECT: Rosemont Copper Mine

Javier Del Rio
Rosemont Copper Company
5255 E. Williams Circle Suite 1065
Tucson, Arizona 85711

Dear Mr. Del Rio:

I am writing to acknowledge receipt of your letter dated April 28, 2022, regarding "surrender" of the Department of the Army permit (DA), issued to Rosemont Copper Company (Rosemont) associated with the Rosemont Copper Mine project (SPL-2008-00816-MB). The DA permit authorized Rosemont to permanently and temporarily discharge fill material into 48.48 acres of waters of the United States through clearing, grubbing, and grading activities on the Rosemont Mine site, construction of off-site roads and utility lines, and construction of compensatory mitigation at the Sonoita Creek Ranch/Rail X Ranch site, Gunsight Pass stock tank, McCleary Canyon stock tank, Rosemont Crest stock tank, and Barrell Canyon East stock tank, in Pima and Santa Cruz Counties, Arizona.

While any permittee has the option to not proceed with activities authorized under a DA permit, there is not a regulatory process to "surrender" a DA permit. Instead, the USACE regulations that govern revocation of DA permits are found at 33 C.F.R. § 325.7. Those regulations provide in pertinent part that the "district engineer may reevaluate the circumstances and conditions of any permit, . . . at the request of the permittee . . . , and initiate action to modify, suspend, or revoke a permit as may be made necessary by considerations of the public interest." 33 C.F.R. § 325.7(a). "Among the [public interest] factors to be considered are the extent of the permittee's compliance with the terms and conditions of the permit; whether or not circumstances relating to the authorized activity have changed since the permit was issued or extended, and the continuing adequacy of or need for the permit conditions; any significant objections to the authorized activity which were not earlier considered; revisions to applicable statutory and/or regulatory authorities; and the extent to which modification, suspension, or other action would adversely affect plans, investments and actions the permittee has reasonably made or taken in reliance on the permit." *Id.*

The South Pacific Division Commander suspended the DA permit on March 8, 2019. Following a permit suspension, the authority making the decision may decide to reinstate, modify, or revoke the permit. See 33 C.F.R. § 325.7. No decision has yet been made to reinstate, modify, or revoke the DA permit. The DA permit remains suspended until any

such final decision. Accordingly, USACE views your letter as a request to revoke the DA permit, and will process Rosemont's request to "surrender" the DA permit under 33 C.F.R. § 325.7(d).

If you have any questions about revocation of a DA permit, I can be reached at Tori.K.White@usace.army.mil or (415) 503-6530.

Sincerely,

Tori K. White

Tori K. White
Chief, Operations and Regulatory

Copy Furnished:

Matt Bingham, Hudbay Minerals, Inc., 5255 E. Williams Circle Suite 1065,
Tucson, Arizona 85711

ATTACHMENT F



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
SOUTH PACIFIC DIVISION
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102

May 4, 2022

SUBJECT: Rosemont Copper Mine

Javier Del Rio
Rosemont Copper Company
5255 E. Williams Circle Suite 1065
Tucson, Arizona 85711

Dear Mr. Del Rio:

I am writing to acknowledge receipt of your letter dated April 28, 2022, regarding "surrender" of the Department of the Army permit (DA), issued to Rosemont Copper Company (Rosemont) associated with the Rosemont Copper Mine project (SPL-2008-00816-MB). The DA permit authorized Rosemont to permanently and temporarily discharge fill material into 48.48 acres of waters of the United States through clearing, grubbing, and grading activities on the Rosemont Mine site, construction of off-site roads and utility lines, and construction of compensatory mitigation at the Sonoita Creek Ranch/Rail X Ranch site, Gunsight Pass stock tank, McCleary Canyon stock tank, Rosemont Crest stock tank, and Barrell Canyon East stock tank, in Pima and Santa Cruz Counties, Arizona.

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The South Pacific Division Commander suspended the DA permit on March 8, 2019. Following a permit suspension, the authority making the decision may decide to reinstate, modify, or revoke the permit. See 33 C.F.R. § 325.7. No decision has yet been made to reinstate, modify, or revoke the DA permit. The DA permit remains suspended until any

such final decision. Accordingly, USACE views your letter as a request to revoke the DA permit, and will process Rosemont's request to "surrender" the DA permit under 33 C.F.R. § 325.7(d).

If you have any questions about revocation of a DA permit, I can be reached at Tori.K.White@usace.army.mil or (415) 503-6530.

Sincerely,

Tori K. White

Tori K. White
Chief, Operations and Regulatory

Copy Furnished:

Matt Bingham, Hudbay Minerals, Inc., 5255 E. Williams Circle Suite 1065,
Tucson, Arizona 85711

ATTACHMENT G



July 27, 2022

Sent Via E-Mail and Regular Mail

Tori K. White
Chief, Operations and Regulatory
U.S. Army Corps of Engineers
South Pacific Division
Phillip Burton Federal Building
450 Golden Gate Avenue
San Francisco, California 94102

RE: Rosemont Copper Company; Section 404 Permit No. SPL-2008-00816-MB

Dear Ms. White:

By letter dated April 28, 2022, Rosemont Copper Company notified the USACE South Pacific Division that Rosemont had surrendered Section 404 Permit No. SPL-2008-00816-MB (the "Permit"). Rosemont also advised USACE that no work authorized by the Permit had been conducted (as a consequence of certain litigation and the suspension of the Permit).

By letter dated May 4, 2022, you acknowledged receiving Rosemont's April 28 letter, but went on to indicate that there was no "regulatory process" for surrendering an unused Section 404 permit. You stated that USACE instead viewed Rosemont's surrender of the Permit as a request for revocation of the Permit under the agency's regulations that govern permit revocation. Subsequently, by letter dated June 3, 2022, you confirmed the agency's position, and indicated that the agency was continuing with the permit revocation process.

In the meantime, the status of the Permit was placed directly at issue in *Save the Scenic Santa Ritas v. U.S. Army Corps of Engineers*, No. 4:19-cv-177 (D. Ariz.). As you know, the plaintiffs in that consolidated case were challenging the validity of the Permit. In the latest round of proceedings, U. S. District Judge James Soto dismissed the plaintiffs' claims on mootness grounds because Rosemont had surrendered the Permit. Notably, Judge Soto considered and rejected the plaintiffs' argument that Rosemont was not able to surrender the Permit because USACE has no regulatory process explicitly governing permit surrender. *Save the Scenic Santa Ritas, supra*, Order at 7-8 (May 23, 2022) ECF No. 160 (stating it would be "illogical to read the [USACE's] regulations such that they would prevent a permittee from surrendering its own permit"). That determination is final and binding on the parties to the litigation, including USACE.

5255 East Williams Circle
Suite 1065
Tucson, Arizona 85711
United States
tel 520 495-3500
hudbayminerals.com

Given Judge Soto's ruling confirming Rosemont's surrender of the Permit, Rosemont's position is that the Permit no longer exists. Consequently, Rosemont is not bound by the Permit in any way and is no longer committed to avoiding the areas covered by the (suspended) Permit, as previously requested by the USACE.

Even though the Permit is no longer in existence, we understand that USACE may continue with its permit revocation process. Rosemont has always worked cooperatively with USACE, and we will continue to provide information needed for the revocation process, as requested by the agency. We want to make sure, however, that USACE understands that Rosemont regards the permit revocation process as unnecessary in light of the events summarized above.

Pease feel free contact me if you have any questions or would like to discuss this letter in greater detail.

Sincerely,



Javier Del Rio
Vice President, South America and USA

cc. Col. Julie A. Balten, Commanding, USACE Los Angeles District

ATTACHMENT H



September 23, 2022

Colonel Antoinette R. Gant
South Pacific Division, U.S. Army Corps of Engineers
450 Golden Gate Avenue
San Francisco, CA 94102-3661

Re: Request for Government-to-Government Consultation

Dear Colonel Gant:

The Tohono O'odham Nation, Pascua Yaqui Tribe, and Hopi Tribe (collectively, the "Tribes") received your offer to engage in government-to-government consultation regarding Hudbay Mineral, Inc.'s ("Hudbay's") suspended Clean Water Act Section 404 permit for the Rosemont mine. The Tribes also received a request from Colonel Balten to consult with the Los Angeles District regarding the approved jurisdictional determinations (AJDs) improperly issued to Hudbay in 2021.¹ We agree that consultation is essential on both issues given the severe, irreversible, and irretrievable impacts of Hudbay's expanded mine, known as the Copper World Complex, on environmental and cultural resources.

The Tribes propose a two-step process that allows for a comprehensive, meaningful, and informed consultation. First, the Tribes propose consultation with the Los Angeles District on a new jurisdictional determination for Hudbay's expanded mining operation. Second, once the Los Angeles District delineates the extent of jurisdictional waters at the Copper World Complex, the Tribes can meaningfully consult with you on the question of whether to revoke, modify, or deny Hudbay's Clean Water Act Section 404 permit.

In the meantime, the Corps should not revoke the suspended permit, which provides crucial safeguards for our Nation's waters and cultural resources. By signing the permit, Hudbay agreed that there are jurisdictional waters at the Rosemont mine site; it cannot dredge, fill, or discharge any pollutants into those waters while the permit remains suspended. The permit should therefore remain in place, albeit suspended, until the Corps and Tribes can engage in the requisite consultation.

Please feel free to reach out with any questions. You can reach me by email at sgillespie@earthjustice.org or by phone at 303-996-9616.

Sincerely,
/s/ Stuart Gillespie
Stuart C. Gillespie

Cc: Tom Cavanaugh, Regulatory Program Manager, thomas.j.cavanaugh@usace.army.mil

¹ See, e.g., Letter from Colonel Balten, Commanding Officer Los Angeles District, to Chairman Peter Yucupicio, Pascua Yaqui Tribe (Sept. 6, 2022).

