

F. ANN RODRIGUEZ, RECORDER
Recorded By: JAF
DEPUTY RECORDER
4920

SAHUA
TOWN OF SAHUARITA
375 W SAHUARITA CENTER WAY
SAHUARITA AZ 85629



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Town Clerk Department

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APPROVED
Town of Sahuarita
Department of Law
Town of Sahuarita Contract No. CO13-0029

TOWN OF SAHUARITA LICENSE

FOR RIGHT-OF-WAY ENCROACHMENT

THIS LICENSE FOR RIGHT-OF-WAY ENCROACHMENT (this "License" or "Agreement") is made as of this 24 day of June, 2013 (the "Effective Date") between the Town of Sahuarita, a political subdivision of the State of Arizona, ("Town"), and Rosemont Copper Company, an Arizona corporation, ("Licensee") (each a "Party" and collectively the "Parties"). The parties agree as follows:

1. Grant of Permission. In consideration of the covenants and agreements contained herein and Licensee's payment of any applicable License fee, Town hereby grants to Licensee a non-exclusive License, giving Licensee permission, revocable and terminable as provided herein, to encroach on portions of Town's right-of-way for the purpose of construction, installation, operation, maintenance and repair of a water delivery pipeline and related facilities, (the "Encroachment"), on, over, under, across and through that portion of South Santa Rita Road located within Sections 18 and 19, Township 17 South, Range 14 East, running from Licensee's Sanrita West well site to the southernmost point of South Santa Rita Road located within the Town limits, as more specifically described and depicted on the attached Exhibit "A" which is incorporated herein by reference, and as further described in the design plans for the Encroachment to be submitted by the Licensee, and once acceptable, approved by the Town (the "Approved Design Plans"). The foregoing right-of-way area described on Exhibit "A" attached hereto with the location of the Encroachment is hereinafter referred to as the "License Area".
2. Prohibited Use. Installation or construction of a groundwater extraction well or wells or a monitoring well or wells within the License Area, either above ground or below ground, are expressly prohibited.
3. Privilege Assignable. Licensee's privileges hereunder are assignable only upon the prior written approval of Town which approval will not be unreasonably withheld, conditioned or delayed. The Town's written approval subjects assignee to the same benefits and requirements as Licensee.
4. Indemnity and Hold Harmless. All costs associated with the Encroachment shall be the sole responsibility and expense of Licensee. Licensee assumes responsibility and liability for any injury or damage to the License Area or to any person while using the License Area caused by or arising out of the exercise of this License. To the fullest extent

allowed by law, Licensee shall indemnify, defend, and hold harmless Town, its elected officials, officers, departments, employees, and agents for, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, or damages of any kind or nature arising out of this License, which are attributed, in whole or in part to Licensee's use of the License Area, or to any act or omission of the Licensee, its agents, employees, or anyone acting under its direction, control or on its behalf, whether intentional or negligent in connection with or incidental to this License. Licensee's responsibilities shall not extend to the negligence or willful misconduct of the Town, its elected officials, officers, departments, employees and agents. The indemnity and hold harmless covenants of this Paragraph 4 shall survive the termination or revocation of the License, provided however, that any successor in interest to the License shall become successor in interest to the requirements of this paragraph 4 and Licensee's obligations and responsibilities hereunder shall terminate at the time the assignment, as approved by the Town, is completed.

