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# MEMORANDUM

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Date: December 4, 2008

To: The Honorable Ray Carroll, Member  
Pima County Board of Supervisors

From: C.H. Huckelberry  
County Administrator 

Re: Your December 1, 2008 Memorandum Regarding the Arizona/California Portland Mineral Leases on State Trust Land Within Davidson Canyon

I can understand how you are confused regarding the role of Pima County in this matter. It is a complicated issue. Perhaps a review of some of the facts may be of assistance in understanding the County's insignificant regulatory role. These facts are:

1. The state mineral lease in question for Arizona/California Portland had expired and the state was under no obligation to renew the lease after expiration.
2. The mineral lease is a combination lease to the State Trust and to the federal Bureau of Land Management as a portion of the underlying mineral lease of the State Trust land is owned by the federal government through the Bureau of Land Management.
3. The County, with the assistance of area residents, protested the state reconsideration of granting the mineral lease to Arizona/California Portland.
  - In December 2004, the State Land Department requested comments from the County on the renewal of Arizona/California Portland mineral leases in Davidson Canyon. The County submitted comments opposing the renewal of the leases due to the impact mining could have on significant public investments in conservation properties downstream of the proposed mine and impacts on surrounding landowners, among other key points. The County continued to oppose the renewal of these leases through letters to the State Land Department and the Governor, Board adopted resolutions, and meetings with State Land Department officials.
  - In June 2006, the County, in response to a request from the State Land Commissioner, provided the Land Department with several conditions to include in the renewal of the mineral leases, while at the same time reiterating the County's outright opposition to issuing the leases.
  - On November 22, 2006, in response to a court order stating that the State Land Commissioner must make a decision on whether to issue the leases or not, the Land Commissioner issued a Decision and Order, No. 134-2006/2007, granting Arizona/California Portland the mineral leases. The Order did include some of the conditions proposed by the County.

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- On December 21, 2006, the County initiated an administrative appeal of the State Land Commissioner's November 22, 2006, Decision and Order by filing a Notice of Appeal with the Land Department. By letter dated January 16, 2007, the State Land Commissioner rejected the County's administrative appeal.
  - Thereafter, on February 16, 2007, the County filed a complaint in Maricopa County Superior Court to challenge the Commissioner's decision to issue the leases.
4. To attempt to resolve County concerns, a mining reclamation plan was produced by the proposed lessee and a number of conditions were imposed on the lease. Our review of these conditions and the mining reclamation plan is where you have confused our issuance of a floodplain use permit versus comments on lease conditions and the mining reclamation plan. Our comments are straightforward and call into question the adequacy of the conditions as well as the plan, but our comments are not binding and are only taken into consideration by the state or federal governments when issuing the mineral lease.

Regarding your specific comments:

1. The issuance of a floodplain use permit, as I indicated previously, is a routine action based on an applicant submitting information regarding the activity requiring a permit; in this particular case, Arizona/California Portland submitted information similar to all other applicants and met our conditions. Hence, once the ordinance requirement is met the County is legally bound to issue a permit. We did that. The confusion over the date of issuance is simply that, confusion, and does not alter or validate the issuance of the permit. Regarding the riparian areas, the ordinance contains a threshold disturbance area. The applicant was below the threshold disturbance area, requiring mitigation.
2. The United States Army Corps of Engineers was contacted regarding this matter. They are the federal agency with primacy over administration of the Section 404 Clean Water Act, which applies to this case. Furthermore, the Arizona Department of Environmental Quality was also notified as they have primacy in the area of stormwater discharges if they arise out of the property uses.
3. With respect to the staff report from Planning, signed by Arlan Colton, please note the date on the report and its title. It relates specifically to a mining and reclamation plan submitted by Arizona/California Portland to the Bureau of Land Management. The County provided these review comments by a letter from my office dated April 30, 2007, as evidence of our view of the inadequacy of the plan. Our comments are only advisory to the Bureau of Land Management and carry no regulatory weight.
4. Traffic analyses can do little to predict the impacts of mining equipment on emergency vehicles, school buses or general transportation. Such an analysis would be of little benefit, particularly when there is no itemization of the mining equipment that may utilize public highways.

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5. Anyone who applies for a floodplain use permit in Pima County must follow the same ordinance rules and regulations enacted by the Board. Hence, issuance of this floodplain use permit to cross Davidson Canyon will have no precedent of the issuance of a future floodplain use permit in Pima County.

In summary, the proposed mining operation by Arizona/California Portland will be an aesthetic and environmental disaster for pristine Davidson Canyon. However, the action has been approved by the state with possible federal approval pending on the federal lease component of the proposal. The authority to effect, regulate and control the mining operation and activity lies with the State Land Department and the Bureau of Land Management, not Pima County. Current Arizona state law regarding state mineral leases is wholly inadequate with regard to public notice and the imposition of real and effective mining mitigation measures. Reform in this area is needed, as was requested by the County by letters dated February 12, 2008 to State Representatives Jonathan Paton and Marian McClure, and Senator Tim Bee.

CHH/jj

c: The Honorable Chairman and Members, Pima County Board of Supervisors