

Appendix F

Comments and Responses

Reclamation received comments on the DEA (March 2009) and revised DEA (RDEA, April 2010) from federal, state and local agencies, as well a variety of organizations and citizens. Section I is an index of public comment letters received on the DEA (March 2009); they are identified numerically. Section II contains those letters and Reclamation's responses. Section III provides a summary of comments received at the March 26, 2009 public meeting and Reclamation's responses. Section IV is an index of public comment letters received on the RDEA (April 2010); they are identified alphabetically. Section V contains copies of those letters and Reclamation's responses.

I. Index of Public Comment Letters Received on the DEA (March 2009)

Letter

<u>No.</u>	<u>Agency, Organization or Individual</u>
1.	ADEQ (Water Quality Division)
2.	ADEQ (Waste Programs Division)
3.	Wade A. Bunting
4.	Joan Curtiss
5.	Farmers Investment Co. and Farmers Water Co.
6.	Freeport-McMoRan Sierrita Inc.
7.	Les Gunderson
8.	Mission Peaks 4000, LLC.
9.	Mountain Empire Action Alliance
10.	Connie Mullineaux
11.	Pima County Administrator's Office; C.H. Huckelberry
12.	Rosemont Copper (March 29, 2009)
13.	Rosemont Copper (April 20, 2009)
14.	Save the Scenic Santa Ritas Association
15.	Raymond L. Smith
16.	US Army Corps of Engineers

II. Public Comment Letters on the DEA (March 2009) and Reclamation's Responses

The following pages contain each comment letter received on the DEA (March 2009), followed by Reclamation response(s).

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER QUALITY DIVISION

COMMENT LETTER 1



Janice K. Brewer
Governor

ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007
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Patrick J. Cunningham
Acting Director

April 23, 2009

Ms. Sandra Eto
U.S. Department of Interior
Bureau of Reclamation
Environmental Resource Management Division
6150 W. Thunderbird Road
Glendale, AZ 85306-4001

SUBMITTED VIA E-MAIL: seto@usbr.gov

Re: Draft Environmental Assessment for Community Water Company of Green Valley Water Distribution System and Recharge Facility

Thank you for the opportunity to comment on the Draft Environmental Assessment (EA) for the Community Water Company of Green Valley (CWC), Central Arizona Project (CAP) Water Delivery System. The EA evaluates the effects of recharging 5,000 acre-feet of CAP water annually at a location northeast of Green Valley and east of the Santa Cruz River in Pima County.

The proposed project would allow delivery and use of CWC's CAP entitlement of 2,858 acre-feet per year for its service area within the upper Santa Cruz basin, which will be funded by the operators of the proposed Rosemont Mine. The CAP water would be conveyed through a pipeline to be constructed to an artificial recharge facility located east of CWC's water service area, where the CAP water would be stored underground. Although the EA evaluates the effects of recharging 5,000 acre-feet, the EA is not clear where the remaining recharge water will come from, other than CWC's CAP entitlement of 2,858 acre-feet.

The information provided states that the proposed project includes:

- 1) Approximately 6.3 miles of buried 36-inch diameter main delivery pipeline, beginning at a connection to an existing pipeline that delivers CAP water to the Pima Mine Road Recharge Project. The pipeline aligns with existing right of way of Pima Mine Road, the Nogales Highway, and the Old Nogales Highway.
- 2) Approximately 1.6 miles of buried 20-inch diameter pipeline that would end at the proposed 20-acre recharge site. Another 20-inch diameter pipeline would be constructed in the future from the recharge facility approximately 2.5 miles west to the CWC's existing Well #11 treatment facility.
- 3) A connection to an existing CAP pipeline consisting of a new control valve, flow meter, and associated appurtenances.

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- 4) Construction staging areas, temporary offices, and areas for storing construction materials, requiring two to three acres of land.
- 5) A pump booster station to deliver the water to the recharge basin.
- 6) A 20-acre site recharge facility, located in the west half of the southeast quarter of the southeast quarter of Section 29 T17S, R14E, with two recharge basins constructed within the 20-acre site recharge facility.

The Arizona Department of Environmental Quality, Water Quality Division (ADEQ) is responsible for ensuring the delivery of safe drinking water to customers of regulated public water systems under the Safe Drinking Water Act, permits for proposed discharges to surface waters of the United States under the federal Clean Water Act (CWA), permits under the State aquifer protection program, and water quality certifications of certain federal licenses and permits. With the information provided, ADEQ would like to make you aware of some water quality issues that may need to be addressed.

Clean Water Act 401 water quality certification: If project activities will occur inside the Ordinary High Water Mark of any water of the U.S., such as the Santa Cruz River, then an U.S. Army Corps of Engineers-issued CWA section 404 permit (a.k.a. dredge and fill permit) may be required. If a 404 permit (or any other federal permit) is required for the project, a state-issued CWA section 401 certification of the permit will be required. The U.S. Army Corps of Engineers will include the conditions of the CWA 401 certification as requirements of the Section 404 permit to ensure that the permitted activities will not result in a violation of Arizona's surface water quality standards. For questions relating to CWA 401/404, please contact Bob Scalamera at (602) 771-4502 or by e-mail at RS3@azdeq.gov. The CWA 401 application form can be downloaded from the agency website at: <http://www.azdeq.gov/function/forms/appswater.html#dredge>

Stormwater: Stormwater discharges associated with construction activities (clearing, grading, or excavating) which disturb one acre or more must obtain a general permit for coverage of stormwater discharges under the Arizona Pollutant Discharge Elimination System's (AZPDES) Construction General Permit. Permit coverage also is required for construction activities that will disturb less than one acre of land but the project is part of a larger common plan of development or sale and the entire project will ultimately disturb one or more acres. The EA indicates that this project has the potential to disturb at least 47 acres. As part of permit coverage, a Stormwater Pollution Prevention Plan (SWPPP) must be prepared, and implemented during the course of construction. The SWPPP must comply with ADEQ's Construction General Permit's SWPPP requirements, and must identify such elements as the project scope, anticipated acreage of land disturbance, and the best management practices that would be implemented to reduce soil erosion and contain and minimize the pollutants that might be released to waters of the U.S. In addition to preparing the SWPPP, the project proponent would need to file for permit coverage. The Construction General Permit, SWPPP checklist, and associated forms are available on ADEQ's website at: <http://www.azdeq.gov/enviro/water/permits/stormwater.html#const>. If you have questions, please contact Chris Henninger in our Stormwater and General Permits Unit at (602) 771-4508 or by e-mail at cph@azdeq.gov.

Comment Letter 1 continued

Page 3 of 3

AZPDES De Minimus General Permit: If activities such as well drilling would result in discharges to a surface water, the project proponent would need to obtain coverage under the AZPDES De Minimus General Permit (DGP). The 2004 DGP expired on March 17, 2009. ADEQ is drafting a new DGP that is planned for issuance in June 2009, following opportunities for public review and comment. Further information on the DGP can be found at <http://www.azdeq.gov/enviro/water/permits/gen.html#demi> or by contacting Lavinia Wright, ADEQ Project Manager for the De Minimus General Permit, at (602) 771-4584 or by e-mail at wright.lavinia@azdeq.gov.

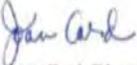
Groundwater issues: Groundwater in the Green Valley area has been impacted by a sulfate plume from the existing Sierrita Mine, located west of the Santa Cruz River and west of Interstate 19. The sulfate plume is migrating to the east and northeast from the mine and tailings impoundment toward the Santa Cruz River. The EA includes results of computer modeling indicating that the proposed recharge is not expected to affect groundwater flow rates or direction in areas west of the Santa Cruz River, where the Sierrita Mine and sulfate plume are located. ADEQ also is aware of the elevated concentrations of sulfate in CAP source water and potential impacts on groundwater quality for drinking water purposes in the Green Valley area. Mitigation of the effects of sulfate in the CAP water may need to be considered in the planning and implementation of this recharge project.

Aquifer Protection Permits (APP):

(1) Discharges, such as for water quality sampling, hydrologic parameter testing, well development, redevelopment, or potable water system maintenance and repair purposes, receives water, drilling fluids, or drill cuttings from a well, are authorized under a 1.04 General Aquifer Protection Permit as long as the drilling and testing operations for each drilling location meet the rule requirements. See A.A.C. R18-9-B301(D).

(2) An underground storage and recovery project is exempt from the APP requirements, under A.R.S. §49-250(B)(12), unless effluent or reclaimed water is being used. The EA correctly notes at page 15 that an underground storage facility permit is required under A.R.S. § 45-811.01 from the Arizona Department of Water Resources (ADWR). Part of ADWR's permitting process involves contacting ADEQ to conduct an application review in order to make a determination that the facility is not in a location that will promote either the migration of a contaminant plume or the migration of a poor quality groundwater area so as to cause unreasonable harm or is not in a location that will result in pollutants being leached to the groundwater table so as to cause unreasonable harm. A.R.S. § 45-811.01(C)(5). However, if any of the proposed project's recharge water will be effluent or reclaimed water, an APP will be required from ADEQ under A.R.S. § 49-241(B)(8). For questions relating to underground storage, please contact Mason R. Bolitho at (602) 771-4434 or by e-mail at mb10@azdeq.gov

Sincerely,



Joan Card, Director
Water Quality Division

Response to Comment Letter 1: As explained in section 3.6.2.2.2, Ground Water Resources, Environmental Consequences, Preferred Alternative-Water Quality, impacts from sulfate concentrations in CAP water are not anticipated to require mitigation. Monitoring requirements that would be part of the ADWR Constructed USF permit would ensure there would be early detection of any potential water quality problems. Section 3.6.2.2 of the EA has been changed to indicate construction of the proposed CWC water delivery system would comply with applicable federal and state water quality requirements. The EA has been changed in Section 4.0, Clean Water Act, to indicate a Clean Water Act Section 401 certification may be required.

**ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
WASTE PROGRAM DIVISION**

COMMENT LETTER 2

From: Veronica Garcia [Garcia.Veronica@azdeq.gov]
Sent: Tuesday, April 28, 2009 4:43 PM
To: Eto, Sandra
Subject: FW: Communication 206685: Green Valley CAP Recharge

Importance: High

Ms. Eto,
 I apologize for the delay in sending our comments. Please find attached ADEQ's comments on the subject draft EA. If you have any questions, please contact me.

Regards,

Veronica Garcia, Deputy Director
 Waste Programs Division
 Arizona Department of Environmental Quality
 1110 W. Washington Street
 Phoenix, AZ 85007
 Telephone: 602-771-4422
 Fax: 602-771-2302

The Arizona Department of Environmental Quality Waste Programs Division (WPD) reviewed the memo dated March 6, 2009 requesting comments on proposed project #PXAO-1500 ENV-6.00, for Community Water Company of Green Valley Central Arizona Project (CAP) Water Distribution System and Recharge Facility in Pima County, Arizona. The Department reviewed the draft Environmental Assessment (at <http://www.usbr.gov/lc/phoenix/reports/capcwc/cwcdea.pdf>), and maps and figures (at <http://www.usbr.gov/lc/phoenix/reports/capcwc/cwcdeafigs.pdf>).

The Department understands that the preferred alternative would entail building a pipeline, recharge site, and related facilities to convey and store CAP water from the existing pipeline that delivers water to the Pima Mine Road Recharge Project to a location near the northern edge of the CWC service area. The Department offers the following comments in regards to the proposed project:

1. In making land use and design decisions, consider nearby sites over which ADEQ has jurisdiction, such as land fills, hazardous waste treatment facilities and cleanup sites. The WPD used the GIS Mapper at <http://www.azdeq.gov/function/about/gis.htm>, and found the following entities that are under the jurisdiction of the WPD within 5 miles of the location of the preferred alternative (western edge of T17S R14E and southwestern quarter of T16S R14E):

Hazardous Waste - LQG

Rec	RCRA_ID	TYPE	SITENAME	ADDRESS	CITY	COUNTY
1	AZT000623678	LQG	Asarco Inc Mission Unit	4201 W Pima Mine Road	Sahuarita	Pima
2	AZD097116362	LQG	Tessenderlo Kerley Mining Inc	2480 Twin Buttes Road	Sahuarita	Pima

Municipal Landfills

Rec	OWNER	OPERATOR	LANDFILL	STATUS	TYPE_04	OPSTATUS_0	PLACE_ID
1	PIMA COUNTY	PIMA COUNTY	SAHUARITA	OPEN	MSWLF	ACTIVE	7097

Superfund

Rec	SITES	NAME	CITY	COUNTY	TYPE	SITES1	WPDABB
1	27	RAYTHEON AIR FORCE PLANT #44, TUCSON AIRPORT	TUCSON	PIMA	EPA NPL	51	RatbAFB44

Program staff do not anticipate any conflict between the proposed recharge and the Waste Program Division's activities at these sites.

2. Program staff determined that the proposed recharge site is within the boundaries of the former Sahuarita Air Force Range, used by the military between 1942 and 1958 as a firing and bombing target range. A bombing target that was used for high explosive bombing is located approximately 1 mile north and 3 miles east of the proposed recharge site (T17S R14E S24). The recharge site falls within the Formerly Used Defense Sites (FUDS) program. The U.S. Army Corps of Engineers (USACE) is assigned environmental clean up responsibilities on behalf of the Department of Defense. In January 2007, Parsons on behalf of USACE conducted a site inspection (SI) under the Military Munitions Response Program (MMRP). A copy of the site inspection report for FUDS Project number J09AZ057601, dated August 2007 can be obtained from the USACE by contacting Jeff Armentrout, the FUDS Program Manager at (213) 452-3990 or by e-mail at jeffery.b.armentrout@usace.army.mil.

The site inspection report identified several high explosive munitions items at the southern bomb target range. Soil samples were taken and the recommendations were to proceed to a remedial investigation. The site of the proposed recharge area was not surveyed by Parsons for high explosive munitions during the SI. Use caution when digging anywhere on the former bombing target range until the area can be further evaluated and assessed. If munitions items are discovered that would warrant concern, notify the local sheriff's department.

3. All waste management activities must comply with state and federal laws. These may be found at <http://www.azdeq.gov/function/laws/index.html>. Asbestos waste is regulated under the Asbestos National Emission Standard of Hazardous Air Pollutants (NESHAP).

4. The WPD believes that the Bureau of Reclamation should consider it's operation and maintenance of construction equipment. Equipment operation and maintenance carries with it the risk of accidental release of fuel, motor oil and other hazardous fluids. Mitigation of such potential releases should be included as part of the project plan, and should be addressed in the Environmental Assessment.

5. Construction documents should include provisions that, if any solid or hazardous wastes are encountered, the owner or developer will coordinate with state and federal regulators in taking appropriate action. Report newly discovered waste sites to local emergency officials or by filling out the form at <http://www.azdeq.gov/function/compliance/complaint.html>.

6. The orientation for contractors should include instructions that, if any solid or hazardous wastes are encountered, the contractor will report the waste, and the Bureau of Reclamation will coordinate with state and/or federal regulators in taking appropriate action. Newly discovered waste sites can be reported by filling out the form at <http://www.azdeq.gov/function/compliance/complaint.html>.

Comment Letter 2 continued

7. All onsite workers should be instructed to appropriately dispose of waste they generate, and report any illegal solid or hazardous waste disposal areas.

8. Construction and operation plans should incorporate waste reduction through the use of recycled materials, as well as proper handling, recycling and disposal of construction debris, solid waste and hazardous waste. To learn more about recycling, waste minimization and pollution prevention, go to <http://www.azdeg.gov/environ/waste/index.htm>. Select sustainable construction materials and products by evaluating such characteristics such as recycled content, toxicity, durability, longevity, and local production. Such products promote resource conservation and efficiency. Using recycled-content products also helps develop markets for recycled materials that are being diverted from Arizona's landfills.

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Response to Comment Letter 2: Thank you for providing this information. The revised, alternative recharge locations are now located outside of the boundaries of the former Sahuarita Air Force Range. Section 3.3.2.2, Land Use Environmental Consequences-Preferred Alternative, has been revised to indicate development of the proposed CWC water delivery system would consider: 1) hazardous waste, landfill, and superfund sites; 2) state and federal laws and regulations regarding waste management; and 3) water reduction and pollution prevention methods. Reclamation will encourage CWC to include language in its construction specifications regarding provisions identified in #'s 5 through 8 of your letter; Reclamation would not be involved in the actual construction of this project.

Comment Letter 3 continued

From the letter to Pima County Supervisor Ray Carroll from CWC Chairman of the Board Ken Taylor dated August 22, 2007:

"In the two years Community Water Company and, independently, a group of concerned citizens of Green Valley, have been actively pursuing funding for this project, we have not been successful in locating these readily available alternative funding sources."

"Since we have not yet signed a binding agreement with Augusta Resources Corporation, we will be happy to discuss any firm commitment to a similar transaction with any entity that has funds readily available for our project."

From Reclamation's Draft Environmental Assessment, Section 1.5 Relationship to Proposed Rosemont Mine:

"Reclamation recognizes that construction of the Proposed Project is proposed to be funded by Rosemont and that CWC plans to give priority for use of CWC's CAP water and available recharge storage capacity for the first 15 to 20 years of the systems operation unless needed by CWC. However, as discussed further in the Scoping Report in Appendix B and below, Reclamation has determined that the Proposed Project and the proposed Rosemont Mine are not connected actions under NEPA."

"Presently, use of the CWC water delivery system is not identified in Rosemont's mine plan of operation (MPO) under consideration by the Coronado National Forest."

From Reclamation's Draft Environmental Assessment, Section 2.3 Proposed Action:

"CWC has agreed to give Rosemont priority for use of CWC's 2,858 AFY of CAP water for the first 15 to 20 years of the system's operation unless it is needed by CWC. Under the Preferred Alternative, this water would be recharged at the proposed recharge site, along with additional water supplies Rosemont may obtain to utilize the maximum recharge capacity of 5,000 AFY at the site."

From Reclamation's Draft Environmental Assessment, Project Financing, p.16:

"The Agreement between CWC and Rosemont has not been finalized, and thus Reclamation and CAWCD have not been able to review any portion of the Agreement."

2. SUMMARY OF FACTS DERIVED FROM THE EXCERPTS

1. ARC and CWC jointly completed a plan for construction of a CAP Water Delivery System and Recharge Facility on June 18, 2007, which was incorporated into the Letter of Intent between them and which is the Proposed Project currently under review by the Reclamation.
2. ARC and CWC are "Development Partners." The Proposed Project is managed by the WDS Project Team consisting of members of both ARC and CWC reporting to and acting under the direction of their respective companies.
3. ARC's Rosemont Mine Plan of Operation was dated and submitted to the Coronado National Forest ("CNF") July 11, 2007.
4. The ARC/CWC plan for constructing a CAP water delivery pipeline and recharge facility was completed a month prior to ARC's completion and submission of its Rosemont Mine Plan of Operation to the CNF.
5. The ARC/CWC plan could easily have been incorporated by name into ARC's Rosemont Mine Plan of Operation's recharge plan, but as a conscious decision by ARC it was not.
6. Reclamation's determination that ARC's Proposed Rosemont Mine and the Proposed Project are not connected actions under NEPA was based in part on the observation that ARC's use of the Proposed Project's water delivery system is not specifically identified by name in ARC's Rosemont Mine Plan of Operation.
7. The availability of a suitable CAP water delivery pipeline and recharge facility is critical to the implementation of the recharge plan in ARC's Rosemont Mine Plan of Operation.
8. The maximum capacity of the Proposed Project's recharge facility is 5,000 acre-feet per year—exactly equal to ARC's annual recharge commitment.
9. Without Reclamation's approval of the Proposed Project, ARC's CAP water contract with the Pima Mine Road Recharge Facility will not be sufficient to meet ARC's commitment to recharge 105,000 acre-feet of water over the lifetime of the proposed Rosemont Mine.
10. The final "Agreement Relating to Extension of Water Distribution Facilities" that would provide ARC funding for the Proposed Project has not been executed by ARC and CWC to date, nor has a binding agreement for project

3-2

Comment Letter 3 continued

3-2 funding been executed by CWC and any other entity to date. Funding for the Proposed Project, therefore, remains uncertain.

3. CONCLUSIONS SUPPORTED BY THE FACTS

- 1. ARC knowingly and inappropriately withheld full disclosure in its Rosemont Mine Plan of Operation that its Recharge Plan and the Proposed Project are in fact one and the same; and it did so intentionally to avoid the unwanted consequences of a correct determination by the CNF and Reclamation that ARC's proposed Rosemont Mine and the Proposed Project are connected actions under NEPA.
- 2. ARC and CWC, through the WDS Project Team, are Development Partners in the Proposed Project. ARC is not simply an independent funding entity but a central participant in the design, construction, management and operation of the proposed facility. Thus, ARC's proposed Rosemont Mine is directly connected and integral to the Proposed Project.
- 3. That the maximum capacity of the Proposed Project's recharge facility is 5,000 acre-feet per year—exactly equal to ARC's annual recharge commitment—cannot be a coincidence.
- 4. The availability to ARC of a suitable pipeline and recharge facility is critical to the implementation of its Recharge Plan. Without approval of the Proposed Project, ARC will not be able to implement the CAP Recharge Plan in its Rosemont Mine Plan of Operation. Absent a viable recharge plan, CNF's approval of ARC's Rosemont Mine Plan of Operation is unlikely. Therefore, approval of ARC's proposed Rosemont Mine is in fact dependent upon Reclamation's approval of the Proposed Project.
- 5. Neither ARC nor any other entities to date have entered into a binding agreement with CWC to fund the Proposed Project. Absent a binding final agreement between ARC and CWC that guarantees funds for project design and construction costs, funding for the Proposed Project is uncertain and Reclamation's approval of the Proposed Project is unlikely. Therefore, approval of the Proposed Project is in fact dependent upon approval of ARC's proposed Rosemont Mine.

4. RECOMMENDATIONS

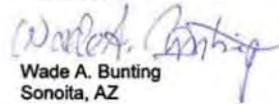
- 1. ARC's and CWC's own words and actions make the case that ARC's Proposed Rosemont Mine and the CAP Water Delivery System and Recharge Facility proposed by CWC are in fact connected actions. Therefore, the Bureau of Reclamation must (a) reverse its decision to

the contrary, (b) communicate its decision to the Coronado National Forest that ARC's Proposed Rosemont Mine and the Proposed Project are connected actions under NEPA, (c) jointly with the Coronado National Forest, expand/convert the pending environmental assessment to a full, combined environmental impact statement for both ARC's Proposed Rosemont Copper Project and the Proposed Project, and (d) upon completion of the above, expand the scoping period to permit a full review and comment by the public, particularly in Green Valley and Sahuarita.

3-4

Thank you for the opportunity to comment on this important public matter.

Respectfully,


Wade A. Bunting
Sonoita, AZ

Cc: Congresswoman Gabrielle Giffords
Congressman Raul Grijalva
Ms. Jeanine Derby, Forest Supervisor
Coronado National Forest

3-3

3-4

Response to Comment Letter 3:

- 3-1. Please note this 53-acre parcel of land is not associated with the proposed CWC water delivery system project. It is owned by Augusta Resources Corporation, and is located approximately 2.5 miles northeast of the proposed CWC recharge site. The 53-acre parcel is labeled “water production site” on the figure found at http://www.augustaresource.com/upload/Plan_of_Operations/2-10water_supply.pdf.
- 3-2. Your comments are noted; however, Reclamation considers several of the comments included in this “summary of facts” to be conclusions that have been drawn by the writer. Reclamation does not necessarily agree with those conclusions.
- 3-3. Section 1.5 and Appendix B of the DEA and RDEA specifically evaluated whether the proposed project and the Rosemont Mine are connected actions under the three criteria in the NEPA regulations (40 CFR 1508.25). Reclamation concluded in the DEA and RDEA, and continues to find, that the proposed CWC and Rosemont projects are not connected actions for purposes of complying with the NEPA because: 1) approval of the proposed CWC water delivery system does not automatically trigger the proposed Rosemont Mine; 2) Rosemont’s commitment to pay for the proposed CWC water delivery system is not contingent on the CNF’s approval of the proposed Mine; and 3) the proposed CWC water delivery system has independent utility regardless of the proposed Mine. Similarly, as part of its Biological Opinion on the construction of the proposed CWC water delivery system, the U.S. Fish and Wildlife Service concluded that the proposed Rosemont Mine is not an action interrelated or interdependent to the proposed project for the purposes of ESA analysis (Appendix F).

The conclusions drawn in these comments based upon excerpts from various documents by or between CWC and Rosemont are speculative. As clearly disclosed in Section 1.5 of the EA, there is no question construction of the proposed CWC water delivery system is proposed to be funded by Rosemont and that CWC plans to give Rosemont priority over other customers for that water, the system, and recharge capacity for the first 15 to 20 years, unless they are needed by CWC to meet delivery obligations to other portions of CWC’s water service area. However, for the reasons summarized in the previous paragraph, the proposed relationship between CWC and Rosemont does not rise to a level where the two proposed project are “connected actions” for purposes of NEPA analysis.

The CNF has not yet completed its analyses of the impacts that are anticipated to result from approval and implementation of the Rosemont Mine MPO. Until this occurs, a conclusion that CNF’s approval of the Rosemont Mine MPO is “unlikely” (as stated in this comment), is speculative.

- 3-4. Your recommendations are noted; however, for reasons stated in response to Comment 3-3, Reclamation continues to conclude the proposed project and the proposed Rosemont Mine are not connected actions for purposes of complying with NEPA.

JOAN CURTISS

COMMENT LETTER 4

Joan Curtiss
484 S. Lower Chord Road
Corona de Tucson, AZ 85641

April 24, 2009

SANDRA ETO
BUREAU OF RECLAMATION
6150 W. THUNDERBIRD ROAD
GLENDALE, AZ 85306

Re: Comment to Proposed Community Water Company of Green Valley ("CWCGV")
Central Arizona Project Water Delivery System

4-1

1. First and foremost, the title page to the Draft Environmental Assessment dated March, 2009 references the missions of both the Department of the Interior and the Bureau of Reclamation. Nowhere in those missions are there references to any non-American entity, heritage, public or community. Please explain how enabling a foreign mining company to legally steal precious water resources furthers these missions.

The actions of CWCGV must benefit its members. How does giving its CAP allotment benefit its members?

4-2

2. There is a blatant conflict of interest with the Bureau of Reclamation in that Rosemont has agreed to fund all capital and project development for the Proposed Project. How can the Bureau remain objective under these circumstances? If the Bureau feels it can remain objective, why aren't the costs referenced in Appendix D of the Draft Environmental Assessment disclosed so that the entire Assessment remains open to the public and transparent? The Bureau should disqualify itself from the entire process.

4-3

3. The proposed pipeline goes 3 miles round trip to get the pipeline closer to Santa Rita Road when the more direct route would be Well #11 if the intention is truly to serve the members and customers of CWCGV.

4-4

4. The Environmental Assessment dated March 2009 (the "3/2009 EA") should instead be an update to the 1982 Environmental Impact Statement prepared by the Bureau of Reclamation due to the additional environmental concerns discovered since 1982. See lines 27 through 40 of page 3 of the 3/2009 EA.

4-5

5. Page 6, section 1.5 of the Draft Environmental Assessment states that Rosemont Mine and CWCGV are not connected. If that is truly the case, all other references in the DEA should be removed.

6. CWC is giving its allocations to Rosemont who, in turn, will only make the water shortage in Green Valley worse. Once can only assume that the lack of interest is due to the current groundwater contamination having a negative impact on the thought processes of the people of Green Valley (perhaps sulfite contamination). Who in their right mind would knowingly contribute to their own demise? 4-6

7. The purpose of the Proposed Project is to relieve water overdraft in the area. See Section 1.2, page 2 of the Draft Environmental Assessment. The purpose will not be fulfilled if instead Rosemont is allowed to deplete the groundwater. 4-7

8. The primary purpose of this project is for the delivery and use by CWCGV customers should the existing sulfate plume contaminate additional CWC wells. See page 4 lines 17 – 23 and see also page 18 lines 14 – 17. Pursuant to the LOI, Augusta will have first priority for the use of the water for the first 30 years of operation. Augusta's first priority is in direct conflict with the original intent. In short – the proposed project as detailed in Augusta's and CWCGV's LOI does not pass the smell test. 4-8

9. The proposed pipeline will be directed to the Rosemont site and not toward Green Valley. How can CWC justify not providing water to its existing customers first? 4-9

10. If the purpose of CWCGV is to serve its members, how does CWCGV justify its allowing Rosemont to become a member when it is not in the service area? What credentials and considerations were used to allow Rosemont to become a member? 4-10

Thank you for your consideration.

Sincerely,

Joan Curtiss

Response to Comment Letter 4:

- 4-1. The purpose and need for the proposed CWC water delivery system, as described in Section 1.2 of the EA, are consistent with and further the missions of Reclamation and the Department of Interior. The proposed project completes environmental clearances so that CWC can utilize its CAP entitlement, as provided for under the Colorado River Basin Project Act of September 30, 1968 (Public Law 90-537). It benefits CWC's members by developing a permanent CAP water delivery system so a renewable water supply can be recharged in the upper Santa Cruz sub-basin. This would help offset the ground water pumping overdraft in the Green Valley area and reduce the potential for ground subsidence. It would also provide an alternative water source in the event that additional CWC production wells become unusable as a potable water source due to contamination or some other problem.
- 4-2. Reclamation's obligation is to objectively describe and assess the environmental consequences that may result from construction and operation of CWC's proposed CAP water delivery system, regardless of the funding mechanism. Rosemont's funding does not create a conflict of interest for Reclamation. Appendix D was provided by CWC with the amounts blacked out. It is not uncommon for construction cost estimates to be withheld from the public during agreement discussions, as their disclosure is considered to provide potential competitors with an unfair advantage.
- 4-3. As explained in Section 2.6.1, Alternatives Considered but Eliminated from Detailed Study-Direct Use of CAP Water, direct delivery to Well #11 was eliminated from detailed study. This alternative would require CWC to construct an expensive plant to treat the CAP water before it entered the CWC system. There would also be substantial ongoing operation and maintenance costs to treat the CAP water. Recharge of the CAP water does not require treatment but would provide an indirect benefit to CWC and its customers by offsetting some of the pumping in the area. The EA has been clarified to indicate that CWC may investigate direct use of CAP water again in the future if recovery wells from near the recharge site, as discussed in Section 2.3 – Proposed Project, prove to be infeasible.
- 4-4. The purpose of this EA is to update the information regarding CWC's plans for taking and using its CAP water entitlement, which were not known and only generally addressed in the 1982 EIS. The water quality concerns resulting from the sulfate plume from the Sierrita Mine tailings impoundment are a result of private actions taken by a private company on private land. The contamination and mitigation measures being undertaken are included in the EA as part of the description of the potential cumulative effects of the Proposed Action in Section 3.6.3.
- 4-5. Your comment is noted. While not connected to the proposed Rosemont Mine in terms of NEPA regulations, CWC's plans for taking and using its CAP Water entitlement include giving Rosemont priority over other customers for that water, the system, and recharge capacity for the first 15 to 20 years, unless they are needed by CWC to meet delivery obligations to other portions of CWC's water service area. Therefore, the reference to Rosemont cannot be removed.4-6. Recharge of CWC's CAP entitlement in the upper Santa Cruz sub-basin is intended to offset some of the ground water pumping overdraft occurring in the area. Pumping by Rosemont Mine is outside the scope of this EA and beyond Reclamation's jurisdiction and authority.
- 4-7. Please see response to Comment 4-6.

- 4-8. As stated in Section 1.5, should CWC need to use its CAP entitlement, and/or recharge storage capacity, to meet delivery obligations to other portions of CWC's water service area, it will be able to do so.
- 4-9. Please see response to Comment 4-1.
- 4-10. Your comment is noted. See also response to Comment 4-1. The proposed project would allow CAP water to be delivered and recharged in the upper Santa Cruz basin, an area that is experiencing serious ground water overdraft but that heretofore has not had a mechanism for bringing in a renewable water supply to offset ground water pumping.

FARMERS INVESTMENT CO. and FARMERS WATER CO.

COMMENT LETTER 5

FARMERS INVESTMENT CO.

P.O. BOX 7 SAHUARITA, ARIZONA 85629-0007 U.S.A.

FARMING AND FARM MANAGEMENT:
SANTA CRUZ VALLEY FARM, ARIZONA
SAN SIMON, ARIZONA
BLUE THREE GROVES, GEORGIA



EST. 1937

PROCESSING AND MARKETING:
THE GREEN VALLEY PECAN COMPANY
THE PECAN STORE
GREEN VALLEY PECANS

RICHARD S. WALDEN
PRESIDENT, & CEO

April 24, 2009

Ms. Sandra Eto
Environmental Resource Management Division
U.S. Department of the Interior, Bureau of Reclamation
Attention PXAO-1500
6150 West Thunderbird Road
Phoenix, AZ 85306-4001

Re: Comments from Farmers Investment Co. (FICO) and Farmers Water Co. on the Draft Environmental Assessment of Community Water Company Plan for Central Arizona Project Water Delivery System, Pima County, Arizona

Dear Ms. Eto:

Please find enclosed the comments of FICO and Farmers Water Co. on the above-referenced Draft Environmental Assessment. We look forward to working with the Bureau of Reclamation throughout this National Environmental Policy Act process. We also ask that your agency keep us well informed of any meetings or other newly available public information.

We appreciate the opportunity to provide your office with comments on the Draft Environmental Assessment.

Sincerely

Richard S. Walden
President

Enclosure

Tel: 520-791-2852

Fax: 520-791-2853

cc w/enc.

Honorable Gabrielle Giffords
Honorable Raul Grijalva
Honorable Ed Pastor
US Forest Service, Southwestern Region
Coronado National Forest
USDI Bureau of Land Management
US Environmental Protection Agency
Army Corps of Engineers
Davis-Monthan Air Force Base
Federal Highway Administration
US Fish & Wildlife
US Geological Survey
Office of Surface Mining Reclamation
Department of Labor Mine Safety and Health Administration
Department of Transportation Federal Railroad Administration
Bureau of Indian Affairs
Arizona Department of Mine & Mineral Resources
Arizona State Mine Inspector
Arizona Department of Environmental Quality
Arizona Game & Fish
Arizona Geological Survey
Arizona State Land Department
Arizona State Parks
Arizona Department of Public Safety
Arizona Department of Administration-Risk Management
Arizona Department of Water Resources
Arizona Water Banking Authority
State Historic Preservation Office
Arizona Department of Transportation
Central Arizona Groundwater Replenishment District
Central Arizona Water Conservation District
Pima County
Santa Cruz County
Cochise County
City of Tucson

Comment Letter 5 continued

Farmers Investment Co. and Farmers Water Co.

**Proposed CWC Pipeline: Comments on the
Draft Environmental Assessment
(US Bureau of Reclamation)**

April 24, 2009

- 1. The CWC pipeline environmental analysis should be conducted as part of the proposed Rosemont Mine environmental impact statement process. Thus, the Bureau should be designated as a cooperating agency with the Coronado National Forest in the CNF's environmental review of Rosemont. The proposed CWC pipeline is a legally "connected action" with "cumulative impacts" to and in the context of the larger proposed Rosemont Mine.**

FICO's scoping comments submitted for the pipeline proposed by Community Water Company ("CWC") provided an extensive legal analysis regarding why the proposed CWC pipeline and the proposed Rosemont Mine are legally "connected actions" under NEPA, with "cumulative impacts", and we incorporate those comments by reference herein. As such, the environmental analysis of the two projects must be considered together. Since the formal environmental analysis of the proposed Rosemont Mine began earlier than that of the proposed CWC pipeline, and because the proposed Rosemont Mine is of substantially larger scale than the proposed CWC pipeline, the environmental analysis of the CWC pipeline must be integrated into the Environmental Impact Statement (EIS) analyzing the proposed Rosemont Mine. Furthermore, in order to ensure that the Bureau of Reclamation, which is the "lead" agency for the proposed CWC pipeline, fully participates in the environmental review, the Bureau should become a cooperating agency with the Coronado National Forest/US Forest Service, which is the lead agency for the proposed Rosemont Mine.

The Bureau's superficial analysis of the "connected actions" argument is woefully inadequate. See Draft EA, at 6-7, 15-16, and 22-23; see also Scoping Memorandum, App. A, at 4-5 (generally repeating the same comments). The Bureau seems to have fallen into the carefully-worded trap laid by CWC and Rosemont, wherein Augusta Resource (Arizona) Corporation, Rosemont's parent, appears to commit to funding the CWC pipeline regardless of whether the Rosemont Mining Plan of Operations is approved. In reality, no final agreement has been submitted *legally assuring* such funding source. Furthermore, it is disingenuous, if not naïve, to expect that Augusta will, purely out of the goodness of its corporate heart, agree to fund construction and operation of the CWC pipeline if there is no use for the piped water for a Rosemont Project that is not approved. Augusta and Rosemont have a fiduciary responsibility to their shareholders not to waste corporate assets.

It is clear from extensive correspondence and submittals both by CWC and by Rosemont to the Coronado National Forest that Rosemont expects to need the CWC pipeline. While a CWC pipeline *might* have separate utility from the Rosemont Mine, such "separate

utility" has not been articulated and confirmed; indeed, CWC's expectation is that Rosemont would have the advantage of the CWC-piped water for the first 20 years (if not more¹) of the pipeline's existence. The CWC pipeline is a dependent part of the larger Rosemont Mine action and is thus a "connected action" to the Rosemont Mine proposal, requiring that its analysis be done as part of the larger environmental analysis of the Rosemont Mine.

Evidence of Augusta's reliance on and expectations about the CWC pipeline in connection with the Rosemont mine can readily be gleaned from material posted on the company's Rosemont website and other available material. For example, the November 30, 2007 "Report of Findings and Analysis Presented to Augusta Resource Corporation" by Marketing Research & Strategy Consultants repeatedly identifies the purchase of enough CAP water to guarantee a surplus of water to the area as a significant factor in influencing area residents to have a favorable opinion of the Rosemont mine (see pages 2, 4, 7, 8 and 13).