5. Insurance. Prior to construction, Licensee shall, at Licensee's sole cost, obtain a \$5,000,000 commercial general liability insurance policy naming the Town as Additional Insured to cover the Encroachment within the License Area. Town reserves the right to require additional insurance at Town's sole discretion. The policy shall be maintained throughout the term of this License by the Licensee or Licensee's assignees. This License shall automatically terminate if insurance lapses. A certificate of insurance shall be supplied to the Town Manager on an annual basis with the stipulation that the insurance company shall notify Town in writing of any intent to cancel the insurance policy. This notification to the Town shall be required no less than thirty days prior to cancellation of the insurance policy and shall be provided to the Town Manager. Licensee shall remove the Encroachment at its expense and to the satisfaction of the Town prior to cancellation of the insurance policy.
6. Annual License Fee. Licensee shall pay a License fee to Town in the amount of \$6,465 on or before the execution of this License and annually on each anniversary of the Effective Date of this License, as consideration for Licensee's use of the License Area.
7. Dust Mitigation. Subject to Licensee obtaining all applicable permits and approvals from the Arizona State Land Department, Pima County, the University of Arizona, and any and all other necessary regulatory agencies and property owners, and at no cost to the Town, Licensee agrees to prepare and implement a dust management program for the period that Licensee, any applicable utility and their respective contractors are constructing the water pipeline facilities, the transmission power lines and the distribution power lines between Rosemont's water production well locations (the "Rosemont Wells") and the Rosemont mine. Licensee shall also, at Licensee's sole cost, implement dust control within the Town's Santa Rita Road right of way during construction of the Encroachment in compliance with Town requirements. In addition, Licensee agrees to work in good faith to organize and work with a committee of stakeholders, including the Arizona State Land Department, the Arizona Department of Environmental Quality, Pima County, the University of Arizona and the Town of Sahuarita, to prepare long term dust management proposals for Santa Rita Road and prepare an evaluation of the dust management alternatives as well as a qualitative assessment of the likely costs and benefits of each of those alternatives. Through this committee, Licensee and the

stakeholders will consider each dust management proposal and determine which, if any, may be acceptable and address sources of funding for the implementation of the dust management alternatives selected.

8. Recharge Obligation. Licensee agrees that it shall recharge, with Central Arizona Project water and within the drawdown area depicted on Exhibit B attached hereto and by this reference incorporated herein (the "Recharge Area"), a minimum of 105% of the amount of water withdrawn by Licensee from the Rosemont Wells as depicted on Exhibit "C" hereto and incorporated herein. Licensee's obligation to recharge to the Recharge Area shall remain in effect until the termination of this Agreement. Annually the Licensee shall provide the Town with reports and documents which show the amount of water withdrawn and the amount of water recharged as required in this Agreement. The parties agree that the recharge and reporting obligations of this Paragraph 8 are material terms of this Agreement and a breach of such terms by Licensee may be enforced by the Town through a cause of action at law or in equity.
9. Licensee Protection of Town Wells. Town maintains certain water wells within the Town limits, namely ADWR Well Registration Nos. 55-611142 (the "Town Production Well"), 55-905437, 55-907965 and 55-907993 (the "Town Monitor Wells") (the Town Production Well and the Town Monitor Wells hereinafter collectively referred to as the "Town Wells" or individually as a "Town Well"). The Rosemont Wells are in a range of proximity to the Town Wells such that production of water from the Rosemont Wells may cause some localized decline in water levels in the vicinity of the Town Wells affecting their operation. Licensee agrees to hold Town harmless from adverse effect of production of water in the Rosemont Wells causing interference to Town Wells, including, as necessary, the repair, replacement, or deepening of Town Wells impacted by drawdown from pumping from the Rosemont Wells. Any adverse impact to Town Wells shall be determined by the Town based on factors that include, but shall not be limited to, decrease in water levels, interference with wells, pumps, delivery and storage systems and other infrastructure related to the Town's withdrawal of water. For purposes of this License, a decrease in water level related to the Town Production Well shall mean a decline in the static water level of said Well of 50 feet beyond normal seasonal fluctuation. A decrease in water level related to the Town Monitor Wells shall mean a decline in the static water level of any of the Town Monitor Wells that may result in sampling and/or reporting noncompliance under the Town's Aquifer Protection Permit No. P-103602 (the "APP"). In the event Rosemont disagrees with the Town's determination of adverse impact it may request a meeting with the Town Manager within 30 days of the Town's determination to present technical evidence that supports its position that the Rosemont Wells did not impact the Town Wells. The Town Manager shall make a final decision on Rosemont's request within 30 days of the meeting. The Town Manager's decision will be final and non-appealable, unless challenged on the grounds that it is arbitrary, capricious or an abuse of discretion. In addition to the indemnity provisions in Paragraph 4 of this License, Licensee shall indemnify, defend, and hold harmless Town, its elected officials, officers, departments, employees, and agents for, from and against any and all suits, actions, legal or administrative proceedings, penalties, fines, claims, demands, or damages of any kind or nature in connection with the Town Wells including any sampling and/or reporting noncompliance under the Town's APP proximately caused by a decline in the static water level of any of