ATTACHMENT I



Via Email

March 3, 2023

Brigadier General Antoinette Gant
U.S. Army Corps of Engineers
South Pacific Division
Phillip Burton Federal Building
450 Golder Gate Ave.
San Francisco, CA 94102
Antoinette.r.gant@usace.army.mil

Colonel Julie A. Balten
U.S. Army Corps of Engineers
Los Angeles District
915 Wilshire Boulevard, Suite 1109
Los Angeles, CA 85634
Julie.a.balten@usace.army.mil

Re: Permit Decision and Jurisdictional Determination Regarding the Rosemont Copper World Complex

Dear Brigadier General Gant and Colonel Balten:

The Tohono O'odham Nation, Pascua Yaqui Tribe, and Hopi Tribe (collectively, the Tribes) thank you again for engaging in government-to-government consultations on January 9 and February 1 related to Hudbay's suspended 404 permit and continued ground-clearing activities in the Santa Rita Mountains. As discussed during the consultations, Hudbay has dramatically expanded its mine project to encompass three additional open pits on the west side of mountains and renamed the project "the Copper World Complex," despite purportedly asking the Corps to revoke the 404 permit. Given the significantly increased scope of the project, including fill of jurisdictional waters, the Corps should interpret Hudbay's Copper World Complex proposal as a new application for a section 404 permit under 33 C.F.R. § 325.2. In connection with the new permit application, the Corps must issue a new jurisdictional determination for the entire project site.

However, if the Corps does not determine that Hudbay's Copper World Complex proposal has significantly increased the scope of the mining project, the Corps should refrain from deciding on Hudbay's request to revoke the suspended 404 permit until both the Corps and EPA have completed their jurisdictional analyses for waters across the project site. By signing the suspended permit, Hudbay agreed that the waters throughout the project site are jurisdictional waters of the United States (WOTUS) and, as a result, is prohibited from challenging the status of those waters. Hastily revoking the suspended 404 permit would also give Hudbay a pass for its continued illegal fill activities in the face of multiple Corps orders to stop work. Moreover, both agencies are in the process of reviewing extensive evidence demonstrating that the desert streams on both the east and west sides of the Santa Ritas are jurisdictional waters of the United States (WOTUS). In the meantime, the suspended 404 permit provides some necessary protections for the Tribes, as it is an undertaking that triggers National Historic Preservation Act (NHPA) requirements to consult and protect tribal resources in the area.

The Tribes again urge the Corps to take immediate action to preserve the status quo while the agencies continue to analyze the waters throughout the project area and while the Corps continues to evaluate suspended 404 permit. Hudbay has already graded and filled extensive swaths of lands and waters throughout the Copper World Complex. Unless the Corps acts swiftly and decisively, Hudbay will continue to grade and fill waters, running out the clock on the agencies.

I. The Corps Should Interpret Hudbay’s Expanded Copper World Complex Proposal as a New Application for a 404 Permit Covering the Entire Project Site.

The Corps is currently determining whether to revoke, modify, or reissue the suspended section 404 permit for the Rosemont Mine, in accordance with 33 C.F.R. § 325.7. However, that provision provides that “[s]ignificant increases in scope of a permitted activity will be processed as new applications for permits in accordance with § 325.2 . . . and not as modifications under this section.” *Id.* § 325.7(a). Because Hudbay has dramatically expanded the scope of its original mine project, the Corps should interpret the company’s revised Copper World Complex proposal as a new application for a section 404 permit. The Corps should then issue a new AJD covering the entire project site in connection with the permit application.

A. Hudbay Has Significantly Increased the Geographic Scope of Its Proposed Project and the Resulting Environmental Impacts.

As explained in letters and during our consultation meetings, Hudbay has expanded its mining operations—now the “Copper World Complex”—to encompass both its mining activities on the west side of the Santa Rita Mountains and its Rosemont Mine project on the east side of the mountains. Hudbay has set forth this new mining plan in an Preliminary Economic Assessment it issued in May 2022.¹

The Copper World Complex now consists of four open pit mines, “include[ing] the recently discovered Copper World deposits along with the [original] Rosemont deposit.”² The three “Copper World” pits—the Peach-Elgin, West, and Broadtop Butte pits—would measure 5,600 ft on average in diameters with an average depth of 520 ft, while the Rosemont pit would measure approximately 8,200 ft in diameter and have a depth of approximately 2,250 ft.³ As a result, Hudbay has dramatically increased the project footprint, nearly doubling the geographic area covered from the original Rosemont Mine. It would also create approximately 2.4 billion tons of mine waste, up from 1.8 billion tons for the original Rosemont Mine proposal.⁴

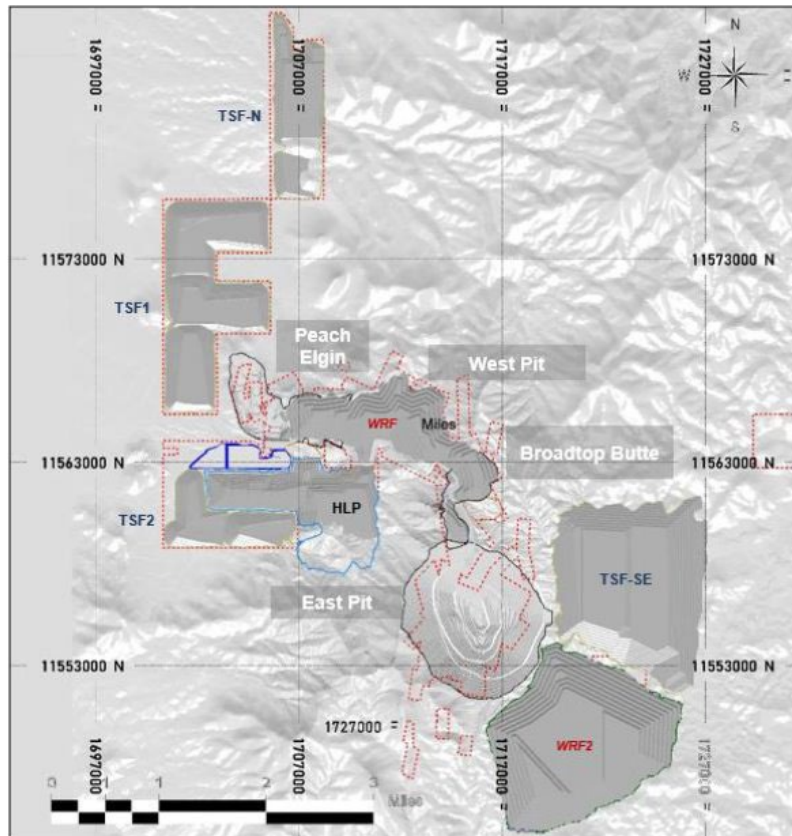
¹ Hudbay Minerals, Inc., Preliminary Economic Assessment: Copper World Complex, Pima County, Arizona USA (2022) [hereinafter “Copper World PEA”]. The Tribes have previously provided the Corps a copy of the Copper World PEA.

² Copper World PEA at 1-1. Hudbay refers to the original Rosemont pit as the “East pit” in its PEA. *Id.*

³ *Id.* at 1-10.

⁴ *Id.* at 1-10.

The expanded Copper World Project further includes “processing infrastructure that is fundamentally different from” its originally proposed Rosemont Mine project.⁵ Under this revised plan, Hudbay would construct three tailings facilities for conventional tailings deposition and heap leaching with a total capacity of 355 million tons.⁶ Hudbay would also construct one tailings facility on the east side for dry stack tailings with a capacity sufficient to store 90,000 tons per day for the rest of the project life.⁷ In addition to the tailings and heap leach facilities, Hudbay plans to construct two waste rock facilities—one on each side of the mountains. *Id.* Hudbay also plans to construct a sulfuric-acid plant on the west side of mountains to process sulfuric-acid by-product.⁸ Below is a depiction of Hudbay’s expanded Copper World Complex:



Hudbay has, thus, significantly increased the scope of the mine project and fill activities covered by the suspended 404 permit. First, the project footprint for the Copper World Complex has approximately doubled from the footprint for the original Rosemont Mine project. As result, Hudbay’s construction and development of the mine would impact a significantly larger amount of jurisdictional waters, dramatically increasing the reach of the planned fill activity.⁹ Indeed, as

⁵ *Id.* at 1-2.

⁶ *Id.* at 1-17, 1-20.

⁷ *Id.* at 1-17.

⁸ *Id.* at 1-8.

⁹ Because Hudbay incorrectly claims that a 404 permit is not required for its fill activity, Letter from Javier Del Rio, Vice President, S. Am. And USA, Copper World, Inc., to Tori K. White, Operations and Regul. Chief, S. Pac. Div., U.S. Army Corps Eng’rs at 1 (Jan. 31, 2023)

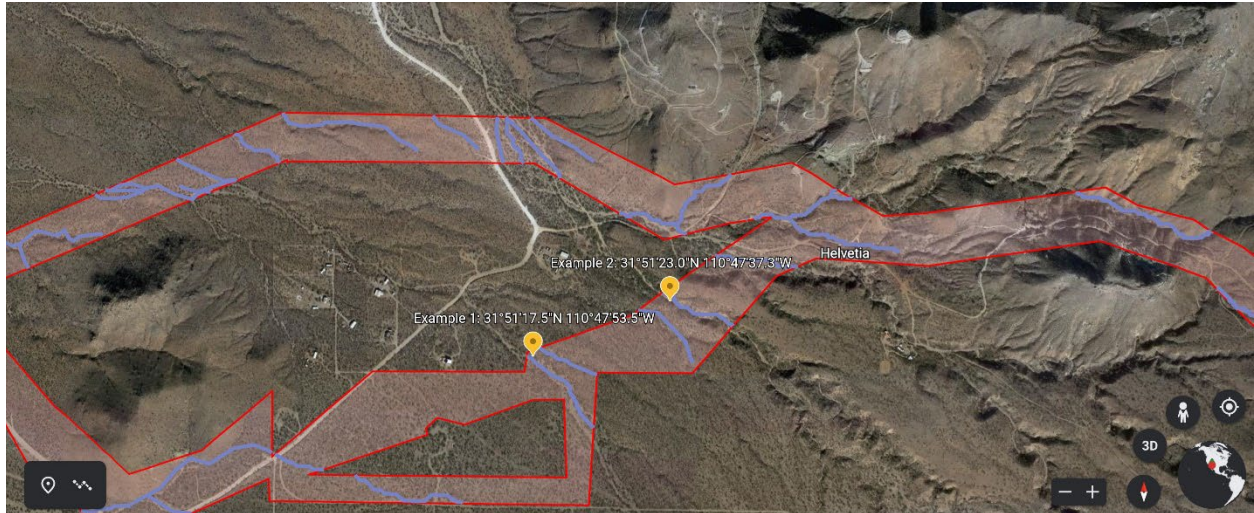
the Corps is aware, Hudbay has already begun extensive ground-clearing and fill activities on both the east and west sides of the mountains, as shown in the figures below.