An even more explicit explanation of the relationship between the CWC pipeline and the Rosemont mine is articulated in the opening paragraphs of the July 12, 2007, Letter of Intent between Augusta and CWC. In that document, signed by both parties, it is explained that, "Augusta Resource Corporation (ARC) plans to procure and recharge CAP water in the vicinity of its Rosemont Mine well site, a 53-acre parcel of land located on Davis Road, Sahuarita, AZ (ARC 53-Acre Parcel). The availability of a suitable pipeline and recharge facility **is critical to the eventual implementation of this plan**" (*emphasis added*).

The Bureau's Draft EA reinforces the inter-relatedness of the proposed CWC pipeline and the proposed Rosemont Mine and how the environmental impacts *MUST* be considered together. In section 3.1.3, the Draft EA rejects consideration of the proposed Rosemont mine for cumulative analysis purposes because "there is no potential for impact to common resources, with the exception of groundwater." Yet, groundwater use is the precise issue that is one of the most significant elements of both the proposed CWC pipeline and the proposed Rosemont Mine. Later in the same paragraph, the Draft EA drives home the point that the cumulative impacts of the two projects must be considered together by affirming that the cumulative impacts *ARE* discussed in section 3.6.3

¹ As FICO has maintained throughout the course of the scoping process for the proposed Rosemont mine, the probability of and impacts of Rosemont operating longer than 20 years must be considered by federal agencies. As we said in our formal scoping comments, "We have had long experience in this same area with mines that underestimate their lifespan. Three mines on the west side of our valley have been active for over fifty-five years. Due to improved technologies and the cost of minerals, many believe that 100 years is a more realistic life span for the mine. Obviously, the analyses of the long list of potential impacts from this proposed mine need to be carried out to the reasonably foreseeable lifetime of the operations of the mine, as well as the proposed reclamation plan." And we would now add, the proposed impacts of Rosemont using the proposed CWC pipeline for a period much longer than 20 years must be analyzed. See Rosemont Mining Plan of Operations, Scoping Process Comments from Farmers Investment Co. to Ms. Beverly Everson, Coronado National Forest, July 14, 2008, as well as testimony from Dick Walden, Forest Service Scoping Meeting, Tucson, Arizona, June 30, 2008. See also, scoping comments from Rancho Soñado, LLC, to Ms. Beverly Everson, Coronado National Forest, July 14, 2008.

5-1

5-1

Comment Letter 5 continued

5-1

"because Rosemont's proposed production wells are located in the CWC project area, and the timing of Rosemont's proposed withdrawals and CWC's recharge would overlap, thus creating the potential for cumulative impacts." The Draft EA then goes on to inadequately conclude that the "cumulative impact discussion in the CNF EIS [dealing with the Rosemont proposal] would take into consideration any past actions from the Proposed Project, if appropriate". Draft EA, at 23. Not only is the cumulative impacts analysis "appropriate" because the Bureau acknowledged that it was relevant but the two projects are "connected actions," and the proposed CWC pipeline must be subsumed under the larger NEPA analysis of the Rosemont Mine. Furthermore, as set forth in section 3.6.2 of the Draft EA, the Bureau deemed it important to model the effects of recharge both with and without the groundwater pumping by Rosemont, strongly suggesting that the Bureau agrees with the inter-relatedness of the two projects.

The proposed CWC-Augusta pipeline is an interdependent part of a larger action and, despite some statements to the contrary, is dependent on the larger action (e.g., the Rosemont mine) for its justification. It is inconceivable that Augusta Resources Corporation would be the partner to CWC for this proposed pipeline if Augusta's only mining claims were, for example, in Nevada.

2. The Bureau's rejection of the proposed ANC-FICO pipeline was inappropriate. The proposed ANC-FICO pipeline must be evaluated, along with the proposed CWC pipeline, the CAP entitlements alternative, the "CWC-Only" alternative, and the no-action alternative, as a proper NEPA "alternative."

The analysis of reasonable alternatives to the purpose and need of the proposed action is at the heart of the NEPA process. Even in the context of an EA, the Bureau must "study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(E). This, the Bureau has not done.

5-2

The Bureau's treatment of the preferred alternative, in contrast to its treatment of the proposed ANC-FICO pipeline on pages 18-19 of the Draft EA, is arbitrary and capricious.

As the Bureau states several times in the EA, "negotiations between CWC and Rosemont are ongoing to finalize an agreement (Agreement) through which the details of the arrangement would be memorialized. . . . The Agreement between CWC and Rosemont has not been finalized, and thus Reclamation and CAWCD have not been able to review any portion of the Agreement." Draft EA at 15. The lack of information does not relate to just "minor details". Indeed, as explained below, the legality of the basic construct of CWC's delivering CAP water through the proposed pipeline is in question--a question that the Bureau candidly admits it cannot answer at this point because of the lack of an agreement. Draft EA, at 16-17; see also Draft EA App. B, at 7-8.

Yet, the Bureau has rejected full analysis of the proposed ANC-FICO pipeline on virtually the same grounds of inadequate information. The EA indicates that Mr. Walden

had asked that it be withdrawn. This statement is patently false.² In correspondence submitted to Bruce Ellis, Chief of the Environmental Resource Management Division of the Bureau in Glendale, Mr. Walden not only provided requested information, but affirmed that the ANC-FICO pipeline should be considered as the preferred alternative to the proposed CWC.

In fact, acceptance of the ANC-FICO pipeline alternative as the preferred alternative would avoid many of the permitting and rights-of way issues that have yet to be addressed by CWC in its pipeline proposal. FICO's 3,000-acre Sahuarita Farm has already been permitted as a Groundwater Savings Facility (GSF) by the Arizona Department of Water Resources and as such, it can accept up to 22,000 acre-feet per year of CAP water. This permitted annual volume could comfortably accept FICO's agricultural pool allocation of approximately 3,000 acre-feet per year, plus the CAP allocations of CWC and the Green Valley Domestic Water Improvement District.³ There would be no need to file an application to permit an underground storage facility in accordance with A.R.S. §§ 45-811.01, *et seq.* There would be no need to excavate and dispose of the *almost 1,000,000 cubic yards of overburden* excavated from the proposed recharge "pit" proposed by CWC.⁴ Draft EA at 14:4-14. Because most of the right-of way for the ANC-FICO pipeline would be on land already owned by FICO, there would be no need to process applications for rights-of-way across state trust lands administered by the Arizona State Land Department.

The bottom line is that the Bureau rejected consideration of the ANC-FICO pipeline alternative because the "cost, funding and timing of Phase II are uncertain," yet the Bureau ignored such uncertainties with respect to the CWC proposal "whether it is in conformity with the Subcontract provisions." Compare the Bureau's analysis of the ANC-FICO pipeline in the Draft EA at 19 with its analysis of the CWC pipeline in the Draft EA at 4, 8, and 15. Reclamation believes that a contractual document is not required to initiate the NEPA process. Draft EA, at 15-16. Such bias and inequity is simply unacceptable in a document that is supposed to present the studied judgment of a federal agency.

5-2

² The ANC-FICO pipeline has always been a reasonable alternative to the CWC pipeline, and FICO never asked that it be withdrawn. Mr. Walden did indicate, however, that FICO's Groundwater Savings Facility could not be considered as a facility for the storage of CAP water that would subsequently be utilized by Rosemont.

³ The contracted CAP water entitlements for the Green Valley area include 2,858 acre-feet per year for CWC and 1,900 acre-feet per year for the Green Valley Domestic Water Improvement District, totaling 4,758 acre-feet per year. Draft EA at 13:36-37. Thus, the total water available for recharge at FICO's GSF could be almost as much as 7,800 acre-feet per year.

⁴ For spreading basins, the top layers of soil are removed to reach more permeable layers sometimes as much as 20 feet below the surface. See Susanna Eden, et al., *Artificial Recharge: A Multi-purpose Water Management Tool*, ARROYO at 2 (University of Arizona, College of Agriculture and Life Sciences, Water Resources Research Center, Winter 2007). The recharge project proposed by CWC is less of a basin, and more of a pit, 58 feet in depth. Draft EA at 14:5. As a consequence, approximately 950,000 cubic yards of overburden will have to be removed by CWC and then disposed of elsewhere in order to reach permeable soils capable of accepting recharged CAP water. Obviously, FICO's GSF requires no such extensive excavation.

Comment Letter 5 continued

3. Preparation of the Bureau's Draft Environmental Assessment is premature. There has been no Bureau analysis of the legality of CWC's proposed delivery of its CAP allocation to Rosemont in exchange for financing of the CWC pipeline. If the CWC proposal violates contractual requirements, or legal restrictions on the delivery imposed by the Arizona Corporation Commission, it is a waste of time and resources to even consider the CWC proposal, much less conduct an environmental evaluation under NEPA.

3.1 CWC's CAP Allocation cannot be leased or otherwise conveyed to Rosemont. At present, CWC and Rosemont have not finalized their agreement regarding construction and operation of CAP water delivery infrastructure and a recharge site that will make full use of CWC's allocation of 2,858 acre-feet per year of CAP water. Indeed, there are only vague references in the Draft EA that outline how CWC and/or Rosemont plan to deliver CWC's CAP allocation. The July 12, 2007 Letter of Intent ("LOI") between CWC and Rosemont's parent, Augusta Resource Corporation, is not much help either, especially since the definitive agreement that is called for thereunder has never been finalized.⁵ Without knowing the terms of that definitive agreement, it is impossible for the Bureau to properly analyze the arrangement and determine whether it runs afoul of CWC's subcontract with CAWCD (the "Subcontract").

Specifically, the Subcontract states that CWC "shall not sell, lease, exchange, forbear or otherwise transfer [CAP] Project Water . . ." Subcontract, Subarticle 4.3(d). This provision prohibits a CAP subcontractor like CWC from marketing its CAP allocation to third parties such as Rosemont. If CWC cannot use its CAP allocation, then that water becomes part of the excess CAP water supply which can then be delivered by the Central Arizona Water Conservation District to others. CWC, however, has no right, contractual or otherwise, to sell, lease, exchange, forbear or otherwise transfer its CAP allocation to Rosemont or anyone else. This is what the very unambiguous language of Subarticle 4.3(d) provides.

In its current draft form, the LOI provides that Rosemont will fund construction of the water delivery system, which will be owned and operated by CWC, in exchange for "priority over use of CWC's CAP water, the system, and recharge capacity for the first 15 to 20 years [of the project] . . ." Draft EA, at 15:10-17, 6:25-28. This arrangement is a lease of CWC CAP allocation to Rosemont in exchange for compensation. The only difference here is that the compensation happens to be in the form of infrastructure as opposed to cash. As such, the deal runs afoul of the re-marketing prohibition in the Subcontract.⁶

⁵ The LOI is attached as Exhibit "D" to the Draft EA. The concluding paragraphs of the LOI suggest that a finalized agreement between Rosemont (or Augusta) and CWC for the construction of the CWC pipeline and recharge site should have been forthcoming within 120 days following the execution of the LOI. The fact that such an agreement was not completed might lead one to conclude that the LOI is no longer binding on the parties.

⁶ Importantly, CWC and Rosemont cannot resolve this issue by simply re-structuring the deal so that CWC obtains the infrastructure without a commitment to Rosemont regarding use of the CAP water. Indeed, such an illusory promise from Rosemont would lack consideration, resulting in an unenforceable contract.

Surprisingly, the Bureau casually disregards this critical issue by offering conclusory statements about the availability of alternative water sources. The Bureau stated, "If CWC's CAP water is not utilized as envisioned in the Letter of Intent or Agreement, the use of other supplies likely would be increased, such as CAP excess pool water or CAP tribal leases." Draft EA, at 16:5-7; *see also* Scoping Summary Report at 8. Such a response is short-sighted. Indeed, if the CWC/Rosemont arrangement is prohibited by the Subcontract, which appears likely, then finding an alternative water source is not a foregone conclusion.

Excess CAP water supplies are not guaranteed and are dwindling quickly. In fact, just this year CAP was nearly unable to fulfill the excess water orders it received. Similar situations are on the horizon, and competition for this water will undoubtedly grow. As a result, tribal leases will also be more difficult to secure. It is entirely possible that based upon the marketing prohibitions in the Subcontract and the suspect availability of future water sources that the proposed CWC pipeline could end up being an empty straw.⁷ Even if CWC can secure an alternative water source, there is certainly no guarantee that it will furnish sufficient water supplies to sustain even the 15-year minimum development objective outlined in the initial plans.

Adding to the irony is the Bureau's statement that a portion of the FICO/ANC pipeline will not be considered as an alternative, "[b]ecause the cost, funding, and timing of Phase II are uncertain . . ." Draft EA, at 19: 24-27. However, the Bureau is willing to overlook the uncertainty surrounding CWC's water supply, as well as the absence of necessary administrative approvals,⁸ to proceed with this environmental assessment.

A thorough consideration of the issues suggests that the Bureau should refrain from analyzing and approving this speculative project until the contract that forms the basis of the proposal is finalized. It does not make sense for the Bureau to proceed with its analysis until a legally viable water supply and contractual arrangement has been finalized and is enforceable.

3.2 CWC cannot serve Rosemont water at the ARC 53-Acre Parcel because it is in another utility company's CC&N. In the Draft EA, the Bureau has also assumed that CWC's existing Certificate of Convenience and Necessity ("CC&N") will be extended to include Rosemont's ARC 53-Acre Parcel on Davis Road:

The Parties anticipate that the Agreement will require approval by the ACC under Arizona Administrative Code (AAC) R14-2-406. Currently, the Parties envision Rosemont would become a customer of CWC . . . As envisioned by the Parties, CWC

⁷ The Bureau notes, "GVDWID also holds a CAP M&I priority subcontract in the vicinity of the proposed infrastructure. Currently, there are no agreements or tentative agreements in place concerning the delivery or use of this CAP water within the proposed CWC water delivery system . . ." Draft EA, at 16:12-15.

⁸ The agreement contemplated here, as well as CWC's proposed extension of its CC&N, must be approved by the Arizona Corporation Commission. Draft EA, at 15.

Comment Letter 5 continued

proposes to incorporate [the necessary infrastructure] into its ACC CC&N and it would become an extension of CWC's operating distribution system and therefore a part of CWC's water service area under ARS § 45-493(A)(2). The underground storage facility would need to be permitted by ADWR under ARS § 45-811.01. Once the facility is permitted, CWC would perform water storage services. Rosemont, as a customer of CWC, would be required to obtain a water storage permit from the ADWR under ARS § 45-831.01 to store CAP water at this facility [ARS § 45-831.01(B)(2); ARS § 49-243(H)]. (emphasis added) Draft EA at 15:18-39.

In the Draft EA, the Bureau fails to acknowledge, much less analyze, whether the extension of CWC's CC&N to the ARC 53-Acre Parcel, is legal permissible. Any effort to extend CWC's CC&N to the ARC 53-Acre Parcel would require an order from the Arizona Corporation Commission ("Commission"). In all likelihood, the Commission would refuse to issue such an order because the ARC 53-Acre Parcel is within the CC&N currently held by Farmers Water Co.

When a public service corporation files an application with the Commission to provide utility service, the Commission reviews the application, determines whether the applicant is fit and proper to provide utility service, and decides whether to grant a CC&N to the applicant. See A.R.S. § 40-282. Public service corporations generally cannot provide service to persons or entities outside their CC&N without first obtaining an extension of their CC&N to include the new area. A.R.S. § 40-281. According to the terms of the LOI and as acknowledged in the Draft EA, Rosemont plans to become a member-customer of CWC, and CWC plans to assign or make available its CAP allocation to Rosemont at some yet-to-be-determined rate. If, as suggested in the Draft EA, CWC's CAP allocation is delivered to Rosemont at the ARC 53-Acre Parcel, then the point of delivery will actually be *within the CC&N held by Farmers Water Co.* CWC would be selling water to a customer that is not located within its CC&N, which violates Arizona statutes and Commission regulations. See A.R.S. § 40-281; AAC R14-2-402(c). The Commission has clear jurisdiction to prohibit such acts by CWC.

Regardless of where CWC's CAP water is delivered, and whether it is recharged by CWC or used directly by Rosemont, there may be harm to CWC's customers and to the customers of other water companies, including those of Farmers Water Co. Under all circumstances, Rosemont is utilizing a water resource that should be used by CWC for the benefit of its customers.

Rosemont is another "straw" in the aquifer, an additional water demand that may cause declining water levels. The significant increased use of groundwater will cause a decline in the water table in the Sahuarita area by a significant amount; this in turn will increase the pumping and operation expenses of other utilities like Farmers Water Co. Declining groundwater tables also will harm private well owners in the surrounding area. Also, the withdrawal of additional groundwater from the ARC 53-Acre Parcel may accelerate the flow of sulfate-laden water into areas of the aquifer that have not yet been contaminated.

Until these concerns can be specifically addressed, one can only conclude that the proposed agreement threatens the long-term public health and safety of those living in Green Valley, and jeopardizes the long-term ability of local water utilities, including Farmers Water Co., to provide safe drinking water to customers. Under such circumstances, the ACC would reject any effort by CWC to deliver CAP water to Rosemont.

3.3 Until the definitive agreement called for in the LOI is finalized and exact details of CWC's plan for the use of its CAP allocation are known, it is premature for the Bureau to consider the environmental impacts of the CWC pipeline. As described above, the degree of harm cannot be determined because neither Rosemont nor CWC has identified with certainty the location of the recharge site, the location of Rosemont's groundwater withdrawals or the location of additional groundwater withdrawals by CWC attributable to its failure to take and use its CAP Allocation. Indeed, even these issues cannot be identified with certainty because CWC and Rosemont have not finalized the Agreement called for in the LOI.

This point is best illustrated by the ambiguity about where Rosemont's CAP allocation would be recharged. The July 12, 2007 Letter of Intent ("LOI") between CWC and Rosemont's parent, Augusta Resource Corporation, is not much help either.⁹ The LOI first references Augusta's desire to recharge CWC's CAP allocation at its ARC 53-Acre Parcel on Davis Road, but then states that the recharge site might be at CWC Well No. 11 or on land leased from the State of Arizona.¹⁰ LOI, at 1-2. Yet, descriptions of the recharge site elsewhere in the Draft EA suggest that the recharge site is on an isolated 20-acre tract of private land surrounded by state trust land administered by the Arizona State Land Department. Draft EA, at 13:13-23; Figures 2 and 4. As a consequence, the Bureau appears to have performed only a limited analysis of the proposed recharge site, which forms the basis of the models that the Bureau uses in the Draft EA. See Draft EA at 13.

If the degree of harm cannot be determined because of the confusing, ambiguous and uncertain nature of CWC's plan for the use of its CA allocation, the Bureau simply cannot adequately analyze alternatives. An alternative that is not specific enough to adequately identify possible environmental impacts further reinforces why the Bureau's NEPA process was premature.

Until these issues are resolved and each component of CWC's preferred plan for its use of its CAP allocation is identified, any environmental analysis of the CWC pipeline is premature.

⁹ See footnote 5, *supra*.

¹⁰ Neither FICO nor Farmer's Water Co. is aware of any application for a recharge site being filed with the Arizona State Land Department by CWC, Rosemont, or Augusta Resource Corporation. Similarly, there are numerous other state and local permits and applications that either CWC and/or Rosemont will need to file and obtain before CAP water can be recharged. See, for example, note 8, *supra*.

5-3

5-3

Comment Letter 5 continued

- 4. **The Bureau asserts that one reason for the proposed CWC pipeline is potential migration of sulfate plume from the Sierrita Mine, but this totally ignores the mitigation measures being carried out by the owner of the Sierrita Mine to avoid migration of the sulfate plume. Because of the uncertainty over where the recharge basin and storage credit recovery will occur under the CWC pipeline proposal, all such recharge and recovery scenarios must be analyzed in relation to migration of the sulfate plume.**

On page 4 of the Draft EA, in the context of discussing the Freeport-McMoran ("FMM") sulfate plume and mitigation plan, the Bureau appears to imply that one purpose and need for the proposed pipeline is to alleviate potential groundwater contamination from the sulfate plume. The Draft EA then goes on to discuss at length the FMM mitigation plan. Draft EA, at 56, 64-65.

5-4

Yet, no such analysis has been performed to demonstrate the effects of storing CWC's CAP allocation at the FICO GSF. Such storage might actually facilitate the containment of the sulfate plume and assist FMM in its mitigation efforts to alleviate groundwater contamination from its mining operations. At a minimum, the failure by the Bureau to consider the ANC-FICO pipeline proposal as an alternative must be addressed through such additional groundwater modeling efforts.

In addition, because the locations of the recharge site and recovery wells may shift as CWC develops its recharge and recovery plans, additional groundwater models should be run to analyze the long-term effects on both groundwater levels and sulfate plume migration attributable to each combination of recharge and recovery sites. Without such analyses, the Bureau cannot conclude that the CWC pipeline proposal, as it might eventually be configured, is the preferred alternative.

- 5. **The Draft EA's analysis of air quality impacts, including GHG emissions is inadequate and requires further elaboration and precision based upon use of current scientific techniques.**

Air quality impacts are discussed at sections 3.2.2 and 3.8.3 (climate change). The Draft EA rejects any climate change impacts and minimizes air quality impacts. The Draft EA acknowledges localized impacts over a seven-month period during construction but fails to quantify such effects or analyze the locality(ies) to which such effects will apply. An adequate environmental analysis must include such expanded and thorough analysis that not only defines the localized area (including affected populations) but quantifies the impacts in relation to other known and expected activities. (Section 3.2.3 acknowledges the existence of "other anticipated projects"; although the "timing" may be unknown, if the timing coincides with construction of the proposed CWC pipeline, the cumulative impacts may be significant, even if "localized".)

5-5

- 6. **The scoping comments filed by FICO, Farmers Water Co. and the Central Arizona Water Conservation District are incorporated herein by reference.**

As noted in the opening paragraphs of this letter, in response to Bureau's request for comments on the scoping of the EA, by letter dated September 12, 2008, FICO submitted comments on the CWC pipeline and related facilities. Comments were also submitted by FICO's subsidiary, Farmers Water Co. and the Central Arizona Water Conservation District (aka, the Central Arizona Project), also dated September 12, 2008. These comments are incorporated by reference herein.

5-6

Response to Comment Letter 5:

5-1. See, generally, the response to Comment 3-3.

Presently, use of CWC's proposed water delivery system is not identified in Rosemont's proposed MPO under consideration by CNF. There are 11 existing underground storage facilities located within the Santa Cruz basin. Rosemont has been recharging excess CAP water at three of these facilities since 2007 and continues to do so. Regardless, Reclamation's approval of the CWC water delivery system is not contingent upon CNF's approval of Rosemont's MPO, nor the operation of the mine itself. And CNF has not made a determination whether or not Rosemont's proposed mine is dependent on any recharge project, let alone CWC's proposed water delivery system specifically. Because the proposed CWC and Rosemont projects are not connected actions for purposes of NEPA compliance, they are not required to be considered in a single NEPA compliance process, nor is there any reason to delay the CWC water delivery system project to incorporate it into the Rosemont EIS and make it contingent on the outcome of the NEPA analysis for the proposed Mine.

Reclamation was invited to become a cooperating agency on the CNF Rosemont Mine EIS. Reclamation declined to become a cooperating agency; however, Reclamation staff carefully reviewed the scoping comments submitted to CNF and has met periodically with CNF staff to discuss aspects of each project. Reclamation and CNF initially determined, and later, confirmed, that the projects are not connected actions for purposes of NEPA. Reclamation also provided CNF with copies of the DEA and RDEA, and has shared information with CNF regarding recharge site investigations and ground water modeling results related to the Proposed Project.

As discussed in Sections 1.5 and 3.1.1, and Appendix B of the DEA, RDEA, and Final EA, although Reclamation determined that the proposed CWC water delivery system and the proposed Rosemont Mine are not connected actions for NEPA compliance purposes, the potential effect of future mine-related pumping was an issue raised in several of the scoping comments. To be responsive to this concern, and because Rosemont Mine's production wells are located within the proposed recharge facility's "area of impact" (where the ground water table is expected to rise 1 foot or more over the life of the project as a result of permitted recharge), the EA includes the modeling results of ground water impacts with and without the proposed CWC recharge, and with and without the proposed Rosemont pumping. As described in Sections 3.6.2.2 and 3.6.3, the results indicate the proposed CWC recharge would reduce the rate of regional ground water elevation decline and potentially reduce associated land subsidence in the area of impact. There are only small differences in impacts depending on whether or not the proposed Rosemont pumping occurs. Describing these potential future impacts does not mean the two projects are connected actions. For example, in evaluating cumulative impacts the EA also takes into consideration potential impacts from several proposed developments (such as Quail Creek and Rancho Sahuarita); however, these also are not considered to be connected actions.

5-2. This comment indicates a belief that Reclamation's treatment of the preferred alternative as compared to the FICO water delivery proposal was arbitrary and capricious (now referred to as the "FICO Water Delivery System Proposal" because ANC is no longer a participant due to the sale of its Mission Peaks property). Reclamation would first like to clarify what it means by "final plans." What Reclamation requires in order to comply with NEPA are plans that have sufficient detail regarding construction, operation, and maintenance of a proposed project so Reclamation staff are able to identify areas that would be physically impacted by the proposed project. Reclamation needs this information

because the major purpose of the NEPA document is to describe the existing conditions of the affected environment, and evaluate the anticipated environmental impacts resulting from implementation of the project. The DEA stated in the first paragraph of Section 1.2 – Purpose and Need of Reclamation and CWC, that “CWC provided Reclamation with a final plan for taking and using its CAP water allocation” in April 2008. We have clarified that statement in the EA by adding the following sentences: “For the purposes of this EA, a final plan means that specific project components, which may have an impact on the environment, have been provided to Reclamation. In this context, a final plan does not mean that all engineering details or financing arrangements have been completed.” Pursuant to the requirements of its CAP water service subcontract, the pertinent components of CWC’s plan for taking and using its CAP entitlement are described in detail in Section 2.3 – Proposed Action, which identifies the construction methods and locations of pipelines, CAP connection point, rights-of-way, access and staging areas, and booster station and recharge basin locations.

This comment correctly states Reclamation must “study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” One of the essential criteria used in determining reasonable alternatives to be considered in an EA or EIS is whether or not the alternative will satisfy the purpose and need for the proposed project. For CWC’s proposed CAP water delivery system, the purpose and need include: Delivery of CWC’s CAP entitlement to its water service area to provide a renewable source of M&I water to CWC, to help relieve ground water overdraft in this region consistent with the purpose of the CAP’s authorizing legislation, and to provide an alternative source of water should CWC’s ground water wells become unusable due to contamination or some other problem.

Due to scoping comments received that suggested the FICO water delivery proposal (unveiled to the public on August 25, 2008) be considered as a reasonable alternative in the CWC EA, Reclamation requested information from FICO about its proposal. In a letter dated September 30, 2008, Reclamation requested that FICO provide information about the FICO water delivery proposal if it was interested in the proposal being considered as a reasonable alternative in the EA. This information would be used to determine (1) whether or not the proposal would meet the purpose and need for the proposed project; and (2) if sufficient information about the proposal is currently available that would allow meaningful evaluation by Reclamation. FICO provided an initial response on November 10, 2008. After review, Reclamation requested additional and clarifying information on November 14, 2008; FICO responded on December 1, 2008.

After careful review of both submittals, Reclamation determined Phase I of FICO’s proposal would not meet the purpose and need for the proposed project because under Phase I this system would not deliver CWC’s CAP water entitlement to the CWC water service area. Under the FICO proposal, water delivery facilities that would bring CAP water to the Green Valley area are part of Phase II; however, based upon the information provided by FICO, the features and implementation of Phases II and III appeared uncertain; the proposal stated, “The second and third phase construction cost estimates have not been completed, as participants and funding mechanisms are being explored with various entities.” Reclamation was unable to evaluate impacts from Phase II construction, operation, and maintenance. As stated in FICO’s submittal dated November 10, 2008, “Phases II and III...can be implemented as soon as Pima County completes its study on the best locations for recharge in the aquifer...” Therefore, for example, the EA would not be able to compare impacts from recharge from the preferred alternative to the impacts resulting from recharge at FICO’s Phase II proposal, as it is unknown if and/or where a recharge facility would be included, how much would be recharged at that location, and what impacts would result from its construction, operation, and maintenance. On November 11,

2009, Mr. Walden submitted a Design Criteria Report for delivery of CAP water to the GSF, which would serve FICO lands between PMR and Sahuarita Road (Kimley-Horn and Associates, Inc. 2009). The Design Criteria Report states it was prepared “to evaluate the benefits of providing a supplemental water source to FICO’s property through the extension of an existing 36” Central Arizona Project/City of Tucson water line (CAP Line) located along the south side of Pima Mine Road.” The October 2009 Design Criteria Report addresses only Phase I of the FICO pipeline proposal. As noted above, delivery of water to the FICO GSF is not a viable alternative to the Proposed Project because it would not be able to deliver CWC’s CAP water entitlement to the CWC service area,

The EA accurately states that use of the FICO GSF for recharge was eliminated from further consideration as part of the CWC proposed action due to a request to Reclamation by Mr. Richard Walden, President of FICO. Prior to distributing its scoping memorandum on August 11, 2008, Reclamation made a courtesy call to Mr. Walden to inform him that Reclamation intended to include FICO’s GSF as a potential additional recharge site in the scoping memorandum attachment. Reclamation provided Mr. Walden with a draft version of the attachment which included an “Action Alternative 2-Pipeline and Multiple Recharge Sites.” The draft version of the attachment indicated that under Action Alternative 2, in addition to the CAP water delivery pipeline and recharge facility, “...turnouts would be installed at various locations along the 36-inch portion of the pipeline to deliver CAP water to the Farmers Investment Company (FICO) Groundwater Savings Facility during the irrigation season from approximately April to October....” After additional telephone conversations, Mr. Walden called to inform Reclamation that he did not want the FICO GSF to be identified as part of the CWC proposed action. Thus, Reclamation eliminated Action Alternative 2 from the final version of the Scoping Memorandum attachment that was distributed on August 11, 2008 (see Appendix A to the EA). Reclamation was unaware of the existence of a FICO pipeline proposal until it was made public in a press release by FICO and ANC on August 25, 2008.

This comment indicates “acceptance of the ANC-FICO pipeline alternative as the preferred alternative would avoid many of the permitting and rights-of way issues that have yet to be addressed by CWC in its pipeline proposal.” The details of permitting and rights-of-way issues associated with the FICO-ANC pipeline proposal’s Phase II are currently unknown; however, conceptually a combined CWC-FICO project, which would result in one mainstem pipeline rather than two, would be more cost-effective.

- 5-3. After more careful review of CWC’s proposals described in the EA, Reclamation, in consultation with CAWCD, has determined the proposed water provider/customer relationship, once approved by the ACC, would comply with the CAP water service subcontract provisions and would not require any additional action on Reclamation’s part.

The details of this arrangement are subject to approval by the ACC and must be consistent with applicable law. Nevertheless, an unforeseen situation that could delay delivery of CAP water through the system would not be a legitimate reason for delaying completion of NEPA or construction of the water delivery system. The constructed facility could still be used to deliver excess CAP water or be maintained in a “ready reserve” status until CWC utilizes it to take and use its CAP water entitlement. CWCGV and GVDWID are currently the only entities in the upper Santa Cruz sub-basin with permanent CAP entitlements. Under the preferred alternative, the main delivery pipeline has been upsized to provide additional capacity. The proposed project’s mainstem pipeline continues further south than the pipeline in Phase I of the FICO proposal. We believe constructing turnouts along an existing pipeline to deliver other CAP supplies that may become available in the future

would be more cost-effective than building a pipeline for a supply of water that is expected to diminish to zero by 2030, or extending a pipeline before it is known whether or not long-term supplies of water are available to be transported.

This comment also states the EA's assumption--that other supplies would be available for storage at the proposed recharge facility, such as CAP excess pool water or CAP tribal leases--is short-sighted, and that the CWC water delivery system could end up being an "empty straw." The information provided by FICO in its letter received November 10, 2008, indicates agricultural pool water would decline to zero around 2030. Other potential water supplies identified in FICO's letter as being potential users of the FICO pipeline include the same sources that are identified in the EA and stated above.

Comments in this letter's section 3.2 refer to extension of CWC's CC&N to the ARC 53-acre parcel, and delivery and recharge of CAP water at this parcel. As noted in response to Comment 3-1, this 53-acre site is owned by ARC and does not, nor did it ever, have a relationship to the CWC water delivery system. The 53-acre parcel is labeled "water production site" on the figure found at http://www.augustaresource.com/upload/Plan_of_Operations/2-10water_supply.pdf. The Rosemont pumping locations are clearly identified on Figures 9 and 10. All comments related to the ARC 53-acre parcel are outside the scope of the EA. Also, comments indicating the EA is ambiguous about where CWC's CAP entitlement would be recharged and, therefore, the impacts analysis in the EA is limited, are not accurate. There is an extensive discussion on the impacts from proposed recharge of CWC's CAP entitlement in the EA, Section 3.6.2, Ground Water Resources, Environmental Consequences, and Section 3.6.3, Cumulative Effects. As described in the EA, CWC plans to continue pumping within its existing service area and may add a recovery well or two in the future near the recharge site.

While the Rosemont Mine is outside the scope of this EA and beyond Reclamation's jurisdiction and authority, we would note that the Tucson Basin Aquifer has and is already experiencing long-term water level declines due to cumulative overdrafts associated with current agricultural, industrial, mining, and public water supply usage (EA, Section 3.6, Ground Water Resources). Table 10, "Summary of Upper Santa Cruz Subbasin Water Usage," indicates agriculture and mining combined accounted for 64,400 AF, or about 84 percent of the 76,825 AF of water pumped from the upper Santa Cruz sub-basin in 2006. Water providers accounted for slightly less than 10 percent of the total amount of ground water pumped in 2006. By 2030, while still third behind agriculture and mining, pumping by water providers is expected to increase to 16 percent. Recharge of CWC's CAP entitlement is intended to offset a portion of the pumping occurring in the upper Santa Cruz sub-basin.

- 5-4. Because none of the action alternatives in the EA include storing CWC's CAP entitlement at the FICO GSF, the effects of storing CWC's CAP entitlement at the GSF were not analyzed. As explained in response to Comment 5-2, Mr. Walden specifically stated use of FICO's GSF should not be considered as part of the proposed project. Response to Comment 5-2 also explains why the FICO proposal did not meet the purpose and need for the project.
- 5-5. Section 3.2.2.2 of the EA describes that construction activities related to the proposed 6.5-month project duration are expected to result in about 8.4 tons of PM10, 1.3 tons of hydrocarbons, 7.1 tons of carbon monoxide, 13.3 tons of nitrogen oxides, and 4.1 tons of sulfur dioxide. Given the limited magnitude and short duration of pollutant emissions that would occur from construction and maintenance of the proposed CWC

water delivery system, and compliance with the dust control and emission minimization requirements of the Pima County Activity Permit that would need to be obtained by CWC's contractor, Reclamation believes the analysis of air quality impacts in Section 3.2.2.2 is appropriate.

5-6. Your comment is noted.

FREEMPORT McMoRAN SIERRITA INC.

COMMENT LETTER 6

04/24/2009 FRI 10:22 FAX

0001/002

04/24/2009 FRI 10:22 FAX

0002/002



Freemport-McMoran Sierrita Inc.
6200 W. Duval Mine Rd.
PO Box 527
Green Valley, Arizona 85622-0527



Ms. Sandra Eto
April 24, 2009
Page 2

April 24, 2009

Via Facsimile (623-773-6486) and
Certified Mail # 7008 2610 0000 0983 2606
Return Receipt Requested

Attention: PXAO-1500 (Ms. Sandra Eto)
Unites States Department of the Interior
Bureau of Reclamation
Phoenix Area Office
6150 West Thunderbird Road
Glendale, Arizona 85306-4001

Re: Comments on the Draft Environmental Assessment (EA) on the
Proposed Community Water Company of Green Valley (CWC)
Central Arizona Project (CAP) Water Distribution and Recharge Facility

Dear Ms. Eto:

Freemport-McMoran Sierrita Inc. (Sierrita) submits this comment letter to the Bureau of
Reclamation (BOR) on the draft Environmental Assessment (EA) for the Proposed Community
Water Company of Green Valley (CWC) Central Arizona Project (CAP) Water Distribution and
Recharge Facility.

As mentioned in a letter submitted to the BOR on September 12, 2008, Phelps Dodge Sierrita,
Inc., now Freemport-McMoran Sierrita Inc. (Sierrita), entered into a Mitigation Order on Consent,
Docket No. P-50-06 (MO) with the Arizona Department of Environmental Quality (ADEQ) on June
15, 2006. The MO requires Sierrita to characterize sulfate in groundwater in the vicinity of the
Sierrita Tailing Impoundment (STI) near Green Valley, AZ and to take action in accordance with an
approved mitigation plan if a drinking water supply is found to exceed an average sulfate
concentration of 250 mg/L as a result of sulfate originating from the STI.

Sierrita submitted a Feasibility Study (FS) that identified and evaluated alternatives to mitigate
sulfate with respect to drinking water supplies in the vicinity of the STI on October 23, 2008.
ADEQ commented on the FS and requested that a mitigation plan be submitted within 60 days of
receipt of their comments on March 6, 2009; as such, Sierrita will submit the mitigation plan for the
sulfate plume in early May 2009 and will begin implementation once it is approved by ADEQ.
Additional information pertaining to the Sierrita Mitigation Order on Consent may be found on
Sierrita's electronic document repository that may be accessed at
http://www.fcx.com/sierrita/home.htm.