the Town Monitor Wells due to Rosemont activities in producing water from the Rosemont Wells. The indemnity and hold harmless covenants of this Paragraph 9 shall survive the termination or revocation of the License. In addition, Licensee shall provide to Town a water pump warranty program for the Town Wells, providing that in the event of pump failure, due other than to the gross neglect of Town in maintaining the Town Wells, Licensee shall repair or replace the water production pump and the pump column pipe, any electrical equipment directly connected to and functioning as the power source for the pump, the pump motor, the cable within the well bore, the column pipe, and the above ground items such as the sanitary seal (if disturbed by the repair). Licensee may elect to provide the pump warranty coverage through a third party reputable warranty provider, or may undertake to provide such warranty itself. The obligations of this Paragraph 9 shall commence upon actual production of water (other than small quantities for hydrologic testing) from the Rosemont Wells and shall continue throughout the term of this License and shall apply only to the Town Wells listed herein and one fully constructed and equipped replacement well provided under this Paragraph 9 per individual well of the Town Wells. The location of each replacement well shall be approved by the Town and each replacement well shall be constructed and equipped at no cost to the Town and in accordance with Town requirements and Town-approved plans (each, a "Replacement Well"). Each Replacement Well shall be afforded the same protections granted the Town Wells under the provisions of this Paragraph 9 (Licensee Protection of Town Wells). Following Town acceptance and approval of a Replacement Well, Town agrees to abandon the original Town Well replaced by such Replacement Well in accordance with applicable regulatory requirements and upon abandonment Licensee shall have no further obligations as to the abandoned well under the terms of this Agreement. Licensee shall monitor the water levels in the vicinity of the Rosemont Wells, and shall make that information available to Town upon reasonable request. Town shall allow reasonable inspection and testing of Town Wells by Licensee upon claim of failure in Town Wells.

10. Permits. This License is not a right-of-way use permit. Following the granting of this License by Town, Licensee shall obtain all applicable permits, which may include a Right-of-Way Use Permit, a Town Use Permit, Building Permit or Floodplain Use Permit. Licensee shall construct the proposed Encroachment in accordance with the Approved Design Plans.
11. Compliance With Highway Safety. Construction of the Encroachment shall not interfere with the safety of the traveling public or the authorized public use of right-of-way, and may not otherwise interfere with the general health, safety and welfare of the citizens of the Town of Sahuarita. Once constructed, the Encroachment shall be operated, maintained and repaired by Licensee, at Licensee's sole cost, so as not to interfere with the safe sight distance or safe travel along the right-of-way.
12. Term. This License shall run for a period of 25 years from the Effective Date (the "Term"). Subject to the provisions of Paragraph 5 (Insurance) of this Agreement, this License may be terminated by either party or revoked by Town upon one years' written notice to the other. Town may terminate or revoke by recording a termination or revocation statement.

13. Underground Facilities. If Encroachment includes any underground facilities, Licensee shall maintain a membership with Arizona Blue Stake, Inc., or its successors or assigns, throughout the term of this License.
14. Licensee Has No Interest or Estate. Licensee agrees that it has no claim, interest, or estate at any time in the License Area by virtue of this License or its use hereunder. Upon the expiration, termination or revocation of this License, Licensee shall have no right of entry upon the License Area.
15. Removal of Encroachment. Subject to the provisions of Paragraph 5 (Insurance) of this Agreement, upon the expiration, termination or revocation of this License for any reason or in the event partial or total removal of the Encroachment is required by Town, Licensee shall promptly remove all or part of the Encroachment as required by Town at Licensee's sole expense and to the satisfaction of Town within 180 days of the expiration, termination or revocation date of this License. Licensee shall restore the License Area to the pre-License Area condition or as may be mutually agreed upon by the parties in writing. Licensee shall not seek compensation or financial reimbursement for any and all costs associated with the removal or relocation of the Encroachment from the Town. In the event the Encroachment is not promptly removed by Licensee as directed by Town, Town shall have the right, but not the obligation, to remove the Encroachment and Licensee hereby agrees to reimburse the total amount of Town's actual costs incurred for the partial or complete removal of the Encroachment within 60 days of receipt of an invoice from Town for said costs. In the event Licensee fails to reimburse Town for the costs of Encroachment removal within the 60 day period, Town shall be entitled to bring legal action against Licensee for collection of the costs, and Town shall be entitled to Town's reasonable attorney's fees and interest at the rate established by A.R.S. § 44-1201(A), occurring from the date the costs are incurred. Notwithstanding the foregoing, Licensee hereby grants to Town a right of first refusal to acquire title to the Encroachment from Licensee located with the License Area.
16. Time of Essence and Merger; Counterpart Signatures. Time is of the essence of this Agreement. This Agreement, which may be executed in counterpart, constitutes the entire agreement between the parties hereto pertaining to the subject matters of this Agreement. All prior contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein, and this Agreement constitutes full satisfaction of all claims and liabilities that exist, whether known or unknown, on or before the effective date of this Agreement, between the parties.
17. Records and Audit Rights. Licensee's and its contractors' and subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to the construction of the segment of the Encroachment located within the License area under this Agreement, including the papers of Licensee and its contractors' and subcontractors' employees who perform any work or services pursuant to this Agreement to ensure that the Licensee and its contractors and subcontractors are complying with the provisions of Paragraphs 18 (E-verify Requirements) and 19 (Scrutinized Business Operations) referenced below (all the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the Town. To the extent necessary for the

