

STATE OF NEW MEXICO  
BEFORE THE SECRETARY OF ENVIRONMENT



IN THE MATTER OF THE APPLICATION  
OF NEW MEXICO COPPER CORPORATION FOR  
A GROUND WATER DISCHARGE PERMIT FOR  
THE COPPER FLAT MINE, DP-1840

NO. GWB 18-06 (P)

FINAL ORDER

This matter comes before the Secretary of Environment following a hearing before a Hearing Officer over five days from September 24-28, 2018, in Truth or Consequences, New Mexico.

New Mexico Copper Corporation seeks a discharge permit for the Copper Flat Mine facility, specifically for the planned discharge of up to 25,264,000 gallons per day of tailings slurry, which includes mine tailings, process water, impacted stormwater, and domestic wastewater to a lined tailing impoundment. Additionally, the discharge permit would regulate discharges from other mine units, including waste rock stockpiles, ore stockpiles, mineral processing units, process water impoundments, an open pit, sumps, tanks, pipelines, and other areas within the permit boundary of approximately 2,190 acres. The Copper Flat Mine is located approximately five miles northeast of Hillsboro, in Sierra County, New Mexico.

The New Mexico Environment Department Ground Water Bureau supports the issuance of the permit with conditions necessary to protect public health and welfare and the environment.

Having considered the administrative record in its entirety, including all post-hearing submittals and the Hearing Officer's Report; and being otherwise fully advised regarding this matter, the Ranches' request for oral argument is denied; and

THE SECRETARY HEREBY ADOPTS THE HEARING OFFICER'S REPORT AND PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW, WITH THE CORRECTIONS AND ADDITIONS BELOW:

Corrections

1. On page 7 of the Hearing Officer's Report, in paragraph 1, the date written as "20011" is corrected to "2011."
2. In the Proposed Findings of Fact and Conclusions of Law, Finding 415 correctly reflected the Bureau's written testimony for the hearing, but the language in the draft discharge permit has subsequently changed. The word "leach" is struck from Finding 415.
3. Proposed Conclusion of Law 58 is restated to quote the entire rule cited:  
"The secretary shall approve a discharge permit provided that it poses neither a hazard to public health nor undue risk to property, and:
  - (1) the requirements of the copper mine rule are met;
  - (2) the provisions of 20.6.2.3109 NMAC are met, with the exception of Subsection C of 20.6.2.3109 NMAC; and
  - (3) the denial of an application for a discharge permit is not required pursuant to Subsection E of Section 74-6-5 NMSA 1978. 20.6.7.10.J NMAC."

### Additional Findings and Conclusions

4. The phrase “undue risk to property” as used in the Copper Rule pertains to potential impacts to water quality from the permitted discharges, not to the depletion of groundwater.
5. DP-1840 only regulates discharges of water at the mine site; DP-1840 does not allocate water for use at the mine site, or permit the pumping of groundwater.
6. The granting of any right to pump groundwater, and the consideration of whether others’ water rights may thereby be adversely affected, is a matter solely within the jurisdiction of the New Mexico Office of the State Engineer.
7. The andesite bedrock has been adequately evaluated.
8. The evaluation of leakage from the Tailings Storage Facility has been adequately determined consistent with industry standard and accepted guidance.
9. The groundwater monitoring well network required in DP-1840 is appropriate, and in the event future data suggests that additional monitoring wells would be advisable, the Bureau is already authorized to require them.
10. The Applicant’s financial assurance proposal was preliminary and, consistent with applicable law and guidance, remains the subject of multi-agency negotiation with the Applicant. This Secretary does not make a decision on the adequacy of the amount of proposed financial assurance as part of the

Final Order on the discharge permit, and does not find either substantive inadequacy or procedural defect.

11. The future pit lake at Copper Flat will not be a surface water of the state subject to the water quality standards in 20.6.4 NMAC.
12. A review by NMED of the ultimate OSE classification of the Tailings Storage Facility dam is not required or appropriate as part of the issuance of DP-1840. The discharge permit condition that the Applicant document that a dam permit has been obtained before any activities occur at the Tailings Storage Facility is sufficient.
13. Based on the totality of expert witness testimony in this matter, and weighing more heavily the testimony of those experts who based their conclusions on site-specific modeling and analysis, and addressed scientific likelihoods rather than speculation, the discharges from permitted mine operations will not cause undue risk to the property of the Ranches, or Elephant Butte Irrigation District, or anyone else.
14. DP-1840 poses neither a hazard to public health nor undue risk to property.
15. The requirements of the Copper Rule are met with the issuance of DP-1840.
16. The provisions of 20.6.2.3109 NMAC are met, with the exception of Subsection C of 20.6.2.3109 NMAC.
17. The denial of an application for a discharge permit is not required pursuant to Subsection E of Section 74-6-5 NMSA 1978.

IT IS THEREFORE ORDERED:

New Mexico Copper Corporation's application for the discharge permit is granted, and DP-1840 shall be issued by the Ground Water Bureau in the form set forth in the final revised Draft Permit dated 11-16-18 and attached to the Bureau's post-hearing submittal.



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BUTCH TONGATE, Secretary of Environment

NOTICE OF RIGHT TO REVIEW

Pursuant to NMSA 1978, Section 74-6-5.O, any person who participated in this permitting action and who is adversely affected by the action may file a petition for review by the Water Quality Control Commission, c/o Pam Castaneda, 1190 St. Francis Drive, Suite 2100 S, Santa Fe, New Mexico 87502. The petition shall be made in writing to the Commission within thirty days from the date notice is given of this action; shall include a statement of the issues to be raised and the relief sought; and shall be provided to all other persons submitting evidence, data, views or arguments in the proceeding.