By commenting on the EA, Sierrita neither supports nor opposes the proposed CWC CAP
Recharge Project; however, Sierrita recognizes and supports the opportunities that a CAP
recharge project offers for the region. Sierrita's comments are as follows:

- 1. Page 2, lines 24-25: In the Purpose and Need section the EA states 'The Proposed
Project is needed to provide a renewable source of M&I water to CWC, to help relieve

ground water overdraft in this region consistent with the purpose of the CAP's authorizing
legislation, and to provide an alternative source of water should CWC's groundwater wells
become unusable due to sulfate contamination.' Sierrita's MO objective is to practically
and cost effectively provide the owner/operator of an existing drinking water supply
impacted by the sulfate plume from the STI with a drinking water supply with sulfate
concentrations less than 250 mg/l. Additionally, Sierrita's current modeling indicates that
by implementing the preferred alternative, no additional drinking water supply wells will be
affected by sulfate from the STI. Consequently, the purpose of and need for the CWC
Recharge Project should not be to provide an alternate source of water should wells
become unusable due to sulfate contamination associated with the STI.

6-1

- 2. Page 65, lines 12-15: In the Cumulative Affects section, the EA states 'however, long-
term ground water withdrawals associated with Sierrita Mine Alternative 5 could result in
potential subsidence issues if CWC would ever choose to terminate the recharge and
instead treat and directly deliver its CAP water in the future.' This statement is
speculative and infers that potential subsidence issues could occur solely from Sierrita's
pumping that will result from the implementation of alternative 5 of the FS. Sierrita is not
the sole entity pumping groundwater in the area surrounding the proposed recharge area
and in fact, other groundwater users are actually pumping from wells located closer to the
recharge area than Sierrita's proposed sulfate mitigation wells. As such, the EA should
not single out Sierrita as being the cause for potential subsidence issues if CWC were to
choose terminating the recharge. Moreover, as discussed below, if the CAP recharge will
not commingle with the Sierrita sulfate plume as stated in the EA, we cannot understand
any connection between the recharge project and any future subsidence in the vicinity of
the pumping to mitigate sulfate associated with the STI.

6-2

- 3. The EA states that modeling indicates that the CAP recharge will not commingle with the
Sierrita sulfate plume. According to the CAP website, the concentration of sulfate in CAP
water measured at the San Xavier Pump Plant is consistently greater than 250 mg/L. In
order to ensure that Sierrita does not incur costly groundwater investigation fees to
demonstrate that domestic supply wells exceeding 250 mg/l sulfate are caused by the
CAP recharge project and not the STI, the project should incorporate a means to track the
spread of the recharge to clearly distinguish the origins of sulfate in groundwater.

6-3

If you have any questions regarding these comments, please contact me (520) 648-8700.

Sincerely,

Chad D. Fretz

Chad D. Fretz
Manager Environment, Land and Water

CDF:cdf
20090424-001

xc: Arturo Gabaldon - Community Water Company
Cynthia S. Campbell - Arizona Department of Environmental Quality

6-1

Response to Comment Letter 6:

- 6-1. Section 1.2 of the EA has been revised to remove the implication that sulfate contamination would be the sole reason a well would become unusable.
- 6-2. The cumulative impacts discussion in Section 3.6.3 of the EA has been revised to clarify that Sierrita's future pumping is only one of several ground water withdrawals that may result in subsidence in the area.
- 6-3. Your comment is noted. As part of ADWR's Constructed USF permit process, ADWR will require CWC to establish, among other things, a water quality monitoring plan that must be implemented over the life of the facility. Additionally, the ADWR permit process provides the opportunity for potentially affected parties to comment on the proposed permit. We believe this process will appropriately address your concerns.

LES GUNDERSON

COMMENT LETTER 7

From: Les Gunderson [lsgunderson@cox.net]
Sent: Friday, April 24, 2009 2:22 PM
To: Eto, Sandra
Subject: Draft Environmental Assessment

April 23, 2009

Ms. Sandra Eto
Environmental Resource Management Division
Attention FXAO-1500
United States Department of the Interior
Bureau of Reclamation
Phoenix Office
6150 West Thunderbird Road
Glendale Arizona #5306-4001

Subject: Draft Environmental Assessment (EA) on the Proposed Community Water Company of Green Valley (CWC) Central Arizona Project (CAP) Water Distribution System and Recharge Facility, Green Valley, Pima County, Arizona

Dear Mrs. Eto:

Green Valley Domestic Water Improvement District appreciates the work you are doing in regard to the proposed CAP Water Distribution System and Recharge Facility. It is comforting to have it confirmed that the proposed pipeline will not have any negative impact on the environment.

The District has a strong concern about the 40,000 acre feet annual deficit of the regional aquifer. It is a challenging problem as the water usage is dominated by mining and agricultural interests. However, as a member of the Upper Santa Cruz Providers and Users Group (USC/PUG), we are working to develop both short term and long term solutions to the problem and achieve safe yield. A CAP pipeline to Sahuarita area is the core of the short term Phase 1 plan and is a necessary precondition to implementing Phase 2 which will bring water further south close to our service area.

While surface water catchment, wastewater and other recharge approaches have merit in the long term, it is apparent that the only approach having a potential short term impact to our aquifer is a pipeline to bring CAP water to the region. We were pleased with the extensive investigation and evaluation of alternatives undertaken by the Bureau.

Although the GVDWID will not benefit directly from the pipeline since the terminus point is north of the District franchise area, offsetting the draw down of the regional aquifer is essential. We therefore support the conclusion the pipeline project addressed in the BOR draft Environmental Assessment is furthest along and the most expeditious approach toward solving the overdraft situation.

Sincerely,

Les Gunderson
Chairman, Board of Directors
Green Valley Domestic Water Improvement District

Response to Comment Letter 7: Your comments are noted. Thank you.

MISSION PEAKS 4000, LLC

COMMENT LETTER 8

Mission Peaks 4000, LLC

Proposed CWC Pipeline: Comments on the Draft Environmental Assessment (US Bureau of Reclamation)

April 24, 2009

- 1. The CWC pipeline environmental analysis should be conducted as part of the proposed Rosemont Mine environmental impact statement process. Thus, the Bureau should be designated as a cooperating agency with the Coronado National Forest in the CNF's environmental review of Rosemont. The proposed CWC pipeline is a legally "connected action" with "cumulative impacts" to and in the context of the larger proposed Rosemont Mine.

8-1

The environmental analysis of the two projects must be considered together. Since the formal environmental analysis of the proposed Rosemont Mine began earlier than that of the proposed CWC pipeline, and because the proposed Rosemont Mine is of substantially larger scale than the proposed CWC pipeline, the environmental analysis of the CWC pipeline must be integrated into the Environmental Impact Statement (EIS) analyzing the proposed Rosemont Mine. Furthermore, in order to ensure that the Bureau of Reclamation, which is the "lead" agency for the proposed CWC pipeline, fully participates in the environmental review, the Bureau should become a cooperating agency with the Coronado National Forest/US Forest Service, which is the lead agency for the proposed Rosemont Mine.

The Bureau's superficial analysis of the "connected actions" argument is woefully inadequate. See Draft EA, at 6-7, 15-16, and 22-23; see also Scoping Memorandum, App. A, at 4-5 (generally repeating the same comments). The Bureau seems to have fallen into the carefully-worded trap laid by CWC and Rosemont, wherein Augusta Resource (Arizona) Corporation, Rosemont's parent, appears to commit to funding the CWC pipeline regardless of whether the Rosemont Mining Plan of Operations is approved. In reality, no final agreement has been submitted legally assuring such funding source. Furthermore, it is disingenuous, if not naïve, to expect that Augusta will, purely out of the goodness of its corporate heart, agree to fund construction and operation of the CWC pipeline if there is no use for the piped water for a Rosemont Project that is not approved. Augusta and Rosemont have a fiduciary responsibility to their shareholders not to waste corporate assets.

It is clear from extensive correspondence and submittals both by CWC and by Rosemont to the Coronado National Forest that Rosemont expects to need the CWC pipeline. While a CWC pipeline might have separate utility from the Rosemont Mine, such "separate utility" has not been articulated and confirmed; indeed, CWC's expectation is that Rosemont would have the advantage of the CWC-piped water for the first 20 years of the pipeline's existence. The CWC pipeline is a dependent part of the larger Rosemont Mine

action and is thus a "connected action" to the Rosemont Mine proposal, requiring that its analysis be done as part of the larger environmental analysis of the Rosemont Mine.

Evidence of Augusta's reliance on and expectations about the CWC pipeline in connection with the Rosemont mine can readily be gleaned from material posted on the company's Rosemont website and other available material. For example, the November 30, 2007 "Report of Findings and Analysis Presented to Augusta Resource Corporation" by Marketing Research & Strategy Consultants repeatedly identifies the purchase of enough CAP water to guarantee a surplus of water to the area as a significant factor in influencing area residents to have a favorable opinion of the Rosemont mine (see pages 2, 4, 7, 8 and 13).

An even more explicit explanation of the relationship between the CWC pipeline and the Rosemont mine is articulated in the opening paragraphs of the July 12, 2007, Letter of Intent between Augusta and CWC. In that document, signed by both parties, it is explained that, "Augusta Resource Corporation (ARC) plans to procure and recharge CAP water in the vicinity of its Rosemont Mine well site, a 53-acre parcel of land located on Davis Road, Sahuarita, AZ (ARC 53-Acre Parcel). The availability of a suitable pipeline and recharge facility is critical to the eventual implementation of this plan" (emphasis added).

The Bureau's Draft EA reinforces the inter-relatedness of the proposed CWC pipeline and the proposed Rosemont Mine and how the environmental impacts MUST be considered together. In section 3.1.3, the Draft EA rejects consideration of the proposed Rosemont mine for cumulative analysis purposes because "there is no potential for impact to common resources, with the exception of groundwater." Yet, groundwater use is the precise issue that is one of the most significant elements of both the proposed CWC pipeline and the proposed Rosemont Mine. Later in the same paragraph, the Draft EA drives home the point that the cumulative impacts of the two projects must be considered together by affirming that the cumulative impacts ARE discussed in section 3.6.3 "because Rosemont's proposed production wells are located in the CWC project area, and the timing of Rosemont's proposed withdrawals and CWC's recharge would overlap, thus creating the potential for cumulative impacts." The Draft EA then goes on to inadequately conclude that the "cumulative impact discussion in the CNF EIS [dealing with the Rosemont proposal] would take into consideration any past actions from the Proposed Project, if appropriate". Draft EA, at 23. Not only is the cumulative impacts analysis "appropriate" because the Bureau acknowledged that it was relevant but the two projects are "connected actions," and the proposed CWC pipeline must be subsumed under the larger NEPA analysis of the Rosemont Mine. Furthermore, as set forth in section 3.6.2 of the Draft EA, the Bureau deemed it important to model the effects of recharge both with and without the groundwater pumping by Rosemont, strongly suggesting that the Bureau agrees with the inter-relatedness of the two projects.

The proposed CWC-Augusta pipeline is an interdependent part of a larger action and, despite some statements to the contrary, is dependent on the larger action (e.g., the Rosemont mine) for its justification. It is inconceivable that Augusta Resources

8-1

Comment Letter 8 continued

8-1

Corporation would be the partner to CWC for this proposed pipeline if Augusta's only mining claims were, for example, in Nevada.

- 2. The Bureau's rejection of the proposed ANC-FICO pipeline was inappropriate. The proposed ANC-FICO pipeline must be evaluated, along with the proposed CWC pipeline, the CAP entitlements alternative, the "CWC-Only" alternative, and the no-action alternative, as a proper NEPA "alternative."

The analysis of reasonable alternatives to the purpose and need of the proposed action is at the heart of the NEPA process. Even in the context of an EA, the Bureau must "study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(E). This, the Bureau has not done.

The Bureau's treatment of the preferred alternative, in contrast to its treatment of the proposed ANC-FICO pipeline on pages 18-19 of the Draft EA, is arbitrary and capricious.

8-2

As the Bureau states several times in the EA, "negotiations between CWC and Rosemont are ongoing to finalize an agreement (Agreement) through which the details of the arrangement would be memorialized. . . . The Agreement between CWC and Rosemont has not been finalized, and thus Reclamation and CAWCD have not been able to review any portion of the Agreement." Draft EA at 15. The lack of information does not relate to just "minor details". Indeed, as explained below, the legality of the basic construct of CWC's delivering CAP water through the proposed pipeline is in question--a question that the Bureau candidly admits it cannot answer at this point because of the lack of an agreement. Draft EA, at 16-17; see also Draft EA App. B, at 7-8.

Yet, the Bureau has rejected full analysis of the proposed ANC-FICO pipeline on virtually the same grounds of inadequate information. The EA indicates that Mr. Dick Walden (FICO) had asked that it be withdrawn. This statement is patently false.¹ In correspondence submitted to Bruce Ellis, Chief of the Environmental Resource Management Division of the Bureau in Glendale, Mr. Walden not only provided requested information but affirmed that the ANC-FICO pipeline should be considered as an alternative to the proposed CWC.

The bottom line is that the Bureau rejected consideration of the ANC-FICO pipeline alternative because the "cost, funding and timing of Phase II are uncertain," yet the Bureau ignored such uncertainties with respect to the CWC proposal "whether it is in conformity with the Subcontract provisions." Compare the Bureau's analysis of the ANC-FICO pipeline in the Draft EA at 19 with its analysis of the CWC pipeline in the Draft EA at 4, 8, and 15. Reclamation believes that a contractual document is not required to initiate the NEPA process. Draft EA, at 15-16. Such bias and inequity is

¹ The ANC-FICO pipeline has always been a reasonable alternative to the CWC pipeline, and FICO never asked that it be withdrawn. Mr. Walden did indicate, however, that FICO's Groundwater Savings Facility could not be considered as a facility for the storage of CAP water that would subsequently be utilized by Rosemont.

simply unacceptable in a document that is supposed to present the studied judgment of a federal agency.

8-2

- 3. Preparation of the Bureau's Draft Environmental Assessment is premature. There has been no Bureau analysis of the legality of CWC's proposed delivery of its CAP allocation to Rosemont in exchange for financing of the CWC pipeline. If the CWC proposal violates contractual requirements, or legal restrictions on the delivery imposed by the Arizona Corporation Commission, it is a waste of time and resources to even consider the CWC proposal, much less conduct an environmental evaluation under NEPA.

3.1 CWC's CAP Allocation cannot be leased or otherwise conveyed to Rosemont. At present, CWC and Rosemont have not finalized their agreement regarding construction and operation of CAP water delivery infrastructure and a recharge site that will make full use of CWC's allocation of 2,858 acre-feet per year of CAP water. Indeed, there are only vague references in the Draft EA that outline how CWC and/or Rosemont plan to deliver CWC's CAP allocation. The July 12, 2007 Letter of Intent ("LOI") between CWC and Rosemont's parent, Augusta Resource Corporation, is not much help either, especially since the definitive agreement that is called for thereunder has never been finalized.² Without knowing the terms of that definitive agreement, it is impossible for the Bureau to properly analyze the arrangement and determine whether it runs afoul of CWC's subcontract with CAWCD (the "Subcontract").

Specifically, the Subcontract states that CWC "shall not sell, lease, exchange, forbear or otherwise transfer [CAP] Project Water . . ." Subcontract, Subarticle 4.3(d). This provision prohibits a CAP subcontractor like CWC from marketing its CAP allocation to third parties such as Rosemont. If CWC cannot use its CAP allocation, then that water becomes part of the excess CAP water supply which can then be delivered by the Central Arizona Water Conservation District to others. CWC, however, has no right, contractual or otherwise, to sell, lease, exchange, forbear or otherwise transfer its CAP allocation to Rosemont or anyone else. This is what the very unambiguous language of Subarticle 4.3(d) provides.

8-3

In its current draft form, the LOI provides that Rosemont will fund construction of the water delivery system, which will be owned and operated by CWC, in exchange for "priority over use of CWC's CAP water, the system, and recharge capacity for the first 15 to 20 years [of the project] . . ." Draft EA, at 15:10-17, 6:25-28. This arrangement is a lease of CWC CAP allocation to Rosemont in exchange for compensation. The only difference here is that the compensation happens to be in the form of infrastructure as opposed to cash. As such, the deal runs afoul of the re-marketing prohibition in the Subcontract.³

² The LOI is attached as Exhibit "D" to the Draft EA. The concluding paragraphs of the LOI suggest that a finalized agreement between Rosemont (or Augusta) and CWC for the construction of the CWC pipeline and recharge site should have been forthcoming within 120 days following the execution of the LOI. The fact that such an agreement was not completed might lead one to conclude that the LOI is no longer binding on the parties.

³ Importantly, CWC and Rosemont cannot resolve this issue by simply re-structuring the deal so that

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Surprisingly, the Bureau casually disregards this critical issue by offering conclusory statements about the availability of alternative water sources. The Bureau stated, "If CWC's CAP water is not utilized as envisioned in the Letter of Intent or Agreement, the use of other supplies likely would be increased, such as CAP excess pool water or CAP tribal leases." Draft EA, at 16:5-7; see also Scoping Summary Report at 8. Such a response is short-sighted. Indeed, if the CWC/Rosemont arrangement is prohibited by the Subcontract, which appears likely, then finding an alternative water source is not a foregone conclusion.

Excess CAP water supplies are not guaranteed and are dwindling quickly. In fact, just this year CAP was nearly unable to fulfill the excess water orders it received. Similar situations are on the horizon, and competition for this water will undoubtedly grow. As a result, tribal leases will also be more difficult to secure. It is entirely possible that based upon the marketing prohibitions in the Subcontract and the suspect availability of future water sources that the proposed CWC pipeline could end up being an empty straw.⁴ Even if CWC can secure an alternative water source, there is certainly no guarantee that it will furnish sufficient water supplies to sustain even the 15-year minimum development objective outlined in the initial plans.

Adding to the irony is the Bureau's statement that a portion of the FICO/ANC pipeline will not be considered as an alternative, "[b]ecause the cost, funding, and timing of Phase II are uncertain . . ." Draft EA, at 19:24-27. However, the Bureau is willing to overlook the uncertainty surrounding CWC's water supply, as well as the absence of necessary administrative approvals,⁵ to proceed with this environmental assessment.

A thorough consideration of the issues suggests that the Bureau should refrain from analyzing and approving this speculative project until the contract that forms the basis of the proposal is finalized. It does not make sense for the Bureau to proceed with its analysis until a legally viable water supply and contractual arrangement has been finalized and is enforceable.

3.2 CWC cannot serve Rosemont water at the ARC 53-Acre Parcel because it is in another utility company's CC&N. In the Draft EA, the Bureau has also assumed that CWC's existing Certificate of Convenience and Necessity ("CC&N") will be extended to include Rosemont's ARC 53-Acre Parcel on Davis Road:

CWC obtains the infrastructure without a commitment to Rosemont regarding use of the CAP water. Indeed, such an illusory promise from Rosemont would lack consideration, resulting in an unenforceable contract.

⁴ The Bureau notes, "GVDWID also holds a CAP M&I priority subcontract in the vicinity of the proposed infrastructure. Currently, there are no agreements or tentative agreements in place concerning the delivery or use of this CAP water within the proposed CWC water delivery system . . ." Draft EA, at 16:12-15.

⁵ The agreement contemplated here, as well as CWC's proposed extension of its CC&N, must be approved by the Arizona Corporation Commission. Draft EA, at 15.

The Parties anticipate that the Agreement will require approval by the ACC under Arizona Administrative Code (AAC) R14-2-406. Currently, the Parties envision Rosemont would become a customer of CWC . . . As envisioned by the Parties, CWC proposes to incorporate [the necessary infrastructure] into its ACC CC&N and it would become an extension of CWC's operating distribution system and therefore a part of CWC's water service area under ARS § 45-493(A)(2). The underground storage facility would need to be permitted by ADWR under ARS § 45-811.01. Once the facility is permitted, CWC would perform water storage services. Rosemont, as a customer of CWC, would be required to obtain a water storage permit from the ADWR under ARS § 45-831.01 to store CAP water at this facility [ARS § 45-831.01(B)(2); ARS § 49-243(H)]. (emphasis added) Draft EA at 15:18-39.

In the Draft EA, the Bureau fails to acknowledge, much less analyze, whether the extension of CWC's CC&N to the ARC 53-Acre Parcel, is legal permissible. Any effort to extend CWC's CC&N to the ARC 53-Acre Parcel would require an order from the Arizona Corporation Commission ("Commission"). In all likelihood, the Commission would refuse to issue such an order because the ARC 53-Acre Parcel is within the CC&N currently held by Farmers Water Co.

When a public service corporation files an application with the Commission to provide utility service, the Commission reviews the application, determines whether the applicant is fit and proper to provide utility service, and decides whether to grant a CC&N to the applicant. See A.R.S. § 40-282. Public service corporations generally cannot provide service to persons or entities outside their CC&N without first obtaining an extension of their CC&N to include the new area. A.R.S. § 40-281. According to the terms of the LOI and as acknowledged in the Draft EA, Rosemont plans to become a member-customer of CWC, and CWC plans to assign or make available its CAP allocation to Rosemont at some yet-to-be-determined rate. If, as suggested in the Draft EA, CWC's CAP allocation is delivered to Rosemont at the ARC 53-Acre Parcel, then the point of delivery will actually be within the CC&N held by Farmers Water Co. CWC would be selling water to a customer that is not located within its CC&N, which violates Arizona statutes and Commission regulations. See A.R.S. § 40-281; AAC R14-2-402(c). The Commission has clear jurisdiction to prohibit such acts by CWC.

Regardless of where CWC's CAP water is delivered, and whether it is recharged by CWC or used directly by Rosemont, there may be harm to CWC's customers and to the customers of other water companies, including those of Farmers Water Co. Under all circumstances, Rosemont is utilizing a water resource that should be used by CWC for the benefit of its customers.

Rosemont is another "straw" in the aquifer, an additional water demand that may cause declining water levels. The significant increased use of groundwater will cause a decline in the water table in the Sahuarita area by a significant amount; this in turn will increase

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Comment Letter 8 continued

the pumping and operation expenses of other utilities like Farmers Water Co. Declining groundwater tables also will harm private well owners in the surrounding area. Also, the withdrawal of additional groundwater from the ARC 53-Acre Parcel may accelerate the flow of sulfate-laden water into areas of the aquifer that have not yet been contaminated.

Until these concerns can be specifically addressed, one can only conclude that the proposed agreement threatens the long-term public health and safety of those living in Green Valley, and jeopardizes the long-term ability of local water utilities, including Farmers Water Co., to provide safe drinking water to customers. Under such circumstances, the ACC would reject any effort by CWC to deliver CAP water to Rosemont.

3.3 Until the definitive agreement called for in the LOI is finalized and exact details of CWC's plan for the use of its CAP allocation are known, it is premature for the Bureau to consider the environmental impacts of the CWC pipeline. As described above, the degree of harm cannot be determined because neither Rosemont nor CWC has identified with certainty the location of the recharge site, the location of Rosemont's groundwater withdrawals or the location of additional groundwater withdrawals by CWC attributable to its failure to take and use its CAP Allocation. Indeed, even these issues cannot be identified with certainty because CWC and Rosemont have not finalized the Agreement called for in the LOI.

This point is best illustrated by the ambiguity about where Rosemont's CAP allocation would be recharged. The July 12, 2007 Letter of Intent ("LOI") between CWC and Rosemont's parent, Augusta Resource Corporation, is not much help either.⁶ The LOI first references Augusta's desire to recharge CWC's CAP allocation at its ARC 53-Acre Parcel on Davis Road, but then states that the recharge site might be at CWC Well No. 11 or on land leased from the State of Arizona. LOI, at 1-2. Yet, descriptions of the recharge site elsewhere in the Draft EA suggest that the recharge site is on an isolated 20-acre tract of private land surrounded by state trust land administered by the Arizona State Land Department. Draft EA, at 13:13-23; Figures 2 and 4. As a consequence, the Bureau appears to have performed only a limited analysis of the proposed recharge site, which forms the basis of the models that the Bureau uses in the Draft EA. See Draft EA at 13.

If the degree of harm cannot be determined because of the confusing, ambiguous and uncertain nature of CWC's plan for the use of its CA allocation, the Bureau simply cannot adequately analyze alternatives. An alternative that is not specific enough to adequately identify possible environmental impacts further reinforces why the Bureau's NEPA process was premature.

Until these issues are resolved and each component of CWC's preferred plan for its use of its CAP allocation is identified, any environmental analysis of the CWC pipeline is premature.

⁶ See footnote 3, *supra*.

4. **The Bureau asserts that one reason for the proposed CWC pipeline is potential migration of sulfate plume from the Sierrita Mine, but this totally ignores the mitigation measures being carried out by the owner of the Sierrita Mine to avoid migration of the sulfate plume. Thus, the Bureau needs to completely remove from its discussion of purpose and need in the Draft EA any justification related to migration of the sulfate plume.**

On page 4 of the Draft EA, in the context of discussing the Freeport-McMoran ("FMM") sulfate plume and mitigation plan, CWC appears to imply that one purpose and need for the proposed pipeline is to alleviate potential groundwater contamination from the sulfate plume. The Draft EA then goes on to discuss at length the FMM mitigation plan. Draft EA, at 56, 64-65. While the discussion raises the issue of possible subsidence from implementation of the FMM plan, there does not appear to be a credible concern that the CWC pipeline is needed because of the FMM mitigation plan.

Thus, the Draft EA's implication that the CWC pipeline is needed to avoid groundwater contamination from the sulfate plume should be removed.

5. **The Draft EA's analysis of air quality impacts, including GHG emissions is inadequate and requires further elaboration and precision based upon use of current scientific techniques.**

Air quality impacts are discussed at sections 3.2.2 and 3.8.3 (climate change). The Draft EA rejects any climate change impacts and minimizes air quality impacts. The Draft EA acknowledges localized impacts over a seven-month period during construction but fails to quantify such effects or analyze the locality(ies) to which such effects will apply. An adequate environmental analysis must include such expanded and thorough analysis that not only defines the localized area (including affected populations) but quantifies the impacts in relation to other known and expected activities. (Section 3.2.3 acknowledges the existence of "other anticipated projects"; although the "timing" may be unknown, if the timing coincides with construction of the proposed CWC pipeline, the cumulative impacts may be significant, even if "localized").

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Response to Comment Letter 8:

8-1. Please see response to Comment 5-1.

8-2. Please see response to Comment 5-2.

8-3. Please see response to Comment 5-3.

8-4. Please see response to Comment 6-1.

8-5. Please see response to Comment 5-5.

MOUNTAIN EMPIRE ACTION ALLIANCE

COMMENT LETTER 9

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Mountain Empire Action Alliance
Sonoita, AZ

April 21, 2009

Ms. Sandra Eto
US Department of Interior
Bureau of Reclamation
Environmental Management Division
Phoenix Area Office,
6150 West Thunderbird Road
Glendale AZ 85306-4001

Attention: PXAO-1500 (Ms. Sandra Eto)

Re: NEPA Comments on the Draft Environmental Assessment for the proposed Community Water Company of Green Valley Central Arizona Project Water Delivery System, Pima County, Arizona

Dear Ms. Eto:

This letter sets forth comments on the Draft Environmental Assessment (EA) for the construction and operation of the proposed Community Water Company of Green Valley Central Arizona Project Water Delivery System, Pima County, Arizona (Proposed Project). The document has been prepared by ERO Resources (ERO) Corporation of Denver, Colorado, for the U.S. Bureau of Reclamation (Reclamation) on behalf of Community Water Company of Green Valley (CWC). As discussed below, it is clear from the record that CWC and Augusta Resource Corporation (ARC) co-authored the plan for the proposed Water Delivery System and Recharge Facility (WDS/RF), and subsequently submitted a plan to Reclamation for taking and using their Central Arizona Project (CAP) entitlements. In its capacity as the "lead agency" for the Proposed Project, Reclamation is responsible for preparation of the environmental documents required under the National Environmental Policy Act (NEPA).

These comments are submitted on behalf of the Mountain Empire Action Alliance (MEAA), a community-based organization composed of approximately 300 residents of the greater Sonoita area. MEAA membership covers a geographic area from Vail to Patagonia and from Sonoita to Elgin. Our comments on the proposed water distribution and recharge facility recognize the undeniable and direct link between the proposed CWC project and the open pit copper mine and processing facilities (ARC Rosemont Copper Project) proposed for the eastern slopes of the Santa Rita Mountains, a project we strongly oppose. Note that on July 14, 2008, MEAA submitted a detailed scoping

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letter on the proposed Rosemont Copper Project to the US Forest Service, Coronado National Forest (CNF) office in Tucson; that letter is incorporated herein by reference.

The comments set forth below have been prepared in accordance with the National Environmental Policy Act of 1969, as amended (P.L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by P.L. 94-52, July 3, 1975, P.L. 94-83, August 9, 1975, and P.L. 97-258, § 4(b), Sept. 13, 1982). Per your March 6, 2009 Memorandum providing Notice of Availability for the Draft EA, our comments contain detailed analyses focusing on statements that we believe to be incorrect, including reasons for our conclusions.

The comments are organized into the following nine (9) substantive sections:

- (1) CWC's and Reclamation's Failure to Accurately Identify Project Applicants: CWC and ARC Constitute a Contractual Development Partnership;
- (2) CWC's and Reclamation's Failure to Provide Public Access to the Final Plan (i.e., the seminal document) that is the Subject of the Draft EA for the Proposed Project;
- (3) Reclamation's Failure to Require a Final Plan and Final Agreement between CWC and ARC Prior to Initiating the NEPA process;
- (4) CWC's Failure to Identify the Proposed Project as a De-facto Mitigation Measure for the proposed Rosemont Copper Project;
- (5) Reclamation's Error in Failing to Properly Identify Connected Actions: the Logical and Contract Interrelationships Between the Proposed Project and the proposed Rosemont Copper Project;
- (6) CWC's and ARC's Failure to Adequately Describe the Scope of Mining Planned by ARC, thus Piece-mealing or Segmenting both the Proposed Project and the proposed Rosemont Copper Project;
- (7) Reclamations Failure to Provide Objective, Balanced and Fair Analyses of Alternatives to the Proposed Project;
- (8) Reclamations Failure to Adequately Consider the Scope of Cumulative Effects;
- (9) Reclamations Error and/or Omission in Identifying and Reporting of Agencies and Persons Consulted;

These sections are followed by a tenth section containing a series of conclusions and recommendations.

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(1) CWC's and Reclamation's Failure to Accurately Identify Project Applicants: CWC and ARC Constitute a Contractual Development Partnership

On July 12, 2007, CWC and ARC (ARC in the capacity as owners and applicants for the proposed Rosemont Copper Project) signed a Letter of Intent (LOI) – a contract – that creates a “development partnership” between the two entities and inextricably links their respective projects. This LOI is contained in Appendix D of the Draft EA. The introductory section of the LOI states that:

- the availability of suitable financial arrangements is critical to the eventual implementation of the proposed CWC water delivery and recharge system;
- the availability of a suitable pipeline and recharge facility is critical to ARC plans to procure and recharge CAP water in the vicinity of the proposed Rosemont Mine well site;
- the LOI represents the due diligence required to complete an agreement between CWC and ARC for the financing, construction and operation of a new pipeline and associated water recharge facilities. (emphasis added)

Further, this July 12, 2007 LOI states:

“The parties have established a CAP Water Delivery System (WDS) Plan as presented in a briefing dated June 18, 2007, and that Plan is incorporated as Appendix A to this Letter of Intent.”

The material set forth in LOI as well as the Appendix contains a project description that matches the project under review in this Environmental Assessment, creates a “Project Team” consisting of members from both CWC and ARC, states that the Project Team is responsible to “senior management of both Companies”, states that the Project Team will oversee design, construction, and operation of the Proposed Project, and identifies the two Companies as “development partners.”

The conclusion is inescapable: the CAP Water Delivery System and Recharge Facility under review in the Draft EA has been designed collaboratively by CWC and ARC acting as development partners under the Letter of Intent dated July 17, 2007, and thus the two parties are de facto “co-applicants” of the Proposed Project. As such, CWC and ARC are properly hereinafter referenced in this comment letter as “Applicants” or “Project Applicants”.

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(2) CWC's and Reclamation's Failure to Provide Public Access to the Final Plan (i.e., seminal document) that is the Subject of the Draft EA for the Proposed Project

There is no publically available Final Plan for the Proposed Project. There is no plan document posted on any of the relevant websites (CWC, Reclamation, or ARC); Section 6.0 of the Draft EA – Literature Cited – contains no reference to any Final Plan. Thus the only plausible “Plan” for the Proposed Project is set forth as an Appendix to the LOI between CWC and ARC, dated July 12, 2007 (located in the EA immediately following the LOI); the document in this Appendix is referenced as: **CWC CAP WDS; Appendix A; CAP Water Delivery System (WDS) Plan; dated _____, 2007.** Note that there is no date on this page. This page is then followed by a document titled:

COMMUNITY WATER COMPANY of GREEN VALLEY CAP WATER DELIVERY SYSTEM (WDS) PLAN

PLAN BRIEFING
June 18, 2007

“Confidential Information”

The only logical conclusion one can draw is that this document is the “final plan” provided to Reclamation in April 2008, as stated on page 2 of the EA.

(3) Reclamation's Failure to Require a Final Plan and Final Agreement between CWC and ARC Prior to Initiating the NEPA process;

As stated under the preceding item, there is apparently no “Final Plan” for the Proposed Project. Reclamation appears to be relying on the Plan Briefing dated June 18, 2008, as the basis for the Draft EA. This Briefing Plan wholly lacks the level of detail necessary for a project of this scale and complexity, thus the Draft EA has apparently been prepared on a preliminary planning document, not on a Final Plan submitted to Reclamation in April 2008 as claimed on page 2 of the Draft EA.

Appendix D of the Draft EA contains an “Explanatory Memorandum” apparently prepared by CWC, and dated October, 25, 2007. This “Explanatory Memorandum” serves as a wholesale disclaimer for the LOI signed on July 12, 2007, stating in part, that the documents (the LOI and the Plan set forth in the appendix to the LOI)

“... reflect preliminary concepts and alternatives being discussed by the parties at that time. The fact that an alternative is discussed or potential third party participation identified is not intended to imply that any determination has been

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made concerning any given alternative or that any understanding has been reached by any identified potential participant."

The Memorandum concludes:

"Accordingly, it must be recognized that while reviewing the Letter and the Appendix that they reflect only the initial step in an ongoing process. That process continues to narrow available options and to clarify and specify relationships and regulatory frameworks that may be incorporated into any final project".

In other words, the alleged "Final Plan" is not really final, and the alternatives and relationships among the various potential participants are subject to change.

Moreover, under Project Financing (page 15), the EA states that

"Negotiations between CWC and Rosemont (Parties) are ongoing to finalize an agreement (Agreement) through which the details of the arrangement would be memorialized."

A subsequent statement on page 15 reveals that Reclamation has prematurely issued a NEPA document absent a final plan and agreement that constitute a sufficiently definitive Proposed Project:

"The Agreement between CWC and Rosemont has not been finalized, and thus Reclamation and CAWCD have not been able to review any portion of the Agreement." (emphasis added)

It is important to note that ARC is no longer the principal party in the agreement, but rather Rosemont Copper Company (RCC), revealing a closer interrelationship between CWC and the proposed Rosemont Copper Project.

Thus the public and Reclamation have neither a Final Plan nor a Final Agreement upon which to base a NEPA analysis. And since all information that is currently provided by CWC, ARC and/or RCC is qualified as preliminary and subject to change, how can any analyses, evaluations, and conclusions be considered adequate for a credible review of the Proposed Project? We respectfully submit that the current NEPA process cannot produce credible and reliable results, and, as such, should be terminated. A new NEPA process can then be initiated when a Final Plan and Final Agreement are in place. As discussed elsewhere in this comment letter, the proper NEPA process should consist of a full Environmental Impact Statement prepared jointly by Reclamation and CNF on the Proposed Project and the Proposed Rosemont Copper Project.

(4) CWC's Failure to Identify the Proposed Project as a De-facto Mitigation Measure for the proposed Rosemont Copper Project;

ARC's Rosemont Mine Plan of Operation, Section 2.8.2, Water Supply—Legal and Regulatory Considerations states:

"To mitigate harm to the Tucson AMA basin, Rosemont has procured an excess water subcontract from the Central Arizona Water Conservation District (CAWCD), which operates the CAP system. The subcontract allows Rosemont Copper to purchase CAP water on an annual basis, as available, and take to delivery in the Tucson AMA. As described above, Rosemont Copper began the process of purchase and recharge in 2007 in order to offset any potential harm to the Tucson AMA as the basin of origin for the Project's water supply." (emphasis added)

Furthermore, MPO Section 2.8.5, Water Supply—Recharge Plan states:

"Pima Mine Road is the state-permitted underground storage facility closest to [Rosemont Production Well] Site 1. Because available capacity at this facility may remain limited for the foreseeable future, Rosemont Copper has also begun evaluating construction of a new recharge facility in close proximity to it. Although construction and operation of a nearby recharge facility is not required by law, regulation, or any contractual obligation, Rosemont Copper is committed to recharge available CAP water at groundwater storage facilities close to its production wells to lessen impacts of mine water production on local water users." (emphasis added)

Clearly, the Proposed Project is designed as mitigation measure by ARC, intended to mitigate harm from mine water production to the Tucson AMA basin and to local water users. As a result, the Proposed Project is an integral part of the Mine Plan of Operation (MPO) for the proposed Rosemont Copper Project. Consequently, the Proposed Project must be reviewed as an integral part of the Draft Environmental Impact Statement (DEIS) on the proposed Rosemont Copper Project currently in preparation by CNF, rather than as a stand-alone EA.

Moreover, the Augusta Resources Corporation website contains a section on the Rosemont Mine, including a series of "Frequently Asked Questions." Among the questions and responses is the following:

QUESTION: "With regards to the commitment to supply 105% of the water needed for the project, will there be any formal agreement with the community on how this will be done?"