Town to audit Records as set forth in this subsection, Licensee and its contractors and subcontractors hereby waive any rights to keep such Records confidential. The Town shall have access to said Records, even if located at subcontractors' facilities, from the Effective Date of this Agreement for the duration of the work and until 3 years after the date of final payment. Licensee and its contractors and subcontractors shall provide the Town with adequate and appropriate workspace so that the Town can conduct audits in compliance with the provisions of this Paragraph. The Town shall give Licensee or its contractors and/or subcontractors reasonable advance notice of intended audits. Licensee shall require its contractors and subcontractors to comply with the provisions of this Paragraph by insertion of the requirements hereof in any contract pursuant to this Agreement.

18. E-verify Requirements. To the extent applicable under A.R.S. § 41-4401, Licensee and its contractors and subcontractors warrant compliance with all federal immigration laws and regulations that relate to its employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). Licensee or its contractor's and subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of the Agreement by the Town.
19. Scrutinized Business Operations. Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, Licensee certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this subsection the term "scrutinized business operations" shall have the meanings set forth in A.R.S. § 35-391 or § 35-393, as applicable. If the Town determines that Licensee submitted a false certification, the Town may impose remedies as provided by law including terminating the Agreement.
20. Amendment. Any amendment to this Agreement shall be in writing and signed by the parties.
21. No Third Party Beneficiary. This Agreement shall not create any third party beneficiary rights to any person or entity who is not a party to this Agreement, including any lender to the Licensee, unless expressly provided to the contrary in this Agreement (and then only to the extent so provided).
22. Conflict of Interest. This Agreement is subject to A.R.S. §38-511 which provides for cancellation of contracts by the Town for certain conflicts of interest.
23. Payment of Town's Attorney Fees. Promptly after the Town submits invoices to Licensee, Licensee agrees to pay the Town for the Town's costs and expenses incurred in connection with the negotiation and preparation of this Agreement and any amendment thereto.
24. Default and Remedies. In the event Town alleges Licensee is in default under any provision of this Agreement, Licensee shall not be deemed in default until Licensee fails to perform or comply with any provision of this License and such failure continues for 60 days after the receipt of written notice of default from Town; provided, however, that with respect to any such failure which is of such nature that although curable, it cannot, with due diligence and adequate resources, be cured within 60 days, a default shall not be deemed to exist if Licensee commences curing such failure within the 60 day period and

thereafter proceeds with reasonable diligence and action to complete curing such failure, but in no event more than 12 months from the date of the written notice.

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IN WITNESS WHEREOF, the parties hereto have executed this License to be effective as of the Effective Date herein.

LICENSEE:

ROSEMONT COPPER COMPANY, an Arizona corporation

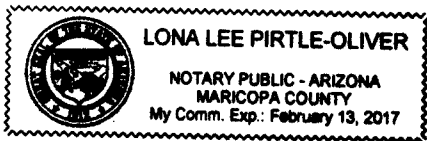
By: Jamie Sturgess

Title: Senior Vice President

Date: 29 May 2013

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me this 29th day of May 2013, by Jamie Sturgess, as Senior Vice President of ROSEMONT COPPER COMPANY, an Arizona corporation (Licensee).