Copper World Complex: West Side in the Utility Corridor



These berms obstruct jurisdictional waters in the utility corridor, as depicted in the Google map below which details the location of this photo.

[hereinafter “Jan. 31, 2023 Letter From Hudbay”], it has not delineated the total amount of waters that would be impacted by the expanded Copper World Complex.

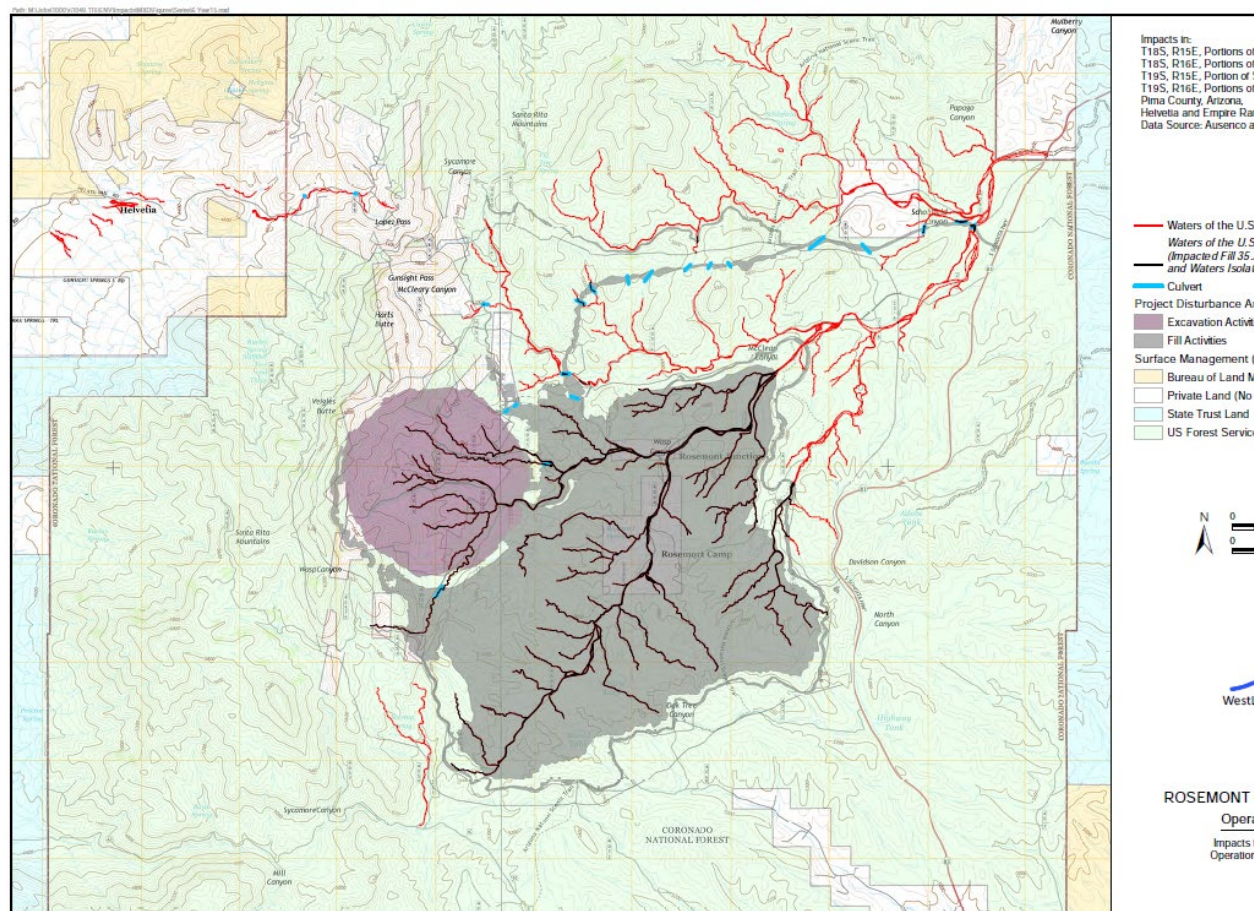


Hudbay has also expanded operations on the east side, descending into the Rosemont pit.

Copper World Complex: East Side in the Rosemont Pit



This area on the east side of the mountains is covered by a network of jurisdictional waters, as identified in the suspended 404 permit.



Despite the fact that the Corps has issued multiple stop-work orders, Hudbay has informed the agency that it intends to continue ground-clearing and fill activities in areas covered by the permit.¹⁰

Second, construction and development of the Copper World Complex will have much more severe impacts on the environment beyond the loss of waters from additional fill. With the significant expansion of the project to encompass three additional mine pits, Hudbay has nearly doubled the amount of toxic waste rock and tailings it plans to excavate and dump on the surrounding ground surface. This excavated material would be laden with toxic heavy metals,

¹⁰ Jan. 31, 2023 Letter From Hudbay at 2; Rosemont Copper Co., Response to Request for Information, EPA Docket No. CWA-308-9-22-032 at 13-14 (Sept. 30, 2022) (“Rosemont surrendered the Section 404 permit on April 28, 2022, and, after the district court confirmed that the surrender was effective, notified the Corp on July 27, 2022 that it would no longer avoid the washes covered by the permit. Work in those areas commenced one week later, on August 3, 2022.”) [hereinafter “Copper World EPA RFI Response”].

which would runoff into downstream waters and degrade water quality.¹¹ With the addition of three pits, Hudbay would also have to conduct additional dewatering for each pit during mining.¹² Hudbay further plans to use heap leaching to process mine tailings on the west side of the mountains and to build a sulfuric acid plant to process sulfuric acid by-product. However, the Forest Service rejected the use of heap leaching for the original Rosemont Mine because, among other things, it requires the use of highly-toxic sulfuric acid and poses significantly greater risk of groundwater contamination.¹³

Given the much larger footprint, the additional fill activity required, and the much more severe environmental impacts to result from of the new Copper World Complex, the Corps should consider Hudbay's plans to develop the Copper World Complex as a new application for a 404 permit under 33 C.F.R. § 325.2.

B. The Corps Must Issue A New Jurisdictional Determination Covering Waters Throughout the Entire Copper World Complex.

In assessing Hudbay's new application for a 404 permit under 33 C.F.R. § 325.2, the Corps has to determine the effect of the proposed project on the public interest, including conformity with the 404(b)(1) guidelines.¹⁴ To determine the effects of Hudbay's proposed project, the Corps must first issue a new jurisdictional determination that accurately delineates the waters across the entire Copper World Complex site that would be impacted by Hudbay's mine activities.

The Corps cannot rely on the existing AJDs for the Rosemont Mine project to accurately delineate jurisdictional waters. First, as noted above, the geographic scope of the Copper World Complex is significantly larger than for the original Rosemont Mine. The existing AJDs thus do not cover the vast majority of Hudbay's expanded mine project. Indeed, given the dramatic alterations in Hudbay's mining plans, the AJDs were issued for a project that no longer exists.

Second, the Corps has unequivocally stated that it cannot and will not rely on jurisdictional determinations issued under the now-vacated Navigable Waters Protection Rule (NWPR) to support any permit decisions, whether they be to issue a new permit or revoke a suspended permit. Shortly after the District of Arizona first vacated the NWPR, the Corps publicly announced that it "will not rely on an AJD issued under the NWPR . . . in making a new

¹¹ Letter from Nancy Woo, Assoc. Dir., Water Div., U.S. Env'tl. Prot. Agency, to Edwin S. Townsley, Operations and Regulatory Div. Chief, S. Pac. Div., U.S. Army Corps of Eng'rs, Environmental Consequences of the Proposed Rosemont Copper Mine: Significant Degradation to Waters of the United States at 14-16 (Nov. 30, 2017) (discussing significant adverse effects of the waste rock dumps proposed for the original, and much smaller, Rosemont Mine).

¹² Copper World PEA at 20-176 to 20-177.

¹³ See, e.g., U.S. Forest Serv., Record of Decision: Rosemont Copper Project and Amendment of the Coronado Land and Resource Management Plan at 20-21 (2017).

¹⁴ 33 C.F.R. § 352.2(a)(6) (requiring the district engineer to set forth their views on the effects of the proposed work when determining whether or not to grant an application for a 404 permit). The 404(b)(1) Guidelines are set forth at 40 C.F.R., Pt. 230.

permit decision.”¹⁵ And just the last month, the Corps, along with EPA, again stated in the preamble for the revised “waters of the United States” rule that NWPR AJDs “may not reliably state the presence, absence, or limits of ‘waters of the United States’ on a parcel and will not be relied upon by the Corps in making new permit decisions.”¹⁶ The Corps cannot therefore rely on the AJDs to issue a new permit (or revoke the suspended permit); it must prepare new ones.

Moreover, the Corps has ample available information it can use to issue a new jurisdictional determination for the waters throughout the entire Copper World Complex. As discussed during the consultation meetings, the Tribes commissioned a report from Dr. Mark Murphy that demonstrates that the desert washes covering the Copper World area on the west side of the Santa Rita mountains have a significant hydrological, biological, and chemical nexus with the downstream traditionally navigable section of the Santa Cruz River.¹⁷ Hudbay itself also acknowledged that there are over 100 acres of jurisdictional waters on the east side of the mountains within the area covered by the original Rosemont Mine in its preliminary jurisdictional determination for the suspended 404 permit.¹⁸ And EPA provided a detailed analysis showing that, even under the NWPR, there are jurisdictional intermittent waters on the east side of the mountains.¹⁹

II. The Corps Should Not Decide Whether to Revoke, Modify, or Reissue the Suspended 404 Permit Until the Corps and EPA Complete Their Jurisdictional Analyses.

As discussed above, the Corps should determine that Hudbay’s revised Copper World Complex has significantly expanded the scope of the company’s proposed project and fill activities and interpret Hudbay’s plans as a new application for a 404 permit. However, if the Corps does not find that Hudbay has significantly increased the scope of its planned activities,

¹⁵ Press Release, U.S. Army Corps Eng’rs, Navigable Water Protection Rule Vacatur (Jan. 5, 2022) (further stating that “[t]he Corps will make new permit decisions pursuant to the currently applicable regulatory regime (i.e., the pre-2015 regulatory regime).”) <https://www.usace.army.mil/Media/Announcements/Article/2888988/5-january-2022-navigable-waters-protection-rule-vacatur/>.

¹⁶ Revised Definition of “Waters of the United States,” 88 Fed. Reg. 3004, 3136 (Jan. 18, 2023).

