

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)

**NEW MEXICO ENVIRONMENT DEPARTMENT GROUND WATER BUREAU'S
COMMENTS ON HEARING OFFICER'S REPORT**

Pursuant to Section 20.1.4.500.C(2) NMAC, the New Mexico Environment Department Ground Water Quality Bureau (NMED) provides the following comments on the Hearing Officer's Report (Report) filed in this matter on December 3, 2018. The comments below refer to the Discussion section of the Report, found on pages 6-31. The Bureau supports the adoption of the Proposed Findings of Fact and Conclusions of Law as written in the Report.

1. **Undue Risk to Property.** Although a water right is a property right, as stated in the Report, the phrase "undue risk to property" as used in the Copper Rule does not refer to undue risk from groundwater depletion. DP-1840, issued pursuant to the Copper Rule, is solely a permit to discharge water contaminants. It does not allocate water for use at the mine, and does not permit the pumping of groundwater. Issuance of the Discharge Permit by itself cannot and will not cause depletion of groundwater. Water rights and the ability to use water for beneficial use falls solely under the jurisdiction of the New Mexico Office of the State Engineer. Therefore, the issue of undue risk to property as it relates to groundwater depletion is not a consideration for approval of DP-1840. As undue risk to property pertains to potential for impacts to water quality, testimony at the hearing established that the mine, if constructed and operated according to the

Discharge Permit, is not expected to cause exceedances of Section 3103 groundwater quality standards on any of the surrounding properties.

2. **Evaluation of the Andesite.** There is no need for a condition in the Discharge Permit requiring further evaluation of the andesite. As explained in the Report, there were many more sources of data in addition to the “3 data points from 2 borings” that contributed to the conclusions regarding andesite conductivity. “Shomaker reached this conclusion in 1993 based on local geology, mine workings, hand-dug wells and mine shafts, and dewatering efforts within the andesite. In 1996, another consultant, Adrian Brown, did the slug tests Mr. Finch had described in his direct testimony. Other consultants reached the same analysis independently” in 1997, 2011, and 2012. Finch, Tr. pp. 1606-1607, Finch Rebuttal slide, marked as NMCC 108.

3. **Adequacy of Groundwater Monitoring.** Testimony during the hearing established that the monitoring well network is adequate as proposed. The number and location of the monitoring wells proposed in the Discharge Permit are sufficient, particularly for the initial stages of the project. As time goes on and the project progresses, NMED will continue to evaluate monitoring data, and, as may be warranted by the data, may require additional wells at any time. However, requiring additional wells at this time would be premature, as the specific locations for any additional wells, if needed, can be better determined after the initial wells are drilled and factors such as groundwater flow gradients and lithography are more precisely determined.

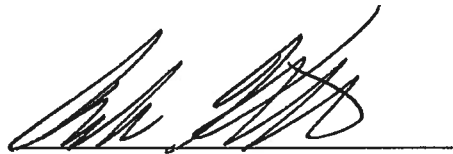
4. **Adequacy of Financial Assurance Proposal.** The Mining and Minerals Division (MMD) cannot issue a mining act permit until NMED issues a determination that the mine, if constructed and operated in compliance with the permit, will comply with all applicable environmental laws

and regulations (the “determination”). Based on the testimony of Mr. Vollbrecht, NMED will not issue this determination until the financial assurance has been agreed upon by the federal Bureau of Land Management, NMED, and MMD, and provided to MMD.

5. **Typographical Correction.** On Page 7 of the Hearing Officer’s Report, there is a typo regarding the date “20011”; it should be 2011. See Finch Rebuttal slide, marked as NMCC Exhibit 108.

Respectfully Submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT

A handwritten signature in black ink, appearing to read 'Andrew P. Knight', is written over a horizontal line.

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CERTIFICATE OF SERVICE

The following persons were served electronically with a copy of the foregoing:

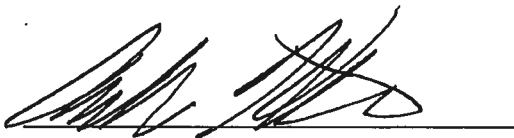
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A handwritten signature in black ink, appearing to be 'Pam Castaneda', is written over a horizontal line.