Lona Pirtle-Oliver
Notary Public

TOWN OF SAHUARITA, ARIZONA

Duane Blumberg
Mayor Duane Blumberg

6-24-2013
Date

ATTEST:

Vicky Miel
Vicky Miel, MMC
Town Clerk



APPROVED AS TO FORM:

Daniel J. Hochuli
Daniel J. Hochuli
Town Attorney

EXHIBIT "A"

[Description and Depiction of License Area with Encroachment]

See following pages.

EXHIBIT A**35-Foot Encroachment****LEGAL DESCRIPTION**

Description of a strip of land thirty-five (35) feet in width, being the Easterly thirty-five feet of the Santa Rita Road right-of-way, as established in Pima County Road Proceedings No. 132. Said land is situated in portions of the Northwest Quarter of Section 17, the East Half of Section 18 and the Northeast Quarter of Section 19, all in Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona.

Said strip of land is more particularly described as lying 17.5 feet on each side of the following described centerline:

Commencing at the Northwest Quarter of said Section 17, marked by a found 3" Arizona Highways Department disk, from which the West Quarter Corner of said Section, marked by found a 2-inch iron pipe, bears South 01°44'32" East a distance of 2647.80 feet;

Thence along the west line of said Section, being also the centerline of Santa Rita Road per said Road proceedings, South 01°44'32" East a distance of 1671.57 feet;

Thence departing said centerline, North 88°15'28" East, a distance of 22.50 feet to the **POINT OF BEGINNING** situated 17.5 feet Westerly from the East right-of-way line of said Santa Rita Road, said point also lying on the Westerly prolongation of the North property line of that certain property described in Docket 12993, Page 5277;

Thereafter following a line 17.5 feet parallel to said East right-of-way line, for the following courses:

Thence South 01°44'32" East a distance of 784.41 feet;

Thence along a tangent curve to the right with a radius of 612.24 feet, a central angle of 15°34'48" (the chord of which bears South 06°02'52" West, a distance of 165.97 feet) for an arc length of 166.48 feet to a point on the West line of said Section 17, from which the West Quarter Corner of said Section bears South 01°44'32" East a distance of 27.39 feet;

Thence continuing along said curve, through a central angle of 18°34'39" for an arc length of 198.51 feet;

Thence South 32°24'55" West, a distance of 297.54 feet;

Thence, along a tangent curve to the left with a radius of 1137.76 feet, a central angle of 14°50'23" (the chord of which bears South 24°59'44" West, a distance of 293.86 feet) for an arc length of 294.86 feet;

Thence South 17°34'32" West, a distance of 241.56 feet;

Thence, along a tangent curve to the left with a radius of 3722.76 feet, a central angle of $03^{\circ}17'26''$ (the chord of which bears South $15^{\circ}55'49''$ West, a distance of 213.78 feet) for an arc length of 213.81 feet;

Thence South $14^{\circ}17'06''$ West, a distance of 1580.57 feet to a point on the South line of said Section 18, from which a found GLO brass cap marking the Southeast corner of said Section bears South $89^{\circ}40'57''$ East a distance of 964.15 feet;

Thence continuing South $14^{\circ}17'06''$ West, a distance of 147.63 feet;

Thence, along a tangent curve to the left with a radius of 512.76 feet, a central angle of $32^{\circ}48'14''$ (the chord of which bears South $02^{\circ}07'01''$ East, a distance of 289.58 feet) for an arc length of 293.57 feet;

Thence South $18^{\circ}31'08''$ East, a distance of 90.44 feet;

Thence along a tangent curve to the right with a radius of 2285.99 feet, a central angle of $06^{\circ}37'42''$ (the chord of which bears South $15^{\circ}12'17''$ East, a distance of 264.31 feet) for an arc length of 264.45 feet;

Thence, along a reverse curve to the left with a radius of 597.76 feet, a central angle of $43^{\circ}56'24''$ (the chord of which bears South $33^{\circ}51'39''$ East, a distance of 447.27 feet) for an arc length of 458.42 feet;

Thence South $55^{\circ}49'51''$ East, a distance of 65.01 feet;

Thence, along a tangent curve to the left with a radius of 6747.76 feet, a central angle of $02^{\circ}15'55''$ (the chord of which bears South $56^{\circ}57'48''$ East, a distance of 266.77 feet) for an arc length of 266.79 feet to a point on the South line of the Northeast Quarter of the Northeast Quarter of said Section 19, said point being the **POINT OF TERMINATION** of the herein described centerline.

