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October 13, 2020

David Otori, Senior Reclamation Specialist
Mining Act Reclamation Program
Mining and Minerals Division
New Mexico Energy, Minerals and Natural Resources
Department
Via email: dohori@state.nm.us

RE: Tererro Exploration Project, Comexico, LLC, Applicant
Permit No. SF040ER,

Dear Mr. Otori:

The Upper Pecos Watershed Association has reviewed your letter to Comexico LLC, dated April 27, 2020, regarding Comexico's application for an exploration permit under New Mexico Mining Act, NMSA 1978 section 69-36-13. We have also reviewed the Comexico response to your letter, dated August 25, 2020. We appreciate that you have posted this correspondence on the Mining and Minerals Division website.

We would like to comment on the Comexico response. Our comments are as follows:

1. In its response (page 1), Comexico asks for a change to the "operating duration from less than one calendar year to up to three years." Yet the Santa Fe National Forest (SFNF) scoping letter on this project dated December 2, 2019 (page 2) states that "All operations and reclamation will occur within one year of the start date." Further, §19.10.4.405.A.(1) NMAC states that "A permit to conduct exploration and reclamation

PO Box 140
Pecos, NM 87552
(505) 757-3600
upwa@pecoswatershed.org
www.pecoswatershed.org



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operations shall be valid for a period of not more than one year from the date of issuance.” If Comexico seeks to continue its exploration activities for more than one year, it would need to renew the permit annually, at a minimum, as provided in §19.10.4.405.C NMAC. Comexico seems to recognize this requirement as noted in its August 25 response.

2. In its response (page 1), Comexico asks for the “removal of seasonal restrictions which currently limit Comexico to an operating period from October through February.” However, endangered Mexican spotted owls are known to breed and nest in the area. The noise and vibration caused by the drilling operation, if it were conducted during the breeding season, would “harass” and “harm” spotted owls resulting in a taking of the owls in violation of the Endangered Species Act, 42 U.S.C. §1538(a)(1). Consequently, in its scoping letter (page 4), SFNF states “Drilling will be prohibited during the Mexican spotted owl breeding season.” We believe that the limited drilling period should be adhered to.
3. In its response (page 2), Comexico proposes to use lined mud pits for the exploration project. One of the components of the waste drilling mud is bentonite. Bentonite can contain respirable crystalline silica, a known carcinogen. Bentonite also inhibits the attachment of trout roe, which would sterilize the important trout habitat of not only Indian Creek, but the Pecos River if the waste mud is leaked from the possible sixty (60) mud pits placed at the project site. SFNF’s scoping report states (page 4), appropriately, that Comexico’s Proposed Plan would be modified to provide that “Drilling waste ‘mud’ would be placed in surface tanks and removed from the project site to a state-approved disposal site, not put in



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lined pits on each drill site as proposed by Comexico.” We agree with this modification.

We appreciate your consideration of these comments in your evaluation of this exploration project. If you have any questions or require any further information, please do not hesitate to contact us.

Regards,

Lela McFerrin, Vice President
Upper Pecos Watershed Association

cc: Senator Liz Stefanics
liz.stefanics@nmlegis.gov
Charles de Saillan, NMELC
cdesaillan@nmelc.org
Kurt Vollbrecht, NMED
kurt.vollbrecht@state.nm.us
Matthew Wunder, NMDG&F
matthew.wunder@state.nm.us
Jose Larranage, Santa Fe County
joselarra@santafecountynm.gov
Steve Romero, SFNF
sfromero@fs.fed.us
Larry Gore, SFNF
larry.gore@usda.gov

PO Box 140
Pecos, NM 87552
(505) 757-3600
upwa@pecoswatershed.org
www.pecoswatershed.org



UPPER PECOS WATERSHED ASSOCIATION

78 S. Main Street
POB 140
Pecos, NM 87552
505.757.3600
upwa@pecoswatershed.org

October 13, 2020

By First Class and Electronic Mail

Mr. Douglas Crosby
Acting District 6 Manager
Office of the State Engineer
Water Rights Division
130 South Capitol Street
Concha Ortiz y Pino Building
Post Office Box 25102
Santa Fe, New Mexico 87504-5102

Re: Status of Production Well in Santa Fe National Forest
OSE File No. UP-826

Dear Mr. Crosby:

We write to express our concern about the status of a production well in the Upper Pecos Watershed, OSE file number UP-826. Last year, the Office of the State Engineer (OSE) issued a permit for use of the well to the United States Department of Agriculture (USDA). The purpose of use of the well is livestock watering. We understand, however, that the USDA is not in compliance with the conditions of the water use permit. This non-compliance needs to be corrected.