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ANSWER: "Rosemont is negotiating agreements with local community water user groups, and will make announcements at appropriate times if there are announcements to be made. Augusta has made considerable progress towards finalization of these agreements, with the goal of having agreements in place to allow the EIS to rely on these important community mitigation programs as relevant conditions of approval." (emphasis added)

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Note that ARC states that the commitment to supply water needed for the Rosemont Copper Project is being negotiated with the local community water users groups (i.e., CWC) and that the commitment of this necessary water is related to the EIS (on the proposed Rosemont Copper Project) in terms of providing a "mitigation programs as relevant conditions of approval." As such, clearly ARC explicitly considers the proposed Water Distribution System and Recharge Facility a "mitigation program" integral to the DEIS on their proposed Rosemont Copper Project (i.e., Rosemont Mine). Moreover, ARC is seeking to have final agreements for the WDS/RF (presumably including approval by Reclamation) in place prior to completion of the DEIS on the Proposed Rosemont Copper Project. This explains CWC/ARC's great haste in pressing Reclamation to proceed with the NEPA process in hopes of receiving approval of the Proposed Project so that it can serve as a "mitigation measure" in the Draft EIS on the Proposed Rosemont Copper Project. This again demonstrates that the Applicants fully recognize that the two projects are "connected actions" under NEPA (see item 5 below).

(5) Reclamation's Error in Failing to Properly Identify Connected Actions: Logical and Contract Interrelationships Between the Proposed Project and the proposed Rosemont Copper Project;

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Although the ARC/RCC Mine Plan of Operations (MPO) does not contain the formal name of the proposed Community Water Company Water Delivery System and Recharge Facility, it does however include a ground water recharge plan that relies on the existence of a facility exactly like the Proposed Project that is the subject of this Draft EA. Section 2.8.5 of the MPO is entitled "Recharge Plan" and states:

"Rosemont has made a commitment...to utilize available CAP water to recharge 105% of the total water production over the life of the [Proposed Mine]. The recharge will be within the Tucson AMA, and as close to the water production site as possible."

Add to this ARC/RCC's (non-binding) commitment to funding construction of the Proposed Project, in return for which the CWC will give ARC/RCC priority for use of CWC's CAP water and available recharge storage capacity for the first 15 to 20 years of the system's operation unless it is needed by CWC—the stated and exact expected

lifetime of the Proposed Mine. The "Recharge Plan" in the MPO combined with the fact that construction of the Proposed Project will be funded by Rosemont in consideration for CWC's implementation of Rosemont's "Recharge Plan" makes unavoidable the conclusion that the two Projects are connected actions

It is also clear that ARC/RCC's commitment to the ground water recharge plan in its MPO is an attempt to mitigate the severe environmental impacts of its ground water pumping plan and, thereby, improve the chances that the Coronado National Forest (CNF) will approve this widely unpopular proposed open pit copper mine at Rosemont.

Rosemont would not include a ground water recharge plan in its MPO and agree to fund construction the proposed CWC/RF unless it believes the Proposed Project is essential for approval of the proposed Rosemont Copper Project by the CNF. If Rosemont holds this belief, so too should Reclamation; Reclamation should therefore declare the Proposed Project and the proposed Rosemont Copper Project (i.e., Rosemont Mine) to be connected actions with cumulative impacts.

The background leading up to the Applicants' submittal to Reclamation is highly instructive in the matter of establishing "connected actions." The July 17, 2007 LOI between CWC and ARC was preceded by the issuance of the CAP Water Delivery System (WDS) Plan described above (co-authored by CWC and ARC) on June 18th, 2007. Obviously the formulation of both the LOI and the Water Delivery System Plan required a substantial amount of time, thus it is reasonable to conclude that CWC and ARC/RCC had been working together for an extended period of time prior to formalizing the LOI and WDS Plan in July 2007.

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Concurrent with these discussions between CWC and ARC, ARC was occupied with the preparation of the MPO for their proposed Rosemont Copper Project, which was also formally submitted to the CNF for review and approval in July 2007. As noted above, although the MPO does not specifically identify Community Water Company of Green Valley by name as the entity responsible for development of the CAP Water Delivery System, it is clear from the record (LOI and LOI Appendix) that (1) ARC and CWC are development partners in the Proposed Project, and (2) the water distribution system and recharge facility described in the MPO is the same system as the Proposed Project that is the subject of the Draft EA issued by Reclamation.

Simply and clearly stated, the project in the MPO and the project in the Draft EA are the same project. They are not only linked; they are identical. Reclamation (and the CNF as may be warranted) must not be misled by the mere absence of the formal Community Water Company name in the MPO; as Gertrude Stein's 1913 poem reminds us "a rose is a rose" and, as commonly paraphrased, "a rose by any other name is still a rose." The Proposed Project set forth in the Draft EA is the same project as embodied in the ARC/Rosemont MPO. Moreover, since ARC/RCC and CWC were formal "development partners" on the design and funding of the proposed WDS/RF, it would

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only be logical for the formal name of the Proposed Project to appear in the MPO. Thus a key question: why would the name "Community Water Company" not appear in the MPO?

Consider the following statement from the ARC Website; location: *Rosemont Copper; Community Commitments; Sustainable Water Source*:

"Rosemont's approach to maintaining a sustainable water source includes:

- Water resources will be protected by avoiding impacts to the Davidson Canyon and Clenega Creek watershed, recycling production water within the plant and lining storage reservoirs to ensure that groundwater is not affected. Additionally, Central Arizona Project water is being purchased and stored in advance and by the end of 2007, a supply will have been collected sufficient to sustain the operation for three years.
- Augusta Resource, developer of Rosemont Copper, has signed a letter of intent with the Community Water Company of Green Valley to fund a CAP extension that could be delivering water to the Green Valley/Sahuarita area in as little as two years. The water delivery system plan includes a seven-mile extension of the CAP pipeline into the Water Company's service area and a water recharge facility in the Green Valley/Sahuarita area. The plan would enable Community Water to construct a water delivery system and bring much-needed recharge of CAP water into its service area many years sooner than would have otherwise been possible. Community Water will also make its unused CAP water allocation available to Augusta Resource for recharge in the Green Valley/Sahuarita area."

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Several statements in the various documents that are a part of the public record indicate that CWC and ARC/RCC are pressing for approval of the Proposed Project prior to the CNF action on the proposed Rosemont Copper Project. In the August 2007 CWC Community Water Newsletter, the following statement appears under the "Pipeline Extension FAQ's":

Q: Why does the Community Water want the project completed within two years?

A: A shortage declaration of the Colorado River becomes increasingly likely with each passing year. If we are not making use of our CAP allocation at the time a shortage is declared, it is possible we could lose access to our allocation. Additionally, we would like the project to be completed before Augusta Resource's application for their mine in the Santa Rita's reaches a decision point. (emphasis added)

The first part of the Answer is understandable, but why does CWC want the project completed before CNF's decision on the Rosemont Mine? Does CWC believe that ARC/RCC will fail to meet the obligations set forth in the (non-binding) LOI if the

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Rosemont Mine is not approved by the CNF? In a January 20, 2009 letter from ARC to CWC (final page of the Draft EA) we find the following concluding sentence:

"Rosemont expects that the design, construction bidding, funding and actual construction of the pipeline will be completed prior to finalization of Rosemont Mine Plan of Operation review process, and will move forward independent thereof." (emphasis added)

Again the basic question must be posed: why does ARC/RCC want the project completed prior to a CNF decision on the Rosemont Mine? Does ARC/RCC believe that absent approval and construction of the Proposed Project the CNF will not approve the proposed Rosemont Copper project? This obvious concern by the two parties – CWC and ARC/RCC – can only be explained because they realize that the actions are, in fact, "connected". Note also, that this explicit concern is directly related to two NEPA actions: the Draft EA on the Proposed Project and the Draft EIS on the proposed Rosemont Copper Project, thus bringing NEPA directly into play.

Further, as discussed under topic 4 above, the ARC website states that the commitment to supply water needed for the proposed Rosemont Copper Project is being negotiated with the local community water users groups (i.e., CWC) and that the commitment of this necessary water is related to the Draft EIS on the proposed Rosemont Copper Project in terms of providing a "mitigation program," yet another direct link to NEPA.

The foregoing statements clearly demonstrate that the two projects are connected actions under NEPA; this discussion underscores CWC's concern that their project will not proceed if the Rosemont Mine is not approved by the CNF, and Rosemont's concern that their will not be approved if the WDS/RF is not approved by Reclamation. Both approvals require a NEPA process, and both parties (CWC and ARC/RCC) recognize the vulnerability of their own project in terms of the approval of the other's, precisely per the provision of Section 40 CRF 1508.25 (1) (ii) – Scope,

(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously (emphasis added)

Reclamation's determination regarding "connected actions" appears on page 6 of the Draft EA:

"...Reclamation has determined the Proposed Project and the proposed Rosemont Mine are not connected actions under NEPA."

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9-5

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The discussion under the initial evaluation criteria used to make the foregoing determination includes this curious statement, also on page 6 of the Draft EA:

"Presently, use of the CWC water delivery system is not identified in Rosemont's mine plan of operation (MPO) (Rosemont 2007) under consideration by CNF." (emphasis added)

"Presently?" Why do the authors of the Draft EA state that the CWC WDS/RF is not presently identified in the MPO for the proposed Rosemont Copper Project? "Presently" suggests that at some point in the future this may change; that the Proposed Project will eventually be identified in the MPO, at which time, the two projects would clearly be "connected actions", since the absence of the CWC name in the MPO is cited in the Draft EA as evidence that the actions are not connected.

The text of the eleventh image of Reclamation's fifteen-image PowerPoint presentation at the August 26th scoping meeting is set forth below:

"SCOPE of THIS PROJECT

Is it appropriate to proceed with a separate environmental assessment for this project, or is the CWC project so interrelated to the Rosemont Mine proposal that they should be considered together in a single environmental impact statement?"

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The balance of Reclamation's scoping meeting presentation was devoted to responding to this question. In formulating Reclamation's response, the presenter focused on the provisions of 40 CFR 1508.25 – Scope, particularly the provision regarding "connected actions" as set forth below:

1508.25 - Scope.

Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include: (a) Actions (other than unconnected single actions) which may be:

- (1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:
 - (i) Automatically trigger other actions which may require environmental impact statements.
 - (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.
 - (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

(3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement. (emphasis added)

In discussing the three types of "connected actions" (each with an accompanying PowerPoint image) the presenter stated that Reclamation had concluded that for each of the three provisions, the subject projects (the Proposed Project and the proposed Rosemont Copper Project) are not linked in the "NEPA" sense.

Every member of the public who offered oral testimony at the scoping hearing explicitly disagreed with Reclamation's conclusion, as did members of the public who attended the public hearing on the Draft EA. We also emphatically disagree. The proposed Rosemont Copper Project cannot proceed without construction of the water distribution system and recharge facility proposed by CWC, and conversely, the water distribution system and recharge facility proposed by CWC cannot proceed without funding from RCC. In spite of ARC/RCC's stated "intent" (absent a binding contract) to the contrary, funding of the Proposed Project would appear to be contingent upon CNF completion of the NEPA process and approval of the MPO for the proposed Rosemont Copper Project. The two projects are clearly interdependent and directly linked – the viability of each is based upon approval of the other.

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Given these facts, let us next turn to a narrower determination of how these two projects are "connected actions" under NEPA. Per the regulations, "connected actions" means that the actions are closely related and therefore should be discussed in the same impact statement. The following discussion addresses each of the three conditions:

Condition (i): The action automatically triggers other actions which may require environmental impact statements.

In considering this condition, the sequence of approval of the two projects becomes a central consideration, and explains why both CWC and ARC/RCC are pressing for approval of the Proposed Project prior to approval of the proposed Rosemont Copper Project. If the Proposed Project were approved first, as the Applicants are apparently counting on, the "trigger" mechanism affecting the Proposed Rosemont Copper Project would be the provision of funding for the Proposed Project by ARC/RCC. Under Condition (i), the action of funding by ARC/RCC could be interpreted as not requiring a NEPA action (i.e., an EA or EIS), although the clear interrelationships between the two projects as well as between

Comment Letter 9 continued

CWC and ARC/RCC, RCC funding could be interpreted as integral to the success of the proposed Rosemont Copper Project, and thus meeting this "connected actions" criteria.

If however, the Proposed Project were not approved at the time that CNF was prepared to issue the Final EIS and approve the MPO on the Proposed Rosemont Copper Project, the Proposed Project (water delivery system and recharge facility) would be a required mitigation measure in the Final EIS. Under this sequence scenario, approval of the Proposed Rosemont Copper Project would be the "trigger" mechanism for the Proposed Project, requiring a Reclamation NEPA process, and clearly establishing the two projects as "connected actions."

The two subject actions meet the provisions of this condition and constitute "connected actions"; a single environmental impact statement is required.

Condition (ii): The action cannot or will not proceed unless other actions are taken previously or simultaneously.

9-5

Under Condition (ii) the relationship between the two projects is abundantly straightforward and clear. Both CWC and ARC/RCC recognize that the Proposed Project cannot proceed unless the CNF approves the proposed Rosemont Copper Project (thus triggering funding by ARC/RCC), and the proposed Rosemont Copper Project will not proceed unless Reclamation approves the Proposed WDS/RF Project. The subject actions meet the provisions of this condition. (Again, see earlier discussion of concerns by both CWC and ARC/RCC regarding the importance of gaining Reclamation approval prior to completion of the CNF NEPA process.) In this case, other actions must be taken simultaneously, namely completion of the NEPA process and approval of the MPO by the CNF. The projects are "connected actions" and should therefore be addressed in a single environmental impact statement as required under NEPA.

It is also clear that the two actions are "connected" when considering the sequence of NEPA approvals of the two projects as discussed under Condition (i). Since the Draft EIS on the proposed Rosemont Copper Project is dependent upon the recharge facility (i.e., the Proposed Project) as a major, indeed a key mitigation measure, it is critical to ARC/RCC that Reclamation's approval of the Proposed Project precede (i.e., be taken previously) the completion and review of the Draft EIS on the proposed Rosemont Copper project. There is simply no question; the two projects are intertwined and "connected actions" under NEPA.

Condition (iii): The actions are interdependent parts of a larger action and depend on the larger action for their justification.

The "interdependency" portion of Condition (iii) is clearly present in the immediate case. There is, however, no "larger action" upon which the actions derive their justification. As such, the subject actions only partially meet the provisions of this condition.

9-5

The conclusion is inescapable: the WDS/RF proposed by CWC and their development partner ARC/RCC whose proposed Rosemont Copper Project MPO is currently under NEPA review by the CNF, are "connected actions" and should therefore be addressed in a single EIS as required under NEPA.

(6) CWC's and ARC's Failure to Adequately Describe the Scope of Mining Planned by ARC/RCC, thus Piece-mealing or Segmenting both the Proposed Project and the proposed Rosemont Copper Project

ARC literature for stockholders and potential investors clearly indicates that the proposed Rosemont Copper Project is only the initial step in creating a four-mine complex within the area defined as the "Rosemont Project" in the MPO (Figures 1-2 and 1-3.) Although the MPO makes passing reference to the Peach-Elgin prospect and the Broad Top Butte prospect (p. 2), it fails to state that these two areas, along with the Cooper World prospect are integral to Augusta's mining plans for the Rosemont area.

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Figure 1 on the following page shows the geographic location and extent of this four-mine complex. The following discussion underscores the fact that the proposed Rosemont Copper Project is part of a much larger mining plan for the greater Rosemont Area, thus the scope of any related NEPA review (such as the EA for the Proposed Project) must be expanded to include the additional elements of Augusta's overall plan for the area. The water supply required for the four-mine complex would clearly require expansion of the Proposed Project as well, thus the Draft EA is deficient in failing to discuss the full scope of water delivery and groundwater recharge related to the overall "Rosemont Project."

The September 11, 2007 issue of *World Mining Stocks: The Definitive Guide for Equity Investing*, contained an article touting Augusta's plans for the Rosemont area. The following excerpts are from the article, "Augusta's Arizona jewel on target to be big player in copper league".

Under the subheading "STRATEGIC LAND PACKAGE" is the following statement:

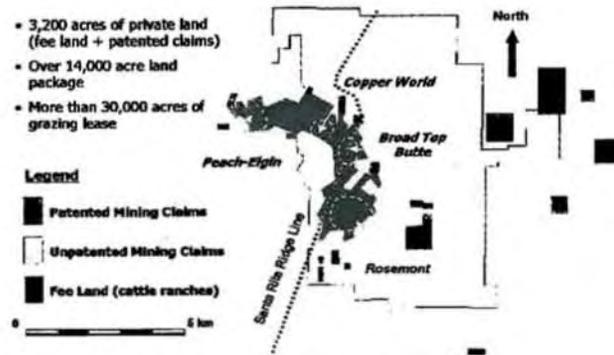
"The company has accumulated a land package covering some 14,000 acres, plus a further 20,000 acres of grazing lease for the cattle ranch it will continue to run throughout the life of mine. Included in their holdings are the Rosemont deposit plus Peach-Elgin, Broad Top Butte and also the

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Copper World prospects. During a recent interview, Mr. Clausen noted that, although developing Rosemont was clearly the company's primary focus, the three other properties offered opportunities for further exploration, especially including Broad Top Butte as the Rosemont deposit is open to the north and east directly toward where Broad Top is located."

Source: www.augustaresource.com/upload/powerpoint/Final_Profile.pdf

Figure 1: Rosemont Area



Source: Augusta Resources website (found under Frequently Asked Questions (<http://www.augustaresource.com/section.asp?pageid=8264>)).

The Augusta website also contains a publication clearly setting forth Augusta's plans to proceed with additional mining in the Rosemont Area. This publication, titled *Rosemont Copper: Arizona's Next Major Copper Mine – Right People, Right Place, Right Time*, contains the following statements:

"President's Message (p. 02)

... After publishing the updated resource statement, the company was pleased to complete a positive bankable feasibility study in the third quarter of 2007. ... Augusta has since commenced an exploration program geared towards increasing reserves and resources at Rosemont, specifically targeting a 50 to 100 million ton conversion of waste ore from the northern part of the existing

Rosemont open-pit mineable reserve. The program is also hoping to discover a potential 10 million tons of deeper high-grade ore for underground operation and identify additional higher-grade targets in a district-wide search for deeper mineralization."

"2008 Growth Objectives (p. 06)

- ...
 - Continued New Exploration
- Expand current open pit reserve
- Define new Rosemont property resources"

"Exploring the Future (p. 06)

Augusta's recent geological mapping and sampling taken around the Rosemont orebody has identified several promising new exploration targets. The work significantly advances the understanding of fault displacements on rock units, rock alteration and mineralization, and identified that faulting has apparently displaced a yet-unexplored western extension of the Rosemont deposit approximately 4,500 feet (1,400 meters) to the north."

These statements are unequivocal; ARC is actively planning significant additional mineral extraction beyond the scope set forth in the MPO. Even following submittal of the MPO and prior to the initiation of the CNF NEPA process, ARC published materials on their website identifying additional areas planned for mining, and undertook field explorations to expand the scope and magnitude of the ore body within the Rosemont area, including the possibility of an "underground operation". Note also that the feasibility study referenced in the *President's Message* followed the completion of the MPO submitted to the CNF in July 2007. It seems highly irregular to prepare the feasibility study after completion of the MPO, particularly since the MPO was already submitted to the CNF for review and initiation of the NEPA process.

Taken in the aggregate, the information cited above clearly reveals that the Proposed Rosemont Copper Project is a part of a larger plan being undertaken by ARC; a plan that would significantly expand the scope and magnitude of mining operations within the Rosemont Area with a corresponding and significant increase in adverse environmental impacts, including a major increase in the necessary water supply as well as a significant corresponding increase in groundwater recharge. By segmenting the larger plan, ARC apparently planned to prepare a series of sequential Environmental Impact Statements on the various elements of the overall plan. Such an approach, known as "segmenting" or "piece-mealing" is in clear violation of NEPA. Moreover, since the proposed WDS/RF is intended to support the Rosemont Mine in particular, and ARC in general, the basic

9-6

9-6

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Issue of water supply for the entire "Rosemont Project" area must also be addressed in the Reclamation Draft EA.

Allowing an applicant to segment or piecemeal the permitting process and thereby avoid the complete and timely assessment of all impacts is inconsistent with NEPA. The courts have interpreted NEPA to prohibit such segmenting or "piece-mealing" of projects. Since ARC is actively planning at least three additional adjacent mines – Peach Elgin, Broad Top Butte, and Copper World – as described above, Reclamation must include evaluation of all water supply impacts of the overall ARC "Rosemont Project" in the current EA; otherwise, full and timely identification and assessment of impacts will have been avoided. It is readily apparent that such a water supply linkage to future Augusta mining projects within the Rosemont Area is a reasonably foreseeable outgrowth of the proposed WDS/RF Project. As such, Reclamation has a duty to consider in this current Draft EA the impacts of such a linkage. (40 C.F.R. § 1508.8.)

9-6

As such, we respectfully request that Reclamation suspend the NEPA process immediately and indefinitely and advise the Applicants to prepare a revised (i.e., expanded) WDS/RF Plan which addresses the water supply/water quality issue for the entire complex of mining projects reflected in ARC's long-range plans; this issue should explicitly address the entire constellation of interrelationships within the complex of arrangements among the principal parties as pertains to the ultimate scale and configuration of the WDS/RF Plan. Upon receipt of the expanded WDS/RF Plan, Reclamation could restart the NEPA process, retaining all public testimony on the currently Proposed Project. To continue with a Draft EA on the current WDS/RF Project would be a clear violation of NEPA.

In addition, arrangements set forth in the LOI arrangements between ARC and CWC include provisions for selecting additional participants in the Proposed Project. This provision obviously provides ARC an unfair advantage with respect to other potential users of CAP water, particularly since under this provision, ARC could presumably expand their water use for the additional mines planned in the area by excluding other potential users, or limit or prohibit expansion of existing users. This matter also warrants full explication and exploration in the EA on the Proposed Project.

(7) Reclamation's Failure to Provide Objective, Balanced and Fair Analyses of Alternatives to the Proposed Project

9-7

The consideration of alternatives to a proposed project is central to the NEPA Process. Among the substantive provisions set forth under NEPA is a detailed statement by the responsible official setting forth and evaluating alternatives to the proposed action [§102 (C) (iii)]. In its regulations implementing NEPA, the Council on Environmental

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Quality (CEQ) calls the alternatives analysis section the "heart of the EIS", and require that agencies shall:

- (a) Rigorously explore and objectively evaluate all reasonable alternatives and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
- (b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.
- (c) Include reasonable alternatives not within the jurisdiction of the lead agency.
- (d) Include the alternative of no action.
- (e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.
- (f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

– 40 CFR 1502.14

Evaluation of alternatives should present the proposed action and all the alternatives in comparative form, to define the issues and provide a clear basis for choice among alternatives. Alternatives analysis should clearly indicate why and how the particular range of project alternatives was developed, including what kind of public and agency input was used. In addition, alternatives analysis should explain why and how alternatives were eliminated from consideration. It must be made clear what criteria were used to eliminate alternatives, at what point in the process the alternatives were removed, who was involved in establishing the criteria for assessing alternatives, and the measures for assessing the alternatives' effectiveness.

In light of the considerations set forth above, the Draft EA fails to consider any meaningful alternatives to the Proposed Project. Only the Proposed Project and the "no project" alternative are set forth in any detail. In brief, then, Reclamation fails to demonstrate any serious consideration of alternatives which would reduce adverse environmental impacts, or even to provide a gesture toward meeting the spirit and letter of NEPA.

Several possible alternatives identified during the scoping process on the proposed Rosemont Copper Project have significant implications for water use, and thus reflect directly on the Proposed Project which directly supports the proposed Rosemont Copper Project as a mitigation measure. Since the two projects are linked, it is critical

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that the Reclamation EA analyze and evaluate alternatives to the project as proposed in the Rosemont MPO. Two such alternatives are briefly described below:

Hydrologic Conveyance of Wet Ore Concentrate to Processing Site West of the Santa Rita Mountains. This alternative would utilize some form of hydrologic/ pipeline conveyance down the west side of the Santa Rita Mountains to a processing/drying site near Santa Rita Road. According to the RCC, 89% of the water could be returned to the mine area for reuse. The ore product could then be trucked to the Port of Tucson railhead at Kolb & I10 or to a railhead on the existing rail line connecting Nogales and Tucson. Obviously this alternative would require a significant increase in water use, likely reducing the amount of water available for the recharge facility. Clearly the impacts of such an alternative must be included in Reclamations' Draft EA on the Proposed Project.

Wet Stacking of Mining Tailings. The MPO calls for dry-stacking of mining tailings, thus substantially reducing the amount of water use required for the typical wet-stacking technology widely used in mining operations. In fact, dry-stacking has never been used in the United States, and some experts claim that it is not suited for the arid west. Should this RCC-preferred method prove untenable and wet-stacking technology is required, water use for the proposed mine would increase significantly, with a corresponding adverse effect on the availability of water for the recharge facility. As with the alternative summarized above, the impacts of this alternative must be included in the Draft EA.

The Draft EA must address alternatives to the water distribution system and recharge facility as proposed by the Applicants, including alternatives to the project itself, as well as alternatives reflecting a range of water use scenarios by the proposed Rosemont Copper Project as a "connected action"

As noted in the Draft EA, on August 25, 2008, Farmers Investment Company (FICO) of Sahuarita, Arizona and American Nevada Company (ANC) of Henderson, Nevada announced their intent "to work jointly with regional partners in the development of a pipeline to deliver Central Arizona Project (CAP) water to the Upper Santa Cruz Valley. This second alternative has no connection to the proposed Rosemont Copper Project; the proposed pipeline and recharge facility are not dependent upon the outcome of the CNF NEPA process and any subsequent CNF approval of the ARC/RCC MPO. As such, this second alternative would not be a "connected action" with any other project, requiring a single EA or EIS. It is conceivable that this alternative might only warrant an EA (as currently underway) whereas the CWC/RCC projects properly constitute "connected actions" under NEPA and will thus require a single and full EIS.

NEPA requires a rigorous exploration and objective evaluation of all reasonable alternatives and for alternatives which were eliminated from detailed study, brief discussions of the reasons for their having been eliminated. NEPA also requires

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substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

The Draft EA fails to apply the same standards for review to the Proposed Project and the FICO alternative, with the result that the FICO alternative is rejected absent a fair and equal review. Reclamation makes the following statement regarding rejection of the FICO alternative (Draft EA, p. 19):

"... The cost, funding, and timing of phases II and III are not known at this time due to ongoing discussions with potential participants in those phases."

A portion of Phase II of the FICO/ANC alternative, plus construction of facilities to recharge the CWC CAP entitlement near the CWC service area would need to occur to meet the purpose and need of the Proposed Project. Because the cost, funding, and timing of Phase II are uncertain; this alternative was eliminated from further consideration."

In light of the sweeping disclaimer set forth in the "Explanatory Memorandum" (see topic 3 above) it is inconceivable that Reclamation would dismiss the FICO-ANC alternative on grounds that the "cost, funding, and timing of Phases II and III are not known at this time due to ongoing discussions with potential participants in those phases" (EA page 19). The "Explanatory Memorandum" has precisely the same effect on the "Preferred Alternative" since CWC/ARC/RCC are still engaged in ongoing discussions, including the consideration of additional potential participants, as well as cost, funding, and timing, presumably all of which will be addressed in a "Final Agreement." Reclamation clearly used higher standards for the FICO Alternative than for the Preferred Alternative.

Also of concern in the discussion of timing as pertains to alternatives, is the "Planning Schedule" shown in the CWC/ARC June 18, 2007 Plan Briefing. This schedule indicates that the Funding Agreement as well as the Design, Construction, Operation and Management Agreements would be completed by November 2007, and the operation of the Proposed Project would commence in June 2009. It is disturbing, indeed, a clear violation of NEPA that the FICO/ANC alternative was rejected absent information on cost, funding, and timing, when in fact, the CWC, ARC/Rosemont Plan Briefing fails to contain credible information on the very same topics.

At present, since the aforementioned Agreements are not yet in place, the Proposed Project (Preferred Alternative) is already 17 months behind, and the Draft EA states that "[T]he agreement between CWC and Rosemont has not been finalized, and thus Reclamation and CAWCD have not been able to review any portion of the Agreement" which will obviously require further slippage in the CWC/ARC "Planning Schedule". Moreover, the Arizona Corporation Commission (ACC) must approve the Agreement, requiring yet more additional delay in the schedule.

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The Proposed Project, through the significant slippage in the "Planning Schedule" clearly reveals problems of timing and uncertainty. Moreover, the provisions of the LOI and the accompanying "Explanatory Memorandum" can lead to significant changes in a "Final Agreement" thus revealing problems of uncertainty in timing, funding and costs. How ironic it is that the Proposed Project exhibits precisely the same conditions used to eliminate the FICO/ANC alternative – "[Because the cost, funding and timing of Phase II are uncertain..."

In sum, the Draft EA should be revised, reissued, and re-circulated in order to provide a full consideration of the FICO/ANC alternative as required under NEPA.

(8) Reclamation's Failure to Adequately Consider the Scope of Cumulative Effects

The discussion of Cumulative Effects is diffuse, confusing, and misleading. There is no single summary of Cumulative Effects where the reader can gain a clear view of the impacts of the Proposed Project along with other impact-producing projects in the area.

With respect to the determination of the area within which impact-producing projects could occur, the Draft EA states (page 22):

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"The proposed Mine is approximately 10 to 12 miles from the Proposed Project and is located in a separate watershed."

The Proposed Rosemont Copper Project is in a separate watershed, and is 10.5 miles from the location of the Proposed Recharge Facility. However, ARC's proposed Peach-Elgin Mine is only 7.5 miles from the proposed Recharge Facility. More importantly, as shown in Figure 1 on page 15 of this comment letter, ARC's proposed Peach-Elgin Mine, proposed Copper World Mine, and half of the proposed Broad Top Butte Mine all fall in the same watershed as the Proposed Project. The fact that the Proposed Rosemont Mine is not in the same watershed as the Proposed Project is used as a criterion for not including the proposed Rosemont Mine in the analyses of cumulative effects of the Proposed Project. However, per the ARC plans for the "Rosemont Area", the other three proposed mines fall within the same watershed as the Proposed Project. As such, there are compelling reasons to expand the area for the analyses of cumulative effects on water resources to include these additional mines that are planned by ARC. At a minimum, the area of analysis should extend to the ridgeline of the Santa Rita Mountains, and include the entirety of the sub-watersheds within which these additional ARC mines are located.

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(9) Reclamation's Error and/or Omission in Identifying and Reporting of Agencies and Persons Consulted

Given the prominence of the Proposed Rosemont Copper Project and Rosemont Copper Company in the Draft EA (the name "Rosemont" appears 120 times) it is ironic that no CNF documents or correspondence are listed in Section 6.0 Literature Cited of the Draft EA; similarly, there is no mention of either consultation or correspondence with CNF set forth in Section 5.0 Agencies and Persons Consulted of the Draft EA. Since Reclamation noted that CNF was a participant in early discussions of the two projects, particularly with regard to this issue of "connected actions" this key omission is particularly disturbing. A full and detailed explanation of this obvious and significant oversight is clearly warranted.

9-9

(10) Conclusions and Recommendations

Our analyses have produced the following major conclusions:

1. The Proposed Project and the proposed Rosemont Copper Project are "connected actions" warranting a single environmental impact statement under CEQA.
2. Alternatives to the must include the alternative proposed by the Farmers Investment Company (FICO) of Sahuarita, Arizona and American Nevada Company (ANC) of Henderson, Nevada.
3. Alternatives to the Proposed Project must include analyses of alternatives reflecting a range of water use scenarios by the proposed Rosemont Copper Project, including, but not limited to a slurry-transport system, and wet-stacking of mine tailings.
4. The scope of the analysis of cumulative impacts must be expanded to include the four mines proposed by ARC for the entirety of the "Rosemont Area."

9-10

These conclusions lead to the following recommendations:

1. Reclamation should reissue its determination regarding "connected actions" and properly identify the Proposed Project and the Proposed Rosemont Copper Project as "connected actions" under NEPA.
2. Once recommendation 1 is completed, Reclamation, in collaboration with the CNF should suspend the NEPA process and initiate the integration of the Draft EA on the Proposed Project, into to a full, combined EIS on both the Proposed

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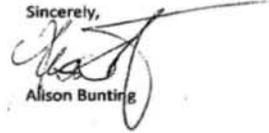
Project and the proposed Rosemont Copper Project; the EIS should be undertaken jointly with the CNF;

- 3. Once recommendation 2 above is initiated, Reclamation and the CNF should expand and reopen the scoping period on the "connected actions" to permit a full review and comment by the public particularly in those communities most directly impacted by the combined project(s);
- 4. All public comments on both projects (i.e., scoping comments from the CNF NEPA process, and scoping comments and comments on Reclamations NEPA process) should be incorporated into a single EIS;
- 5. Reclamation and the CNF should incorporate a full analysis of the alternative proposed by the Farmers Investment Company (FICO) of Sahuarita, Arizona, and American Nevada Company (ANC) of Henderson, Nevada, into the Draft EIS; and
- 6. Reclamation and the CNF should incorporate a full analysis of the cumulative effects of the four mines proposed by ARC for the entirety of the "Rosemont Area" into the Draft EIS.

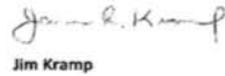
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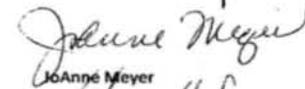
Thank you for the opportunity to review and comment on the Draft EA. Please do not hesitate to contact us if you have any questions or clarifications.

Sincerely,


Alison Bunting


Wade Bunting


Jim Kramp


JoAnne Meyer


James Pepper


Mark Williams


Joan Gillespie Williams


Sherry Pepper

Mountain Empire Action Alliance Steering Committee

Cc: Congresswoman Gabrielle Giffords
Congressman Raul Grijalva
Coronado National Forest Supervisor Jeanine Derby

Response to Comment Letter 9:

- 9-1. Please see response to Comment 3-3. CWC is the only project proponent for the proposed CWC water delivery system; this is appropriate because CWC is an entity that holds a CAP subcontract which requires Reclamation to conduct an environmental review of plans to take and use the CAP water. Reclamation does not require that project proponents disclose financing arrangements for a proposed project, or that financial partners other than the CAP water service subcontractor become a project proponent. Reclamation does not require a funding guarantee for the project to complete NEPA. Reclamation does require the project proponent to pay for both the preparation of the EA and Reclamation's costs to oversee and complete the NEPA process.
- 9-2. Please see response to Comment 5-2, clarifying what is meant by "final plans" needed to conduct NEPA compliance. The "final plans" that have been evaluated in the EA are described in detail in the EA in Section 2.3 - Proposed Action.
- 9-3. The "Explanatory Memorandum" at the beginning of Appendix D was prepared by CWC to explain the contents of the LOI when CWC placed the LOI on its website in July 2007. As noted above in response to Comment 9-2, the final plans submitted to Reclamation by CWC, which have been evaluated in the EA, consist of the components of the proposed project that are described in detail in Section 2.3 of the EA. Reclamation's need to review any financial agreement between CWC and Rosemont is solely for the purpose of determining whether or not any additional federal action is required in order for CWC to take and use its CAP entitlement. After additional consideration of CWC's plans and discussions with CAWCD, Reclamation has concluded no additional action is required on Reclamation's behalf. The EA has been revised to reflect this.
- 9-4. Regardless of the statements quoted by the commenter, the facts are as follows: CNF has not completed an analysis or made a determination regarding the effect of the ground water pumping proposed by Rosemont, as part of the MPO. CNF has not determined whether those impacts are significant or insignificant, or whether mitigation of those impacts is required, or what appropriate mitigation might be. Reclamation and CNF have discussed the relationship between the two projects, and specifically considered whether the two projects should be considered "connected actions" under NEPA, and addressed in a single NEPA document. For the reasons stated in the EA, and reiterated in response to Comment 3-3, we have concluded that the two projects are not "connected actions" under the CEQ Regulations, and it is appropriate for Reclamation and CNF to proceed with two separate NEPA documents. Reclamation's decision on the proposed CWC project will not remove or restrict CNF's discretion to approve or disapprove the Rosemont Mine, or for CNF to establish conditions or require mitigation for the proposed Mine Plan of Operation.
- 9-5. Please see responses to Comments 3-3, 5-1, and 9-4. Response to Comment 3-3 explains why Reclamation has concluded Rosemont Mine is not a connected action for purposes of NEPA. Therefore, comments that speculate about the motivations and concerns of Rosemont and CWC regarding the timing of the two projects are irrelevant to Reclamation's determination regarding the "connectedness" of the projects for purposes of NEPA. For example, the conclusion that the proposed Rosemont Mine cannot proceed without construction of the proposed project is the writers' speculation. CNF has not yet undertaken studies to evaluate impacts from the MPO, or identify if or what reasonable alternatives may be considered, or what mitigation (if any) may be required. Similarly, the authors' conclusion that Rosemont's pumping will

result in “severe environmental impacts” and the CWC delivery facilities will be “required mitigation in the Final EIS” is further speculation on the outcome of an analysis currently being conducted by the CNF. The authors’ statement that the proposed project cannot proceed unless the CNF approves the proposed Rosemont Copper Project is speculation and is, in fact, contrary to the proposed action being evaluated in this EA—the construction of the CWC CAP water delivery system in advance of, and without regard to, CNF’s decision regarding Rosemont Mine’s MPO.

Reclamation agrees that Rosemont proposes to fund the CWC delivery system and receive priority for recharge for the first 15 to 20 years, and the EA is very straightforward in describing the relationship between this project and Rosemont Mine. Indeed, Section 1.5 of the EA acknowledges construction of the proposed CWC water delivery system is proposed to be funded by Rosemont and that CWC plans to give Rosemont priority over other customers for that water, the system, and recharge capacity for the first 15 to 20 years, unless they are needed by CWC to meet delivery obligations to other portions of CWC’s water service area. However, Reclamation is required to determine whether the projects are “connected” as defined in the CEQ Regulations. For the reasons summarized in response to Comment 3-3, first paragraph, the proposed relationship between CWC and Rosemont does not meet the criteria established by CEQ for projects to be “connected actions” for purposes of NEPA analysis.