¹⁷ Dr. T. Murphy, Copper World Project Significant Nexus Analysis (Dec. 2022).

¹⁸ WestLand Resources, Inc., Preliminary Jurisdictional Determination: Santa Rita Road Waterline for the Rosemont Project, Pima County, Arizona (Mar. 1, 2010) [hereinafter “Utility Corridor PJD”]; Marjorie E. Blaine, Sr. Project Manager, Ariz. Branch, Regul. Div., U.S. Army Corps Eng’rs, Preliminary Jurisdictional Determination Regarding the Presence of Geographic Jurisdiction (Nov. 1, 2020) [hereinafter “Rosemont PJD”]. By signing the suspended 404 permit, Hudbay agreed that the ephemeral streams covered by the permit “are jurisdictional waters. . . preclud[ing] any challenge to such jurisdiction . . . in any Federal court.” Utility Corridor PJD at PDF 47; Rosemont PJD at PDF 4.

¹⁹ See Memorandum from Robert A. Leidy, Region 9 Wetlands Off., U.S. Env’t Prot. Agency, EPA Review of Los Angeles Corps District Memorandum for Record (March 24, 2021), Approved Jurisdictional Determination, East Review Area, Rosemont Copper Mine Project, Pima, Co, Arizona (May 7, 2021).

the Corps should not prematurely decide whether to revoke the suspended 404 permit. Rather, the Corps should refrain from making a decision on Hudbay's request to revoke the permit at least until both the Corps and EPA have determined whether the desert streams on the east and west sides of mountains covered by the permit are jurisdictional WOTUS.

The Corps' decision on the suspended 404 permit is governed by 33 C.F.R. § 325.7(a). That provision requires the Corps to determine whether it would be in the public interest to revoke the permit based on a list of factors, including: (1) the permittee's compliance with permit requirements; (2) whether the circumstances of the fill activity have changed; (3) the continuing adequacy of or need for the permit; and (4) revisions to the applicable statutory or regulatory authorities.²⁰

As a threshold matter, Hudbay has not complied with the permit provisions, as documented by the Tribes. It filled jurisdictional waters, despite the permit suspension. That alone is a basis to deny Hudbay's request to revoke the permit under the first factor in 33 C.F.R. § 325.7(a).²¹ And Hudbay cannot escape that outcome by claiming there are no jurisdictional waters present. In fact, by signing the suspended 404 permit, Hudbay agreed that the waters across the project site "are jurisdictional waters of the United States" and waived any right to challenge that basis for the permit in a court or administrative proceeding.²² The Corps thus repeatedly warned Hudbay to *not* fill the waters during the suspension.²³ Yet, Hudbay defied those orders and explicitly told the Corps and EPA that it will not cease its illegal activities,²⁴ foreclosing its after-the-fact attempt to revoke the permit and escape liability under the Clean Water Act. If the Corps were to revoke the permit while the agencies continue their reviews, the Corps would effectively reward Hudbay for its illegal activities in violation of permit suspension by giving the company a free pass to continue those same fill activities.

Furthermore, before the Corps can determine whether it would be in the public interest to revoke the permit, it must demonstrate that none of the desert streams covered by the permit that crisscross the Copper World Complex are jurisdictional WOTUS. For instance, Corps cannot determine that there is no need for the permit unless and until it determines that none of the

²⁰ 33 C.F.R. § 325.7(a).

²¹ *Id.* (listing "the permittee's compliance with the terms and conditions of the permit" as a public interest factor the Corps must consider when determining whether to revoke, modify, or reissue a 404 permit).

²² Utility Corridor PJD at PDF 47 ("accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court"); *see also* Rosemont PJD at PDF 4.

²³ U.S. Army Corps Eng'rs, Notice of Permit Suspension (Aug. 23, 2019); Letter from Tori K. White, Operations and Regul. Chief, U.S. Army Corps Eng'rs, to Matt Bingham, Hudbay Minerals, Inc. (Jan. 13, 2022).

²⁴ Jan. 31, 2023 Letter From Hudbay at 2; Copper World EPA RFI Response at 13-14.

waters covered by the permit are subject to protection under the CWA. As noted above, the Corps cannot rely on the Trump-era AJDs to make these permit determinations. Furthermore, both the Corps and EPA are currently in the process of assessing these waters, and EPA is further determining whether to pursue an enforcement action against Hubday for illegally filling waters without a valid permit.²⁵ The Tribes have also provide an extensive hydrological report demonstrating the waters are jurisdictional. The Corps is thus precluded from making a decision to revoke the 404 permit.

Making a hasty decision on the permit before the agencies have completed their jurisdictional reviews would further jeopardize priceless tribal resources throughout the project area. Although the 404 permit is currently suspended, it remains an “undertaking” that triggers NHPA obligations on the part of the Corps to consult with the Tribes and protect tribal resources.²⁶ As the Corps is well-area, there are hundreds of unique and irreplaceable tribal cultural resources throughout the Santa Rita Mountains and in the Copper World Complex site, including a rare ballcourt and hundreds of tribal burials. These cultural resources are of great importance to the Tribes. For hundreds of years, the Tribes have visited the Santa Rita Mountains, including the areas covered by the Copper World Complex, to connect with their ancestors and gather traditional materials for religious ceremonies. The suspended 404 permit provides much needed protections for the tribal cultural resources in the area while the agencies continue their jurisdictional reviews. Indeed, the continued protections provided by the 404 permit are of the utmost importance, as Hubday unilaterally terminated its Memorandum of Agreement with the Forest Service that required the company to mitigate impacts on tribal resources related to the Rosemont Mine.

The Tribes look forward to continuing conversations with the Corps related to the Copper World Complex and Hubday’s illegal fill activities, and request that the Corps continue to update the Tribes on their progress related to the suspended 404 permit and jurisdictional review.

Sincerely,

/s/ Stu Gillespie
STUART C. GILLESPIE
Senior Attorney
Earthjustice, Rocky Mountain Office
633 17th Street, Suite 1600
Denver, CO 80202
T: 303.996.9616
F: 303.623.8083
sgillespie@earthjustice.org

CAITLIN MILLER
Senior Associate Attorney

²⁵ As noted above, there is ample evidence available to the Corps and EPA demonstrating that the waters across entire Copper World Complex are jurisdictional WOTUS.

²⁶ 54 U.S.C. §§ 306108, 302706(a)-(b); 36 C.F.R. §§ 800.2(c)(2)(ii)(A), 800.6(a), 800.6(b)(1)(i)

Earthjustice, Rocky Mountain Office
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Denver, CO 80202
T: 303.996.9613
F: 303.623.8083
cmiller@earthjustice.org

*Counsel for the Tohono O'odham Nation,
Pascua Yaqui Tribe, and Hopi Tribe*

CC: Tori K. White, South Pacific Division Operations and Regulatory Chief
Tom Cavanaugh, South Pacific Division Regulatory Program Manager
Maureen Rudolph, South Pacific Division Counsel
David Castanon, L.A. District Regulatory Division Chief
Sallie Diebolt, Arizona Regulatory Branch Chief
Tiffany Troxel, L.A. District Office of Counsel
Maryann Blouin, South Pacific Division Assistant Division Counsel

ATTACHMENT J



DEPARTMENT OF THE ARMY
SOUTH PACIFIC DIVISION, U.S. ARMY CORPS OF ENGINEERS
Phillip Burton Federal Building
Post Office Box 36023
450 Golden Gate Avenue
SAN FRANCISCO, CALIFORNIA 94102

CESPD-PDO

31 May 2022

MEMORANDUM FOR RECORD

SUBJECT: Results of Field Inspection within Rosemont Mine Permit Area (Corps File No.: SPL-2008-00816)

1. Background. On 28 April 2022, in a letter from Javier Del Rio of Hudbay to Tori White of the U.S. Army Corps of Engineers (Corps), South Pacific Division, Hudbay expressed intent to voluntarily surrender their Department of the Army (DA) permit for the Rosemont Copper Mine project. In response, the Corps has commenced a review process under 33 CFR Section 325.7 to consider revocation of the permit. On-site conditions within the permit area were observed to determine whether any regulated activities under the permit in question have been implemented.
2. Pre-Field Preparation. In preparation for the field trip, a plan was developed for conducting the required review of the permit area. Using maps from the DA permit document showing permitted impact locations and the Google Earth Pro application, 18 representative checkpoints were mapped throughout the permit area for visual inspection in the field. Six points were established along the western utility corridor, and 10 points were established in the eastern area where most of the permitted impacts would have occurred. An additional two checkpoints were identified within the Sonoita Creek Ranch compensatory mitigation area. Attachment 1 to this memorandum shows the checkpoint locations.

The checkpoints were established at locations in or near permitted impacts under the DA permit to allow Corps staff to determine whether any regulated activities had occurred. The goal was to establish sufficient checkpoints to be able to ascertain whether any regulated activities have occurred to date.

On 20 May 2022, Rosemont Copper Company filed a Status Report with the District Court for the District of Arizona regarding construction activities at a location in the western part of the permit area. Rosemont's Status Report states:

while preparing for the Corps' site inspection, Rosemont determined that native material comprised of soil and rocks had been placed in or inadvertently fallen into washes that run parallel to and cross an unimproved road on the western side of the ridgeline near Helvetia, within the utility corridor for the Rosemont Copper Project. The impact to the washes was very small. It was caused by work on the Copper World Project and was not undertaken pursuant to the Permit. (The only work authorized in this area under the Permit consisted [of] the construction of a water line, which has not been constructed and is not currently planned.) Rosemont has

CESPL-RGA

SUBJECT: Results of Field Inspection for Consideration in Rosemont Mine Permit Revocation Review (Corps File No.: SPL-2008-00816)

removed the native material from the washes and is in the process of restoring the washes to their prior condition.

The Status Report is included as Attachment 2 to this memorandum. This location was added to the field trip route as West Checkpoint 6 to allow inspection by Corps staff during this field trip.

3. Field Visit. Corps staff, escorted by Hudbay representatives, conducted the field visit on 23-24 May 2022. The following individuals participated in the field visit:

- Michael Langley, Senior Project Manager, Los Angeles District
- Thomas Cavanaugh, Regulatory Program Manager, South Pacific Division
- Matt Bingham, Hudbay
- Holly Beggy, Hudbay
- Aaron Vesledahl, Hudbay (first day only)
- Javier Toro, Hudbay (first day only)

The group traveled to each checkpoint to determine whether any regulated activities had occurred within the permit area. Photographs were taken at each location in multiple directions, and location coordinates were recorded, to document conditions. These photographs are included in Attachment 1 to this memorandum.