To be clear, our concern with this well stems from its planned future use for mineral exploration possibly leading to full-scale mining operations in the Upper Pecos Watershed. We understand that the USDA intends eventually to transfer the water rights associated with this well to Comexico LLC for use in prospecting and mining. On June 3, 2019, Comexico LLC applied to the Mining and Minerals Division of the New Mexico Energy, Minerals and Natural Resources Department for a permit under the New Mexico Mining Act¹ to drill up to 30 exploratory borings into the underlying mineral deposits near Jones Hill in the Upper Pecos Watershed, on Santa Fe National Forest property. Eventually, depending on the results of the exploration project, Comexico may propose a full-scale mining operation in the area. We object to mining operations in the Upper Pecos Watershed for aesthetic, recreational, environmental,

¹ NMSA 1978, § 69-36-1 to 69-36-20.

and economic reasons. The old Tererro Mine, which operated in the area in the 1930s, left behind a legacy of waste rock dumps, mill tailings, disturbed land, acid rock drainage, surface water and groundwater contamination, and fish kills. Because of this groundwater contamination, the OSE has issued an order prohibiting any new appropriation of groundwater, including new wells, replacement wells, and supplemental wells, and prohibiting changes in points of diversion, within the "Pecos Mine operable unit" near the Tererro Mine in San Miguel County.²

According to records available in the OSE District 6 files, OSE initially permitted the well (No. UP-826) in 1981 to Conoco, Inc. for temporary use for prospecting, mining, or developing mineral resources. The permit was valid for one year. Conoco drilled the well in 1981. In 1982, Conoco, submitted an application for a water rights permit for an additional year of water use from UP-826 for prospecting and mining purposes. The OSE initially denied the application, stating, "This application is denied for the reason that only one permit may be granted to appropriate water for the purpose of drilling a series of mine drill holes in a project as provided in Section 72-12-1 N.M.S.A. 1978." OSE subsequently set aside the denial and granted Conoco another temporary permit. Over the next ten years, through 1992, OSE issued temporary permits for well UP-826 to Santa Fe Mining, Inc., Santa Fe Pacific Mining, Inc., and Santa Fe Pacific, Inc. Each permit was for prospecting and mining and valid for one year. OSE issued a temporary permit to Santa Fe Pacific in 1992, which was valid for one year and expired in 1993. The well apparently was not permitted between 1993 and 2009.

On September 5, 2019, the USDA, on behalf of the U.S. Forest Service, submitted an application to OSE to use the well for watering livestock.³ The USDA stated in the application that "the Santa Fe National Forest has been using the well for several years now for the purposes of stock watering (cattle) and would like to obtain the water right in the name of the USDA." This use, apparently, was not permitted.

On September 11, 2019, the OSE approved the permit application, subject to several conditions. One condition states that the well must be equipped with a totalized flow meter, and that flow data must be collected quarterly and submitted to OSE. OSE sent USDA a simple form that USDA could complete and return to document installation of the flow meter. Based on our discussion with Mr. Diego Anaya of your office, the form has not been returned, a flow meter apparently has not been installed on the well, and no flow data has been submitted.

Another condition – stated several times – is that diversions from the well must not exceed 3.000 acre-feet per year. Without a flow meter installed and operating, it is impossible to determine whether this condition has been complied with.

A third condition provides that the permit is subject to cancellation for non-compliance with the conditions of approval.

² *In Re: New Ground Water Appropriations and Applications to Transfer Water Rights to Existing Ground Water Wells in a Certain Area of San Miguel County within the Upper Pecos Underground Basin*, State Engineer Order (Jan. 28, 2019).