- 9-6. The potential expanded scope of Rosemont’s mining and related water use scenarios are outside the scope of Reclamation’s analysis in the EA and are not related to the purpose and need for the proposed CWC water delivery system.
- 9-7. Because Reclamation has determined the proposed project and Rosemont Mine are not connected actions for purposes of NEPA analysis, consideration of alternative Rosemont mining processes in this EA is outside Reclamation’s jurisdiction, and inappropriate to include in this document. As explained in response to Comment 5-2, the proposed FICO pipeline does not satisfy the purpose and need for the proposed project; therefore it was not included as an alternative to be studied in detail in the EA. It also is worth noting, the FICO proposal does not require federal approval by Reclamation, and would not be subject to NEPA review by Reclamation as currently proposed. See also response to Comment 9-2 above, regarding “plans” required to conduct NEPA.
- 9-8. The cumulative impacts are clearly described in a separate section under each resource area. As indicated in the EA, cumulative impacts are minimal from the proposed project when combined with other reasonably foreseeable future actions.

Reclamation is not aware of any plans for developing additional mines that would occur within the geographic impact area of the proposed project. Absent some type of proposal or mine plan of operation related to these other potential mines and a potential temporal or geographic connection between the proposed action and these potential mines, Reclamation believes they do not fit the definition of “reasonably foreseeable future actions” typically included in a NEPA document for purposes of a cumulative impacts analysis.

- 9-9. Reclamation staff periodically met with CNF staff to discuss aspects of each project to determine, and later confirm, that the projects were not connected actions for purposes of NEPA analysis. CNF did not indicate that they had documents relevant to the proposed CWC project, other than the proposed Mine Plan of Operations and Groundwater Flow Modeling, which are cited in the EA as Rosemont 2007 and Montgomery

2009a, respectively. Reclamation has also shared information with CNF regarding our recharge site investigations and ground water modeling results. CNF's omission from Section 5.0 was an unintentional oversight. Thank you for pointing out this omission; the EA has been revised to include CNF in Section 5.0.

- 9-10. See responses to Comments 9-1 through 9-9 above. Also, note that this is a NEPA document, not a document prepared under the California Environmental Quality Act (CEQA).

Response to Comment Letter 10: Please see response to Comment 3-3. Please note Reclamation has no jurisdiction over the Rosemont Mine proposal. CNF is currently preparing an environmental impact statement on Rosemont Mine's MPO. More information regarding that process is available at <http://www.RosemontEIS.us>.

PIMA COUNTY ADMINISTRATOR'S OFFICE
C. H. HUCKELBERRY

COMMENT LETTER 11



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

April 23, 2009

Sandra Eto
PXAO-1500
Bureau of Reclamation
Phoenix Area Office
6150 West Thunderbird Road
Phoenix, Arizona 85306

Re: Draft Environmental Assessment on the Proposed Community Water Company Central
Arizona Project Water Distribution System and Recharge Facility

Dear Ms. Eto:

I would like to acknowledge my appreciation for the work the Bureau of Reclamation (Bureau) has put forth to date helping Pima County address this region's water supply needs, and to thank you for the opportunity to comment on this draft Environmental Assessment. The primary source of water for Green Valley is from groundwater within the Santa Cruz Valley; this is supplemented with two sources of renewable supply. One source, effluent water, is fully committed to golf course irrigation. The other renewable water source is Central Arizona Project (CAP) water. The CAP delivery system currently terminates at Pima Mine Road, ten miles north of Green Valley. Due to the ever increasing water demand in this area it is vital that sound, cooperative, cost effective measures are implemented to ensure that CAP water is delivered to and for the benefit of the Green Valley area. We found this draft Environmental Assessment to be deficient in evaluating the viable options available for CAP delivery and providing meaningful analysis of the environmental and social economic impacts. Instead, this document presented a cursory environmental assessment of one option that is financially supported by a private mining company while discarding all other options that could be more beneficial to the Green Valley area.

Numerous studies have established that the Green Valley area does not have a sustainable water supply given current groundwater pumping rates in the Upper Santa Cruz River Basin. The water table in Green Valley and the Upper Santa Cruz Basin has been declining, and is expected to continue at faster rates as water demand increases. As a region we look to the

Sandra Eto
Draft Environmental Assessment on the Proposed Community Water Company Central
Arizona Project Water Distribution System and Recharge Facility
April 23, 2009
Page 2

Bureau for the leadership and foresight to help the Green Valley area meet its water supply needs now and in the future. Bureau support of a draft Environmental Assessment that overlooks viable alternatives for CAP delivery and augmentation while promoting delivery and recharge of CAP water which benefits a private mining company that would use it outside the area of hydrologic impact is not appropriate.

To help clarify our position the following comments are offered:

1. There may be a legally established disconnect between the proposed delivery of CAP water to the identified recharged site and Rosemont Mine.
 - a. The proposed 20-acre recharge site provides no hydrologic benefit to the Community Water Company (CWC). It is 2.5 miles away from CWC's service area and down-gradient of their wells. The proposed recharge site is, however, located immediately up-gradient from the planned Rosemont well field.
 - b. The report documents the beneficial rise in groundwater levels in the area resulting from the proposed recharge, however, it fails to acknowledge this recharged CAP water will be utilized and that there will be no long-term beneficial increase in groundwater depth. It is likely the recharged CAP water will commingle with local groundwater and be used by Rosemont Mine in the Santa Rita Mountains and Sonoita Valley watershed. Thus, CAP water will be exported to another unconnected watershed and will not benefit the declining water table in Green Valley.
 - c. As presented there is no guarantee that CWC's CAP allocation will enter the CWC Service Area unless "CWC needs to recover recharged water which will be affected by future water demands and water quality considerations" (p.10, lines 33-35). This means there is an uncertainty whether the 20" pipeline from the recharge site to the CWC service area, 2.5 miles to the east, will ever be built.
 - d. The report did not address the environmental impact for the recovery component. Presumably, CWC will need wells to recover their CAP allocation in addition to the 2.5 mile 20" pipe line.
2. The Environmental Assessment did not provide a rigorous evaluation of the alternative CAP recharge locations.
 - a. The descriptions and evaluation discussions of alternative recharge sites in the Green Valley area are cursory and dismissive without adequate evaluation. It appears that the proposed CAP recharge site was primarily chosen because Rosemont Mine has down-gradient supply wells that would benefit from a raised water table to export commingled CAP water and groundwater to their proposed mine in the Santa Rita Mountains and Sonoita Watershed.

11-1

11-2

Comment Letter 11 continued

Sandra Eto
Draft Environmental Assessment on the Proposed Community Water Company Central
Arizona Project Water Distribution System and Recharge Facility
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Page 3

- 11-2
- b. Discounting recharge on Arizona State Trust Land in close proximity to both the CWC service area and their recovery wells with a statement that it is too close to the Green Valley Wastewater Treatment Facility is short sighted. An evaluation of mounding from CAP recharge and well recovery is needed to determine the impacts to the Facility. Additionally, recharge in this area may have environmental benefits by reducing movement of the sulfate and TDS plume currently contaminating CWC wells.
 - c. Potential recharge to the Santa Cruz River and its tributaries was eliminated based on one statement made by a Pima County employee related to problems associated with the introduction of non-native fish. No discussion was provided substantiating the claim or discussing options that would mitigate introduction of non-natives or the environmental benefits for undertaking this alternative. In a recent biological opinion regarding delivery of CAP water to the Gila River Basin, the U.S. Fish and Wildlife Service concluded that several conservation measures should and can be effectively used to control non-indigenous fish. In addition, the Bureau has successfully sponsored recharge of CAP at the Arroyos Project on the San Xavier District of the Tohono O'odham Nation that is tributary to the Santa Cruz River. To rule out riverbed recharge sites with an unsubstantiated single-source statement is short sighted and not in keeping with Environmental Assessment standards, especially when the U.S. Fish and Wildlife Service has indicated that riverbed recharge of CAP water can be viable if precautions are taken.
 - d. In August 2008, Pima County, in cooperation with the Upper Santa Cruz Providers and Users Group, developed a scope of work to select and evaluate feasible CAP recharge sites for the Green Valley area. Technical site selection criteria including estimated infiltration rates, mounding potential, available storage capacity, groundwater quality, perched water table conditions and subsurface impeding layers, proximity to landfills and waste disposal sites, environmentally sensitive areas (cultural resources and biological sensitivity), potential to enhance riparian habitat, and land ownership. Conceptual layouts are to be developed for each facility selected. The layouts will provide plan views, sketches and profiles where needed. The acreage, period of recharge and estimated annual recharge volume are to be developed. Cost evaluations are also included.

A similar rigorous site selection process is what should be undertaken by the Bureau. Instead, this Environmental Assessment consists of carefully crafted word-smithing that highlights one alternative which has financial support. This document falls short of the comprehensive site evaluation, as described on pp.17-19, Section 2.6.3.

- 11-3
- 3. The location and construction of the proposed pipeline and CAP recharge site have problems that were not discussed in the draft Environmental Assessment including:

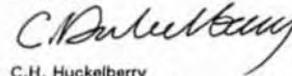
Sandra Eto
Draft Environmental Assessment on the Proposed Community Water Company Central
Arizona Project Water Distribution System and Recharge Facility
April 23, 2009
Page 4

- a. The proposed recharge facility is a 20-acre, 60-foot deep hole that is to remain in perpetuity. The carbon footprint required excavating such a hole, and disposing of the material was never discussed or compared to other alternatives.
- b. Impacts to Priority Vulnerable Species recognized by Pima County in its Sonoran Desert Conservation Planning effort were not mentioned for either the pipeline or the recharge site.
- c. Impacts of CAP recharge to adjacent domestic water users. The TDS content and higher corrosivity of CAP water will cause home plumbing to corrode and break faster.

11-3

We look forward to working cooperatively with your office to resolve the above issues and to successfully address the water supply needs of the Green Valley area. Should you have questions, please feel free to contact myself or Suzanne Shields.

Sincerely,



C.H. Huckelberry
County Administrator

CHH/jj

- c: John Bernal, Deputy County Administrator - Public Works
Nanette Slusser, Assistant County Administrator for Policy - Public Works
Suzanne Shields, Regional Flood Control District Director
Ursula Kramer, Environmental Quality Director
Linda Mayro, Cultural Resources Manager
Richard Grimaldi, Deputy Director, Environmental Quality
Tom Helfrich, Division Manager, Regional Flood Control District
Frank Postillion, Chief Hydrologist, Regional Flood Control District
Nicole Fyffe, Executive Assistant to the County Administrator

Response to Comment Letter 11:

- 11-1. a. As compared to the No Action alternative, the ground water modeling results in the EA, Figures 7-10, indicate the preferred alternative results in higher ground water levels within the project area; this includes portions of the current CWC water service area.
- b. We do not agree that there would be no long-term benefit from the proposed recharge. The proposed project is similar to all recharge projects involving CAP water in that the recharged water is intended to be used in the future. As such, the recharged water reduces the amount of ground water mining in the area. We believe the rise in the ground water table that would occur whether or not Rosemont pumping occurs (compared to the No Action scenarios) is an indication of a long-term benefit resulting from the proposed project. Under the proposed action, Rosemont's pumping would be offset in the Upper Santa Cruz Subbasin; without the project, Rosemont's pumping would be offset within the AMA, but at a greater distance from its production wells.
- c. As summarized in response to Comment 11-1.a above, a portion of the recharge of CWC's CAP allocation would directly benefit ground water levels under the CWC service area. In the long term, it is expected that the CWC allocation will be used to directly benefit CWC customers in its existing service area, either through direct use or CWC recovery of the recharged water. The uncertain timing of construction of the 20" pipeline from the recharge site to the CWC service area reflects that there are a number of variables— e.g., the amount of CWC water demand, recovery locations, and direct use of the CAP water—rather than whether or not the CWC CAP allocation would be used to benefit CWC customers. Although there may be some uncertainty regarding when the 20-inch pipeline might be constructed, it is included in the EA to ensure environmental impacts are considered as part of the entire project.
- d. There are several features that have been included in a conceptual manner, e.g., monitoring wells that would be required as part of ADWR's constructed USF permit. At this time, it is unknown whether or not recovery well(s) would be located within CWC's current water service area or within the recharge facility. Because recovery is currently not contemplated for 15 to 20 years, no specific plan has been developed and no ground water modeling scenarios were conducted. The EA was revised to reflect this.
- 11-2. a. Reclamation supports developing a regional approach to address the ground water overdraft problems within the upper Santa Cruz sub-basin in its role as a water resources management agency; however, in this specific project Reclamation's primary responsibility is to address CWC's plans for taking and using its CAP entitlement. CWC, the project proponent, has identified and provided substantial technical support for its preferred recharge site. Conducting additional studies to determine whether alternative recharge sites exist that would better benefit the region as a whole, as suggested in this comment, is beyond the scope of this EA.
- b. During the analysis of recharge site alternatives, State land was included in the process and a parcel of State land is now the preferred recharge location. As suggested in the comment, the ground water mounding analysis of the preferred and alternative recharge sites was done,

which indicate that that there would be insignificant effects on existing recharge facilities or the sulfate plume (see Section 3.6.2, Ground Water Resources – Environmental Consequences and 3.6.3 – Cumulative Effects. .

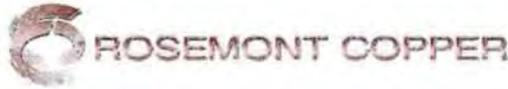
c. Section 2.6.3 of the EA was revised to delete the reference to comments received from Pima County staff regarding the possible introduction of nonnative species to the Santa Cruz River habitat. The remaining reasons that this alternative was eliminated from detailed evaluation in the EA are: 1) recharge in the bed of the Santa Cruz River or its tributaries could adversely impact other existing recharge sites by raising the water table in their vicinity; 2) the use of natural waterways for recharge would result in additional costs to rebuild portions of the recharge facilities if major flood events cause damage; and 3) a reduction in natural recharge from flood events would occur due to an already wetted channel and higher water levels under the stream channel.

d. Please see response to Comment 11-2.a. above. While we agree this information would be helpful, we believe it is not reasonable to delay the proposed project in order to address the regional ground water overdraft problem, which is beyond the scope of this EA. With the additional capacity that would be available in the mainstem pipeline, the preferred alternative will allow use of the proposed system to deliver additional CAP water to other recharge facilities that might be developed as a result of Pima County’s work.

- 11-3. a. Section 3.2.2.2 of the EA describes the estimated emission amounts that would be generated for all applicable pollutants during the 6.5-month construction period (see response to Comment 5-5). As stated in that section, the contribution of project-related emissions, including carbon footprint emissions, during the 6.5-month construction period as compared to county-wide emissions are minimal.
- b. The pipeline would be primarily constructed in previously disturbed habitat along frequently traveled major roadways. As such, there is little suitable habitat for any priority vulnerable species. With the new locations of the proposed recharge facilities, there would be no impacts to the federally listed Pima pineapple cactus.
- c. Section 3.6.2.2 of the EA describes the potential impacts of using recharged CAP water with sulfate and TDS levels that are higher than those typically found in local ground water. The CAP concentrations of these constituents are acceptable for municipal use.

ROSEMONT COPPER (March 29, 2009; April 20, 2009)

COMMENT LETTERS 12 AND 13



TUCSON OFFICE
 2470 W RUTHRAUFF RD #104
 TUCSON, ARIZONA 85705 USA
 TEL: (520) 293-1488
 FAX: (520) 407-3991
 CORPORATE WEB: www.rosemontcopper.com
 PROJECT WEB: www.sahuarita.com

APR 01 '09

DATE	SUBMITTED	CONDE
4/1/09	248	1670

RETURN TO:
 CLASSIFICATION:
 CONTROL NO:
 PROJECT:

TUCSON OFFICE
 2470 W RUTHRAUFF RD #104
 TUCSON, ARIZONA 85705 USA
 TEL: (520) 293-1488
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MEMORANDUM

Date: March 29, 2009

To: Bureau of Reclamation
 From: Rosemont Copper Company
 Subject: Comments on the Proposed CWC Pipeline EA Public Hearing

Dear Ms. Eto:

Rosemont Copper wishes to express our appreciation of your efforts to advance the proposed CWC pipeline project to the EA public review stage. As part of that review, Rosemont is concerned that continued efforts by some misguiding individuals in the Sahuarita area continue to propagate misinformation as it relates to the CWC pipeline project. In addition, it seems to be a popular opinion among Green Valley residents that the proposed pipeline is required in order for Rosemont to provide water for the proposed mining project.

For the record, we would like to reiterate the facts:

- 1) Rosemont Copper Company currently holds a permit issued by ADWR in 2008 to withdraw 6000 acre feet of water from the upper Santa Cruz basin for 20 years and is not dependent upon CWC or any other water supplier to obtain the necessary water to support the proposed mining operations.
- 2) Construction of the well sites in the Sahuarita area and the pipeline that will deliver that water to the mine site is part of the Mine Plan of Operations currently being evaluated by the Coronado National Forest as a mandatory part of the NEPA process.
- 3) The two pipelines are totally separate entities and have no cross-connection whatsoever.
- 4) Regardless of whether the proposed CWC pipeline is built or not, Rosemont Copper will continue its plans to establish adequate well sites and will continue its plans to permit and build a dedicated pipeline from those well fields to the mine site.
- 5) Rosemont's funding of the CWC pipeline delivery system is not predicated on the approval of the Rosemont Mine project or the outcome of the EIS. In fact, it is anticipated that the CWC pipeline delivery system will be approved with construction starting before the final EIS and record of decision are announced.

Your assistance in making these points clear in your response to the EA comments is greatly appreciated.

Best regards,

Jamie Sturgess
 Jamie Sturgess
 VP Sustainable Development
 Rosemont Copper Company



April 20, 2009

U.S. Department of the Interior
 Bureau of Reclamation
 Phoenix Area Office

Subject: Comments on Draft Environmental Assessment (Draft EA): Community Water Company of Green Valley (CWC) Central Arizona Project (CAP) Water Distribution System (CWC Project)

Dear Ms. Sandra Eto:

Rosemont Copper Company (Rosemont) is pleased to submit the following comments on the above-referenced Draft EA:

Purpose and Need (Section 1.2). National Environmental Policy Act analysis, by its nature, tends to focus on potentially harmful or negative impacts of a proposed project. At times, the importance of a project to its community can become obscured. The Green Valley/Sahuarita area, due to long-established agricultural and mining groundwater pumping, plus growing municipal groundwater pumping, is experiencing a long-term decline in water levels. Absent effective action to counter this trend, this groundwater decline will continue in the future with or without construction of the Rosemont mine.

Recent groundwater pumping in the region has totaled 80-90,000 acre-feet per year, which is estimated to be about 30,000 acre-feet more than all recharge in the region. The attached map shows the latest model projections (developed from the Arizona Department of Water Resources (ADWR) model for the region) for additional water level declines in the region over the next twenty years, based on latest available data for committed future demand, **without any pumping for the proposed Rosemont mine.**

Clearly, the community need for the CWC Project Proposed Action is very substantial. Though the Rosemont funding agreement for the CWC Project is with one entity, it is our hope that the entire community will be able to benefit. The Proposed Action provides a higher level of broad community benefit than either the CAP Entitlements Alternative or the CWC-Only Alternative. Thus, while any of the three alternatives can meet the Purpose and Need as they relate to CWC, only the Preferred Alternative can provide broad benefit to the larger Green Valley/Sahuarita area. This broader potential for benefit is the reason Rosemont agreed to assume the substantially higher financial burden of the Preferred Alternative.

Relationship to the Proposed Rosemont Mine (Section 1.5). Rosemont has already received from ADWR the permits it will need to pump the groundwater required for all of its mining and ore processing activities. Thus, the water supply for the mine is already secure. Whether or not Rosemont funds the CWC Project, and whether or not Rosemont recharges any water in the Green Valley/Sahuarita area, it will have the water supply required to operate its mine and facilities. Thus, if the CWC Project is somehow delayed or stopped by opponents to the Rosemont mine, Rosemont will not be harmed. In fact, such an outcome would save

Comment Letters 12 and 13 continued

CONTINUED Page 2

Rosemont a great deal of money. Construction and operation of the Rosemont mine are in no way dependent on the approval, construction or utilization of the CWC Project.

For Rosemont, meeting the minimum standards for mine design and operation has never been the goal. From the inception of its project planning, Rosemont has made commitments in a wide range of areas to go beyond the requirements for mine approval. Rosemont set higher standards for itself as a corporate citizen of the community. Several of these commitments related to water supply and water conservation.

Since ensuring a 100 year water supply and utilizing renewable water supplies are now the 'gold standard' for water management in Arizona, one of Rosemont's entirely voluntary commitments was to recharge 105% of its expected mine usage in recharge facilities as close to the water production locations as feasible. Rosemont initiated this recharge program in 2007, and by the end of 2009 will have recharged 45,000 acre-feet of water in the Tucson Active Management Area. This 45,000 acre-feet constitutes about 40% of the total amount of water projected to be used by the Rosemont mine over its entire life. Millions of dollars have been invested to date, and by the time the commitment is fully met, Rosemont's recharge expenditures may approach \$20 million. This is a large and serious investment in good corporate stewardship.

Upon learning of Rosemont's voluntary recharge commitment, CWC approached Rosemont to inquire if Rosemont would be willing to go an expensive and also completely voluntary step further by funding a project to enable renewable CAP water resources to be brought to the Sahuarita/Green Valley area and, if possible, to recharge as much of the Rosemont recharge commitment as possible in the area. After carefully investigating the benefits to the region and the expected costs, Rosemont agreed to fund the CWC Project at an additional cost of about \$15 million. Since then, at the request of the Upper Santa Cruz Providers and Users Group (USCPUG) and CWC, Rosemont agreed to voluntarily fund (at still higher cost) an expanded CWC Project that could bring as much as 30,000 acre-feet of renewable water supplies to the area annually. This larger project concept became the Preferred Alternative. To date, Rosemont has reimbursed CWC for more than \$1 million in design and environmental costs for this project.

Opponents to the Rosemont mine would like to give the impression that the groundwater problem in the Sahuarita/Green Valley area is a problem caused by Rosemont. The facts, however, clearly indicate otherwise. Current groundwater pumpers in the area have been overdrafting the water table for decades. The planned pumping of groundwater over the Rosemont mine's **entire** 20-25 year expected life totals less than 1.5 years of current demand in the Sahuarita/Green Valley area. In the 100-year state water resource planning context, the total Rosemont mine usage will be less than 1.5% of the 100-year usage in the region. For any given year during the 20-25 years of mine operation, Rosemont pumping will constitute only about a 7% increase over the recent levels of pumping in the area. Thus, even without the CWC Project, the Rosemont pumping will be only a small part of the overall demand in the area.

During its period of mine operation, Rosemont will likely never utilize more than a quarter of the CWC Project capacity, assuming that CWC is able to build the Preferred Alternative. The capacity balance would be available to other users in the community. After mine closure, the entire capacity would be available to other community users.

These facts really serve to highlight the perplexing nature of opposition to the CWC Project. If opponents successfully block the CWC Project, Rosemont will still have its required mine water permit, Rosemont will save the \$20 million cost of the project, water table decline in the area will continue, CWC will not be able to access its CAP allocation, and the community will lose a valuable water infrastructure investment.

CONTINUED Page 3

Rosemont has been pleased to voluntarily offer the funding of the CWC Project as a large, long-term benefit to the Sahuarita/Green Valley community that will far outlive the Rosemont mine. By its nature, mining tends to be a time-limited activity, but the CWC Project and other activities Rosemont undertakes as a good corporate citizen will provide benefits to the community long after the ore is mined. Rosemont looks forward to working with CWC to complete this project.

Sincerely,

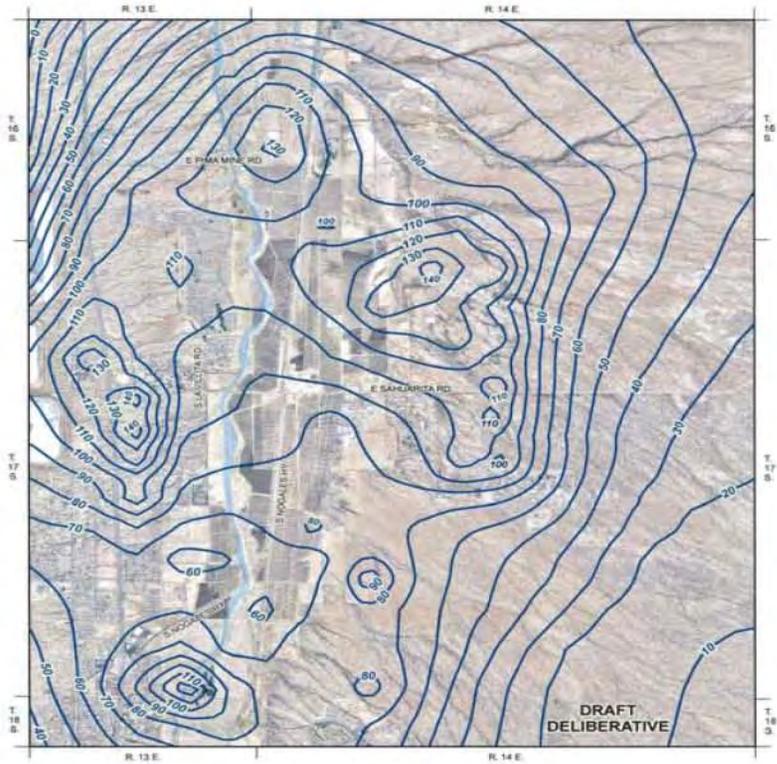


Rod Pace

VP, Operations

General Manager

Comment Letters 12 and 13 continued



EXPLANATION

—100— Contour of Groundwater Level Drawdown, in feet, After 20-Year Period Ending in 2031



 ROSEMONT COPPER	
SAHUARITA AREA PROJECTED DRAWDOWN FOR 20-YEAR PERIOD WITHOUT ROSEMONT PUMPING	
 ERICLL MONTGOMERY & ASSOCIATES, INC. WATER RESOURCE CONSULTANTS TUCSON, ARIZONA	2009

\\s01\GIS\Projects\2009\20090501_Sahuarita\Map\Map0908

Response to Comment Letters 12 and 13: Your comments are noted. The EA includes information regarding the Rosemont Mine to the degree it is needed to conduct an adequate analysis of all issues identified by Reclamation, or raised during the scoping period and in public comments received on the draft document. We believe the EA accurately reflects the pertinent information and adequately addresses the ground water pumping concerns contained in these comment letters.

Response to Comment Letter 14:

14-1. Please see response to Comment 5-1.

14-2. Reclamation's evaluation of the proposed CWC water delivery system in the EA is not contingent upon Rosemont's ability to pay for the construction. We are unaware how the proposed project would be left to the local taxpayers to fund should Augusta not be able to pay the costs for the proposed project. If Rosemont is unable to provide the funds, CWC can elect to seek other funding or not construct the project at this time. See also response to Comment 9-1.

Response to Comment Letter 15: Please see response to Comment 5-2, last paragraph. Your comments are noted.

U.S. ARMY CORPS OF ENGINEERS

COMMENT LETTER 16

From: Blaine, Marjorie E SPL [Marjorie.E.Blaine@usace.army.mil]
Sent: Tuesday, April 21, 2009 5:52 PM
To: Eto, Sandra
Subject: Comments for the Draft EA on Proposed Community Water Company
of Green Valley CAP project

Sandy

I had a chance to review the Draft EA. The only place I could find reference to Section 404 was on page 74 under "Clean Water Act". There are two problems with this paragraph:

1. The wording is incorrect regarding Section 404. It should state that "Under Section 404 of the CWA, the Corps of Engineers regulates the discharge of dredged and or fill material into waters of the U.S. including wetlands". It shouldn't state "into, and out of, jurisdictional areas". That is not a true statement.
2. It further states that no jurisdictional waters would be impacted by the proposed action. In looking at some of the aerials, I am not sure I agree with this statement. In addition, a delineation has not been submitted to the Corps for us to make that determination. Example: Figure 7 shows a proposed road (extension of Quail Crossing Blvd) which clearly crosses what appears to be a water of the U.S.

I respectfully request that the wording in the DEA be changed to reflect my recommendations in paragraph 1 above and that the applicant contact the Corps as soon as possible regarding submittal of a preliminary jurisdictional delineation. The DEA should also be changed to indicate that a jurisdictional delineation has not been submitted and, therefore, the Corps has not made a determination of jurisdiction on this proposed project but that waters of the U.S. may be affected.

Thanks, Sandy. Best regards!

Marjorie Blaine
Senior Project Manager/Biologist
U.S. Army Corps of Engineers
Tucson Project Office, Regulatory Division
5205 E. Comanche Street
Tucson, AZ 85707
(520)584-1684 (phone)
(520)584-1690 (fax)

In the interest of the environment, please print only if necessary and recycle.

Response to Comment Letter 16: The EA has been revised to reflect these comments. Please note the potential extension of Quail Crossing Blvd. is not part of the proposed project.

III. Responses to Comments Made at the Public Hearing

The public hearing on the DEA was held at American Legion Post 66 in the Green Valley, Arizona on March 26, 2009. Oral comments made at the public hearing are restated below. Where comments were identical, similar, or related, they were combined and summarized. Reclamation's responses follow each comment.

1. Comment: The notice for the public hearing was too short, and the timing did not take into consideration other meetings about Rosemont Mine and homeowner association meetings already scheduled.

Response: All arrangements for the March 26th public hearing were made a month in advance. Reclamation received no notification regarding the Tucson Electric Power meetings until reading about them in the newspaper the day after issuing the public notice about the public hearing. To the degree practicable, Reclamation schedules its public meetings on days and times that are generally considered to be convenient to the majority of the public.

2. Comment: Scoping comments were either not considered at all or were inadequately considered in the DEA. Even though comments unanimously indicated the pipeline and the mine are interconnected, Reclamation still insists they are not.

Response: These comments are noted. As reflected in the EA in Sections 1.4 and 1.5, and Appendix B, Reclamation carefully considered all relevant comments made during the scoping process. Appendix B, I.B., clearly states a majority of the scoping comments received expressed the belief that the proposed project and the proposed Rosemont Mine are connected, and that an EIS should be prepared. The number of comments about a given topic that are received during scoping does not necessarily dictate what issues are carried forward in the NEPA document. In this situation, Reclamation staff carefully considered the information provided in the scoping comments received, and met with CNF regarding the Rosemont Mine proposal. Taking everything into consideration, Reclamation confirmed its initial conclusion that the proposed project and the Rosemont Mine are not "connected actions" for the purposes of NEPA. Please see also, generally, responses to Comments 3-3 and 5-1.

3. Comment: The NEPA process is premature; agreements between CWC and Rosemont Mine are not complete. There is inadequate information regarding the proposal. The design isn't complete as to the size of the pipeline.

Response: Please see response to Comment 5-3. The sizes of the pipeline under each of the action alternatives considered are identified in Sections 2.3 and 2.4 of the EA.

4. Comment: The DEA incorrectly states the proposed project and the Rosemont Mine are not connected actions. They are connected actions within the meaning of NEPA and must be considered in a full environmental impact statement. There is ample evidence in

the record and Reclamation's original scoping notice that Rosemont Mine depends upon the CWC pipeline for its success. It is naïve to ask the public to believe a Canadian venture capital company just chooses a community at random and offers to build a pipeline. When one company wants to pay for something and the other company agrees to those terms—for 15 to 20 years, that's interconnection.

Response: Please see responses to Comments 3-3 and 9-5. As stated in response to Comment 9-5, Reclamation acknowledges that Rosemont proposes to fund the CWC delivery system and receive priority for recharge for the first 15 to 20 years; the EA is very straightforward in describing the relationship between this project and Rosemont Mine. However, Reclamation is required to determine whether the projects are "connected" as defined in the CEQ Regulations. For the reasons summarized in response to Comment 3-3, first paragraph, the proposed relationship between CWC and Rosemont does not meet the criteria established by CEQ for projects to be "connected actions" for purposes of NEPA analysis.

5. Comment: The finances for this project are doubtful. If the mine financing goes away, CWC will be left with an unfinished project that isn't a benefit to anybody. The DEA does not address what will happen if and when Augusta Resource Corporation sells its project, and what will happen to the pipeline and the agreement with CWC. There is no evidence of a firm funding commitment, or a contractual obligation.

Response: Please see response to Comment 14-2. Please also see Comment 6 below.

6. Comment: The CAP pipeline stops at Pima Mine Road; there is some recharge at Nogales Highway, but it doesn't come here. If Rosemont doesn't fund the project entirely, we're no worse off than we are right now. We should all be paying money into something that's getting more water here because we're short of water and we need it.

Response: Your comments are noted.

7. Comment: The DEA inadequately considered the FICO-ANC pipeline proposal as an alternative. It was wrongly rejected for lack of information. There is no more information on the CWC pipeline than the FICO-ANC pipeline; there appears to be a double standard.

Response: Please see response to Comment 5-2. To briefly recap: (1) the FICO proposal does not meet the purpose and need for the proposed project until Phase II; and (2) there is currently insufficient information regarding the features of Phase II and their construction, operation, and maintenance (e.g., it is not yet known if and/or where a recharge facility would be included in Phase II) to describe the existing environment and anticipated environmental impacts. Regardless of either (1) or (2), the FICO proposal does not have to be considered as an alternative in the EA for it to be constructed; there is no action required by Reclamation for the FICO proposal to proceed to construction.

8. Comment: The Freeport-McMoran sulfate plume is wrongly described as a purpose of the CWC pipeline. There is a consent decree and mitigation plan for which funding is assured.

Response: Please see response to Comment 6-1.

9. Comment: This proposed project has been misrepresented as bringing new water into our valleys when it is piggy-backing on allotments that already belong to water companies. This is misleading.

Response: CWCGV and GVDWID are currently the only entities in the upper Santa Cruz sub-basin with permanent CAP entitlements. In addition, FICO has non-Indian agricultural pool CAP water in the amount of 3,600 acre-feet per year, which would decline to zero around 2030. None of this water, however, has actually been delivered to the Sahuarita and Green Valley areas because no facilities have been constructed to move the water from the CAP terminus to the upper Santa Cruz sub-basin. While not “new” water in an entitlement sense, the water delivered through the proposed system would be new “wet” water. Any renewable water source introduced into the upper Santa Cruz basin would help offset ground water overdraft pumping in this sub-basin. We believe the EA explains this situation accurately and does not misrepresent the purpose of the proposed project. Please see also, generally, responses to Comments 4-1 and 11-1b.

10. Comment: The ground water table is going down. A part of everyone’s water bill in the Green Valley and Sahuarita areas should be going towards getting new water here, because the water is running out. Options besides connecting a pipeline from the CAP terminus and bringing it south are suggested.

Response: Your comments are noted. The EA recognizes and describes the ground water overdraft problems occurring in the upper Santa Cruz sub-basin. Although the options mentioned are outside the scope of the EA, we agree a regional solution is needed; to the degree resources are available, staff from Reclamation’s Tucson Office are assisting the Upper Santa Cruz/Providers and Users Group with this effort.

11. Comment: CAWCD submitted a letter saying the exchange of water proposed by a deal between CWC and Augusta Resources-Rosemont Mine is illegal; this issue was not addressed in the DEA.

Response: Please see response to Comment 5-3.

12. Comment: Economic feasibility is a component of NEPA, and it must be evaluated as well.

Response: We are unaware of anything requiring an economic feasibility evaluation be included in NEPA documents, including 40 CFR Parts 1500-1508.

13. Comment: The cumulative impact of the pipeline and mine must be considered. The DEA states in part, “Reclamation has concluded it is not appropriate to consider the proposed Rosemont Mine project for cumulative analysis purposes.... There is no potential for impacts to all our common resources, with the exception of ground water.” Please reconsider the action between the proposed project and the Rosemont Mine. It would make a huge difference in the findings.

Response: As explained in the EA, Section 3.1 - Background for Cumulative Effects, the definition of cumulative impacts and the actions that are taken into consideration in determining them are framed by NEPA, its implementing regulations, and regulatory guidance. Federal agencies are not free to include or exclude other actions arbitrarily, at will. The EA evaluates the cumulative impact of the No Action and Preferred Action recharge scenarios on ground water under two different assumptions: one in which there is no Rosemont Mine pumping and one in which there is Rosemont Mine pumping (see Section 3.6.3, and Figures 7 and 9 of the EA). This is because the impacts of the future action would occur within the same geographic area and would affect the same regional ground water aquifer as the Proposed Action. The reason that there is not a substantial difference between the two scenarios is because there is a large amount of ground water in storage and the regional ground water overdraft is much greater than the proposed amount of Rosemont pumping.

14. Comment: Section 3.6.3 of the DEA [Note: this should refer to Section 3.1.3] states cumulative impacts from proposed ground water pumping will be addressed in the CNF EIS on Rosemont’s MPO, and would also take into consideration any past actions from the proposed CWC CAP water delivery system. This sounds like passing the buck.

Response: Please see response to Comment 13 above. The EA does evaluate the impact of the proposed recharge operations with potential future Rosemont Mine pumping as described in the MPO. The intent of the statement found in Section 3.1.3 of the EA is to point out the CNF EIS on Rosemont’s MPO must also include an analysis of the cumulative impacts from operation of Rosemont’s production wells, including the impacts of mine pumping, when combined with operation of the CWC CAP water delivery system.

15. Comment: Rosemont is paying a few million dollars now to potentially gain hundreds of million dollars of profit in the future. It is also trying to establish inevitability of the mine in the eyes of the public.

Response: Your comments are noted. They are outside the scope of this EA.