Said strip of land contains 4.31 acres of land, more or less.

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Exhibit A
Town of Sahuarita
35' Encroachment into
Right-of-Way for Water Line

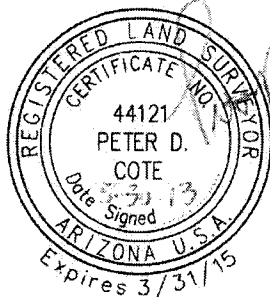
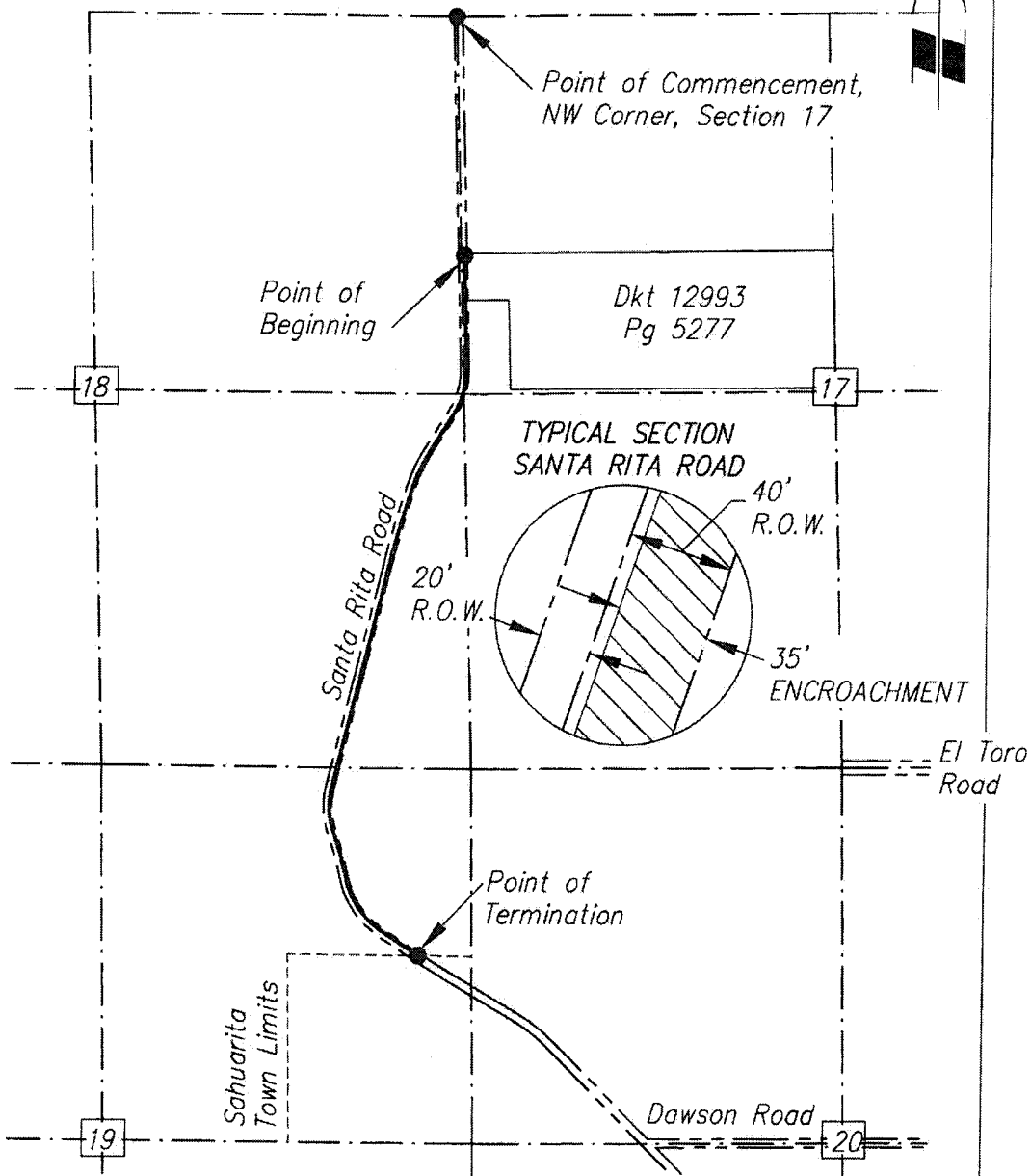


EXHIBIT "B"

[Depiction of Recharge Area]

See following page.