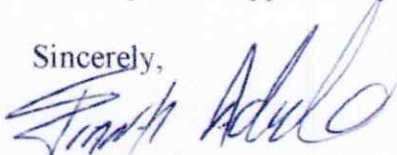
³ NMSA 1978, § 72-12-1.2.

We are quite perturbed by USDA's apparent non-compliance with the express conditions of the well permit. We urge OSE either to cancel the permit for non-compliance with the conditions of approval, or to ensure that those conditions are met. If the permit remains in effect, USDA must install a flow meter in the well, submit a completed water meter information form to OSE, submit flow data to OSE quarterly, divert no more than the maximum 3.000 acre-feet of water per year, and comply with all other applicable conditions of the permit.

Please keep the Upper Pecos Watershed Association informed of any future developments on this matter. The Association phone number is (505) 757-3050.

We very much appreciate your consideration of our concerns.

Sincerely,



Frank Adelo

President

Upper Pecos Watershed Association



Charles de Saillan

Staff Attorney

New Mexico Environmental Law Center

Counsel for the Upper Pecos Watershed Association

cc: Mr. Diego Anaya, OSE District 6
Mr. Brian Gallegos, OSE
Mr. John T. Romero, PE, WRAP Director, OSE
Mr. James Melonas, SFNF
Mr. Jerry Schoeppner, Director, Mining & Minerals Division, EMNRD



Northern New Mexico Group
Rio Grande Chapter
1807 Second Street, Suite 45
Santa Fe, NM 87505
505-983-2703

October 9, 2020

David Ohori
Senior Reclamation Specialist
Wendell Chino Building, Third Floor
1220 South St. Francis Drive
Santa Fe, NM 87505

Submitted via email to EMNRD.MMD2@state.nm.us

Cc: Holland Shepherd

RE: MMD response to Comexico on exploratory drilling application

Dear Mr. Ohori:

Thank you for the detailed comments and explanation of requirements sent by Mining & Minerals Division (MMD) to Comexico, Inc. earlier this year in response to their application to drill exploratory wells in Santa Fe National Forest. The many unanswered questions on the application were carefully addressed by both MMD's response and those letters from other state and county entities tasked with compliance related to mining on public lands.

We appreciate the Division's commitment to safeguarding New Mexico's resources and people from potentially harmful industrial extraction practices, but we remain extremely concerned that a) Comexico has been unable to provide adequate financial estimates or assurance to cover predicted reclamation costs re: damage to roads, erodible slopes, contaminated streams, and area dependent wildlife, b) Comexico plans to construct on-site mud pits to contain drilling waste instead of removal to a proper disposal site, and c) key mitigation and restoration practices and costs are left unspecified or will be answered in the future.

Comexico needs to provide specific answers to all the questions asked by MMD and the other permitting bodies before the application moves ahead. Many of Comexico's responses are based upon assumptions that information (and funding) will be available in the future,

rather than on current assets that show the company is able to fund operations at the required mitigation level, and restoration costs following completion.



Future Mitigation Concerns

Of particular concern to our members who are long-time residents in the town of Pecos or who outdoor recreate routinely in both the Santa Fe National Forest area above and in the Pecos River Canyon, is the fear of another (1990) flood event where high precipitation caused the overflow of the old Tererro Mine waste ponds into the Pecos River that killed aquatic life and contaminated the river to a “superfund” level. The estimated \$36 million needed to reclaim the river, mine and mill site was the beginning of what this clean up legacy continues to cost the state of New Mexico in current maintenance, monitoring and control of leached contaminants.

The five Pecos Canyon watersheds that will be potentially impacted by Comexico’s drilling activity are critical tributaries that feed this section of the Pecos River, which is the major surface water resource in eastern New Mexico. Shortchanging the quality of the

Pecos River and the economic potential for outdoor recreation has been publicly opposed by top state government leaders from Governor Michelle Lujan Grisham, the NM Congressional Delegation, county officials who enforce the Santa Fe Mining Ordinance and (in process) San Miguel Mining Ordinance, to thousands of individual residents and dozens of watershed, conservation, recreational and legal organizations.

In terms of future impact on the local economy of Pecos, the numbers are hard to find but from fishing alone: (2013) anglers spent over \$28 million in San Miguel County, which

contributed to 333 local jobs, \$11 million in labor income, and more than \$2 million in local and state taxes. These figures are not current, but reflect the level of future outdoor recreation potential in this area.