IV. Index of Public Comment Letters Received on the RDEA (April 2010)

- A. Wade A. Bunting**
- B. Farmers Investment Company and Farmers Water Company**
- C. Freeport-McMoran Copper & Gold Inc.**
- D. Danae Michael**
- E. Mountain Empire Action Alliance**
- F. Pima County Administrator's Office**
- G. Town of Sahuarita**
- H. Save the Scenic Santa Ritas Association**
- I. Karen L. Soliere**
- J. René Roberts**

V. Public Comment Letters on the RDEA (April 2010) and Reclamation's Responses

The following pages contain each comment letter received on the RDEA (April 2010), followed by Reclamation response(s).

WADE A. BUNTING

COMMENT LETTER A



May 15, 2010

Ms. Sandra Eto
U. S. Department of Interior
Bureau of Reclamation
Phoenix Area Office,
6150 West Thunderbird Road
Glendale AZ 85306

Attention: PXAO-1500 (Ms. Sandra Eto)

Re: NEPA Comments on the Draft Environmental Assessment for the proposed Community Water Company of Green Valley Central Arizona Project Water Distribution System and Recharge Facility, Pima County, Arizona

Dear Ms. Eto:

This letter sets forth comments on the Draft Environmental Assessment ("DEA") for the construction and operation of the proposed Community Water Company ("CWC") of Green Valley Central Arizona Project Water Distribution System and Recharge Facility in Pima County, Arizona ("Proposed Project"), prepared for the U.S. Bureau of Reclamation ("Reclamation") It will be shown below that **CWC and Augusta Resource Corporation ("ARC"), in their very own words, have themselves made the case that the Proposed Project and ARC's Proposed Rosemont Copper Project are in fact connected actions.**

This case is presented in four parts: (1) excerpts from relevant documents in the public record, (2) summary of facts derived from the excerpts, (3) conclusions supported by the facts, and (4) recommendations.

1. EXCERPTS FROM RELEVANT DOCUMENTS IN THE PUBLIC RECORD

From ARC's Rosemont Mine Plan of Operation dated July 11, 2007, Section 2.8.5 Recharge Plan:

"Rosemont has made a commitment to the local community to utilize available CAP water to recharge 105% of the total water production over the life of the Project. The recharge will be within the Tucson AMA, and as close to the water production site as possible. The total life-of-the-mine usage is currently estimated to be 100,000 af, resulting in a recharge commitment of 105,000 af."

"Pima Mine Road is the state-permitted underground storage facility closest to [water production] Site 1. Because available capacity at this facility may remain limited for the foreseeable future, Rosemont Copper

has also begun evaluating construction of a new recharge facility in close proximity to it."

From the Letter of Intent between ARC and CWC dated July 12, 2007, p. 1:

"Augusta Resource Corporation (ARC) plans to procure and recharge CAP water in the vicinity of its Rosemont Mine well site, a 53 acre parcel of land located on Davis Road, Sahuarita, AZ (ARC 53 Acre Parcel). The availability of a suitable pipeline and recharge facility is critical to the eventual implementation of this plan."

A-1

From the Letter of Intent between ARC and CWC dated July 12, 2007, p. 2:

"The parties have established a CAP Water Delivery System (WDS) Plan as presented in a briefing dated June 18, 2007, and that Plan is incorporated as Appendix A to this Letter of Intent."

From the Letter of Intent between ARC and CWC dated July 12, 2007, p. 3:

"ARC and CWCGV will form a WDS Project Team comprised of two members each and an alternate from each. The WDS Project Team will report directly to the appropriate management of ARC and CWCGV. The WDS Project Team will have specific construction milestone and operation milestone responsibilities."

From Appendix A to the Letter of Intent between ARC and CWC dated July 12, 2007, p. 12 (text on Diagram):

"Other Development Partners could be brought in through the Main Line Extension Agreement prior to construction start."

From Appendix A to the Letter of Intent between ARC and CWC dated July 12, 2007, p. 13:

"Additional Partner(s) to contract for water transport and recharge, and share in the construction cost of an enlarged system, are sought by the WDS Project Team."

From the letter to Pima County Supervisor Ray Carroll from CWC Chairman of the Board Ken Taylor dated August 22, 2007:

"In the two years Community Water Company and, independently, a group of concerned citizens of Green Valley, have been actively pursuing funding for this project, we have not been successful in locating these readily available alternative funding sources."

Comment Letter A continued

"Since we have not yet signed a binding agreement with Augusta Resources Corporation, we will be happy to discuss any firm commitment to a similar transaction with any entity that has funds readily available for our project."

From Reclamation's Draft Environmental Assessment, Section 1.5 Relationship to Proposed Rosemont Mine:

"Reclamation recognizes that construction of the Proposed Project is proposed to be funded by Rosemont and that CWC plans to give priority for use of CWC's CAP water and available recharge storage capacity for the first 15 to 20 years of the systems operation unless needed by CWC. However, as discussed further in the Scoping Report in Appendix B and below, Reclamation has determined that the Proposed Project and the proposed Rosemont Mine are not connected actions under NEPA."

"Presently, use of the CWC water delivery system is not identified in Rosemont's mine plan of operation (MPO) under consideration by the Coronado National Forest."

From Reclamation's Draft Environmental Assessment, Section 2.3 Proposed Action:

"CWC has agreed to give Rosemont priority for use of CWC's 2,858 AFY of CAP water for the first 15 to 20 years of the system's operation unless it is needed by CWC. Under the Preferred Alternative, this water would be recharged at the proposed recharge site, along with additional water supplies Rosemont may obtain to utilize the maximum recharge capacity of 5,000 AFY at the site."

From Reclamation's Draft Environmental Assessment, Project Financing, p.16:

"The Agreement between CWC and Rosemont has not been finalized, and thus Reclamation and CAWCD have not been able to review any portion of the Agreement."

2. SUMMARY OF FACTS DERIVED FROM THE EXCERPTS

1. ARC and CWC jointly completed a plan for construction of a CAP Water Delivery System and Recharge Facility on June 18, 2007, which was incorporated into the Letter of Intent between them and which is the Proposed Project currently under review by the Reclamation.
2. ARC and CWC are "Development Partners." The Proposed Project is managed by the WDS Project Team consisting of members of both ARC and

CWC reporting to and acting under the direction of their respective companies.

3. ARC's Rosemont Mine Plan of Operation was dated and submitted to the Coronado National Forest ("CNF") July 11, 2007.
4. The ARC/CWC plan for constructing a CAP water delivery pipeline and recharge facility was completed a month prior to ARC's completion and submission of its Rosemont Mine Plan of Operation to the CNF.
5. The ARC/CWC plan could easily have been incorporated by name into ARC's Rosemont Mine Plan of Operation's recharge plan, but as a conscious decision by ARC it was not.
6. Reclamation's preliminary determination that ARC's Proposed Rosemont Mine and the Proposed Project are not connected actions under NEPA was based in part on the observation that ARC's use of the Proposed Project's water delivery system is not specifically identified by name in ARC's Rosemont Mine Plan of Operation.
7. The availability of a suitable CAP water delivery pipeline and recharge facility is critical to the implementation of the recharge plan in ARC's Rosemont Mine Plan of Operation.
8. The maximum capacity of the Proposed Project's recharge facility is 5,000 acre-feet per year—exactly equal to ARC's annual recharge commitment.
9. Without Reclamation's approval of the Proposed Project, ARC's CAP water contract with the Pima Mine Road Recharge Facility will not be sufficient to meet ARC's commitment to recharge 105,000 acre-feet of water over the lifetime of the proposed Rosemont Mine.
10. The final "Agreement Relating to Extension of Water Distribution Facilities" that would provide ARC funding for the Proposed Project has not been executed by ARC and CWC to date, nor has a binding agreement for project funding been executed by CWC and any other entity to date. Funding for the Proposed Project, therefore, remains uncertain.

3. CONCLUSIONS SUPPORTED BY THE FACTS

- ARC knowingly and inappropriately withheld full disclosure in its Rosemont Mine Plan of Operation that its Recharge Plan and the Proposed Project are in fact one and the same; and it did so intentionally to avoid the unwanted consequences of a correct determination by the CNF and Reclamation that

Comment Letter A continued

ARC's proposed Rosemont Mine and the Proposed Project are connected actions under NEPA.

A-3

- ARC and CWC, through the WDS Project Team, are Development Partners in the Proposed Project. ARC is not simply an independent funding entity but a central participant in the design, construction, management and operation of the proposed facility. Thus, ARC's proposed Rosemont Mine is directly connected and integral to the Proposed Project.
- That the maximum capacity of the Proposed Project's recharge facility is 5,000 acre-feet per year—exactly equal to ARC's annual recharge commitment—cannot be a coincidence.
- The availability to ARC of a suitable pipeline and recharge facility is critical to the implementation of its Recharge Plan. Without approval of the Proposed Project, ARC will not be able to implement the CAP Recharge Plan in its Rosemont Mine Plan of Operation. Absent a viable recharge plan, CNF's approval of ARC's Rosemont Mine Plan of Operation is unlikely. Therefore, approval of ARC's proposed Rosemont Mine is in fact dependent upon Reclamation's approval of the Proposed Project.
- Neither ARC nor any other entities to date have entered into a binding agreement with CWC to fund the Proposed Project. Absent a binding final agreement between ARC and CWC that guarantees funds for project design and construction costs, funding for the Proposed Project is uncertain and Reclamation's approval of the Proposed Project is unlikely. Therefore, approval of the Proposed Project is in fact dependent upon approval of ARC's proposed Rosemont Mine.
- ARC portrays its funding of the Proposed Project in the press and in announcements as a gift to the public. It is, however, not a gift at all, but a business transaction with a *quid pro quo* that benefits ARC's proposed Rosemont Mine. In consideration for ARC's funding of the Proposed Project, ARC will receive priority use of CWC's entire annual CAP water allotment for the first 15 to 20 years of the Proposed Project's operation for the purpose of recharging the aquifer near the site of ARC's production water wells as described in the Rosemont Mine Plan of Operation. As such, the Proposed Project is in fact a measure designed to mitigate the adverse environmental impacts of groundwater depletion by ARC's proposed Rosemont Mine. ARC could and should have described the Proposed Project in its Rosemont Mine Plan of Operation—confirming that the two projects are connected actions under NEPA.

A-4

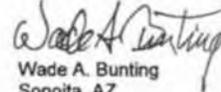
4. RECOMMENDATIONS

ARC's and CWC's own words and actions make the case that ARC's Proposed Rosemont Mine and the CAP Water Delivery System and Recharge Facility proposed by CWC are in fact connected actions. Therefore, the Bureau of Reclamation must (a) reverse its decision to the contrary, (b) communicate its decision to the Coronado National Forest that ARC's Proposed Rosemont Mine and the Proposed Project are connected actions under NEPA, (c) jointly with the Coronado National Forest, expand/convert the pending environmental assessment to a full, combined environmental impact statement for both ARC's Proposed Rosemont Copper Project and the Proposed Project, and (d) upon completion of the above, expand the scoping period to permit a full review and comment by the public, particularly in Green Valley and Sahuarita.

A-5

Thank you for the opportunity to comment on this important public matter.

Respectfully,



Wade A. Bunting
Sonoita, AZ
wadebunting@aol.com

Cc: Congresswoman Gabrielle Giffords

Congressman Raul Grijalva

Mr. Michael L. Connor, Commissioner
Bureau of Reclamation

Ms. Jeanine Derby, Forest Supervisor
Coronado National Forest

Response to Comment Letter A:

A-1. Please see response to Comment No. 3-1.

A-2. Please see response to Comment No. 3-2.

A-3. Please see response to Comment No. 3-3.

A-4. Please see response to Comment No. 3-3 and response to Comment 9-5, last paragraph.

A-5. Please see response to Comment No. 3-4.

FARMERS INVESTMENT COMPANY AND FARMERS WATER COMPANY

COMMENT LETTER B



May 21, 2010

Ms. Sandra Eto
PXAO-1500
United States Bureau of Reclamation
Phoenix Area Office
6150 W. Thunderbird Road
Glendale, AZ 85306

RE: Revised Draft Environmental Assessment ("EA")
Community Water Company of Green Valley ("CWC")
CAP Water Delivery System
Comments from Farmers Investment Co. & Farmers Water Co.

Dear Ms. Eto:

Following are the comments from Farmers Investment Co. and Farmers Water Co. (collectively, "FICO") regarding the revised draft EA issued April 19, 2010:

- 1. The "purpose and need" is too narrowly stated in limiting this matter simply to the application of a single entity. Rather, the issue of concern is delivery of Central Arizona Project to the southern portion of the Tucson Active Management Area.

The Bureau of Reclamation's mischaracterization of the purpose and need of this proposed action sets the stage for serious errors to follow. A primary reason for articulating the purpose and need of a proposed action is to enable the lead agency, other agencies, and the public to identify and develop reasonable alternatives that respond to that purpose and need. In the case of an action proposed by an applicant, while it is necessary to consider the applicant's purpose and need, it is also important to bear in mind that the federal agency's involvement exists because there is also a federal interest in this particular type of action and to identify the underlying federal purpose and need. Courts have cautioned agencies not to articulate a purpose and need statement that is so narrow that it excludes competing reasonable alternatives from consideration¹ In this case, the Bureau has failed on both counts.

1 Alaska Wilderness Recreation and Tourism Association v. Morrison, 67 F.3d 723 (9th Cir. 1995); Simmons v. U.S. Army Corps of Engineers, 120 F.3d 664 (7th Cir. 1997).



Ms. Sandra Eto
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The Bureau frames the purpose and need precisely as it did in the original draft EA – that is, to enable CWC to deliver its CAP entitlement to its water service area. Strikingly, in at least one place, the revised EA reflects a narrower purpose and need than the original draft EA²

Virtually all of the discussion centers around the need to deliver CWC's CAP entitlement to the vicinity of the CWC service area. While the description of the proposed action in both the original and revised draft EAs references a 36" diameter main delivery pipeline, an additional exhibit attached to the draft revised EA explains why the original pipeline diameter size was increased from 20 inches to 36 inches. Specifically, the letter from Augusta Resource Corporation to CWC, states that, "Subsequent to the 2007 agreement, Rosemont and CWC/GV have explored, and agreed in principle, to the concept of increasing the pipeline diameter from a nominal 20 inches diameter to as much as a 36 inch diameter pipeline, to allow other parties in the area to achieve regional water delivery from the extended CAP system."³ Thus, even according to the parties' own statements, there is a broader potential range of users than just the CWC.

The broader purpose and need is much more consistent with both the Bureau's mission and the applicant's intentions; framing the purpose and need as responding to the needs of a single water provider is consistent with neither. As stated on the cover of the Bureau's revised EA, the Bureau's mission is "to manage, develop, and protect water and related resources . . . in the interest of the American public." The EA needs to be revised again to reflect a broader purpose and need that meets the delivery needs of parties who hold CAP water allocations and/or are entitled to access to water, such as non-Indian agricultural pool water in the Upper Santa Cruz Basin of the Tucson Active Management Area,⁴ consistent with both the Bureau's mission and the intent of CWC.

- 2. Once again, the Bureau has failed to give adequate consideration to the proposed FICO pipeline as a legitimate alternative for delivering CAP water to the southern portion of the Tucson Active Management Area.

The Bureau's failure to analyze the proposed FICO pipeline is in violation of the central requirement under NEPA to analyze reasonable alternatives⁵. The failure of the Bureau to even

2 The first factor listed under Section 2.1, "Formulation and Evaluation of Alternatives" in the original draft EA was "Purpose and need for the Proposed Project." Draft Environmental Assessment, Community Water Company of Green Valley Central Arizona Project Water Delivery System, March, 2009, p. 8. In the revised EA, the same factor is described as, "CWC's need for the Proposed Project." Revised Draft Environmental Assessment, Community Water Company of Green Valley Central Arizona Project Water Delivery System, April, 2009, p. 10 (hereinafter, Revised Draft EA).

3 Letter from Jamie Sturgess, Vice President, Sustainable Development to Virgil Davis, Community Water Company of Green Valley, January 20, 2009, Attachment D, Revised Draft EA (emphasis added).

4 See discussion in Section 3.6.1.1. of the Revised Draft EA, pp. 61-63.

5 The requirement to analyze alternatives is articulated twice in NEPA (Sections 102(2)(C) and 102(2)(E)) and is characterized in the CEQ regulations implementing the procedural provisions of NEPA as "the

B-1

B-2

B-1

Comment Letter B continued

Ms. Sandra Eto
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acknowledge, let alone respond to the comments made by FICO on the original draft EA and to the additional communications that have taken place since then between FICO and the Bureau regarding the FICO alternative is particularly troubling. Indeed, it calls into question whether the Bureau has even read and considered comments that it received on the draft EA.

As an initial matter, the revised draft EA repeats verbatim the falsehood that I asked that this alternative be eliminated from further consideration in 2008 and that the Bureau was honoring that request. This repeated assertion is, frankly, extremely irritating considering that I explained in writing in FICO's comments, which I personally signed, that, "This statement is patently false" and that "FICO never asked that it be withdrawn." Did the Bureau simply not read this response? The Bureau's complete disregard of my unambiguous correction to the record is puzzling and raises serious questions about the Bureau's handling of the NEPA process for this proposal.

Indeed, the Bureau's apparent continued belief that I asked that this alternative be withdrawn is demonstrated by the Bureau's expressed confusion about FICO's intent in submitting the Design Criteria Report ("Although the intent of submitting the Design Criteria Report is not clear . . ."). The intent would be clear if the Bureau, or at least that part of the Bureau working on NEPA compliance for this proposal, would take the FICO proposal seriously. The Design Criteria Report was submitted to show the seriousness of this proposal and to provide more detail, just as information has been submitted regarding the source and amounts of water, the lack of a need for a new recharge areas, and other details.

Indeed, since submitting comments on the original draft EA, FICO has been working with their engineering consultants and with the Central Arizona Project (CAP) on a number of aspects of the proposed FICO line. In those discussions, Paul Zellmer, a civil engineer representing CAP, consulted with the Bureau about its role vis-à-vis the FICO pipeline. In the course of that consultation, the Bureau concluded that, in contrast to the proposed CWC pipeline, its approval was not required for the proposed FICO pipeline. That conclusion, of course, does not obviate the need for the Bureau to analyze the pipeline as a reasonable alternative in the course of NEPA compliance for the CWC proposal. But CAP's discussions with the Bureau regarding the FICO proposal should have been understood as further evidence that the FICO proposal was, and is, proceeding.

Furthermore, I met with Commissioner Michael Connor on August 13, 2009, regarding the proposed CWC pipeline. While much of the discussion was focused on the need to integrate the NEPA analysis for the proposed pipeline with the analysis for the proposed Rosemont mine, I

heart" of the process. 40 C.F.R. 1502.14. Hundreds of judicial decisions attest to the importance of identifying and analyzing reasonable alternatives in both EISs and EAs.

⁸ Comments from Richard S. Walden, President, Farmers Investment Co., to Ms. Sandra Eto, Bureau of Reclamation, on the *Draft Environmental Assessment of Community Water Company Plan for Central Arizona Project Water Delivery System*, Pima County, Arizona, April 24, 2009, pp. 3-4 and see fn. 2.

Ms. Sandra Eto
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United States Bureau of Reclamation
May 21, 2010
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did explain that FICO was proposing an alternative pipeline and that the Bureau's rejection of it as a reasonable alternative in the initial EA was inappropriate.

Turning to the purpose of the proposed action, it is vital to understand that, as explained above, the properly framed purpose and need is not merely to satisfy CWC's particular needs, but to serve the larger community of users in the Upper Santa Cruz Basin within the Tucson AMA (as opposed to Rosemont). The revised draft EA continues to focus solely on CWC's needs. To be clear, FICO is not arguing that CWC's needs are irrelevant. Indeed, FICO takes issue with the assertions in the draft EA that FICO's alternative is not technically suited to meet CWC's needs. It is difficult to determine what analysis this conclusory statement is based upon given that the only explanation for this is a statement that the "center" of the FICO study area is approximately 5 miles north of the CWC service area. Despite repeated offers on my part to provide more information, there has been no effort to discuss these technical aspects with me or FICO personnel to determine if the Bureau's assumptions were accurate and/or if there are technical adjustments that could be made to the FICO proposal to accommodate the CWC system.

Indeed, another continuing and troubling aspect of the discussion in this part of the EA is the inequitable rationale regarding the details of the FICO and CWC proposals, respectively. Both draft EAs have acknowledged that important details remain to be worked out regarding the financing and operational agreements between CWC and Rosemont, yet the Bureau asserts that it has sufficient information with which to proceed (an assertion with which we obviously disagree, as explained below). However, part of the rationale for rejecting FICO's proposal seemed to be that there is insufficient information, despite our furnishing additional information about the proposal. It is notable that the Bureau was puzzled about the purpose of submitting this information but failed to follow-up by calling or otherwise communicating for further explanation.

We do wish to provide some further information regarding the status of the proposed FICO pipeline. The American Nevada Co. has recently sold its property in the area to Freeport-McMoRan Copper & Gold Co. and, for almost a year, it has been common knowledge that American Nevada Co. is no longer a partner in the proposed FICO pipeline.⁷ However, FICO again emphasizes that it will self-fund the proposed FICO pipeline, so this development should not affect the Bureau's analysis of the FICO proposal.

Finally, we want to emphasize a couple of factors that we believe add weight to FICO's proposal. First, as I have said repeatedly to CWC, the Bureau, CAP, and others in public presentations, FICO's proposed pipeline could serve all current water uses in the Upper Santa Cruz Basin of the Tucson AMA. The CWC pipeline might do that many years from now after Rosemont's priority use was concluded (unless it was extended), although who would pay for it is in real question (see discussion below), but the CWC proposal would also purport to serve Rosemont, which is outside of the Tucson AMA and CWC's service area. Second, the proposed

⁷ "Freeport buys Mission Peaks property," Green Valley News, Sunday, May 8, 2010.

B-2

B-2

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FICO pipeline will not involve the acquisition of any rights-of-way since, as currently envisioned, it would be on FICO property. The status of rights-of-way acquisition for the proposed CWC pipeline is not identified in the draft EA and the ability to acquire the necessary rights-of-way for it is uncertain, despite the blithe assumption that the alignment would follow a utilities corridor. Finally, as pointed out in our comments on the original draft EA, and contrary to the repeated and inaccurate assertions of the Bureau, FICO's Groundwater Savings Facility (GSF) has already been permitted and would be available for use by all current water users in relevant AMA area.

B-2

In short, the reasons given for excluding the FICO alternative simply do not hold up to scrutiny. There are significant advantages to the FICO proposal, and, at the very least, it certainly stands as a reasonable alternative to the CWC proposal to serve the needs of the water users within the Upper Santa Cruz Basin of the Tucson AMA.

3. Completion of the Environmental Assessment process is premature. Neither the Bureau nor the public knows or has had a chance to evaluate the final agreement between CWC and Augusta or Rosemont regarding construction of the pipeline.

Applicable regulations for the NEPA process require that *all* information be available to the decision-makers and the public "before decisions are made and actions taken." 40 CFR §1500.1(b). The obvious reason for this requirement is that the public's opportunity to comment and the agency's ability to make an informed decision based on consideration of all factors is severely compromised if relevant information regarding the project is not yet available or is withheld from review and consideration.

B-3

Apparently, CWC and Augusta Resources have preliminarily agreed that Augusta will finance the construction and operation of CWC's proposed pipeline. Letter of Intent, dated July 12, 2007, between Community Water Company and Augusta Resources ("LOI"). The reason for Augusta's agreement to provide such funding is plainly stated in the LOI: it is because the pipeline and recharge "is critical to the eventual implementation of the Rosemont Mine plan to acquire and recharge CAP water." Further evidence of the necessary intertwining of the CWC and Rosemont projects is the LOI's statement that CWC will commit the first 15 years of CAP water to Rosemont's needs. In addition, both Augusta and CWC officials would be members of the Project Team, with authority to alter the design and an obligation to communicate and cooperate with possible third parties regarding the project.

The parties agreed that a binding agreement still needed to be crafted, and they left open for the final agreement whether or not Augusta's financing would be without repayment to Augusta or required repayment to Augusta. If Augusta requires repayment, this could significantly alter the economics of the project and could alter the design and location of key facilities, depending upon who would be served by the pipeline project and how.

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Remarkably, nearly three years after the LOI, in which the parties intended prompt progress on the proposed project, there is no final agreement between the parties regarding their respective obligations.

Instead, by letter to the Bureau dated May 15, 2009, CWC said that Rosemont, rather than its corporate parent Augusta, would provide the financing and said that CWC and Rosemont would not finalize their agreement *until the Bureau first approved the project*. This puts the cart before the horse. Furthermore, CWC acknowledged that the CWC project was dependent upon approvals not only from the Arizona Department of Water Resources but the Arizona Corporation Commission ("ACC"), including the necessary expansion of CWC's certificate of convenience and necessity ("CC&N"), which is likely to generate significant reaction from other water companies in the area. Thus, not only is CWC withholding from the Bureau the final binding arrangements regarding construction and operation of the pipeline; it also is demanding that the Bureau approve the project *before* other regulatory approvals are issued, which approvals *do not* require Bureau approval as a pre-condition.

Although CWC "envisions" certain details of the yet-to-be-agreed financing arrangement, it clearly is unknown what the obligations of CWC will be with respect to delivery of the CAP water and what conditions Rosemont or Augusta will dictate to CWC. Unless these enforceable arrangements are evaluated by the Bureau, including required approvals by other governmental agencies, which may likely impose conditions, there is no way that the Bureau can credibly evaluate the potential environmental impacts of the CWC project.

B-3

The Bureau's apparent reliance on the May 15, 2009, letter from CWC illustrates the fact that a lack of information can lead to uninformed decision-making, a situation that NEPA seeks to avoid by requiring that all information be provided to the decision-maker and the public *before* decisions are made. For example, the last sentence of paragraph 3 indicates that Rosemont is a CWC customer (although the next paragraph refers to it as a customer only prospectively and speculatively). Rosemont is not and can not be a customer because its use is outside CWC's CC&N. Second, the next paragraph refers to ACC approval by reference to an irrelevant regulation dealing with "main extensions." The proposed "infrastructure" (which is *NOT* a "CAP system") is not a regulated "main extension" because Rosemont is not a "customer." As a regulated entity, CWC must be aware of this and is simply misleading the Bureau to indicate the breadth of involvement by other agencies, whose decisions are speculative anyway. Third, CWC spreads confusion, at the bottom of page 1 by referring to an "advance" and later indicating that such "advance" would be "without financial burden on CWC's existing customers." Under the ACC regulations, an "advance" is refundable to the party making the "advance" (Augusta or Rosemont in this case), and the "advance" will ultimately affect the rates paid by CWC's customers, all for some activity that does not benefit them; it is hard to see how the ACC would agree that this is "in the public interest." Fourth, CWC proposes to incorporate a recharge facility into its CC&N, but the "recharge facility" would not be the customer; rather, Rosemont is the intended "customer," as previously intimated. This plays into the final point, that CWC presumes

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ACC approval of the extension of CWC's CC&N, which is completely speculative, given the potential input from other water companies.

B-3

Nearly three years after the signing of the non-binding LOI between CWC and Augusta, all the Bureau knows about the prospective financing of construction and operation of the CWC pipeline proposal is purely speculative. The lack of both firm commitments and a full understanding of all conditions that might be imposed by Augusta, Rosemont, the Arizona Department of Water Resources, and the ACC means that until such full information is obtained, the Bureau's completion of the EA process, which must include the public's opportunity to review and evaluate the information, is very premature.

4. Completion of the Environmental Assessment process for the CWC proposal is also premature because the environmental impacts of the primary and most important "customer" for the first 15 years have not been incorporated into the revised draft EA.

As the previous comment made clear, quoting from the 2007 LOI between CWC and Augusta and the 2009 letter describing the necessary role that Rosemont will play in the CWC project even getting off the ground, the CWC pipeline project and the Rosemont Mine project are inextricably intertwined. Whether the CWC pipeline project can in fact go forward will depend upon a business evaluation of the terms and conditions that Rosemont will impose in the speculative and yet-to-be-documented "final agreement" between CWC and Rosemont.

B-4

It is fundamentally illogical to even consider that a mining company, whose sole asset is a mining property that requires federal approval to begin operations, would freely fund construction of a water delivery system unless (1) such a system were critical to the mine's operations, (2) the mine could ensure that it had access to the delivered water to satisfy its needs, and (3) the mine itself would be approved. Thus, while both CWC and Rosemont and its corporate parent Augusta have provided "paper assurances" that Rosemont and/or Augusta would pay for construction and operation of the pipeline as a "free good," the reality is that approval of the Rosemont mine is the necessary predicate for Rosemont/Augusta's alleged uncompensated participation in the construction and operation of the proposed CWC pipeline, as set forth in the LOI and CWC's May 15, 2009, letter, the only documents upon which the Bureau relies to understand the critical role that Rosemont/Augusta will play.

Several points in the Bureau's response to comments on the initial draft EA affirm the symbiotic relationship between the Rosemont mine project and the CWC proposal. On page B-6, notwithstanding that FICO has specifically and explicitly provided to the Bureau concrete plans for construction of an alternative pipeline (despite the Bureau's mischaracterizing statements), the Bureau states that only Rosemont has offered to fund the CWC project. Thus, the viability of Rosemont, and its confidence that it will commence mining operations, is critical to the entire CWC project. Second, on page B-7, the Bureau stated that one purpose of the CWC project is to "offset the overdraft of the ground water aquifer in the Green Valley area." Since the cause of the

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most significant potential overdrafts will be the Rosemont mine, it could not be more clear that the CWC project intends to serve Rosemont's concerns. The potential environmental impacts of the proposed Rosemont mine must, therefore, be considered in the same NEPA process as consideration of the environmental impacts of the CWC proposal.

B-4

The Bureau has suggested that the environmental impacts of the CWC project will be considered at a later time when the environmental impacts of the Rosemont mine are considered, in an EIS prepared by the Coronado National Forest. Unfortunately, this is akin to closing the barn door after the horse has left. Unless the two are considered together, before any decisions are made with respect to the CWC project, the process will be improperly fractured, and a proper analysis of the proposal and reasonably foreseeable future actions will not occur. The two projects are not separate; they are inextricably intertwined.

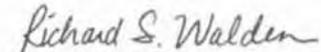
FICO has previously submitted extensive comments on this subject, and those comments, submitted both during the scoping process and after issuance of the first draft of the EA, are incorporated by reference.

Even though the Bureau has declined to schedule a "public hearing" on this revised draft Environmental Assessment (see page 2 of the cover memo), it is apparent from the foregoing that this is necessary because (1) the "purpose and need" needs substantial revision to account for the intent of the applicant and the mission of the Bureau (which public hearing will elicit reaction from other CAP allottees in the area), (2) some much relevant information has yet to be provided to both the Bureau and the public, and (3) the Bureau needs to correct massive misinformation regarding the proposed FICO pipeline as a viable alternative to the applicant's proposal. FICO therefore requests the Bureau to schedule such a "public hearing."

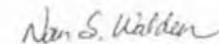
B-5

Please do not hesitate to contact me if you have any questions regarding the foregoing.

Sincerely yours,



Richard S. Walden
President
Farmers Investment Co. and Farmers Water Co.



Nan Stockholm Walden, J.D.
Vice President and Counsel
Farmers Investment Co. and Farmers Water Co.

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Ruben Reyes, Director, Tucson Office for Rep. Grijalva
Chuck Huckleberry, Administrator, Pima County
Kris Mayes, Chair, Arizona Corporation Commission
Benjamin Grumbles, Director, Arizona Department of Environmental Quality
Herb Guenther, Director, Arizona Department of Water Resources
Larry Dozier, Central Arizona Project
Cliff Neal, Manager, Central Arizona Groundwater Replenishment District

Response to Comment Letter B:

B-1. The need for NEPA documentation is triggered when a federal agency proposes to take an action, when federal monies are proposed to be used to implement a project, or when federal approval is required prior to some action being taken by non-federal entity (applicant). In this situation, by the terms of CWC's CAP water service subcontract, CWC must submit its plans for taking and using its CAP water entitlement prior to any water being delivered for CWC's use. CWC is considered to be an applicant, and Reclamation must conduct NEPA compliance on CWC's plans for taking and using its CAP water entitlement. Therefore, the proposed project must minimally meet the applicant's need for, and satisfy the applicant's purpose of, the project. Action alternatives may be considered that could address other needs in addition to those identified by the project proponent; however, any action alternative evaluated in the EA must, at a minimum, satisfy the stated purpose and need for the project.

Where there is no identified federal connection, no NEPA documentation is required. Reclamation, to the degree resources are available, is participating in regional planning efforts to address water supply issues in the Upper Santa Cruz Subbasin; however, Reclamation cannot, as implied by this comment, take an applicant's project and without federal funding or the applicant's approval, expand it to address these regional water supply issues. In this situation, the project proponent was willing to consider an alternative that would satisfy CWC's purpose for the Proposed Project—to deliver CWC's CAP water entitlement to its water service area—as well as provide additional capacity for entities in the Upper Santa Cruz Subbasin holding CAP water allocations and/or are entitled to access other categories of CAP water. It is identified as the preferred action.

The RDEA clarified the distinction between Reclamation's purpose and need and CWC's purpose and need. Reclamation's purpose and need is relatively narrow as summarized in Section 1.2 of the EA – 1) “Reclamation must evaluate the environmental effects of CWC's Proposed Project for taking and using its CAP entitlement, and identify environmental mitigation measures if appropriate, pursuant to the requirements of the CAP water service subcontract;” and 2) “...Reclamation will determine whether or not to approve CWC's CAP Water Delivery System as proposed or as modified...” CWC's purpose and need is broader than Reclamation's, including its interest in possibly having a larger pipeline to enable other water users in the area to become participants in the proposed project. Thus, the change identified in Section 2.1 of the EA was made to clarify that one of the factors considered in developing alternatives was “CWC's need for the Proposed Project” because there are ultimately only two alternatives to Reclamation's purpose and need – either approve a CWC project or not.

Of note, the EA also considers smaller pipeline alternatives to solely serve CWC and/or CWC and the other CAP contractor in the area, GVDWID (see Section 2.4.3 of the EA – CAP Entitlements and CWC-Only Alternatives).

B-2. Please see response to Comment 5-2 in general.

As noted in Reclamation's response to Comment 5-2, Mr. Walden's request that the FICO GSF be eliminated as an alternative recharge site was made prior to Reclamation's issuance of its scoping memorandum on April 11, 2008. The FICO/ANC (now FICO) pipeline proposal was not made public until April 25, 2008, in a news release made jointly by FICO and ANC. The EA accurately indicates that prior to

April 11, 2008, Mr. Walden requested that Reclamation eliminate mention in its scoping memorandum of the use of the FICO GSF as a potential additional recharge facility for indirect recharge of the CWC CAP water. The EA does not state Mr. Walden requested that the FICO pipeline alternative be withdrawn. Only after Mr. Walden requested that Reclamation eliminate the FICO GSF as an alternative recharge site was the FICO pipeline proposal introduced to the public, on April 25, 2008. Reclamation could not have eliminated the FICO pipeline proposal from consideration before it was made public.

Reclamation has carefully read each comment submitted in writing and the transcript of comments received at the public meeting. Where appropriate, those comments have been addressed in preparation of the DEA and RDEA. In addition, Reclamation has fully considered the FICO pipeline proposals as potential alternatives to the Proposed Project (see Section 2.6.3 – Use of FICO Groundwater Savings Facility and – FICO Water Delivery Proposal, formerly known as the FICO/ANC Water Delivery Proposal). Reclamation concluded that each of FICO’s proposals did not meet CWC’s need for the proposed project due to one or more factors – funding and schedule requirements, and/or location of delivery or recharge.

Reclamation’s statement about “insufficient information” regarding FICO’s pipeline proposal is directed primarily to the timing, and features of Phase II of the pipeline, which would be needed to serve CWC and GVDWID (see Section 2.6.3 –FICO Water Delivery Proposal). FICO has not provided additional information on that component of its proposal.

We appreciate the information provided in the comments regarding the sale of Mission Peaks property by ANC to Freeport McMoRan Copper & Gold, Inc., which is also stated in Freeport’s comments (Letter C). We have made the appropriate revisions in the EA, including FICO’s willingness to fund Phase I of its pipeline proposal without a contribution by ANC.

Regarding the advantages of the FICO proposal listed in the comments, the CWC Proposed Project would have the same capacity as the FICO proposal, so additional current and future water users (including FICO) could participate in funding and development of the project if desired. Because the FICO groundwater savings facility and pipeline alternatives do not convey water far enough south to meet CWC’s need for the proposed project, the benefits of ROW on FICO land and access to the FICO GSF do not meet CWC’s purpose and need.

- B-3. Please see response to Comment 5-3. With respect to the comment that CWC is “demanding that the Bureau approve the project *before* other regulatory approvals are issued” (emphasis in comment), Reclamation has not received any such demands from CWC. In fact, it makes sense for CWC to seek Reclamation’s overall approval prior to committing to the significant time and expense of obtaining the other necessary permits and approvals.
- B-4. Please see responses to Comments 3-3, 5-1, 5-3, 9-3, and 9-5. In response to the assertion that “the most significant potential overdrafts will be the Rosemont mine,” the data actually show that the most significant future overdrafts continue to be from ongoing pumping by existing mining, agriculture, and municipal uses (please see Section 3.6.1.3 of the EA). Reclamation assumes the comment regarding “the Bureau’s response to comments on the initial draft EA…” is actually referencing Reclamation’s responses to scoping comments that are found in Appendix B.

- B-5. The lack of a timely and large demand for a public hearing, lack of concern expressed in comments related to the currently proposed recharge site, and the similarity of comments received on the RDEA and DEA indicate that holding another public hearing would have likely not resulted in Reclamation receiving new or different issues or concerns than those already received and considered.

FREEPORT-MCMORAN COPPER & GOLD INC.