NORTH
N.T.S.

EXHIBIT B

**RECHARGE
AREA**

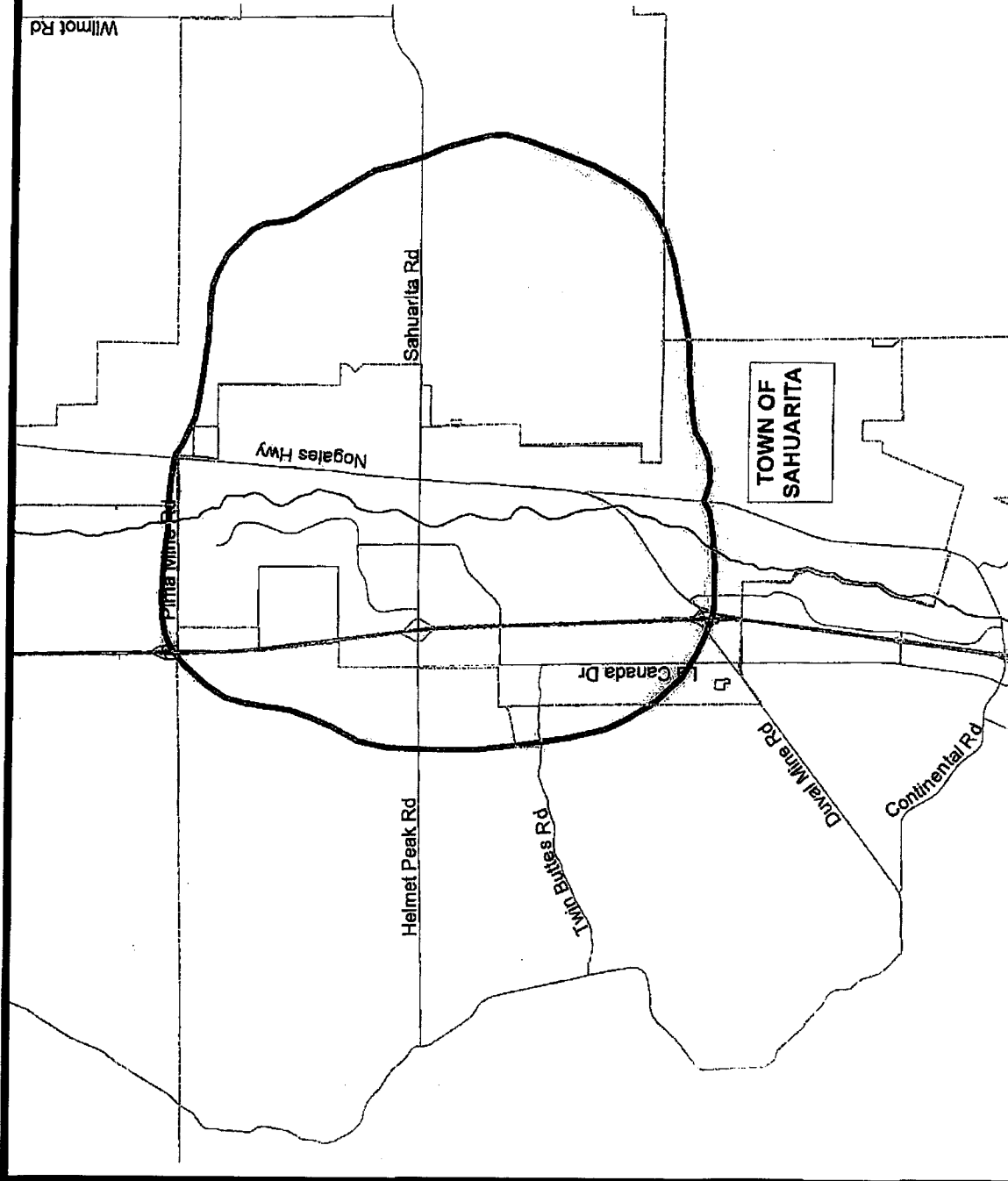
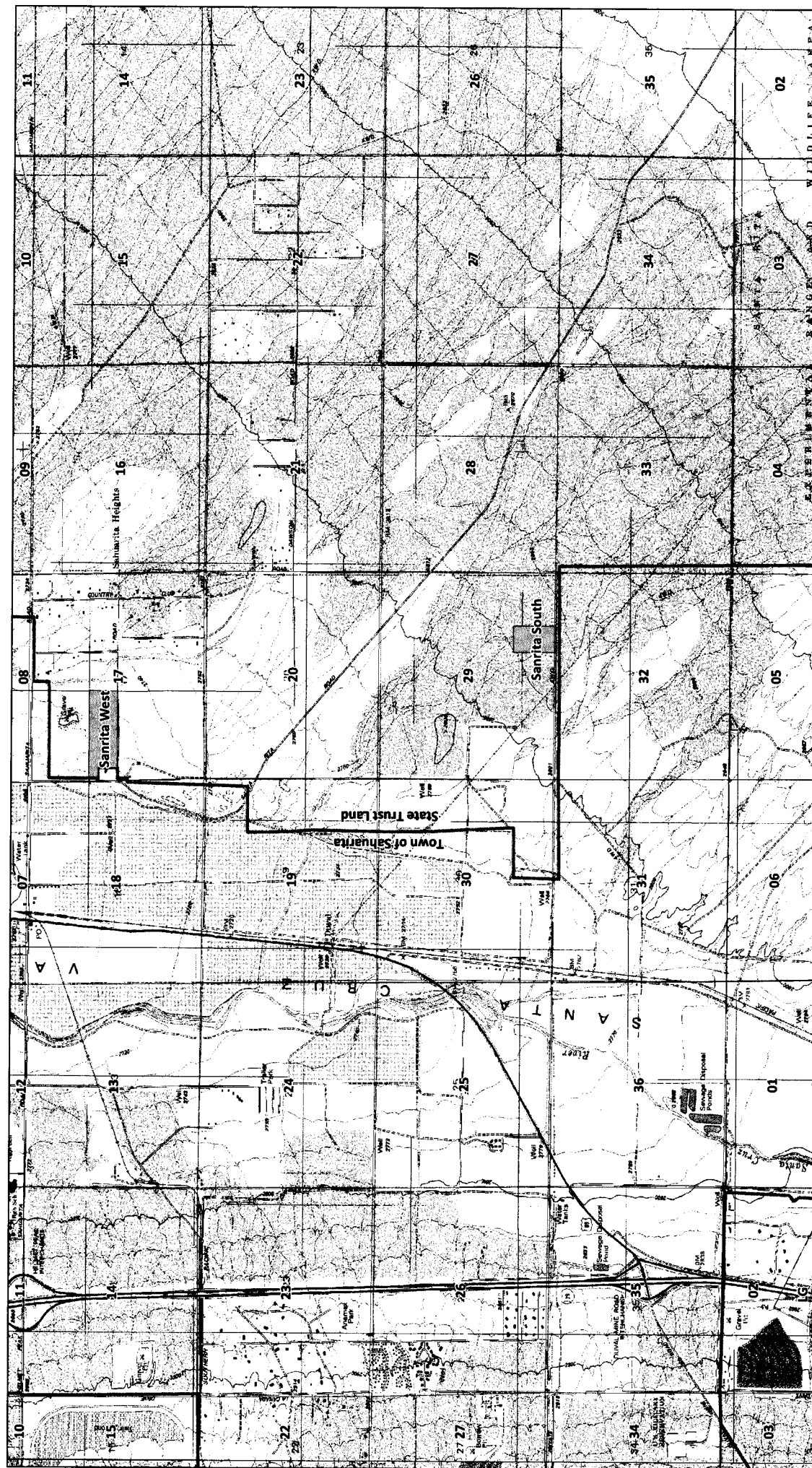


EXHIBIT "C"

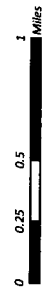
[Rosemont Wells]

See following page.



- Legend**
- Well Locations
 - Town Boundary
 - Public Land Survey System Grid

1 inch = 0.5 miles



Well Locations
Figure 1