Concern about a future contaminated Pecos River is understandably high and, keeping the water quality unimpaired is paramount for many supporters of the Outstanding Natural Resource Water (ONRW) petition.

Annual Permit Review

Although Comexico has asked for a permit for up to three years of exploratory activity from the Forest Service, their Comment Responses to MMD make it clear that:

Comexico is of the of the understanding that an approved MMD Regular Exploration Permit grants 12 months of operations and that in order to maintain full authorization to operate under an USFS-approved 3-year Plan of Operations and EA decision, Comexico would need to renew the MMD permit per NMAC 19.10.4.405 C., annually.

We strongly support MMD's annual permit review that would ensure that Comexico is not in violation of the specified terms of the permit. A renewal process would also allow for ongoing public input so members of the community and the counties of Santa Fe and San Miguel could raise concerns that may not be evident to federal or state agencies.

Future Support

The over three thousand northern members of the Rio Grande Chapter of Sierra Club are in support of the continuing efforts of the Santa Fe National Forest and MMD in requiring more stringent conditions of mine operation and higher levels of financial assurance and accountability for environmental damage and loss to the local economy.

The following examples from Comexico's *Comment Responses* show a lack of agreement on several areas highlighted by SFNF or MMD that require Comexico's acquiescence:

1. Comexico does not agree with the USFS' assessment that the proposed laydown area will require 1 acre (Figure 1, electronically attached) and instead proposes an area of 100 ft by 100 ft – this area is upon an area of existing disturbance.
2. Comexico had not originally proposed maintenance on the roads accessing the Tererro Exploration Project Jones Hill Camp area and so the original application did not include the Road Maintenance Area. Moving forward, Comexico will include the road maintenance in its total proposed disturbance calculation.
3. For existing roads within the project area that are not proposed for maintenance, Comexico has not proposed to install any erosion control measures. Comexico and the USFS have identified that these roads are currently able to support the limited daily pickup-truck and water truck traffic Comexico have proposed.
4. During the project site visit and meeting in August of 2019 Comexico noted that both USFS and New Mexico biologists recommended against reseeding of any disturbance as it tends to introduce non native plant species and weeds. Comexico understands that MMD prefers that

the disturbed areas are reseeded as part of reclamation and is still awaiting feedback from the USFS for an appropriate final seed mix.

5. Comexico will provide more detail on BMPs planned for operations and reclamation due to the presence of New Mexico recognized riparian and wetland areas. The Hydrological Resource Report will also be updated to reflect New Mexico's characterization of wetlands.
6. Comexico does not propose to construct portals, shafts, adits, or ponds. Comexico does not propose to reclaim the existing roads that are in the USFS road system. Comexico does not propose to reclaim the laydown area because it is an area of existing disturbance that is considered by Comexico to be a part of the existing road network utilized by the grazing permittee for cattle operations. Comexico will request the USFS provide feedback here.
7. Comexico were of the position that a construction general permit would be sufficient for the proposed exploration activities but will review the EPA's 2015 MSGP documents. There continues to be an unclear distinction between mining and exploration activities and the definitions do not typically remain consistent across different agencies or levels of government.

This sample of Comexico comments doesn't include a key area of local concern that has not been adequately addressed – industrial traffic. "Low volume" roads are difficult to characterize as low risk when tourist visits can drastically increase peak volumes and where there are increased risks of accidents when trucks are continually turning across oncoming traffic without a signal.

Low Volume Roads are defined therein as roads having an average daily traffic of less than 400 vehicles per day. Comexico has proposed daily access via pickup trucks. If two drill rigs are operating simultaneously then average daily traffic could approach 12 pickup truck passes at a given point along the proposed project area access.

For residents familiar with NM 63, regular truck traffic turning at the access point to the project site could create significant risk for accidents as there is no turn out, turn lane or signal to prepare drivers of an industrial project entrance.

We support the state's efforts to protect the people and environment in Pecos from potential impacts of the Comexico application to conduct exploratory drilling, and appreciate the chance to comment now and in the future.

