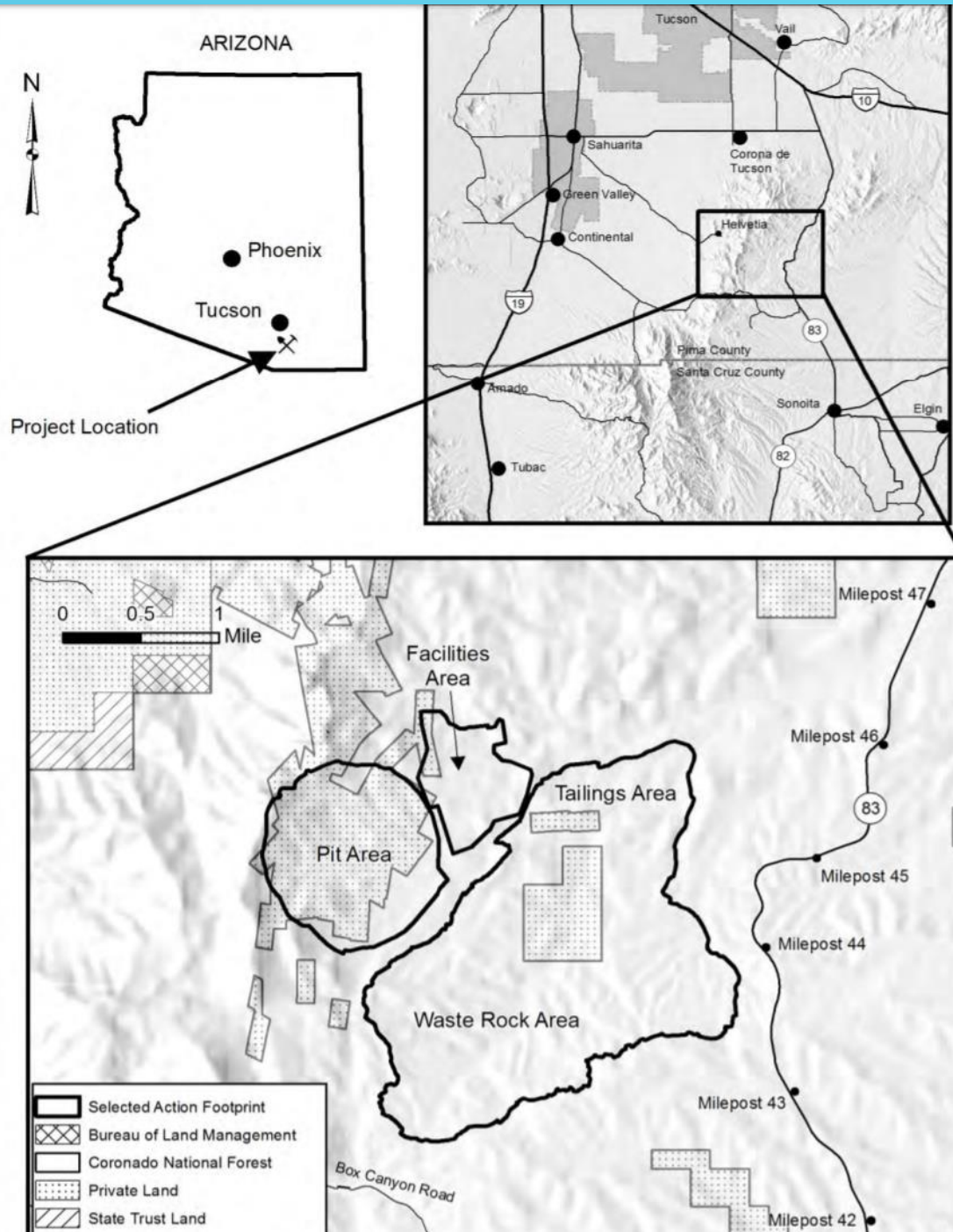


ROSEMONT MINE LITIGATION RECENT DECISIONS

Harlan Agnew, Esq. – WESTCAS Emeritus

Ed Curley – WESTCAS Emeritus



- 30 miles southeast of Tucson
- 1,000 acres private, 4,000 acres National Forest unpatented mining claims
- Main features - open pit mine, processing plant, waste rock and tailings, utility corridor and access roads
- Copper, molybdenum, and silver
- Mine life of 25-30 years including reclamation and closure
- Permitting process 2006-2019, followed by lawsuits that have halted the project
- So why is this project a big deal?