4. Results of Field Trip. Each checkpoint was viewed in the field and documented with multiple photographs (Attachment 1). The individual checkpoint conditions are described below:

a. West Checkpoints

- i. Checkpoint 1: No indications of disturbance to the wash.
- ii. Checkpoint 2: Evidence of vehicle travel within the wash (tire tracks/ruts)
- iii. Checkpoint 3: Evidence of road maintenance activities (minor grading and sediment removal from the roadway).
- iv. Checkpoint 4: Evidence of road maintenance activities (minor grading and sediment removal from the roadway).
- v. Checkpoint 5: No indications of disturbance to the wash.
- vi. Checkpoint 6: West Checkpoint 6 was inspected during this field visit to review the status of self-reported construction activities by Hudbay that had impacted a drainage in this area. The affected ephemeral desert wash is situated along an existing unpaved road

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SUBJECT: Results of Field Inspection for Consideration in Rosemont Mine Permit Revocation Review (Corps File No.: SPL-2008-00816)

with high ground and steep slopes to the south and north sides. Drill pads had been created on this high ground on both sides of the road and wash. Soil and rock materials from this work had fallen downslope along approximately 200 feet of the wash. At the time of the field visit, Hudbay had already removed some of the materials from the wash to a sufficient degree to ensure drainage through this area, though it is not clear whether all material had been removed. Because of the degree of disturbance in this general area from the road and other activities it was difficult to determine how much material entered the wash. Further desktop review of aerial photography is needed to assist in determining the degree of disturbance that had occurred. The activities observed in this area appear to be associated with Hudbay's Copper World project rather than previously permitted activities under the Rosemont Mine DA permit because the activities that caused the inadvertent fill consist of drill pad construction rather than linear utility construction.

Checkpoints 1 through 4 are located at points along a county-maintained road where washes cross the roadway (Pima County 2022). Typically, at locations where at-grade wash crossings exist, county maintenance activities involve removal of sediment from storm events, which is then placed on the downstream side of the roadway within the wash. Small drainage ditches ("V-trenches") paralleling the road may also be created/reestablished as part of regular maintenance. These maintenance activities are generally considered exempt from regulation by the Corps.

Checkpoints 5 and 6 are not situated along county-maintained roads and do not show indications of recent road maintenance.

Conclusions. No activities covered under the existing DA permit for the Rosemont Mine have taken place in the western portion of the permit area. Activities not directly related to the Rosemont Mine permit, but associated with the Copper World project, have occurred in the vicinity of Checkpoint 6.

b. East Checkpoints.

- i. Checkpoint 1: No indications of disturbance to the wash.

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SUBJECT: Results of Field Inspection for Consideration in Rosemont Mine Permit Revocation Review (Corps File No.: SPL-2008-00816)

- ii. Checkpoint 2: No indications of disturbance to the wash. Tire tracks observed within wash.
- iii. Checkpoint 3: No indications of disturbance to the wash. Tire tracks observed within wash.
- iv. Checkpoint 4: No indications of disturbance to the wash.
- v. Checkpoint 5: No indications of disturbance to the wash.
- vi. Checkpoint 6: No indications of disturbance to the wash. Tire tracks observed within wash.
- vii. Checkpoint 7: No indications of disturbance to the wash. Tire tracks observed within wash.
- viii. Checkpoint 8: No indications of disturbance to the wash. Tire tracks observed within wash.
- ix. Checkpoint 9: No indications of disturbance to the wash. Tire tracks observed within wash.
- x. Checkpoint 10: No indications of disturbance to the wash. Tire tracks observed within wash.

The east area checkpoints show signs of regular vehicular use within some of the washes. Washes have been historically used for access in this area to avoid the need for constructing new roads in remote areas. Most of this activity is likely from Hudbay vehicles within the portions of the permit area that are privately owned by Hudbay. On federal lands (Coronado National Forest), vehicular activities are likely undertaken by a much wider range of users. Vehicular travel within a wash is not a regulated activity under the Clean Water Act.

Conclusion: No activities covered under the existing DA permit for the Rosemont Mine have taken place in the eastern portion of the permit area.

c. Sonoita Creek Ranch Mitigation Area Checkpoints

- i. Checkpoint 1: No indications of disturbance to the wash. Tire tracks observed within wash.
- ii. Checkpoint 2: No indications of disturbance to the wash. Tire tracks observed within wash. A barbed wire fence extends across the wash, but no posts/footings have been constructed within the wash bottom.

Conclusion. No compensatory mitigation activities covered under the existing DA permit for the Rosemont Mine have taken place in the Sonoita Creek Ranch portion of the permit area.

CESPL-RGA

SUBJECT: Results of Field Inspection for Consideration in Rosemont Mine Permit
Revocation Review (Corps File No.: SPL-2008-00816)

5. Summary Conclusions. No activities covered under the existing DA permit for the Rosemont Mine have taken place within the permit area. Potential unauthorized activities at west checkpoint 6 were reviewed in the field and found to be unrelated to the Rosemont Mine permit. Rather, those activities are related to Hudbay's Copper World project and will be investigated separately.

Thomas J. Cavanaugh
Regulatory Program Manager
South Pacific Division

Attachment 1. Photo Log

Attachment 2. Hudbay Status Report to Court

Cited Reference: Pima County 2022. PC Road Maintenance Status. Available at webcms.pima.gov/government/geographic_information_systems/gis-maps/pimamaps. Accessed 31 May 2022.

ATTACHMENT K



**DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
SOUTH PACIFIC DIVISION
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102**

January 13, 2022

SUBJECT: Rosemont Copper Mine

Matt Bingham
Hudbay Minerals, Inc.
5255 E. Williams Circle Suite 1065
Tucson, Arizona 85711

Dear Mr. Bingham:

I am writing in regard to the conversation we had on January 5, 2023, in which you confirmed that work has occurred within the Rosemont Copper Mine permit area (SPL-2008-00816-MB). The Department of the Army (DA) permit authorized Rosemont Copper Company to permanently and temporarily discharge fill material into 48.48 acres of waters of the United States through clearing, grubbing, and grading activities on the Rosemont Mine site, construction of off-site roads and utility lines, and construction of compensatory mitigation at the Sonoita Creek Ranch/Rail X Ranch site, Gunsight Pass stock tank, McCleary Canyon stock tank, Rosemont Crest stock tank, and Barrell Canyon East stock tank, in Pima and Santa Cruz Counties, Arizona.

The South Pacific Division Commander (SPD) suspended the DA permit on August 23, 2019. Following a permit suspension, the authority making the decision may decide to reinstate, modify, or revoke the permit. See 33 C.F.R. § 325.7. As stated in the regulation, when a permit is suspended, the permittee is ordered to "stop those activities previously authorized by the suspended permit." On 28 April 2022, Mr. Javier Del Rio advised SPD that Rosemont Copper Company was surrendering the permit and no work authorized by the permit had been conducted. I responded, on May 4, 2022, stating we would consider the surrender as a request to revoke, since our regulations do not include a provision for surrendering a permit. By letter dated June 3, 2022, I reaffirmed the District Court's dismissal of the cases, challenging the issuance of the permits, did not revoke the permit and we were continuing with our revocation process. I again reaffirmed our position by email on August 3, 2022, following receipt of Mr. Del Rio's July 27, 2022, letter stating in his opinion Rosemont Copper Company was not bound by the permit.

I am sending this letter to reiterate that there is no process or means for "surrendering" a DA permit. As stated above, the SPD Commander suspended the DA permit on August 23, 2019. Additionally, no decision has yet been made to reinstate, modify, or revoke the DA permit. The DA permit, therefore, remains suspended until any such final decision. You are reminded that you are not authorized to do work and are ordered to stop any work within the permit area that is covered by the suspended DA

permit. Finally, I am requesting that you provide information, detailing the location and extent of work, which has occurred within the DA permit area.

Thank you in advance for your cooperation. If you have any questions, I can be reached at Tori.K.White@usace.army.mil or (415) 416-0329.

Sincerely,

Tori White

Tori K. White
Chief, Operations and Regulatory

Copy Furnished:
Javier Del Rio, Rosemont Copper Company, 5255 E. Williams Circle Suite 1065,
Tucson, Arizona 85711

ATTACHMENT L



January 31, 2023

Sent Via E-Mail and Regular Mail

Tori K. White
Chief, Operations and Regulatory
U.S. Army Corps of Engineers
South Pacific Division
Phillip Burton Federal Building
450 Golden Gate Avenue
San Francisco, California 94102

RE: Rosemont Copper Company; Section 404 Permit No. SPL-2008-00816-MB

Dear Ms. White:

By letter to our legal counsel, Matt Bingham, dated January 13, 2023, you ordered Rosemont Copper Company to stop work covered by Permit No. SPL-2008-0816-MB (the "Permit") and also requested information about the work that has already occurred with the Permit area.

As a preliminary matter, we changed the name of Rosemont Copper Company to Copper World, Inc., effective December 16, 2022. In this letter and future communications, I will refer to the company by its current name, Copper World, Inc. (or "Copper World").

The Permit was issued on March 8, 2019, but, as you know, no work authorized by the Permit ever took place. On August 23, 2019, Col. Peter Helmlinger suspended the Permit. Copper World eventually elected to surrender it and I notified you of that decision by letter dated April 28, 2022. On July 27, 2022, I notified you that Copper World was no longer committed to avoiding washes covered by the Permit in light of the federal court decision discussed below. Your letter indicates that the agency continues to believe that our surrender of the Permit was not legally effective and, although suspended, still restricts Copper World's activities on its private land. Copper World respectfully disagrees.

As I explained in my letter of July 27, 2022, the status of the Permit was directly at issue in the case of *Save the Scenic Santa Ritas v. U.S. Army Corps of Engineers*, No. 4:19-cv-177 (D. Ariz.). On May 23, 2022, U.S. District Judge James Soto issued an Order dismissing the plaintiffs' claims on mootness grounds because Rosemont had surrendered the Permit. Judge Soto's Order directly addressed the argument that Rosemont was unable to surrender the Permit because the Corps has no regulatory process specifically governing permit surrender. He explained that it would be "illogical to read the Corps' regulations such that they would prevent a permittee from surrendering its own permit." *Save the Scenic Santa Ritas*, Order at 7-8 (May 23, 2022). To the

Copper World, Inc.
5285 East Williams Circle, Suite 2010
Tucson, Arizona 85711
United States
tel 520 495-3500
hubbayminerals.com

contrary, Judge Soto held that the Permit had been legally surrendered and was not able to be vacated because it did not exist. This ruling was not appealed. It is now final and binding on the parties to the lawsuit, including the Corps.