Sincerely,



Teresa Seamster

Northern New Mexico Conservation Chair

505-466-8964

ctc.seamster@gmail.com

October 15, 2020

David Ohori
Senior Reclamation Specialist
Wendell Chino Building, Third Floor
1220 South St. Francis Drive
Santa Fe, NM 87505

Submitted via email to EMNRD.MMD2@state.nm.us

Cc: Holland Shepherd

Dear Mr. Ohori:

We appreciate Mining and Mineral Division's (MMD) commitment to protecting New Mexico's lands, resources, and people by ensuring adequate financial assurance. We were pleased to see that the comments sent to Comexico by MMD highlighted the many oversights and errors in Comexico's initial application, and we are confident that the division is analyzing Comexico's exploratory drilling application thoroughly. This letter serves to indicate the undersigned organizations' and individuals' continued interest and concern with this project, as well as a request that MMD continue to analyze all documents submitted by Comexico, New World Resources, or their contractors thoroughly and completely.

We encourage MMD to require clear and concrete answers to its comments. Many of Comexico's responses provide assumptions and intentions to provide details in the future. MMD is under no obligation to approve an exploration application without clear details, particularly when it has asked for those details. Simply put, MMD will not be able to provide an accurate estimate of the financial assurances required for this project without a complete application including clear and accurate details provided by Comexico regarding protection, mitigation, impact, and duration.

Comexico noted that it intends to apply and receive a permit for up to three years of exploratory activity from the Forest Service. We encourage MMD to require an annual renewal of any Regular Exploration Permit granted under this application. Annual renewal is a viable and efficient tool for the Division to ensure that Comexico is not working outside of the agreed upon area or beyond the agreed upon terms of operation. We request that any permit renewal process in the future undergo a similar public process which will allow the undersigned and additional members of the community to raise concerns that may not be provided by the company.

Comexico also noted in its response to comments that it intends to employ in-ground mud pits during operation, as opposed to surface tanks. We encourage MMD to require best management practices according with current science, including the use of surface tanks to better limit negative impacts to wildlife and humans and to limit the likelihood of precipitation events or other natural events that could lead to spillage, overflows, and otherwise cause surface water contamination in the area.

While not necessarily within the purview of MMD, we encourage the Division to voice its opposition to operations during the Mexican spotted owl breeding season. Comexico proposes to operate year round without seasonal pauses for MSO breeding without any clear indication of reasoning for this change. We are gravely concerned about the impacts of this exploratory drilling on the MSO generally, but particularly during the species' breeding season. As you know, this exploratory drilling project will require approvals from the Forest Service, MMD, and Santa Fe County and while we will certainly submit comments to all three entities we believe a comment from MMD regarding MSO protections will be incredibly persuasive to the Forest Service.

Sincerely,

Logan Glasenapp
Staff Attorney
New Mexico Wild
logan@nmwild.org

Ben Neary
Conservation Director
New Mexico Wildlife Federation
ben@nmwildlife.org

Joe Zupan
Executive Director
Amigos Bravos
jzupan@amigosbravos.org

Carol Johnson
Citizen of New Mexico
carolj@cybermesa.com

Jordan Smith
Executive Director
CAVU
jordan@cavu.org

Greg Peters
Conservation Voters of New Mexico
greg@cvmn.org

Derrick Toledo
Western Leaders Network
derrick@westernleaders.org

Michael Dax
New Mexico Representative
Defenders of Wildlife
mdax@defenders.org

Marc Choyt
Turquoise Trail Regional Alliance
reflective@cybermesa.com

Joseph Brophy Toledo
Cultural Advisor
Flowerhill Institute
facebroz@gmail.com

Paula Garcia
Executive Director
New Mexico Acequia Association
lamorena@lasacequias.org

Dan Roper
New Mexico Public Lands Coordinator
Trout Unlimited
Dan.Roper@tu.org

Henry Carey
Forest Trust
henry@forestreserve.com

Patricia Cardona
Citizen of New Mexico
patriciacardona24@yahoo.com

Charles de Saillan
Attorney
New Mexico Environmental Law Center
cdesaillan@nmelc.org

John Silver
Citizen of New Mexico
john@lapidesfoundation.org

Leia Barnett
Greater Gila Campaigner
WildEarthGuardians
lbarnett@wildearthguardians.org