Mine Site



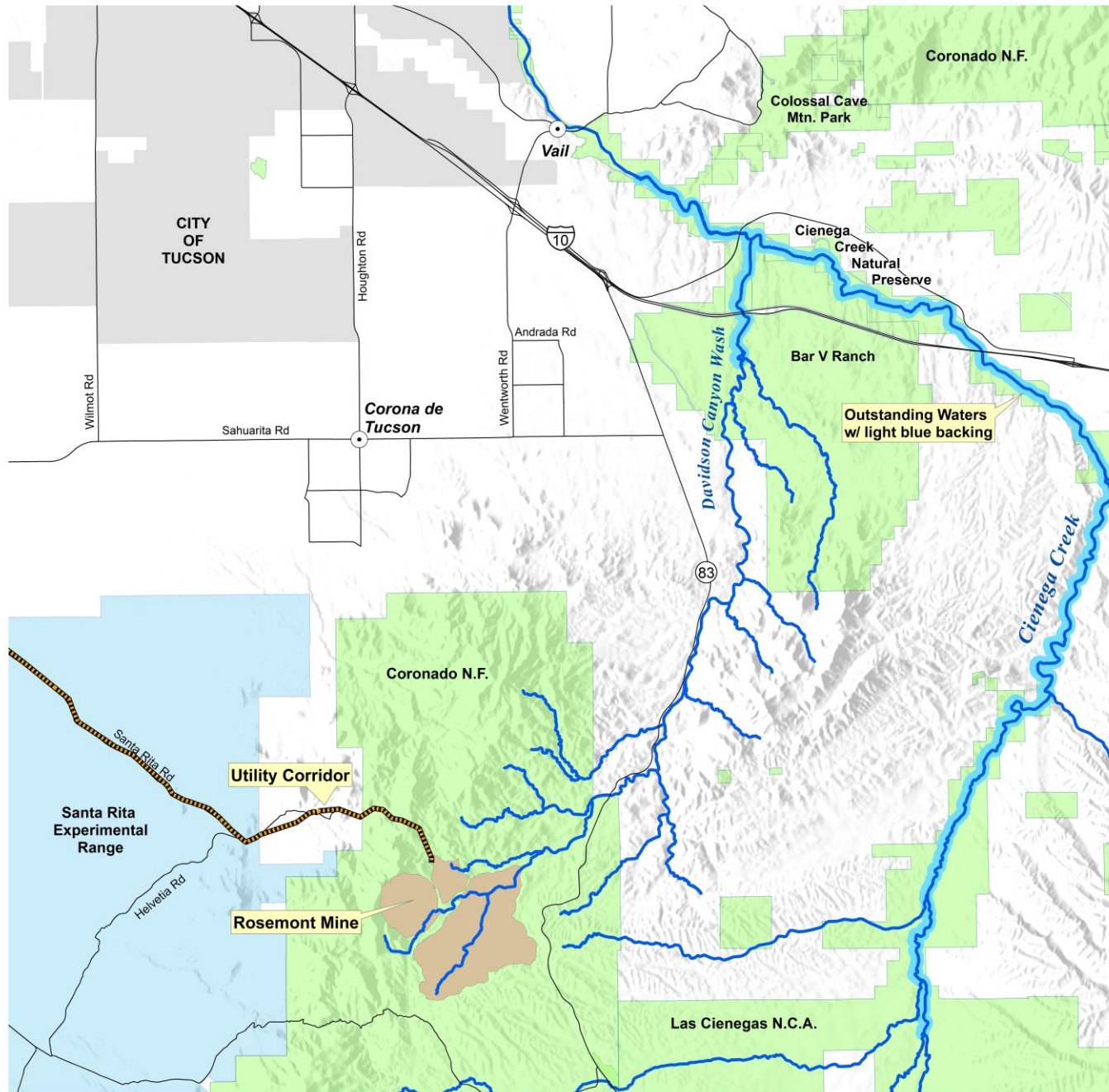
East



South



Northeast



Water, water water.

- Upstream of Tucson and Vail, which get 20% of their water from this watershed.
- Upstream of Davidson Canyon and Cienega Creek, 2 of only 22 Outstanding Arizona Waters in the State designated because of their high water quality supporting exceptional plants and wildlife, to have “the highest levels of protection from pollution and degradation of water quality”.

THE BATTLE FOR THE SCENIC SANTA RITAS: RECENT DEVELOPMENTS

Harlan Agnew, Esq.

5 LAW SUITS

The United States District Court for The District of Arizona consolidated suits.