Under these circumstances, the Corps cannot legally order Copper World to stop work on its private land on the basis of the Permit. A federal judge has already ruled that the Permit was effectively surrendered and rejected the reasoning in your letter.

However, as stated previously, Copper World would like to maintain a cooperative relationship with the Corps and we have always tried to be open and transparent in our communications. In the spirit of cooperation and transparency, I have confirmed that we do not have any plans to impact washes covered by the surrendered Permit until February 27, 2023, at the earliest.

In response to your request for information about the work Copper World has conducted in the Permit area, we have prepared the attached figures (A through G). These figures show that Copper World has not performed earthwork activities in any of the washes that were authorized for fill under the Permit, even after releasing them from restricted status under our internal controls following my July 27 letter.

For your reference, I am also attaching an image showing the footprint of Phase I of the Copper World Project relative to that of the Rosemont Project.

Finally, I should note that the Corps has determined that no waters of the U.S. occur within the areas formerly covered by the Permit. See USACE Approved Jurisdictional Determinations No. SPL-2008-0816-MB (March 24, 2021). Those AJDs were issued in 2021 and, under USACE regulatory policy, remain effective for five years.

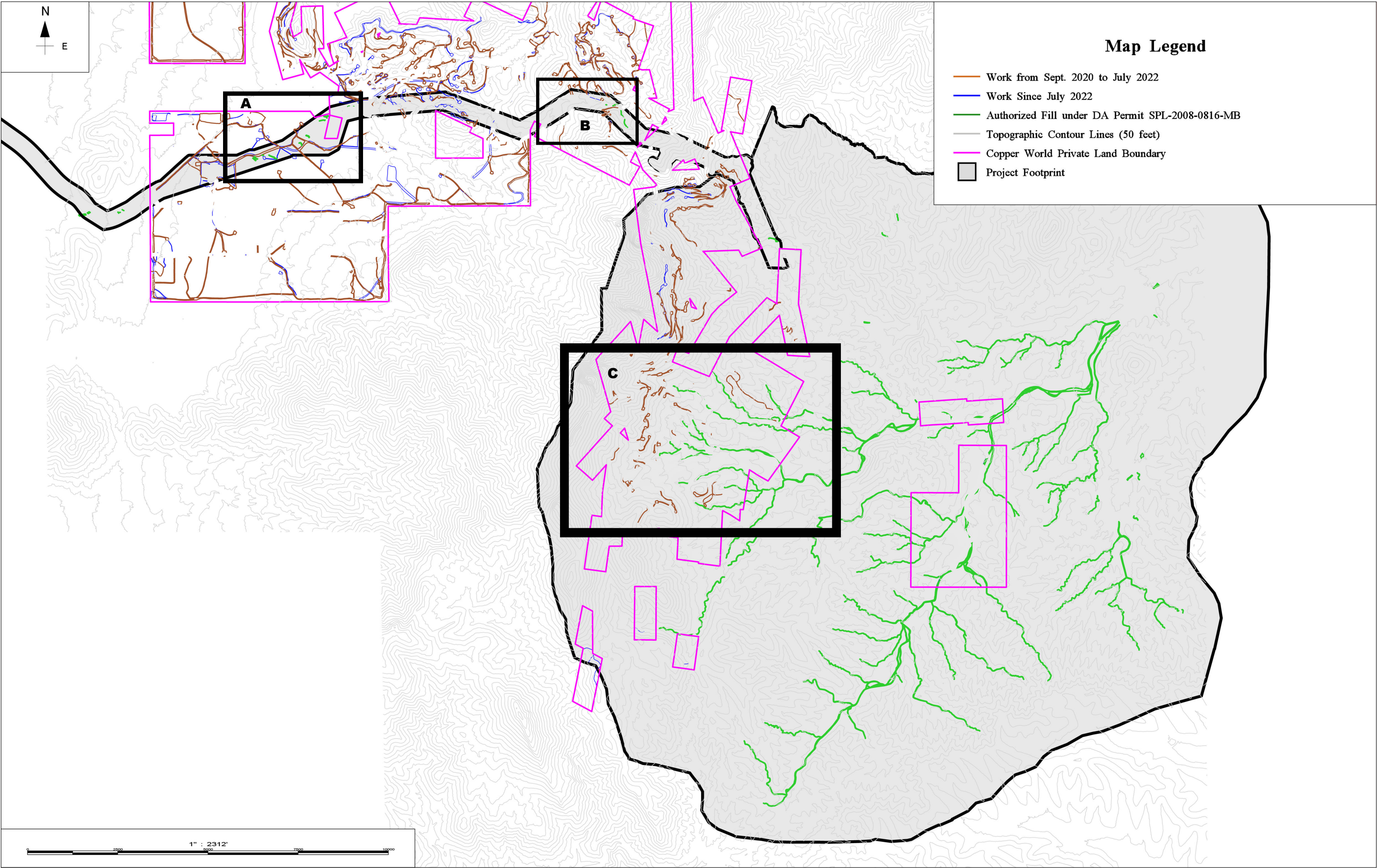
Please feel free to contact me if you have any questions or would like to discuss this letter.

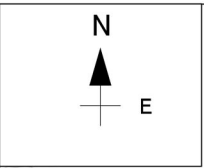
Sincerely,

A handwritten signature in blue ink, appearing to read 'Javier Del Rio', with a stylized flourish extending from the end.

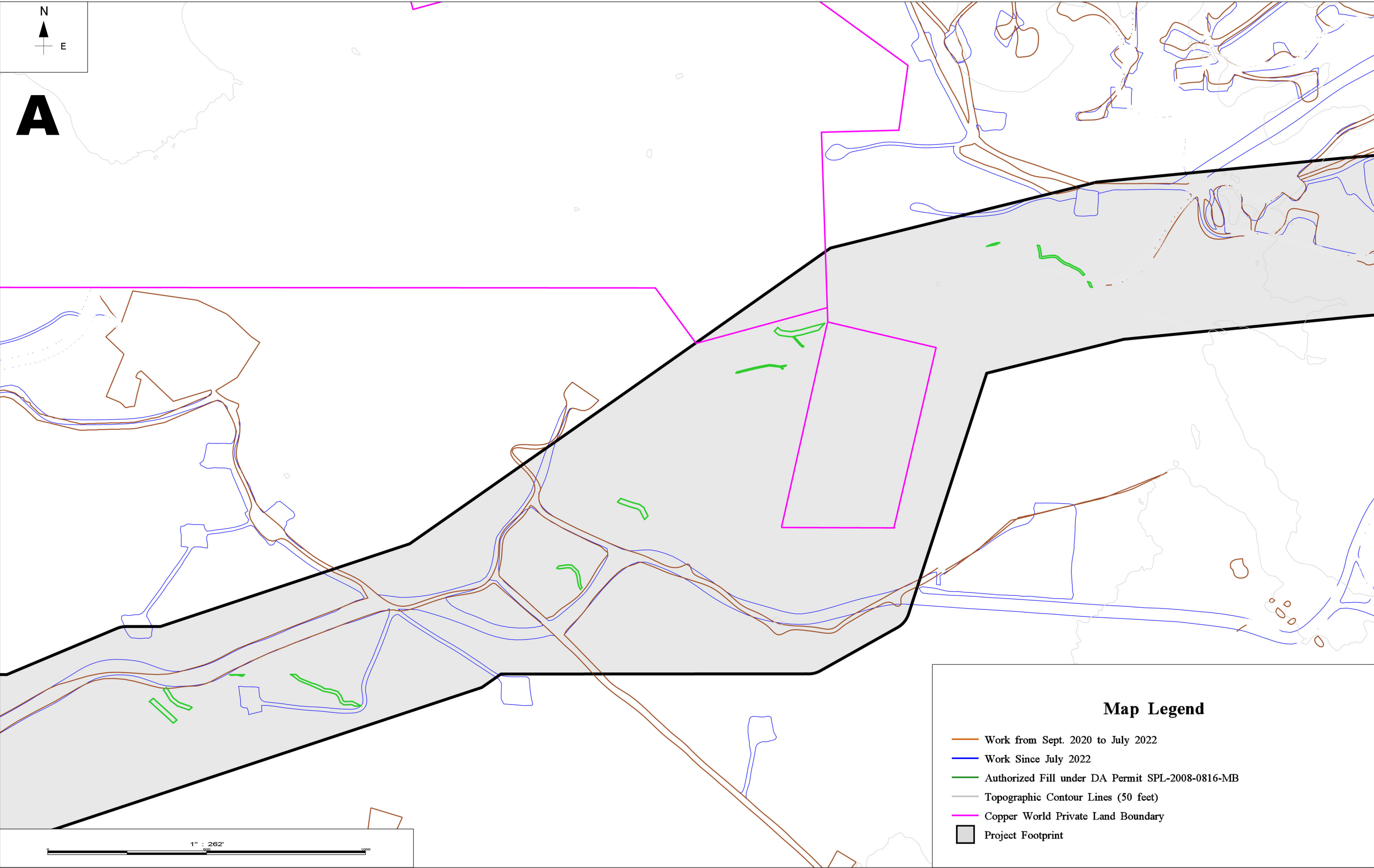
Javier Del Rio
Vice President, South America and USA