COMMENT LETTER C



333 N. Central Avenue, Phoenix, AZ 85004 • (602) 366-8246 • Fax (602) 366-7305

May 21, 2010

Via Electronic Mail and Certified Mail # 7009 0820 0002 1088 3017 Return Receipt Requested

Ms. Sandra Eto United States Bureau of Reclamation, Phoenix Area Office 6150 W. Thunderbird Road Phoenix, Arizona 85306-4001

Re: Comments on the Revised Draft Environmental Assessment (EA) for the Proposed Community Water Company of Green Valley (CWC) Central Arizona Project (CAP) Water Distribution and Recharge Facility

Dear Ms. Eto:

Thank you for the opportunity to comment on the United States Bureau of Reclamation's (USBOR) Revised Draft Environmental Assessment ("Revised Draft EA") on the proposed Community Water Company ("CWC") Central Arizona Project ("CAP") water distribution system and recharge facility. Sierrita submitted comments on the USBOR Initial Draft Environmental Assessment by letter dated April 24, 2009.

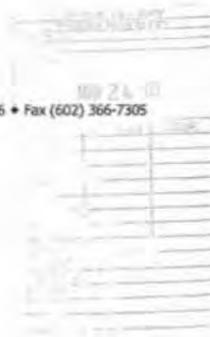
As you know, Freeport-McMoRan Sierrita Inc. ("Sierrita") has significant operations and plays an active role in local water use and planning within the Green Valley area. Sierrita is an active member of the Upper Santa Cruz Providers and Users Group (USCPUG), and as a member, has participated in discussions regarding regional water use planning. It has also reviewed the two current proposals to extend CAP pipelines into the Green Valley community, one by CWC, and the other by Farmer's Investment Company ("FICO").

Freeport-McMoRan Corporation (Freeport) provides the following comments to update information and provide clarification to help USBOR finalize its Revised Draft EA for the CWC proposal:

1. Removal of Mission Peaks and Related Water Use Projections:

- The "reasonably foreseeable action" noted under Section 3.1.1, that references future development of the proposed Mission Peaks master-planned community should be deleted. On May 6, 2010, Freeport purchased Mission Peak 4000 LLC, a subsidiary of American Nevada Company. Freeport also purchased the Twin Buttes property from Park Corporation in late 2009. The Mission Peaks property will give Freeport additional flexibility should the company integrate the Twin Buttes Mine into its existing Sierrita operation. Freeport does not plan to develop the Mission Peaks or Twin Buttes property for any commercial or residential purposes.

C-1



- In Section 3.6.1.3, the number of water users for municipal providers is projected to almost double between 2006 and 2030. It is unclear if this projection remains accurate with the removal of assumptions about future residential and commercial growth on the Mission Peaks and Twin Buttes properties, which are no longer valid. Freeport recommends that the USBOR coordinate with CWC to revisit forecasted demand by local water providers in Section 3.6.1.3 considering the removal of the previously anticipated development of Mission Peaks and Twin Buttes.
- 2. Water Quality Considerations Related to Management of Sulfate Levels under Freeport's ADEQ Mitigation Order on Consent at Sierrita:
 - The sources of water for the Sierrita mine are influenced by several factors, including, most recently, an Arizona Department of Environmental Quality (ADEQ) Mitigation Order on Consent issued in 2006. The Mitigation Order requires Sierrita to implement a mitigation plan to practically and cost-effectively ensure that the sulfate content of drinking water in the Green Valley area, which is attributable to Sierrita, does not exceed 250 mg/L.

C-1

In the USBOR discussion of CAP water quality under Section 3.6.2.2.2, it was noted that the 2008 sulfate concentrations in CAP water averaged 252 mg/l at the San Xavier Pumping Plant. The 2008 data indicate that the monthly readings for sulfate were consistently between 250 and 280 mg/l in all but one anomalous month. Data for 2009 reveals that the monthly average sulfate concentration in CAP water was 256 mg/l. Freeport recommends that USBOR update the Revised Draft EA with 2009 CAP water quality data, as well as other publicly available sulfate concentration data for Green Valley wells. This data is available in the materials Sierrita submitted to ADEQ pursuant to its Mitigation Order on Consent.¹ In the discussion of cumulative impacts on page 76 (Section 3.6.3), the USBOR states "the difference in water quality between CAP supplies and existing CWC groundwater is not substantial, and the CAP is being used by many municipalities in central Arizona." On the contrary, based on the water quality data provided in Tables 8 and 9 of the Revised Draft EA, outside of the one anomalous month, the sulfate levels in CAP water appear to be five to six times greater than that reported by CWC from its wells for 2008 and TDS levels for CAP water in 2008 were also significantly higher than CWC reported in 2008. In addition, based on other publicly available water quality data, sulfate levels in CAP water at the San Xavier Pump Station (again exclusive of the anomalous month) are 1.7 to 4 times greater than that in wells in the vicinity of the proposed recharge area. The proposed recharge area is where the comparison to current groundwater quality should be made. If the USBOR chooses to compare sulfate levels in CAP water to sulfate in regional wells, area wells within the boundary of the Sierrita sulfate plume should not be used.

C-2

Due to the fact that Sierrita was held to a 250 mg/l limit for sulfate at the point of use, Freeport questions USBOR's view of the appropriate sulfate drinking water standard for CWC or other water providers' water production wells that may be

¹ Aquifer Characterization Report, Task 5 of Aquifer Characterization Plan, Mitigation Order on Consent Docket No. P-50-06, Pima County, Arizona. Prepared for Freeport-McMoRan Sierrita Inc., January 30, 2009.

Comment Letter C continued

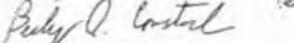
located within the projected area of water level recovery associated with the proposed CAP recharge project and the preferred recharge site proposed by CWC.

- The mitigation plan submitted by Sierrita requires Sierrita to install up to eighteen mitigation wells and pump groundwater for many years to control the migration of the sulfate plume and remove sulfate mass. Sierrita anticipates that the water pumped from the mitigation wells can satisfy much of the mine's current water demand. As a result, water pumped from the mitigation wells will offset pumping from Sierrita's Canoa Wellfield, the historic primary source of freshwater for the Sierrita Mine. Sierrita's obligation to control the existing sulfate plume will, therefore, influence its water supply and water management program for many years to come. This may mean that some localized areas of the regional aquifer located upstream from the CWC service area may actually benefit from the Sierrita Mine's mitigation plan under the ADEQ mitigation order. This consideration may not have been included in the cumulative impacts analysis performed by the USBOR and should be considered moving forward.
- Sierrita has significant investment in its existing and valid groundwater rights, which will allow Sierrita to use groundwater from the planned sulfate mitigation wells for the mining operation. Water that Sierrita is required to pump from its mitigation wells will satisfy much of the mine's current water demand. As a result, Sierrita does not have a current need for or the ability to directly use CAP water in its mining operation.
- Freeport understands the desire of other local water users to bring CAP water into the Green Valley area for groundwater recharge purposes. However, because of ADEQ's mitigation order and the 250 mg/l sulfate standard to which Sierrita is being held, Freeport is very concerned with the sulfate content of any water that may be recharged by any water user in the area. Based on available information, Freeport believes that, due to the sulfate content of CAP water, the recharge of CAP water in the Green Valley area, which requires a permit from the Arizona Department of Water Resources (ADWR) with approval of ADEQ, would create additional sulfate "plumes" in the aquifer that could potentially interfere with Sierrita's mitigation efforts. Due to the added complexity of multiple sulfate sources, ADEQ may have a similar concern and may not approve a recharge permit application if interference with Sierrita's mitigation obligations were possible.
- CAP water samples analyzed at the San Xavier Pumping Plant demonstrate sulfate levels (among other constituents) far exceed that of native groundwater in the Green Valley area. Recharge of CAP water exceeding 250 mg/l sulfate will create a mound of sulfate-enriched, non-native water beneath the recharge area that may migrate to area drinking water wells, including municipal wells, without significant dilution by native groundwater. Allowing CAP water that exceeds 250 mg/l sulfate to be recharged into the regional aquifer by one or more entities, while at the same time requiring another entity to remediate groundwater which exceed 250 mg/l is paradoxical.
- Freeport generally supports water supply augmentation efforts in the Green Valley area, but the implications of those activities must be fully understood. Freeport has

urged the communities and water providers in the Green Valley area to support a possible modification of Sierrita's ADEQ Mitigation Order to raise the sulfate remediation obligation to a level that would allow the permitting of facilities for the recharge of CAP water. This change could provide the basis for ADEQ and ADWR approval of a CAP water recharge permit in Green Valley, which might otherwise be complicated with the unintended conflicting mandates of these two state agencies with respect to management of groundwater supply and quality within the Green Valley area.

I hope this letter is helpful to you in understanding Sierrita's concerns and questions as it relates to the Revised Draft EA that is in the process of being finalized. If you have further questions or concerns, you may contact me at (602) 366-8246.

Sincerely,


Rebecca Comstock
Director, Land and Water Department
Freeport-McMoRan Corporation

C-2

C-2

Response to Comment Letter C:

C-1. Reclamation appreciates the information provided in the comments regarding the purchase of the Mission Peaks property by Freeport-McMoRan. We have made the appropriate revisions in the EA.

The removal of the Mission Peaks and Twin Buttes properties from residential and commercial development will likely delay the population growth and related water demand assumed in the EA. However, should Freeport-McMoRan decide to mine on one or both of these properties, there would still be an increase in water use to serve those properties. After evaluating the ground water modeling and impacts presented in the RDEA, it does not appear that changes in future ground water demand would have a significant impact on the results, so no changes were made in Sections 3.6.2 or 3.6.3 (Ground Water Resources – Environmental Consequences and Cumulative Effects) of the EA.

C-2. As suggested, the EA has been updated with sulfate information for CAP water in 2009.

Further evaluation of the effect of CWC's planned recharge project versus the Sierrita Mine mitigation plan would occur as part of the permit application process with ADWR (with approval of ADEQ) for the proposed recharge facility if the proposed project is approved by Reclamation and CWC proceeds.

The comments assert a paradox between the proposal to recharge CAP water with sulfate levels that slightly exceed the secondary drinking water standard of 250 mg/l while requiring Freeport-McMoRan to remediate ground water exceeding that standard. CAP sulfate levels in 2008 and 2009 averaged 252 and 256 mg/l, respectively, whereas Freeport-McMoRan is remediating ground water, some of which has sulfate concentrations in excess of 1,500 mg/l. Reclamation takes no position on the appropriateness of Sierrita's ADEQ Mitigation Order relative to sulfate levels or potential complications with permitting of recharge by ADWR and ADEQ. However, Reclamation notes that a substantial amount of CAP recharge has previously been approved at other locations, albeit ones that do not have sulfate remediation actions occurring nearby.

DANAE MICHAEL

COMMENT LETTER D

TO : Sandra Eto, Bureau of Reclamation

FAX : 623.773.6486

FROM : Danae Michael, B.S. Nursing, B.A. Biology
34 N. Las Yucas
Green Valley, AZ 85614
520.648.2686
jimmich@cox.net

RE: Revised Draft of Environmental Assessment for
Community Water Co. and the CAP Water Delivery
System, Pima County

No. of Pages : 7

Message: Coming from a chemistry background, I would like to direct your attention to the use of glyphosate herbicides. It seems that if the population wants a type of "safe" water, it (B.R.) must consider the use of herbicides as prohibited. On page 45-46, under a subtitle of "Pima Pineapple Cactus", lines 9 through 11, the application of herbicides to the soil is tracked by animals, birds, insects, amphibians and humans. The air currents allow the spray to drift onto unexpected surfaces. The chemicals can reside in the earth for years, and enter the drinking water system whenever it rains. The water carries the herbicides/ pesticides, and "-cides" through the soil and eventually into the aquifer. From air to oceans... on account of woods and pests.

To destroy weeds, one must pull them out manually, roots and all. No one seems to remember this ancient and valuable practice. Think of the organic food industry—no manufactured sprays. Ill effects have been discovered as relates to household and commercial pesticides. Is it any wonder that "-cides" are assayed from potable water for many communities?

*Thank you
for your time—
Danae Michael*

D-1



Toxic Substances Hydrology Program

Headlines

Glyphosate Herbicide Found in Many Midwestern Streams, Antibiotics Not Common

Researchers with the U.S. Geological Survey (USGS) recently investigated 51 streams in nine Midwestern States to determine the presence of a wide range of herbicides, their degradation byproducts and antibiotics. Herbicides were detected in most water samples, which were collected to coincide with runoff events following herbicide application, but antibiotics were detected in only 1 percent of the samples.

What's New

USGS scientists have conducted periodic studies of herbicide occurrence in midwestern streams since 1989 to measure changes in pesticide levels in water resources caused by changing pesticide use and the introduction of new pesticides. Recently, the USGS developed new methods to measure low-levels of glyphosate and antibiotics in environmental waters. The 2002 study is the first to look for the broad-spectrum herbicide glyphosate, its primary degradation product aminomethylphosphonic acid (AMPA), as well as antibiotics during runoff events in Midwestern streams.

What is Glyphosate?

Glyphosate (tradenames include Roundup®, Touchdown®, Rodeo®, and others) is an organic solid of odorless white crystals. It is a non-selective herbicide used on many food and non-food crops as well as non-crop areas such as roadsides. When applied at lower rates, it serves as a plant growth regulator. The most common uses include control of broadleaf weeds and grasses in: hay/pasture, soybeans, field corn; ornamentals, lawns, turf, forest plantings, greenhouses, rights-of-way. Glyphosate is currently the world's best selling herbicide, used in more than 90 countries and on more than 150 crops. Glyphosate use in agriculture has tripled since 1997, largely due to the increasing popularity of Roundup Ready® crops (including corn and soybeans), which have been genetically modified to tolerate glyphosate. The U.S. Environmental Protection Agency has set a drinking water Maximum Contaminant Level (MCL) of 700 micrograms per liter for glyphosate.

What was found?

A total of 154 water samples were collected during the 2002 study in nine Midwestern States. Glyphosate was detected in 36 percent of the samples, while its degradation product, aminomethylphosphonic acid (AMPA) was detected in 69 percent of the samples. The highest measured concentration of glyphosate was 8.7 micrograms per liter, well below the MCL (700 micrograms per liter). The highest AMPA concentration was 3.6 micrograms per liter (there is no MCL for AMPA). Other herbicides were detected at low levels, below health standards, in most samples. Atrazine was detected at or above the 3 microgram per liter MCL in 30% of the samples. Atrazine concentrations were generally lower, however, than those found in previous USGS studies conducted in the 1990s.

Median concentrations (µg/L) detected for each runoff period are:

	Pre-emergence	Post-emergence	Harvest season
Atrazine	4.2	1.1	0.12
Glyphosate	<0.10	<0.10	<0.10
AMPA	0.10	0.27	0.21

The antibiotics, measured to determine if they also would attain peak concentrations during spring runoff events following pesticide application, were detected in only 1 percent of water samples. Of the 37 antibiotics tested, only sulfamethoxazole was detected in 2 samples.

Reports

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Links to Other Sources

Comment Letter D continued

Glyphosate: Herbicide Found in Many Midwestern Streams, Antibiotics...

http://toxics.usgs.gov/highlights/glyphosate02.html

Monsanto's Toxic Herbicide Glyphosate: A Review of its Health and Env...

http://www.organicconsumers.org/articles/article_5229.cfm

- Scribner, E.A., Baltaglin, W.A., Dietze, J.E., and Thurman, E.M., 2003, **Recognition data for glyphosate, other selected herbicides, their degradation products, and antibiotics in 51 streams in nine Midwestern States, 2002**: U.S. Geological Survey Open-File Report 03-217, 101 p.
- W.A. Baltaglin, E.M. Thurman, D.W. Kolpin, E.A. Scribner, M.W. Sandstrom, and K.M. Kulivila, 2003, **Work Plan for Determining the Occurrence of Glyphosate, Its Transformation Product AMPA, Other Herbicide Conspicuous, and Antibiotics in Midwestern United States Streams, 2002**: U.S. Geological Survey Open-File Report 03-69, 18 p.
- Lee, E.A., Strahan, A.P., and Thurman, E.M., 2002, **Methods of Analysis by the U.S. Geological Survey Organic Geochemistry Research Group--Determination of Glyphosate, Aminoethylphosphonic Acid, and Glufosinate in Water Using Online Solid-Phase Extraction and High-Performance Liquid Chromatography/Mass Spectrometry**: U.S. Geological Survey Open-File Report 01-454, 13 p.

More Information

- Emerging Contaminants in the Environment Investigation
- Research on the Environmental Occurrence of Emerging Contaminants
- Agricultural Chemicals in the Upper Midwest Investigation
- Fate and Transport of Certain Pesticides in the Southern United States
- Topical Information on Agricultural Chemicals
- Topical Information on Field and Laboratory Methods
- U.S. Environmental Protection Agency
 - Consumer Fact Sheet on Glyphosate
 - Technical Fact Sheet on Glyphosate
 - Integrated Risk Information System, Glyphosate Toxicity Information
- EXTOXNET, Extension Toxicology Network, Pesticide Information Profiles, Glyphosate

Related Headlines

- Pesticides are Detected in Vernal Pools in Parks and Wildlife Refuges
- Detoxants in Streams May Just Disappear
- Emerging Contaminants Targeted in a Reconnaissance of Ground Water and Untreated Drinking Water Sources
- Biofilms, Animal Manure, and Earthworms: Is There a Connection?
- Wastewater Indicators Show to Degrade in Streams
- Endocrine Disruption Found in Fish Exposed to Municipal Wastewater
- Pharmaceuticals Found in Soil Irrigated with Reclaimed Water
- Book Chapter on Exposure Modeling and Monitoring of Human Pharmaceuticals in the Environment
- Glyphosate Found in Wastewater Discharged to Streams
- A Decade of Research on the Occurrence of Triazine Herbicides in the Environment Leads to a Update Summary
- USGS Scientists Contribute to New Book on Pharmaceuticals in the Environment
- Veterinary Medicines in the Environment
- National Reconnaissance of Pharmaceuticals, Hormones, and Other Organic Wastewater Contaminants in U.S. Streams is Making an Impact
- National Reconnaissance of Pharmaceuticals, Hormones, and Other Organic Wastewater Contaminants in Streams Named as One of the Top 100 Science Stories of the Year

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USGS Water Water Quality Biology Geology Geography

U.S. Department of the Interior | U.S. Geological Survey
 URL: http://toxics.usgs.gov/highlights/glyphosate02.html
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- Nanotechnology
- GM Wheat

Food Safety

- USDA Watch
- Raw Milk
- Mad Cow
- Irradiation

Monsanto's Toxic Herbicide Glyphosate: A Review of its Health and Environmental Effects

By Adam Lew
 Organic Production Association of Queensland, May 15, 2007
Straight to the Source

Glyphosate is the active ingredient of some of the most common herbicides used in farming and gardening. These products have been promoted as quickly biodegradable and non toxic. People believe that they are so safe that you can drink a cup of these herbicides without any ill effects.

Consequently, it is sprayed on roadways while people are driving, on footpaths when people are shopping and in schoolyards and sports fields, exposing children in dirt and residues. People buy it from supermarkets or garden shops and use it without any protective clothing because it is deemed 'safe'. It is sprayed in national parks and other environmentally sensitive areas in the belief that it is not toxic and/or residual.

I continuously hear Primary Industries officers and other agricultural specialists telling farmers that it is not necessary to wear any protective clothing because it is harmless.

Unfortunately, the facts show that this is not the case. While pure Glyphosate has a low acute toxicity (the amount needed to cause death), when it is sold as a commercial herbicide it is combined with surfactants and other ingredients to make it more effective at killing plants. Studies show that the commercial products, such as Round Up, can be three times more toxic than pure glyphosate.

Health Problems - so safe that you can drink it.

Japanese researchers analysing suicides have found that drinking 3/4 of a cup (200 ml/litre) of commercial glyphosate products is fatal.

Survivors (those who consumed less than 3/4 of a cup) suffered a range of severe health problems. These problems included intestinal pain, vomiting, erosion of the gastrointestinal tract, excess fluid in the lungs, pneumonia, lung dysfunction, clouding of consciousness, destruction of red blood cells, abnormal electrocardiograms, low blood pressure, kidney damage and damage to the larynx. It is important to note that damage to the kidneys and the lungs is usually permanent. These body issues do not repair themselves, instead forming scar tissue that does not function to help filter toxins from the blood or breathe oxygen.

In California, where there is a mandatory system of reporting pesticide poisoning, Glyphosate is the third most common cause of pesticide illness in farm workers. It is the most common form of reported pesticide poisoning in landscape gardeners.

Two separate studies in Sweden have linked exposure to Glyphosate to Hairy Cell Leukemia and Non Hodgkins Lymphoma. These types of cancers were extremely rare, however non-Hodgkins lymphoma is the most rapidly increasing cancer in the Western world. It has risen by 73% in the USA since 1973. Another study has found a higher incidence of Parkinson disease amongst farmers who used herbicides, including glyphosate.

Other studies show that Glyphosate and commercial herbicides containing Glyphosate cause a

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of 2

5/19/2010 12:09 PM of 5

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Comment Letter D continued

<ul style="list-style-type: none"> · Purchase Fair Trade! Social Justice · Buy Local Movement · Protest Startups Farm Issues · NAG · Heavy Bore · Supporting Local Farmers Politics & Democracy Publications · Organic Dymis · Organic View Resources · OCA Spanses · Buying Guide · OCA Action Center · OCA Web Forum · OCA Press Center · OCA En Español · Stock We Like Interim with OCA! 	<p>range of cell mutations and damage to cell DNA. These types of changes are usually regarded as precursors to cancer and birth defects.</p> <p>Reproductive Effects</p> <p>Studies show that exposure to Glyphosate is associated with a range of reproductive effects in humans and other species. Research from Ontario, Canada found that a father's exposure to Glyphosate was linked to an increase in miscarriages and premature births in farm families.</p> <p>Glyphosate caused a decrease in the sperm count of rats and an increase in abnormal and dead sperm in rabbits. Pregnant rabbits exposed to Glyphosate had a decrease in the weight of their babies.</p> <p>Residual</p> <p>The proponents of Glyphosate herbicides promote them as environment friendly or benign. They say that they breakdown very quickly in the environment.</p> <p>The facts show otherwise. A report from The United States Environmental Protection Agency states that Glyphosate is 'extremely persistent under typical application conditions': it is one of the most residual herbicides, with studies in Sweden showing that one application can last up to 3 years.</p> <p>In warmer climates, it can take less than a year per application for Glyphosate to degrade. However, when it breaks down it does not disappear into harmless basic elements. It degrades into an even more residual compound called aminomethylphosphonic acid (AMPA). While AMPA has a low acute toxicity, the studies conducted on this compound show that it damages the livers and bladders of rats. Unfortunately, very few long-term health and environmental studies are conducted on the breakdown products of synthetic chemicals.</p> <p>Residues of Glyphosate have been found in a variety of fruits and vegetables. This is because it readily moves into all parts of a plant. As it is inside the plant tissue, it cannot be washed off.</p> <p>Residues can be detected long after glyphosate treatments have been made. One study showed that lettuce contained residues five months after the field was treated with glyphosate. The disturbing thing about this research is that the lettuce seedlings were planted four months after the field was sprayed for weeds. The seedlings absorbed the glyphosate from the soil residues.</p> <p>A World Health Organisation study revealed significant Glyphosate residues in wheat after harvest. Milling did not remove it, as it moves into the plant and the wheat seed. The study showed that cooking does not break down Glyphosate.</p> <p>Environmental Effects</p> <p>Glyphosate based herbicides have been shown to cause a significant decline of beneficial insect species in farms. Studies by the International Organization for Biological Control and other researchers have found that between 50 to 60 percent of beneficial insects are killed from exposure to residues of a Glyphosate herbicide.</p> <p>Glyphosate is very toxic to fish and other aquatic organisms. Concentrations as low as 10 parts per million can kill fish. Daphnia, a very important part of the aquatic food chain, especially for fish, can be killed by as little as three parts per million. This is an important reason why it should not be used near waterways or in drains.</p> <p>Glyphosate is extremely toxic to the soil life. One application can cause a dramatic plunge in the number of beneficial soil micro-organisms and arthropods. Studies show a reduction in the species that build humus, thus it contributes to the decline in soil organic matter.</p>
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Glyphosate significantly reduces the activity of nitrogen-fixing bacteria. These bacteria transform soil nitrogen into forms that plants can use. Studies of Soybeans grown for nitrogen fixation showed a reduction in the number of rhizobium bacteria and the nitrogen they produce when Glyphosate was used for weed control.

Other studies show that Glyphosate herbicides increase the susceptibility of plants to diseases. This is partly because it reduces the growth of mycorrhizal fungi and other beneficial fungi that help plants absorb nutrients and help fight disease. However, plants suffer more disease, as there is an increase in the soil pathogens and a decrease beneficial species that control diseases after an application of Glyphosate.

Glyphosate exposure damages or reduces the populations of earthworms. A New Zealand study showed that 5% of the usual application rate caused delayed development and increased death in earthworms.

Glyphosate reduces populations of small mammals and birds by damaging the vegetation that provides food and shelter for these animals. The populations of all of these living organisms can take years to recover due to Glyphosate's persistence in the soil.

Spray Drift

Glyphosate spray drift from both ground and aerial applications has been measured from 400 to 800 meters from the target site. Studies have shown that Glyphosate drift will cause more severe and extensive damage than many other herbicides. This is because it is a broad spectrum, non-selective herbicide and it is transported throughout the plant causing damage to the unexposed parts. This damage, when it does not kill the plants, can last for many years.

Drift that is one thousand times less than the usual application rates has been shown to damage surrounding vegetation, including the killing of wild plants. This is an important reason why it should not be used in national parks and environmentally sensitive areas for weed control.

Genetic Engineering

The use of glyphosate is expected to increase substantially in the next few years because several genetically engineered crops are "Roundup Ready" and will be grown by many farmers.

This expected increase in use has resulted in an application for the MRL (residue level) for glyphosate to be increased by 200 percent. This need to increase the permitted residue levels is due to genetically engineered herbicide tolerant crops using more chemicals, not less as the proponents of GMO's claim. These crops cannot be legally sold in Australia under the present residue levels, as the increased number of sprays will mean higher residue levels.

This need for a dramatic increase in residues demonstrates that this herbicide is residual. If it is rapidly degraded and leaves no residues as is commonly claimed, why is there a need for such a large increase on residues on the crop?

The persistent nature of these residues in genetically engineered food crops such as Soybeans, Corn and Canola is another reason why we need mandatory labelling of all GMO's. We need to have the freedom of choice to avoid foods that we believe will contain residues of toxic chemicals.

This is a very good reason for eating organic foods.

Conclusion

Glyphosate is widely used in the mistaken belief that it is harmless, safe and readily breaks down leaving no residues. Consequently, it is sprayed in public areas while people are present and by operators without protective clothing. These people are exposed to the drift of this herbicide. The

Comment Letter D continued

facts show that Glyphosate causes a range of health problems to humans, plants and animals, it causes environmental problems and that it is highly persistent. It is time that the widespread use of this toxic chemical on roadsides, footpaths, parks, gardens, schools, farms, forestry, national parks etc was stopped or highly restricted.

Acknowledgments and References

Most of the information for this article came from an excellent paper authored by Caroline Cox in the JOURNAL OF PESTICIDE REFORM, Fall 1988, Vol.18, No. 3.

Updated 01-02, Northwest Coalition Against Pesticides, Eugene, Oregon.

Lehman V. and Pengue W. (2000), Herbicide Tolerant Soybean: Just another step in a technology treadmill? Biotechnology and Development Monitor, September 2000.

Nordstrom M. et al. (1998), "Occupational exposures, animal exposure, and smoking as risk factors for hairy cell leukaemia evaluated in a case-control study," BRITISH JOURNAL OF CANCER Vol. 77 (1998), pp 2048-2052.

Hardell L. and Eriksson M. (1999), "A Case-Control Study of Non-Hodgkin Lymphoma and exposure to Pesticides," CANCER Vol.85, No. 6 (March 15, 1999).

Organic Producers Association of Queensland

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Response to Comment Letter D:

D-1. As described in Section 3.4.2.2.3, CWC will use several weed control measures to minimize potential adverse impacts to PPC habitat from invasive non-native vegetation: 1) power wash all construction equipment to remove non-invasive weed seeds prior to initiation of work; 2) close active construction sites to vehicles that are not involved with construction; and 3) restrict public access to the recharge site would be restricted. CWC will also reseed the area upon completion of the work. The application of herbicides will be utilized as the weed control measure of last resort. However, if deemed necessary, CWC would utilize an EPA-approved herbicide and it would be applied according to directions. This section has been clarified in the EA.

MOUNTAIN EMPIRE ACTION ALLIANCE

COMMENT LETTER E

Mountain Empire Action Alliance
Sonoita, AZ

May 21, 2010

Ms. Sandra Eto
US Department of Interior
Bureau of Reclamation
Environmental Management Division
Phoenix Area Office,
6150 West Thunderbird Road
Glendale AZ 85306-4001

Attention: PXAO-1500 (Ms. Sandra Eto)

Re: NEPA Comments on the Revised Draft Environmental Assessment for the proposed Community Water Company of Green Valley Central Arizona Project Water Delivery System, Pima County, Arizona

Dear Ms. Eto:

On April 21, 2009, the Mountain Empire Action Alliance (MEAA) submitted a detailed comment letter on the Draft Environmental Assessment (EA) for the construction and operation of the proposed Community Water Company of Green Valley Central Arizona Project Water Delivery System, Pima County, Arizona (Proposed Project). The document has been prepared by ERO Resources (ERO) Corporation of Denver, Colorado, for the U.S. Bureau of Reclamation (Reclamation) on behalf of Community Water Company of Green Valley (CWC).

As we set forth in detail in that comment letter, it is clear from the record that CWC and Augusta Resource Corporation (ARC) co-authored the plan for the proposed Water Delivery System and Recharge Facility (WDS/RF), and subsequently submitted a plan to Reclamation for taking and using their Central Arizona Project (CAP) entitlements. In its capacity as the "lead agency" for the Proposed Project, Reclamation is responsible for preparation of the environmental documents required under the National Environmental Policy Act (NEPA).

These comments were submitted on behalf of MEAA, a community-based organization composed of approximately 300 residents of the greater Sonoita area. Our membership covers a geographic area from Vail to Patagonia and from Sonoita to Elgin. Our comments on the proposed water distribution and recharge facility recognized the undeniable and direct link between the proposed CWC project and the open pit copper mine and processing facilities (ARC Rosemont Copper Project) proposed for the eastern

slopes of the Santa Rita Mountains, a project we strongly oppose. Note that on July 14, 2008, MEAA submitted a detailed scoping letter on the proposed Rosemont Copper Project to the US Forest Service, Coronado National Forest (CNF) office in Tucson; that letter was incorporated by reference to our initial comment letter on the original Draft EA on the subject project.

Our comments were prepared in accordance with the National Environmental Policy Act of 1969, as amended (P.L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by P.L. 94-52, July 3, 1975, P.L. 94-83, August 9, 1975, and P.L. 97-258, § 4(b), Sept. 13, 1982). Per your March 6, 2009 Memorandum providing Notice of Availability for the Draft EA, our comments contained detailed analyses focusing on statements that we believe to be incorrect, including reasons for our conclusions. The BOR cover letter on the Revised DEA dated April 19, 2010, states that "This revised DEA also reflects, where appropriate, changes made in response to comments received on the March 2009 document."

Our comments were organized into the following nine (9) substantive sections.

- (1) CWC's and Reclamation's Failure to Accurately Identify Project Applicants: CWC and ARC Constitute a Contractual Development Partnership.
- (2) CWC's and Reclamation's Failure to Provide Public Access to the Final Plan (i.e., the seminal document) that is the Subject of the Draft EA for the Proposed Project;
- (3) Reclamation's Failure to Require a Final Plan and Final Agreement between CWC and ARC Prior to Initiating the NEPA process;
- (4) CWC's Failure to Identify the Proposed Project as a De-facto Mitigation Measure for the proposed Rosemont Copper Project;
- (5) Reclamation's Error in Failing to Properly Identify Connected Actions: the Logical and Contract Interrelationships Between the Proposed Project and the proposed Rosemont Copper Project;
- (6) CWC's and ARC's Failure to Adequately Describe the Scope of Mining Planned by ARC, thus Piece-mealing or Segmenting both the Proposed Project and the proposed Rosemont Copper Project;
- (7) Reclamations Failure to Provide Objective, Balanced and Fair Analyses of Alternatives to the Proposed Project;
- (8) Reclamations Failure to Adequately Consider the Scope of Cumulative Effects;

Comment Letter E continued

- (9) Reclamations Error and/or Omission in Identifying and Reporting of Agencies and Persons Consulted;

E-1

Regrettably, BOR used a different type-point in the revised document, making direct text comparisons impossible. As such, we were required to spend considerable time reading the two reports side-by-side, seeking to find evidence that our comments had been addressed. There is scant evidence that our concerns have been addressed in the revised DEA; why does DOR consider our concerns inappropriate?

In reviewing the revised DEA we offer an additional issue.

- (10) Reclamation's failure to consider the adverse impacts of climate change on the delivery capacity of the Central Arizona Project.

The following text appears on page 4 "1.2 Purpose and Need – Reclamation" of the revised DEA:

"Reclamation must evaluate the environmental effects of CWC's Proposed Project for taking and using its CAP entitlement, and identifying environmental mitigation measures if appropriate, pursuant to the requirements of the CAP water service subcontract (emphasis added). CWC's CAP entitlement is naturally contingent on the availability of CAP water. Recent research findings indicate that Colorado River water sources are unsustainable as a result of on-going climate change, thus raising the significant issue regarding reductions in CAP water availability, and subsequently CAP entitlements.

E-2

With respect to "taking and using its CAP entitlement, the EA needs to address the following research findings:

Research Report:

Lake Mead Could Be Dry by 2021

Published by Scripps Institution of Oceanography, UC San Diego.
February 12, 2008

There is a 50 percent chance Lake Mead, a key source of water for millions of people in the southwestern United States, will be dry by 2021 if climate changes as expected and future water usage is not curtailed, according to a pair of researchers at Scripps Institution of Oceanography, UC San Diego.

Without Lake Mead and neighboring Lake Powell, the Colorado River system has no buffer to sustain the population of the Southwest through an unusually dry year, or worse, a sustained drought. In such an event, water deliveries would become highly unstable and variable, said research marine physicist Tim Barnett and climate scientist David Pierce.

3

National Academy of Sciences Publication:

Sustainable water deliveries from the Colorado River in a changing climate

Tim P. Barnett and David W. Pierce
Division of Climate, Atmospheric Science, and Physical Oceanography, Scripps Institution of Oceanography, La Jolla, CA 92093
Proceedings of the National Academy of Sciences, April 2009

Abstract

The Colorado River supplies water to 27 million users in 7 states and 2 countries and irrigates over 3 million acres of farmland. Global climate models almost unanimously project that human-induced climate change will reduce runoff in this region by 10–30%. This work explores whether currently scheduled future water deliveries from the Colorado River system are sustainable under different climate-change scenarios. If climate change reduces runoff by 10%, scheduled deliveries will be missed ≈58% of the time by 2050. If runoff reduces 20%, they will be missed ≈98% of the time. The mean shortfall when full deliveries cannot be met increases from ≈0.5–0.7 billion cubic meters per year (bcm/yr) in 2025 to ≈1.2–1.9 bcm/yr by 2050 out of a request of ≈17.3 bcm/yr. Such values are small enough to be manageable. The chance of a year with deliveries <14.5 bcm/yr increases to 21% by midcentury if runoff reduces 20%, but such low deliveries could be largely avoided by reducing scheduled deliveries. These results are computed by using estimates of Colorado River flow from the 20th century, which was unusually wet; if the river reverts to its long-term mean, shortfalls increase another 1–1.5 bcm/yr. With either climate-change or long-term mean flows, currently scheduled future water deliveries from the Colorado River are not sustainable. However, the ability of the system to mitigate droughts can be maintained if the various users of the river find a way to reduce average deliveries.

E-2

These two studies concluded that with either climate-change or long-term mean flows, currently scheduled future water deliveries from the Colorado River are not sustainable. Note that the authors also state that mitigation may occur if various users find a way to reduce average deliveries. As such, BOR's environmental assessment must also address the stark reality that CAP water availability is not sustainable, and that the addition of a CWC/Rosemont allocation only exacerbates an untenable condition.

We respectfully submit that Section 3.9.2 Climate Change be accorded the full treatment that this important subject warrants, and that it be moved from "Resources Considered But Not Affected" into its proper place within "Section 3, Affected Environment and Environmental Consequences". Please obtain, review and incorporate the findings of the two above referenced research reports prepared by Scripps Institute into your updated section on Climate Change.

Note that the seriousness of this issue is recognized by the National Academy of Sciences, who only yesterday released major reports on Climate Change. These reports are herein incorporated by reference. They can be found at the following link: <http://americasclimatechoices.org/>. Additional climate change reports and information can also be found at the following National Academy of Sciences link: <http://dels-old.nas.edu/climatechange/>, also incorporated by reference.

4

Comment Letter E continued

E-2 Finally, the .pdf file also attached to this comment and review letter contains a copy of a report prepared by the Lincoln Institute of Land Policy, "Planning for Climate Change in the West". Please also review and incorporate the findings of this report into your analyses, and incorporate this document by reference.

Conclusions and Recommendations

Our analyses set forth in our original comment letter produced the following major conclusions:

1. The Proposed Project and the proposed Rosemont Copper Project are "connected actions" warranting a single environmental impact statement under CEQA.
2. Alternatives to the must include the alternative proposed by the Farmers Investment Company (FICO) of Sahuarita, Arizona and American Nevada Company (ANC) of Henderson, Nevada.
3. Alternatives to the Proposed Project must include analyses of alternatives reflecting a range of water use scenarios by the proposed Rosemont Copper Project, including, but not limited to a slurry-transport system, and wet-stacking of mine tailings.
4. The scope of the analysis of cumulative impacts must be expanded to include the four mines proposed by ARC for the entirety of the "Rosemont Area."