1. In CV 17-475-TUC-JAS (“Case 1”), the Center for Biological Diversity (“CBD”) filed suit against the US Fish and Wildlife Service (“FWS”) and the Forest Service.
2. In CV 17-576-TUC-JAS (“Case 2”), Save the Scenic Santa Ritas, Arizona Mining Reform Coalition, Center for Biological Diversity, and the Grand Canyon Chapter of the Sierra Club (collectively “SSSR”) filed suit against the United State, the Forest Service and several supervisory officials of the Forest Service.

5 LAW SUITS


The United State District Court for The District of Arizona consolidated suits.

3. In CV 18-189-TUC-JAS (“Case 3”), the Tohono O’odham Nation, Pascua Yaqui Tribe, and Hope Tribe (collectively “Tribes”) filed suit against the Forest Service, The US Secretary of Agriculture, and several supervisory officials of the Forest Service.
4. In CV 19-177-TUC-JAS, Save the Scenic Santa Ritas, Center for Biological Diversity, Arizona Mining Reform Coalition, and the Grand Canyon Chapter of the Sierra Club (collectively “SSSR”) filed suit against the US Army Corps of Engineers (“Corps”) and a US Army Brigadier General with the Corps.
5. In CV 19-205-TUC-JAS the Tohono O’odham Nation, Pascua Yaqui Tribe, and Hope Tribe (collectively “Tribes”) filed suit against the same Defendants in Case 4


Each of these suits have different parties and different causes of action. All are about Rosemont.

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TIME LINE

- The US Forest Service gave final approval of ROD and FEIS
 - Corps of Engineers issued 404 Permit in March
 - This gave Rosemont the OK to start ground disturbing activities on August 1, 2019.
 - Preliminary Injunction motions briefed by second week of July – over 1,000 pages.
 - Court order July 31, 2019
- 
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Honorable James A. Soto issued a 37 page opinion

- Part one: Overview of litigation
 - Part two: Summary of the dispositive issues in case 2 and 3
 - Part three: Detailed analysis of dispositive issues
 - Conclusion
- 
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PART THREE: DETAILED ANALYSIS OF DISPOSITIVE ISSUES

1. Patented and Unpatented Mining Claims, the Location of Minerals, and the Administrative Process with the Forest Service Leading to Approval of the Mine.
2. Relevant Statutory and Regulatory law
 - Administrative Procedure Act
 - NEPA
 - Mining Law of 1872
 - Discovery and location
 - Unpatented and Patented Claims
 - Forest Service Mining Claims and Special Use Restrictions

PART THREE: DETAILED ANALYSIS OF DISPOSITIVE ISSUES

3. Discussion of the Dispositive Errors made by the Forest Service
 - A. The Forest Service abdicated its duty to protect the Coronado National Forest from depredation and preserve the Forest from destruction when it failed to consider whether Rosemont held valid unpatented mining claims.
 - B. The Forest Service implemented the wrong regulations, misinformed the public and failed to adequately consider reasonable alternatives.
- 
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CONCLUSION

Throughout the administrative process, the Forest Service improperly misapplied: (1) Rosemont's right to surface use; (2) the regulatory framework in which the Forest Service needed to analyze these surface rights; and (3) to what extent the Forest Service could regulate activities upon Forest Service land in association with those surface rights. These defects pervaded throughout the FEIS and ROD, and led to an inherently flawed analysis from the inception of the proposed Rosemont Mine. The Court grants summary judgement in favor of SSSR and the Tribes in Cases 2 and 3, vacates and remands the Forest Service's FEIS and ROD, and denies Defendants' cross motions for summary judgement in cases 2 and 3. See 5 U.S.C. § 706 (2)(A) ("[t]he reviewing court shall hold unlawful and set aside" unlawful agency actions. The Clerk of the Court shall enter judgment.

In light of this Order, there are no exigent circumstances necessitate emergency injunctive relief; as such, all of Plaintiffs' motions seeking a preliminary injunction in Consolidated Cases A and B are denied without prejudice.

Dated this 31st day of July, 2019

Honorable James A. Soto
United States District Judge

It's not over yet.

ROSEMONT COPPER COMPANY'S RULE 59 MOTION TO
ALTER OR AMEND THE JUDGMENT


Oral Argument Requested

Appeal to 9th Circuit

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The Solution is NOT in Court

Need for LEGISLATION

- Honorable James A. Soto United States District Judge
 - US Representative Raul Grijalva
 - Amend the 1872 Mining Law
- 
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Army Corps suspends 404 Permit

Because the Corps relied on FEIS, it is in the public interest to suspend the 404 Permit.

Brigadier General Peter Helmlinger

Commander of the Corps Northwestern Division