cc. Col. Julie A. Balten, Commanding, USACE Los Angeles District



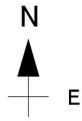
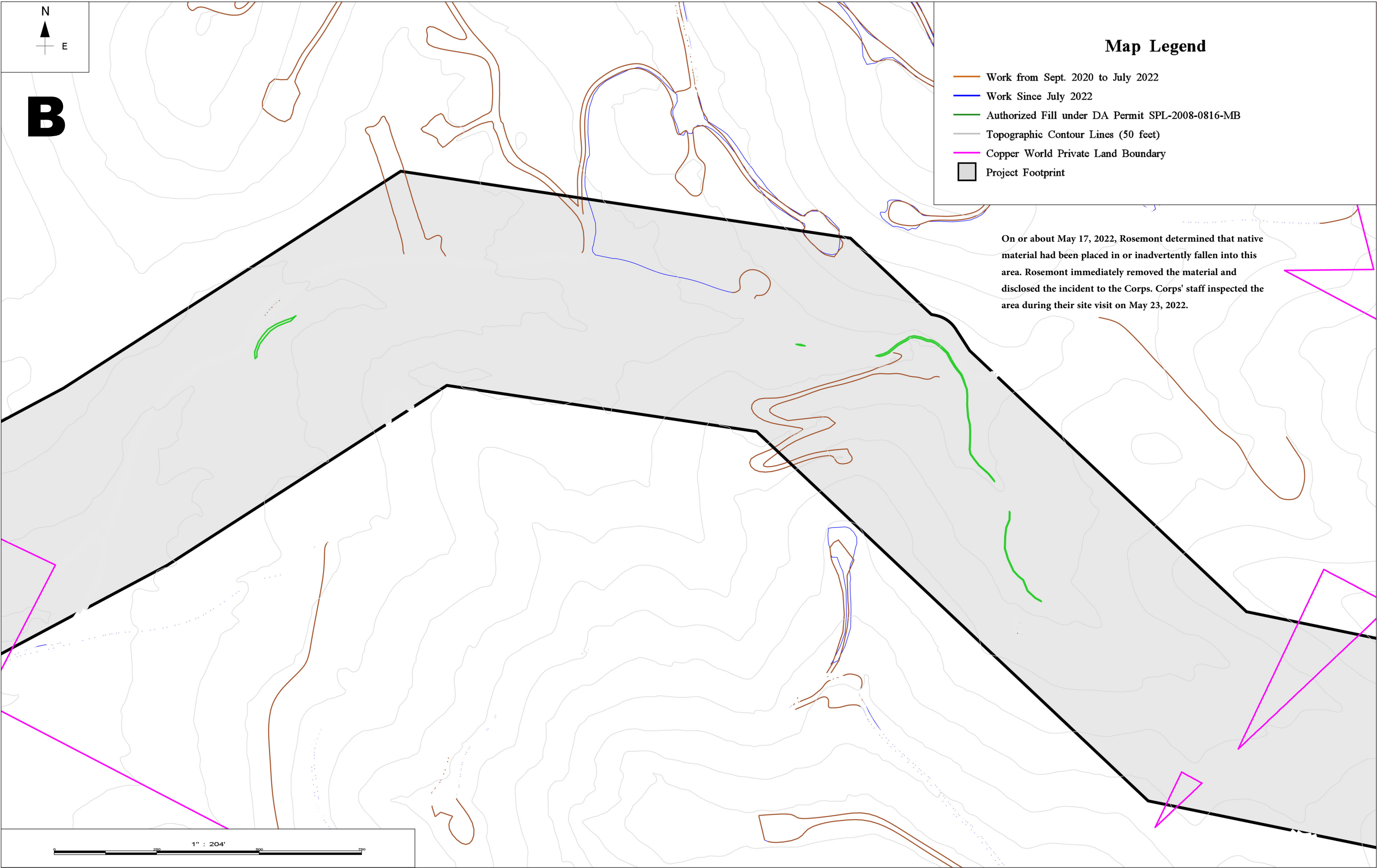


A



Map Legend

- Work from Sept. 2020 to July 2022
- Work Since July 2022
- Authorized Fill under DA Permit SPL-2008-0816-MB
- Topographic Contour Lines (50 feet)
- Copper World Private Land Boundary
- Project Footprint



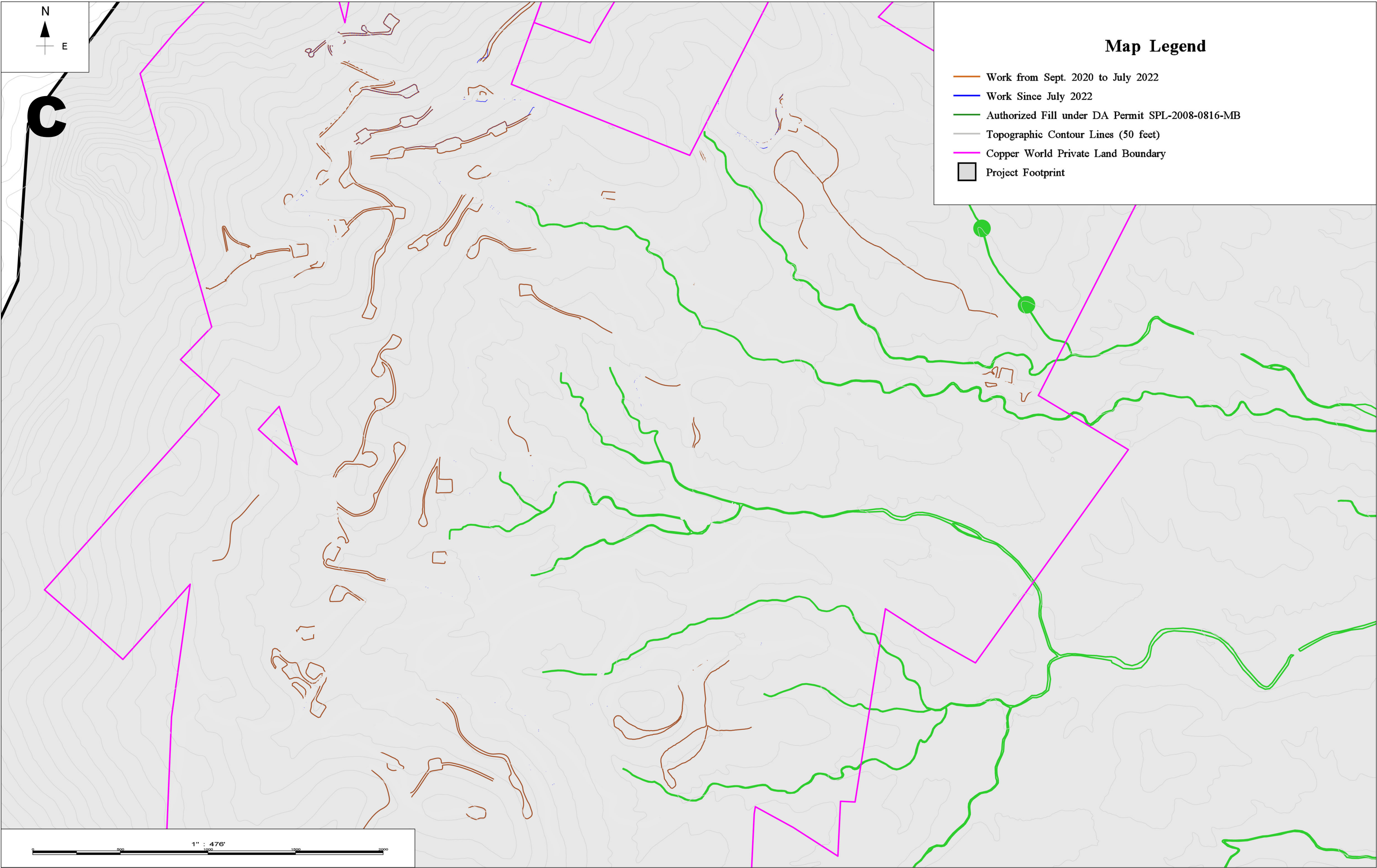
B

Map Legend

- Work from Sept. 2020 to July 2022
- Work Since July 2022
- Authorized Fill under DA Permit SPL-2008-0816-MB
- Topographic Contour Lines (50 feet)
- Copper World Private Land Boundary
- Project Footprint

On or about May 17, 2022, Rosemont determined that native material had been placed in or inadvertently fallen into this area. Rosemont immediately removed the material and disclosed the incident to the Corps. Corps' staff inspected the area during their site visit on May 23, 2022.

0 200 400 1" : 204'

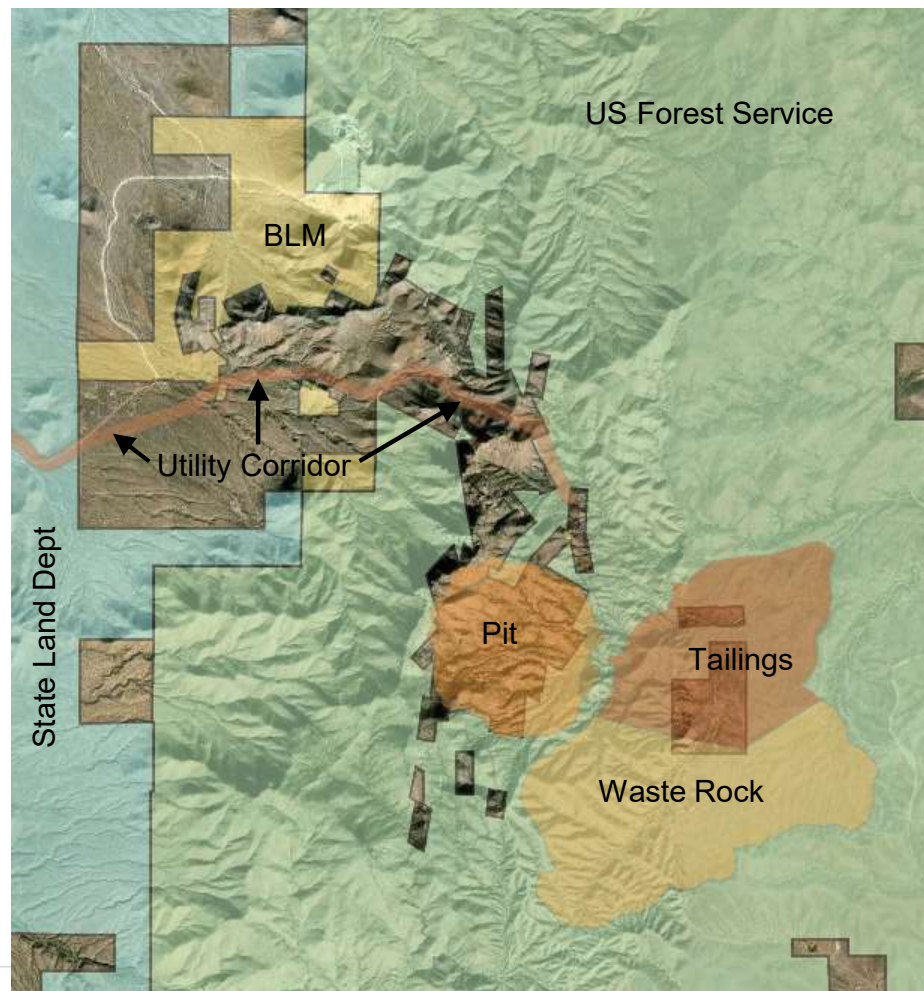


Copper World (private land)