E-3

We now add a fifth conclusion:

5. The revised DEA fails to address the impact of climate change on Colorado River yields and flows, and the consequent unsustainable delivery of CAP water allocations.

E-4

These conclusions lead to the following recommendations:

1. Reclamation should reissue its determination regarding "connected actions" and properly identify the Proposed Project and the Proposed Rosemont Copper Project as "connected actions" under NEPA.
2. Once recommendation 1 is completed, Reclamation, in collaboration with the CNF should suspend the NEPA process and initiate the integration of the Draft EA on the Proposed Project, into to a full, combined EIS on both the Proposed Project and the proposed Rosemont Copper Project; the EIS should be undertaken jointly with the CNF;

E-5

3. Once recommendation 2 above is initiated, Reclamation and the CNF should expand and reopen the scoping period on the "connected actions" to permit a full review and comment by the public particularly in those communities most directly impacted by the combined project(s);
4. All public comments on both projects (i.e., scoping comments from the CNF NEPA process, and scoping comments and comments on Reclamations NEPA process) should be incorporated into a single EIS;
5. Reclamation and the CNF should incorporate a full analysis of the alternative proposed by the Farmers Investment Company (FICO) of Sahuarita, Arizona, and American Nevada Company (ANC) of Henderson, Nevada, into the Draft EIS; and
6. Reclamation and the CNF should incorporate a full analysis of the cumulative effects of the four mines proposed by ARC for the entirety of the "Rosemont Area" into the Draft EIS.

E-5

We now add a seventh recommendation:

7. The Environmental Assessment must incorporate the effects of climate change on Colorado River flows and yields, and the consequent unsustainable delivery of CAP water allocations. This analysis must include a full range of alternatives to mitigate reduced CAP allocations, including the "no project" alternative. Given the magnitude of the impact of reduced CAP flows to Southern Arizona, not solely to CWC, this issue must rise to the level of a **Significant Impact**, and that Reclamation must therefore prepare an EIS on the Proposed Project.

E-6

In closing, and with some regret, I share with you our sense that the Bureau of Reclamation is not listening closely to the public, to the very people to whom you are ultimately accountable. There is a sense among those of us who have attended the scoping meeting and public hearing that our participation was viewed as more of a nuisance than of respect for citizens exercising their rights. No member of the public made any comments which were antagonistic or improper. At both the scoping meeting and the public hearing, answers to some questions were evasive, short, even curt. We were surely not made to feel welcome.

I thus ask that in the future you please make an effort to treat the public with greater consideration and respect. BOR staff are getting paid with taxpayer monies to work on behalf of the public; we are preparing our comments and participating in the NEPA process voluntarily, because the CWC/Rosemont/CAP proposal under consideration is directly linked to and supports a major open pit copper mine in the midst of our region, a project which would have significant adverse impacts on our natural and cultural

E-7

Comment Letter E continued

E-6

resources, including our water resources and the water resources of all parties dependent upon CAP allocations. Please also bear in mind that these impacts will adversely impact the quality of life for a very large regional population.

Thank you for the opportunity to review and comment on the revised Draft EA. Please do not hesitate to contact us if you have any questions or clarifications.

Sincerely,



James Pepper, Convener
Mountain Empire Action Alliance Steering Committee

Cc: Congresswoman Gabrielle Giffords
Congressman Raul Grijalva
Coronado National Forest Supervisor Jeanine Derby
Commissioner Michael L. Connor, Bureau of Reclamation

Response to Comment Letter E:

- E-1. Reclamation has carefully read each comment submitted in writing and the transcript of comments received at the public meeting. Where appropriate, those comments have been addressed in preparation of the EA. We understand the frustration of those who believe their concerns have not been addressed. We have tried to explain the boundaries within which we are required to conduct our analyses of the potential impacts from the Proposed Project. We are required to follow the CEQ regulations implementing NEPA, as well as Department of the Interior regulations and guidance from both CEQ and the Environmental Protection Agency. While two actions may seem “connected” due to a financial arrangement, or based upon literature, news articles, or statements made by someone seemingly knowledgeable about NEPA, this does not necessarily result in the two actions being “connected” with regard to how they must be evaluated in a NEPA document as required by the regulations. If the two actions do not meet the criteria as explained in Section 1.5, we do not consider them as connected actions regardless of the number of comments we may receive from the public who believe they are connected.
- E-2. Reclamation shares your concern about the potential effects of climate change on the Colorado River. In fact, since 2004, Reclamation has had an extensive ongoing Climate Research and Development program focused on the Colorado River Basin – please refer to the reports and information available at <http://www.usbr.gov/lc/region/programs/climateresearch.html> . However, Reclamation’s action on the CWC proposed project will not affect, or be affected by, climate change relative to Colorado River water supplies. The water that would be delivered to CWC is already being imported into central Arizona and made available to other water users as “excess supply.” Continued drought may result in more frequent shortage conditions on the Colorado River but the occurrence of shortages is expected and CAP allocations and contracts include shortage sharing provisions. Reclamation does not guarantee the quantity or quality of the water delivered.
- As noted above, Reclamation keeps abreast of the latest related research, including the reports referenced in your comments and the attachment you provided that was prepared by the Lincoln Institute of Land Policy, and funds much of the climate research specific to the Colorado River Basin.
- E-3. Please see response to Comment 9-10.
- E-4. Please see response to Comment E-2.
- E-5. Please see response to Comment 9-10.
- E-6. Please see response to Comment E-2.
- E-7. Please see response to Comment E-2. Reclamation makes every effort to listen closely to concerns raised by the public and treat everyone with courtesy and respect. We have incorporated many of the comments into the EA and have done substantial analyses of ground water impacts from the proposed withdrawals of water by the proposed Rosemont Mine as a result of public input and concern. Please also see response to Comment E-1.

PIMA COUNTY ADMINISTRATOR'S OFFICE

COMMENT LETTER F



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

May 18, 2010

US Department of the Interior
Bureau of Reclamation
Phoenix Area Office
6150 West Thunderbird Road
Glendale, Arizona 85306-4001

Attention: PXAO-1500, Ms. Sandra Eto

Re: Comments on Draft Environmental Assessment on the Proposed Community Water Company's Central Arizona Project Water Distribution System and Recharge Facility

Dear Ms. Eto:

Pima County offers the following comments on the revised Draft Environmental Assessment (EA) on the proposed Community Water Company's (CWC's) Central Arizona Project (CAP) Water Distribution System and Recharge Facility.

Request for a Public Meeting

The revised draft EA presents two new recharge locations and one of these locations is on land owned by Pima County. We feel it is important to engage the public when developing alternatives for public improvements, especially for an improvement which will impact the communities of Green Valley and Sahuarita. Given the new alternatives which may impact different parties than the original March 2009 EA and because of Pima County's interest in the one recharge site, a public meeting to present the alternatives should be held. We respectfully request the Bureau of Reclamation and Community Water Company hold a public meeting prior to finalizing the draft EA.

F-1

Rosemont Mine

Pima County recognizes the need to deliver CAP water to the water companies serving the Town of Sahuarita, Green Valley and surrounding communities. However, it should be noted that this proposed project would not be needed but for the funding proposal by Rosemont Copper (Rosemont), a subsidiary of Augusta Resources of Canada. The proposal is linked to the mine by virtue of allowing Rosemont to utilize the CWC's CAP allocation. In fact, the first 15 years, Rosemont will use all of 7,000 acre-foot per year recharged.

F-2

Ms. Sandra Eto
Re: Comments on Draft Environmental Assessment on the Proposed Community Water Company's Central Arizona Project Water Distribution System and Recharge Facility
May 18, 2010
Page 2

We disagree with the Bureau's findings in the draft EA presented in section 1.5 Relationship to Proposed Rosemont Mine that there is no linkage of the two projects. In fact, there is a direct linkage to the proposed Mine Plan of Operation (MPO). As discussed in Rosemont's MPO, under Arizona Revised Statutes (A.R.S.) Section 45-543, the transportation of groundwater from the Tucson Active Management Area to the Cienega Creek Basin, "is subject to a claim of damages by groundwater users in the basin of origin." A.R.S. 45-545 provides relief from such claims due to mitigation factors such as providing addition sources of water in the basin of origin. While Rosemont may be recharging in the lower Santa Cruz sub-basin, their well field for their proposed mine is in the upper Santa Cruz sub-basin. Failure to mitigate impacts of their groundwater withdrawals and transportation out of basin would subject them to claims by users within the Sahuarita - Green Valley area. Further, as stated in the Rosemont MPO, they "will have the option of modifying the ME (Mineral Extraction) permit wells to allow them to operate as recovery wells." Given the location of their proposed extraction wells in relationship to the proposed upstream CAP recharge site, the intent of Rosemont is very clear that they will utilize this proposed project for recharge and recovery purposes for their mining operation.

Clearly, recharge in the Sahuarita-Green Valley area has been proposed as a mitigation measure for the Environmental Impact Study (EIS) now underway for US Forest Service lands to be impacted by the Rosemont mining proposal. In essence, Rosemont's arrangement with CWC unnaturally constrains mitigation alternatives for the impacts of groundwater withdrawal for the mine to one location and two beneficiaries (Rosemont and CWC), while ignoring others who bear the impacts of the groundwater withdrawal proposed by Rosemont. Separating the recharge project from the mining proposal without consideration of the links between the two could be interpreted as an attempt to piecemeal the Rosemont Mine EIS.

F-2

Further, a number of the scoping issues for the Rosemont EIS encompass and will affect alternatives for CWC's utilization of CAP. Rosemont and CWC have studied some alternative sites for the pipeline and for the recharge project and these should be evaluated in the EA. Alternative dimensions for the pipeline have also been discussed. The two projects are clearly linked.

In fact, even the technical team preparing this draft EA is linked with Rosemont making it difficult to view the document as objective given the obvious conflict of interest.

Pima County objects to this Draft EA for CAP recharge being performed separately from the Rosemont Mine EIS. It is strongly recommended that the Bureau coordinate with Interior Department's solicitors on whether this EA can be performed separately from the Rosemont Mine EIS. Nothing in this Draft EA indicates that the Bureau has coordinated with the Coronado National Forest.

CAP Allocations for the Sahuarita-Green Valley Area

Extension of the CAP pipeline to the Sahuarita-Green Valley area has been the subject of study and discussion for many years. In addition to the CWC, the Green Valley Domestic Water Improvement District also has a CAP allocation and there are several member lands for which the Central Arizona Groundwater Replenishment District (CAGR) has replenishment obligations. For the Rancho Sahuarita Water Company, the CAGR provides recharge near Marana for replenishment for excess groundwater pumped in by Rancho Sahuarita Water Company.

F-3

Comment Letter F continued

Ms. Sandra Eto
Re: Comments on Draft Environmental Assessment on the Proposed Community Water Company's
Central Arizona Project Water Distribution System and Recharge Facility
May 18, 2010
Page 3

F-3 One of our concerns with CAGRD's replenishment is that there is no hydrologic connection between where CAGRD's replenishment occurs and the location of excess groundwater withdrawals for service member lands and member service areas. Extending the CAP pipeline and construction of recharge facilities in the Sahuarita-Green Valley area would enable the CAGRD to replenish groundwater in close proximity to where the groundwater withdrawals occur.

F-4 We appreciate the fact that the revised draft EA provides for a full range of alternatives including providing CAP delivery to other entities with CAP entitlements.

Surface Water Resources

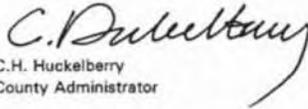
F-5 The proposed recharge sites and booster station are located within the federally designated floodway of the Santa Cruz River. National Flood Insurance Program is restrictive on any change to the base flood (100-year) water surface elevation within the floodway. The Town of Sahuarita has regulatory authority for floodplain permits and should be contacted regarding specific regulatory requirements that would apply.

North Recharge Site

F-6 When Community Water Company approached Pima County regarding the potential of using the north recharge site, we indicated that the conceptual design of the recharge facility needed to be modified to emphasize passive recreation and be developed with an environmental restoration component similar to Pima County's Marana High Plains Effluent Recharge Project. The design also had to be compatible with floodplain management principals and overall river management along the Santa Cruz River. Should the north recharge site be chosen in the future, Pima County will require environmental restoration and passive recreation features.

Thank you for the opportunity to comment on the revised draft EA on the proposed CWC/CAP Water Distribution System and Recharge Facility. If you have any question about Pima County's comments, please contact Suzanne Shields, Regional Flood Control District Director at 520-243-1880.

Sincerely,



C.H. Huckelberry
County Administrator

CHH/dr

- c: John Bernal, Deputy County Administrator - Public Works
- Suzanne Shields, Director, Regional Flood Control District
- Kathy Chavez, Water Policy Manager, Regional Wastewater Reclamation Department
- Nicole Fyffe, Executive Assistant to the County Administrator
- Julia Fonseca, Environmental Planning Manager, Office of Conservation Science and Environmental Policy

Response to Comment Letter F:

- F-1. The South and North parcels are located within the area of impact identified in the DEA and would not impact different parties than those identified in the DEA; however, the use of either of these parcels may impact these parties in a way or magnitude that would be different than what may have occurred with operation of a recharge facility at the original location. These different impacts are not anticipated to be significant. Development of a recharge basin on either the South or North parcel would not substantially impact the communities of Green Valley or Sahuarita. As noted in the EA, although the area within the 100-year floodplain near the Santa Cruz River is seen as future developable land, the likelihood of development occurring within the foreseeable future is low. None of the comments received on the RDEA voiced concern or interest over use of either of these parcels for a recharge facility per se; one letter indicated a floodplain permit would need to be obtained (Letter G). Please also see response to Comment B-5.
- F-2. The proposed project is needed by CWC and others in that area for the reasons discussed in Section 1.2 – Purpose and Need. As noted in the EA, ground water levels within the Green Valley/Sahuarita area have declined significantly over the past 50 years. The funding proposal by Rosemont facilitates earlier construction of the project than would otherwise be possible. It is not known specifically how much water Rosemont would recharge at the CWC facility, if any – Rosemont could recharge up to 7,000 AF/year for 15-20 years provided none of the capacity was needed by CWC; however, Rosemont has already recharged a substantial quantity of water elsewhere in the Tucson AMA, and if it does not receive a mining permit, may not recharge any more. With respect to the connection between the CWC proposed project and the Rosemont Mine, please see responses to Comments 3-3, 5-1, and 9-5.
- F-3. We agree recharge at the proposed location would result in replenishment within the area of hydrological connection for pumping in the Upper Santa Cruz Subbasin. In addition to meeting the stated purpose and need for the project—to delivery CWC’s CAP water entitlement to the CWC water service area—the proposed project provides an opportunity to provide recharge capacity within the Upper Santa Cruz Subbasin for replenishment from CAGR-related water deliveries to member service areas and member lands in the Upper Santa Cruz Subbasin.
- F-4. Thank you for the comment.
- F-5. Thank you for the information on the construction easements and future operation and maintenance of the project. Reclamation has copied CWC on your comments, so it is aware of the permits and agreements that the Town would require for the proposed project.
- F-6. Reclamation has copied CWC on your comments, so the appropriate staff is aware that the County will require environmental restoration and passive recreation facilities should the North recharge site be chosen.

TOWN OF SAHUARITA

COMMENT LETTER G



Town of Sahuarita
Office of the Town Manager

May 20, 2010

Ms. Sandra Eto
PXAO-1500
Bureau of Reclamation
Phoenix Area Office
6150 W. Thunderbird Rd.
Phoenix AZ 85306

seto@usbr.gov

**Subject: Community Water Company of Green Valley Central Arizona Project
Water Delivery System Pima County, Arizona
Revised Draft Environmental Assessment**

Dear Ms. Eto:

The Town of Sahuarita has completed its review of the revised draft Environmental Assessment for the "Community Water Company of Green Valley Central Arizona Project Water Delivery System Pima County, Arizona" dated April 2010 and offers the following comments:

- G-1 1. On the title cover sheet in lieu of Pima County it should or could be Town of Sahuarita.
- G-2 2. **2.3 Proposed Action (Preferred Alternative or Proposed Project)**
Pipeline – A 30-foot-wide temporary construction easement is called out. A temporary construction easement is probably not necessary. An expanded right of way use permit would suffice. In terms of future Operation and Maintenance this item was not discussed in the report. It is preferred a License Agreement between the Town and Community Water Company of Green Valley (CWC) be put in place, with Operation and Maintenance and Right of Entry aspects be included in that agreement.
- G-3 3. **3.7 Surface Water Resources**
3.7.2.2 Preferred Alternative
The Preferred Alternative involves activities within the FEMA 100-year floodplain and would result in impacts on flood flows and the floodplain. The activities to be conducted in the floodplain include construction of a portion of the CAP water delivery pipeline, a booster station, temporary and permanent access roads, temporary staging areas and a recharge facility with equipment storage areas. As permanent structures are to be located within the floodplain, a floodplain use permit will be required by the Town supported mainly by an encroachment analysis.

The Town appreciates the opportunity to comment on the Revised Draft Environmental Assessment.

Sincerely,

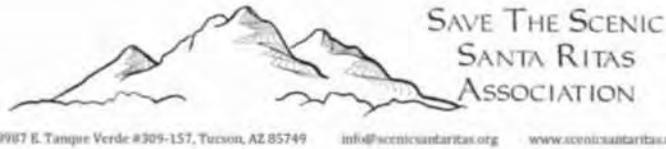
James R. Stahle
Town Manager

Response to Comment Letter G:

- G-1. Although the proposed project and most of the alternatives occur within the Town of Sahuarita, Reclamation's practice is to name the county as the geographical reference area.
- G-2. Please see response to Comment F-5.
- G-3. Thank you for the information on the floodplain use permit that the Town would require for the proposed project. Some information on the encroachment analysis is provided in Section 3.7 – Surface Water Resources in the EA. Also, the EA now reflects that the Town will require a floodplain permit for the proposed project.

SAVE THE SCENIC SANTA RITAS ASSOCIATION

COMMENT LETTER H



Coordinator Lisa Frevlich

21 May 2010

Board of Directors

Gayle Hartmann, President
 Moerva Parr, Vice President
 Kim Rich,
 Sherla Dagacorn
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 Leslie Kramer
 Jamie Levick
 Annie McGovevy
 Tom Pardon

Ms. Sandra Eto
 PXAO-1500
 Bureau of Reclamation
 Phoenix Area Office
 6150 W. Thunderbird Rd.
 Phoenix, AZ 85306

Advisory Board

Bob Barnhill
 Jonana Brown
 Phil Caputo
 Anne Gibson
 Lynn Harris
 Lee Hydeman
 Bob Sharp
 Steve Strum
 Carol Talbot
 Tom Volgy

[sent via e-mail: seto@usbr.gov]

Dear Ms. Eto:

I am writing on behalf of the Save the Scenic Santa Ritaa (SSSR), a largely volunteer, non-profit organization, based in Tucson, Arizona. Our main focus is preventing the development of a large open pit copper mine in the Rosemont Valley of the Santa Rita Mountains and the resulting dumping of tailings and waste on the adjacent Coronado National Forest lands by Augusta Resources, a small Canadian junior mining company.

It is in this context we offer the following comments on the revised draft Environmental Assessment (EA) for the Community Water Company of Green Valley Central Arizona Project Water Delivery System.

The proposed project is indisputably connected to the Rosemont Mine:

Notwithstanding representations to the contrary, the proposed Community Water Company (CWC) pipeline is connected to the Rosemont Mine. As such, the significant impacts of the mine need to be evaluated. SSSR strongly believes that the Bureau's determination in this regard is in error and needs to be corrected.

The revised EA highlights several reasons as to why the CWC project and the Rosemont mine are connected actions. These include:

Reclamation recognizes that construction of the Proposed Project is proposed to be funded by Rosemont and that CWC plans to give Rosemont priority over other customers for use of the water, the system, and recharge capacity for the first 15 to 20 years unless those uses are needed by CWC to meet delivery obligations to other portions of CWC's service area.

Save the Scenic Santa Ritaa (SSSR) is a non profit organization founded in 1996 to protect our area from environmental degradation caused by mining and mineral exploration activities.

In appendix D of the revised draft EA, there are two additional documents that restate the connection between the mine and the CWC pipeline.

The first is a letter from Jamie Sturgess to Virgil Davis, Secretary of the CWC Board, dated 1/20/2009. In it, Augusta states that Rosemont and CWCGV have explored, and agreed, in principle, to the concept of increasing the pipeline diameter from a 20 inch to a 36 inch diameter pipeline to allow other parties in the area to achieve regional water delivery from the extended CAP system. Augusta states that this increase in diameter "does not affect the basic concept approved in the July 12, 2007 Letter of Intent."

The second document is a letter from Virgil Davis on behalf of CWC to Sandra Eto at the Bureau of Reclamation. It "confirms the planned financing for the Water Delivery System (WDS) to be constructed by Community Water, referencing the Letter of Intent dated July 12, 2007. It states that, "The CWC water delivery system would be owned and operated by CWC. CWC would deliver CAP water to the recharge basin for use by its customers. For a period of 15 years, Rosemont would have priority over other customers for that water, the system, and recharge capacity, unless they are needed by CWC."

Additionally, in the original draft EA for this project, there were numerous other examples of Augusta's intent to use CWC's CAP allocation for their own recharge purposes. These include:

The July 12, 2007 Letter of Intent states:

"ARC (Augusta Resource Corp.) will enter into a customer agreement with CWCGV for delivery and recharge of ARC CAP water";

"ARC will recharge the full amount of planned water usage for the Rosemont Mine as specified in the approved Rosemont MPO";

"Augusta will store water from CWCGV and/or GVDWID CAP allocations only at the WDS (water delivery system) recharge facilities", along w/recharging any additional water usage;

"ARC will have first priority for the utilization of the WDS delivery and recharge Design Capacity for 15 years form initial operation of the WDS";

"After the initial 15 year term, the Design Capacity of the WDS shall belong to CWCGVS. The right to utilize additional capacity beyond the Design Capacity shall be retained by such party that paid to oversize the WDS" (i.e., Augusta), and that if the third party (i.e., Augusta), fails to use that additional capacity or pay the capacity tariff established by the ACC, that capacity will revert to CWCGV "on terms to be set forth in the third party participation Agreement."

By any objective standard the CWC pipeline is connected to the Rosemont Mine and in fact the mine will finance it.

At a minimum, the revised EA must be withdrawn and a complete Environmental Impact Statement (EIS) must be prepared examining the full range of environmental impacts that will be created by the CWC pipeline including the impacts of the proposed Rosemont mine.

Save the Scenic Santa Ritaa (SSSR) is a non profit organization founded in 1996 to protect our area from environmental degradation caused by mining and mineral exploration activities.

H-1

H-1

Comment Letter H continued

Ability of Augusta to follow through on financial commitment to CWC is questionable.

The Bureau has stated in the draft revised EA that one of the reasons the CWC pipeline is not a connected action to the Rosemont project is, "Rosemont's commitment to pay for construction of the Proposed Project is not contingent on CNF's approval of the MPO." Essentially, the Bureau believes that Augusta will pay for the pipeline even if a Record of Decision (ROD) is issued that is adverse to the Rosemont mine.

However, a brief review of documents filed with both the Securities and Exchange Commission (SEC) and its Canadian counterpart (SEDAR) make it abundantly clear that the financial health of Augusta is completely dependent on a favorable ROD from the Forest Service.

In disclosures filed with the Canadian authorities in March 2010, Augusta said, "[T]he Company [Augusta] does not anticipate that it will earn any revenue from its operations until its properties are placed into production, which is not expected to be for several years, if at all." It further stated in this document that, "[I]n early 2010, the Company had secured or will secure sufficient capital to cover its working capital deficit and ongoing expenditures until the end of the third quarter 2010. Augusta has no revenue from operations and does not expect to generate any revenue until 2012 when the Rosemont project is placed into commercial production." In other words, until Rosemont receives permits to mine, it will not generate any revenue to pay for the CWC pipeline.

Additionally, in relationships with other partners, Augusta makes it clear that future infusion of capital is completely dependent on a favorable ROD. According to its most recent quarterly report filed with the SEC, Augusta said that in February it had signed an agreement with Silver Wheaton Corporation that would provide \$230 million in cash. However, Augusta said that the "drawdown of the cash payments is subject to Augusta receiving the Record of Decision (ROD)."

Any reliance on Rosemont's assertions that it will financially participate in CWC's pipeline irrespective of the outcome of the Forest Service's permitting process must be placed into context with its own words in the financial statements it files with relevant financial regulatory authorities.

The Central Arizona Water Conservation District has challenged the Augusta and CWC Central Arizona Project (CAP) Scheme

The legality of the scheme to transfer CWC's CAP allocation to Augusta has been challenged by the Central Arizona Water Conservation District (CAWCD), the agency responsible for operating the CAP. In December 2009, the Central Arizona Water Conservation District wrote: "[The Community Water Company] has no rights under the CAP subcontract to lease its unused entitlement to Augusta, in fact, it is prohibited from doing so. CAWCD cannot support a plan for taking and using CAP water which is predicated on leasing a CAP entitlement, when such leasing violates a CAP contract."

Given that the revised EA references this transfer of CAP allocation to Augusta Resources, the draft EA must also address the apparent legal deficiency of this scheme.

A public hearing must be held in the Green Valley Region on the revised draft EA:

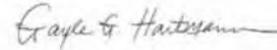
Given the significance of this issue to the water users in the Green Valley area, the Bureau must

conduct at least one public hearing in the affected community on the revised draft EA. The changes in the revised draft EA compel such an action. Additionally, the public comment period should be extended to accommodate this public hearing.

Based on the foregoing, if the draft revised EA is not withdrawn to correct the deficiencies outlined above, the Bureau must select the No Action alternative.

Thank you for your consideration of these comments.

Sincerely,



Gayle Hartmann, president
Save the Scenic Santa Ritas Association

H-2

H-3

H-4

H-4

Response to Comment Letter H:

- H-1. Regarding the connection between the CWC proposed project and the Rosemont Mine, please see responses to Comments 3-3, 5-1, and 9-5. Regarding the statements quoted in the comments, please see response to Comment 9-4.
- H-2. Reclamation does not believe the recent financial documents and disclosures filed by Augusta are relevant to the environmental assessment of the proposed project. As noted in response to Comment 14-2, if Rosemont is unable to provide funding for this project, CWC can elect to seek other funding or delay construction.
- H-3. Please see response to Comment 5-3.
- H-4. Please see responses to Comments B-5 and F-1.

KAREN L. SOLIERE

COMMENT LETTER I

May 19, 2010

Ms. Sandra Eto
U.S. Department of Interior
Bureau of Reclamation
Phoenix Area Office,
6150 West Thunderbird Road
Glendale, AZ 85306



Dear Ms. Eto:

I am writing about my concerns with Augusta Resource Corporation and their proposed Rosemont copper mine in Southern Arizona.

I-1

I believe that Augusta has deliberately withheld full disclosure in its Rosemont Mine Plan of Operation and Recharge Plan, and the Water Distribution System and Recharge Facility. Both these projects are one and the same. I believe that withholding all the facts was done to avoid a negative response from the Coronado National Forest Service.

I-2

I hope that upon your review, the Bureau of Reclamation will reverse its decision and inform the Coronado National Forest that Augusta's proposed Rosemont Mine and the Proposed Project are connected actions under NEPA. Both the Coronado National Forest Service and Augusta should subject the pending environmental assessment to a full, combined environmental impact statement for both projects. The Bureau of Reclamation needs to allow our communities a full public review and comment on this extensive and far reaching project.

Ms. Eto, I appreciate your willingness to allow my comments on this matter that will greatly impact my life, now and in the future. Thank you.

Sincerely,

Karen L. Soliere

Karen L. Soliere
PO Box 383
Sonoita, AZ 85637

Response to Comment Letter I:

I-1. Your comments are noted.

I-2. Regarding the connection between the CWC proposed project and the Rosemont Mine, please see responses to Comments 3-3, 5-1, and 9-5. With respect to the request for a public hearing, please see responses to Comment B-5 and F-1.

RENEÉ ROBERTS

COMMENT LETTER J

Ms. Sandra Eto
U. S. Department of Interior
Bureau of Reclamation
Phoenix Area Office,
6150 West Thunderbird Road
Glendale AZ 85306

Attention: PXAO-1500 (Ms. Sandra Eto)

Re: NEPA Comments on the Draft Environmental Assessment for the proposed Community Water Company of Green Valley Central Arizona Project Water Distribution System and Recharge Facility, Pima County, Arizona

Dear Ms. Eto:

This letter sets forth comments on the Draft Environmental Assessment ("DEA") for the construction and operation of the proposed Community Water Company ("CWC") of Green Valley Central Arizona Project Water Distribution System and Recharge Facility in Pima County, Arizona ("Proposed Project"), prepared for the U.S. Bureau of Reclamation ("Reclamation") It will be shown below that CWC and Augusta Resource Corporation ("ARC"), in their very own words, have themselves made the case that the Proposed Project and ARC's Proposed Rosemont Copper Project are in fact connected actions. This case is presented in four parts: (1) excerpts from relevant documents in the public record, (2) summary of facts derived from the excerpts, (3) conclusions supported by the facts, and (4) recommendations.

1. EXCERPTS FROM RELEVANT DOCUMENTS IN THE PUBLIC RECORD

From ARC's Rosemont Mine Plan of Operation dated July 11, 2007, Section 2.8.5 Recharge Plan:

- "Rosemont has made a commitment to the local community to utilize available CAP water to recharge 105% of the total water production over the life of the Project. The recharge will be within the Tucson AMA, and as close to the water production site as possible. The total life-of-the-mine usage is currently estimated to be 100,000 af, resulting in a recharge commitment of 105,000 af."
"Pima Mine Road is the state-permitted underground storage facility closest to [water production] Site 1. Because available capacity at this facility may remain limited for the foreseeable future, Rosemont Copper has also begun evaluating construction of a new recharge facility in close proximity to it."

From the Letter of Intent between ARC and CWC dated July 12, 2007, p. 1:

- "Augusta Resource Corporation (ARC) plans to procure and recharge CAP water in the vicinity of its Rosemont Mine well site, a 53 acre parcel of land located on Davis Road, Sahuarita, AZ (ARC 53 Acre Parcel). The availability of a suitable pipeline and recharge facility is critical to the eventual implementation of this plan."

From the Letter of Intent between ARC and CWC dated July 12, 2007, p. 2:

- "The parties have established a CAP Water Delivery System (WDS) Plan as presented in a briefing dated June 18, 2007, and that Plan is incorporated as Appendix A to this Letter of Intent."

From the Letter of Intent between ARC and CWC dated July 12, 2007, p. 3:

- "ARC and CWCGV will form a WDS Project Team comprised of two members each and an alternate from each. The WDS Project Team will report directly to the appropriate management of ARC and CWCGV. The WDS Project Team will have specific construction milestone and operation milestone responsibilities."

From Appendix A to the Letter of Intent between ARC and CWC dated July 12, 2007, p. 12 (text on Diagram):

- "Other Development Partners could be brought in through the Main Line Extension Agreement prior to construction start."

From Appendix A to the Letter of Intent between ARC and CWC dated July 12, 2007, p. 13:

- "Additional Partner(s) to contract for water transport and recharge, and share in the construction cost of an enlarged system, are sought by the WDS Project Team."

From the letter to Pima County Supervisor Ray Carroll from CWC Chairman of the Board Ken Taylor dated August 22, 2007:

- "In the two years Community Water Company and, independently, a group of concerned citizens of Green Valley, have been actively pursuing funding for this project, we have not been successful in locating these readily available alternative funding sources."
"Since we have not yet signed a binding agreement with Augusta Resources Corporation, we will be happy to discuss any firm commitment to a similar transaction with any entity that has funds readily available for our project."

From Reclamation's Draft Environmental Assessment, Section 1.5 Relationship to Proposed Rosemont Mine:

- "Reclamation recognizes that construction of the Proposed Project is proposed to be funded by Rosemont and that CWC plans to give priority for use of CWC's CAP water and available recharge storage capacity for the first 15 to 20 years of the systems operation unless needed by CWC. However, as discussed further in the Scoping Report in Appendix B and below, Reclamation has determined that the Proposed Project and the proposed Rosemont Mine are not connected actions under NEPA."
"Presently, use of the CWC water delivery system is not identified in Rosemont's mine plan of operation (MPO) under consideration by the Coronado National Forest."

From Reclamation's Draft Environmental Assessment, Section 2.3 Proposed Action:

- "CWC has agreed to give Rosemont priority for use of CWC's 2,858 AFY of CAP water for the first 15 to 20 years of the system's operation unless it is needed by CWC. Under the Preferred Alternative, this water would be recharged at the proposed recharge site, along with additional water supplies Rosemont may obtain to utilize the maximum recharge capacity of 5,000 AFY at the site."

From Reclamation's Draft Environmental Assessment, Project Financing, p.16:

- "The Agreement between CWC and Rosemont has not been finalized, and thus Reclamation and CAWCD have not been able to review any portion of the Agreement."

2. SUMMARY OF FACTS DERIVED FROM THE EXCERPTS

- ARC and CWC jointly completed a plan for construction of a CAP Water Delivery System and Recharge Facility on June 18, 2007, which was incorporated into the Letter of Intent between them and which is the Proposed Project currently under review by the Reclamation.
- ARC and CWC are "Development Partners." The Proposed Project is managed by the WDS Project Team consisting of members of both ARC and CWC reporting to and acting under the direction of their respective companies.
- ARC's Rosemont Mine Plan of Operation was dated and submitted to the Coronado National Forest ("CNF") July 11, 2007.
- The ARC/CWC plan for constructing a CAP water delivery pipeline and recharge facility was completed a month prior to ARC's completion and submission of its Rosemont Mine Plan of Operation to the CNF.
- The ARC/CWC plan could easily have been incorporated by name into ARC's Rosemont Mine Plan of Operation's recharge plan, but as a conscious decision by ARC it was not.

J-1

J-2

Comment Letter J continued

J-2

6. Reclamation's determination that ARC's Proposed Rosemont Mine and the Proposed Project are not connected actions under NEPA was based in part on the observation that ARC's use of the Proposed Project's water delivery system is not specifically identified by name in ARC's Rosemont Mine Plan of Operation.
7. The availability of a suitable CAP water delivery pipeline and recharge facility is critical to the implementation of the recharge plan in ARC's Rosemont Mine Plan of Operation.
8. The maximum capacity of the Proposed Project's recharge facility is 5,000 acre-feet per year—exactly equal to ARC's annual recharge commitment.
9. Without Reclamation's approval of the Proposed Project, ARC's CAP water contract with the Pima Mine Road Recharge Facility will not be sufficient to meet ARC's commitment to recharge 105,000 acre-feet of water over the lifetime of the proposed Rosemont Mine.
10. The final "Agreement Relating to Extension of Water Distribution Facilities" that would provide ARC funding for the Proposed Project has not been executed by ARC and CWC to date, nor has a binding agreement for project funding been executed by CWC and any other entity to date. Funding for the Proposed Project, therefore, remains uncertain.

3. CONCLUSIONS SUPPORTED BY THE FACTS

J-3

1. ARC knowingly and inappropriately withheld full disclosure in its Rosemont Mine Plan of Operation that its Recharge Plan and the Proposed Project are in fact one and the same, and it did so intentionally to avoid the unwanted consequences of a correct determination by the CNF and Reclamation that ARC's proposed Rosemont Mine and the Proposed Project are connected actions under NEPA.
2. ARC and CWC, through the WDS Project Team, are Development Partners in the Proposed Project. ARC is not simply an independent funding entity but a central participant in the design, construction, management and operation of the proposed facility. Thus, ARC's proposed Rosemont Mine is directly connected and integral to the Proposed Project.
3. That the maximum capacity of the Proposed Project's recharge facility is 5,000 acre-feet per year—exactly equal to ARC's annual recharge commitment—cannot be a coincidence.
4. The availability to ARC of a suitable pipeline and recharge facility is critical to the implementation of its Recharge Plan. Without approval of the Proposed Project, ARC will not be able to implement the CAP Recharge Plan in its Rosemont Mine Plan of Operation. Absent a viable recharge plan, CNF's approval of ARC's Rosemont Mine Plan of Operation is unlikely. Therefore, approval of ARC's proposed Rosemont Mine is in fact dependent upon Reclamation's approval of the Proposed Project.
5. Neither ARC nor any other entities to date have entered into a binding agreement with CWC to fund the Proposed Project. Absent a binding final agreement between ARC and CWC that guarantees funds for project design and construction costs, funding for the Proposed Project is uncertain and Reclamation's approval of the Proposed Project is unlikely. Therefore, approval of the Proposed Project is in fact dependent upon approval of ARC's proposed Rosemont Mine.

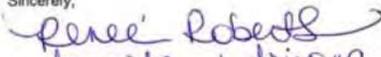
4. RECOMMENDATIONS

J-4

ARC's and CWC's own words and actions make the case that ARC's Proposed Rosemont Mine and the CAP Water Delivery System and Recharge Facility proposed by CWC are in fact connected actions. Therefore, the Bureau of Reclamation must (a) reverse its decision to the contrary, (b) communicate its decision to the Coronado National Forest that ARC's Proposed Rosemont Mine and the Proposed Project are connected actions under NEPA, (c) jointly with the Coronado National Forest, expand/convert the pending environmental assessment to a full, combined environmental impact statement for both ARC's Proposed Rosemont Copper Project and the Proposed Project, and (d) upon completion of the above, expand the scoping period to permit a full review and comment by the public, particularly in Green Valley and Sahuarita.

Thank you for the opportunity to comment on this important public matter.

Sincerely,


Renee Roberts
Janita, Arizona

Response to Comment Letter J:

J-1. Please see response to Comment A-1.

J-2. Please see response to Comment A-2.

J-3. Please see response to Comment A-3.

J-4. Please see response to Comment A-5.