- Private Land Package
- Private Land Patented Mining Claims
- Federal Land Unpatented Claims

Rosemont
Reserve Pit

Rosemont Project



ATTACHMENT M



July 6, 2022

U.S. Department of Agriculture
Forest Service Southwestern Region
Kerwin Dewberry, Forest Supervisor
300 W. Congress Street
Tucson, AZ 85701

State Historic Preservation Office
Attn: Kathryn Leonard
Arizona State Parks & Trails
1110 West Washington Street, Suite 100
Phoenix AZ 85007-2957

Advisory Council on Historic Preservation
Attn: Katry Harris
Program Analyst
1100 Pennsylvania Ave. NW
Suite 803
Washington, DC 20004

U.S. Army Corps of Engineers, LA District
Attn: Sallie Diebolt, Branch Chief
Regulatory Division, Arizona Branch
3636 N. Central Ave., Suite 900
Phoenix, AZ 85012

Dear Signatory Designated Points of Contact:

Pursuant to the Stipulation XV(A) of the Memorandum of Agreement Among the Coronado National Forest ("CNF"), Arizona State Historic Preservation Officer, Advisory Council on Historic Preservation, U.S. Army Corps of Engineers ("COE"), and the Rosemont Copper Company ("Rosemont"), Regarding Resolution of Adverse Effects on Historic Properties from the Rosemont Copper Project having an effective date of November 6, 2013 (hereafter the "MOA"), please be advised Rosemont has determined that certain provisions of the MOA as written will not or cannot be carried out and hereby invokes consultation with the above referenced signatories to develop an amendment within thirty (30) days of the date of this notice.

5255 East Williams Circle
Suite 1065
Tucson, Arizona 85711
United States
tel 520 495-3500
fax 520 495-3540
hudbayminerals.com

MOA Stipulation II(D) (related to mitigation measures in the Federal Historic Properties Treatment Plan (“Federal HPTP”)) provides, in relevant part, that such mitigation measures may begin to be implemented:

. . . upon the Forest’s approval of the final MPO [mine plan of operations] and the issuance of any necessary ARPA permits by the Forest and Clean Water Act Section 404 permit by COE.

Similarly, MOA Stipulation V(D) (related to mitigation measures in the Utility Historic Properties Treatment Plan (“Utilities HPTP”)) provides, in relevant part, that such mitigation measures may begin to be implemented:

. . . upon the Forest’s approval of the final MPO, and after the COE issues its Section 404 Permit and the ASLD issues its right-of-way.

Recent events have rendered the occurrence of those conditions precedent an impossibility. With regard to the MPO for the Rosemont Project, on May 12, 2022, the United States Ninth Circuit Court of Appeals affirmed U.S. District Judge James Soto’s 2019 decision that vacated and set aside the CNF’s Final Environmental Impact Statement (“FEIS”) and Record of Decision (“ROD”).¹ The vacatur of the FEIS and ROD means that the CNF will be required to conduct additional analysis of the impacts of the project under the National Environmental Policy Act, the National Historic Preservation Act and the Endangered Species Act, which could take years to complete.²

With regard to the COE Section 404 permit, on April 28, 2022, Rosemont voluntarily surrendered Permit No. SPL-2008-0816-MB, issued to Rosemont on March 8, 2019. On May 23, 2022, Judge Soto issued an order affirming Rosemont’s surrender of the permit.³ Therefore, Rosemont does not hold a Section 404 permit, and the company is not currently seeking a Section 404 permit.

Accordingly, Rosemont requests an amendment to the MOA that modifies the conditions precedent set forth in Stipulations II(D) and V(D) to facilitate Rosemont’s immediate implementation of mitigation measures for historic properties described in the Federal HPTP and Utility HPTP on Rosemont’s private land and adjacent state land. Rosemont is unwilling to further delay implementation of the mitigation measures on its private land or state land in light of these changed circumstances.

We ask that you provide a response to this request within thirty (30) days.

¹ See *Ctr. for Biological Diversity v. United States Fish & Wildlife Serv.*, No. 19-17585, 2022 WL 1495007 (9th Cir. May 12, 2022), *aff’g* *Ctr. for Biological Diversity v. United States Fish & Wildlife Serv.*, 409 F. Supp. 3d 738 (D. Ariz. 2019).

² Notably, this same result will occur even if the Ninth Circuit Court of Appeals decision is modified as a result of any motion for reconsideration or en-banc review as a consequence of the lengthy delay that has taken place as a result of the litigation.

³ See *Save the Scenic Santa Ritas v. U.S. Army Corps of Eng’rs*, No. CV-19-00177-TUC-JAS (D. Ariz. filed May 23, 2022).

Thank you, in advance, for your prompt consideration of this request.

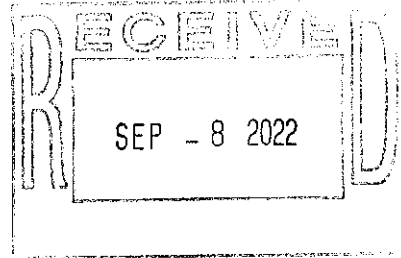
Sincerely,

A handwritten signature in black ink, consisting of a long horizontal stroke with a diagonal line crossing it near the end.

Javier Del Rio
Vice President, South America and USA

ATTACHMENT N

HUDBAY



September 7, 2022

U.S. Department of Agriculture
Forest Service Southwestern Region
Kerwin Dewberry, Forest Supervisor
300 W. Congress Street
Tucson, AZ 85701

State Historic Preservation Office
Attn: Kathryn Leonard
Arizona State Parks & Trails
1110 West Washington Street, Suite 100
Phoenix AZ 85007-2957

Advisory Council on Historic Preservation
Attn: Katry Harris
Program Analyst
1100 Pennsylvania Ave. NW
Suite 803
Washington, DC 20004

U.S. Army Corps of Engineers, LA District
Attn: Sallie Diebolt, Branch Chief
Regulatory Division, Arizona Branch
3636 N. Central Ave., Suite 900
Phoenix, AZ 85012

Dear Signatory Designated Points of Contact:

On July 6, 2022 Rosemont Copper Company ("Rosemont") notified the above referenced Signatories in writing of the need for an amendment to the Memorandum of Agreement among the Coronado National Forest ("CNF"), Arizona State Historic Preservation Officer, Advisory Council on Historic Preservation, U.S. Army Corps of Engineers ("COE") and the Rosemont Copper Company ("Rosemont") Regarding Resolution of Adverse Effects on Historic Properties from the Rosemont Copper Project (hereafter the "MOA"). Specifically, an amendment is required to modify the conditions precedent set forth in Stipulations II(D) and V(D) to facilitate immediate implementation of mitigation measures for the historic properties described in the Federal HPTP and Utility HPTP on Rosemont's private land and adjacent state land.

5255 East Williams Circle
Suite 1065
Tucson, Arizona 85711
United States
tel 520 495-3500
hudsonbayminerals.com

A call between the Signatories was held on August 17, 2022 to discuss the process for dealing with Rosemont's request. Based on this call and the time that has already passed since the notice was sent, it is clear to Rosemont that an amendment will not be developed within an acceptable timeframe. Given this situation, Rosemont is hereby terminating the MOA.

Sincerely,

A handwritten signature in black ink, appearing to be 'Javier Del Rio', written over a horizontal line.

Javier Del Rio,
Vice President, South America and USA

ATTACHMENT O



File Code: 2360
Date: January 9, 2023

Tori White
Division Chief, U.S. Army Corps of Engineers
Tori.K.White@usace.army.mil

The Coronado National Forest (CNF) acknowledges receipt of the letter dated September 7, 2022, indicating Rosemont Copper Company's intent to terminate the Memorandum of Agreement Among the Coronado National Forest, Arizona State Historic Preservation Officer, Advisory Council on Historic Preservation (ACHP), U.S. Army Corps of Engineers (USACE), and the Rosemont Copper Company regarding Resolution of Adverse Effects on Historic Properties from the Rosemont Copper Project (referred to as the MOA).

Given recent Federal Court decisions that resulted in the Environmental Impact Statement (EIS) and Record of Decision (ROD) being vacated, as well as approval of the associated Mine Plan of Operations, the Coronado no longer has an undertaking pursuant to the stipulations of the MOA.

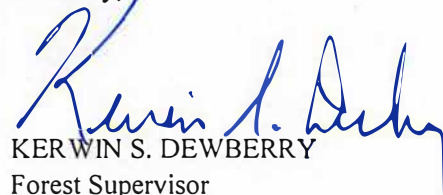
Pursuant to the reporting requirements of the MOA, we request Rosemont to submit a synthetic report documenting results of any data recovery and/or testing activities conducted on sites documented in the associated Historic Properties Treatment Plans prior to the cessation of activities. Activities were to cease in 2019 because of the court decision. Your report should include any cultural resource sites encompassed in the Federal and Utilities Historic Properties Treatment Plans, developed pursuant to the MOA. Please advise the length of time required to complete this reporting. The Forest Service will plan to share the results with the designated contacts identified in the MOA.

As discussed in our meeting on August 17, 2022 with invited signatories to the MOA following Rosemont Copper Company's initial correspondence proposing an amendment to the MOA, U.S. Army Corps of Engineers permitting issues, or any other associated federal undertaking with potential to affect historic properties, may require a separate agreement. And, per Stipulation XV.B, if the MOA is terminated then the Forest and USACE must *"request, take into account, and respond to the comments of the ACHP under § 800.7. Further, this stipulation requires that the CNF and USACE notify the other Signatories as to the course of action it will pursue. This stipulation also states that if the MOA is terminated, then all actions by Rosemont will continue to be subject to the applicable requirements of other relevant laws such as the ARPA, NAGPRA, Clean Water Act, and applicable state laws. If the MOA is terminated, the Forest and COE will use available enforcement authorities to prevent or minimize adverse effects to historic properties until the reinitiated Section 106 process is completed."*

As a reminder, the ACHP no longer accepts mail submission. They, and other invited signatories to the MOA, are requested to submit comments on proposed termination of the MOA, pursuant to 36 CFR 800.6. We appreciate your attention to this matter and look forward to continuing to work together with you.

If you have any questions and/or need clarification regarding the above information, please contact David Mehalic by phone at 520-388-8395, and/or by email at David.Mehalic@usda.gov.

Sincerely,



KERWIN S. DEWBERRY
Forest Supervisor

