



Tyrone Operations  
P.O. Box 571  
Tyrone, NM 88065

November 18, 2020

**Via Email**

**Certified Mail #9171999991703580009516**

**Return Receipt Requested**

Mr. David Ohori  
Energy, Minerals and Natural Resources Department  
Mining and Minerals Division  
Mining Act Reclamation Program  
1220 South St. Francis Drive  
Santa Fe, NM 87505

Dear Mr. Ohori:

**Re: Response to Public Meeting Comments on Tyrone Mine  
Updated Closeout Plan, Revision 09-1, Permit No. GR010RE**

Freeport-McMoRan Tyrone Inc. (Tyrone) submitted an update to the Tyrone Closure/Closeout Plan (CCP) which included an updated cost estimate on April 29, 2020. A virtual public meeting on the CCP was held on August 5, 2020 via WebEx. In a letter dated September 11, 2020, the Mining and Minerals Division (MMD) forwarded comments from Gila Resources Information Project (GRIP) to Tyrone. This letter is in response to GRIP's comment letter.

Below are Tyrone's responses to GRIP's cover letter.

**Progress on Closure/Closeout Plans**

Tyrone appreciates and acknowledges GRIP as having played an important role in achieving an agreement on the scope and cost estimating methodology to update financial assurance going forward. Tyrone also looks forward to getting the updated closure/closeout plan approved. Tyrone also appreciates that GRIP's comments were oriented toward future closure/closeout plan updates versus aimed at modifying the current plan.

### **Public Meeting**

- Tyrone appreciated the public meeting and noticed far more public participation than most meetings that the state has held in years. Everything Tyrone presented was a CCP topic and Tyrone felt that it is far better to provide an overview of the key elements of the CCP and then dedicate the majority of the time to answering specific questions that other parties have raised. In previous public meetings, GRIP presented last and the community was left with a desire to hear the Company's response but we didn't have that opportunity, so we tried something new by sharing presentations to give each party an opportunity to respond to one another. Tyrone did not take more than its allotted time. There were numerous community questions which took time to respond to. Tyrone is open to improving the process so that GRIP feels they have had sufficient time to provide their information and opinions to the community.
- Tyrone has an open-door policy and the public is encouraged to call Tyrone and ask additional questions. This was communicated during the public meeting. The public also has the opportunity to provide written and verbal comments to MMD directly.

### **Financial Assurance**

#### *Third-Party Guarantee*

As a publicly traded company, Freeport-McMoRan Inc. accounts for the reclamation obligations of its operating subsidiaries as asset retirement obligations, as required by Securities and Exchange Commission. These asset retirement obligations are subject to independent accounting review by Freeport-McMoRan's independent audit firm.

Nevertheless, financial assurance of reclamation obligations also is a key component under the Mining Act, and is intended to ensure that there will be funds available, should they be needed, for the state to implement reclamation at closure if Tyrone is unable to do so. Financial assurance covers not only the reclamation the state deems necessary under the Mining Act, but also water collection and treatment to meet requirements of the Water Quality Act and the Copper Mine Rule under the primary jurisdiction of the Environment Department. Tyrone has one of the most robust financial assurance plans in place among hardrock mining operations in the U.S. and includes a large trust fund that has grown to over \$57 million and continues to grow by reinvested earnings. Tyrone currently has approximately \$180M in FA.

The balance of Tyrone's financial assurance is covered by a combination of surety bonds, letter of credit, and collateral (approximately \$80M) required for portions of the mine on federal public lands and a corporate guarantee provided by Tyrone's parent company, Freeport Minerals Corporation. The Mining Act Rules allow for a third-party guarantee covering up to 75% of the total financial assurance amount, provided that the guarantor shows, on a quarterly basis, that it

meets strict financial capability requirements under the Mining Act Rules. Tyrone currently has less than 30% of its obligation insured by a Third-Party Guarantee. This showing is based upon stringent financial tests ensuring the guarantor's solvency, liquidity, and assets. These stringent tests have been in use in the U.S. for nearly 40 years, and there has not been an instance in New Mexico where a guarantee has failed, and it was necessary for the State to use public funds for reclamation costs covered by a guarantee.

Third-party guarantees, as allowed by the Mining Act and the Mining Act Rules, in combination with other forms of financial assurance, provide an effective financial assurance mechanism to ensure that funds will be available for future reclamation in the unlikely event of a default. The use of this mechanism is important to mining companies to provide financial flexibility and to avoid burdensome and unnecessary costs.

#### *Real Estate Collateral*

GRIP's August 31, 2020 comment letter raises a concern for the first time, so far as Tyrone is aware, about Tyrone's use of collateral property as part of its financial assurance securing the Tyrone Closure/Closeout Plan (CCP). Tyrone has used collateral property as part of securing reclamation and closure of the Tyrone Mine for approximately fifteen years. Despite acknowledging that Mining Commission's rules under the New Mexico Mining Act explicitly allow for the use of collateral as financial assurance, which has been the case since the regulations were first adopted in 1994, GRIP nonetheless now finds MMD's acceptance of ranch properties "questionable" due to the potential for value changes, the risk of liens, potential impacts of putting ranches on the market all at once, and uncertainties GRIP perceives about how the collateral property might be treated in a bankruptcy. As discussed in this response, all of GRIP's stated concerns and uncertainties have been accounted for and thoroughly addressed in processes established by the regulations as well as rigorous requirements MMD and NMED have imposed since the ranches were pledged to the State as collateral fifteen years ago and through frequent updates on annual and five-year bases during the intervening years.

#### *Collateral General Valuation Issues*

GRIP expresses concern about the potential for changes—presumably downward fluctuations—in ranch values. The ranches pledged by Tyrone were formally appraised by a reputable third-party appraiser when they were originally posted, and they have been newly appraised every five years since, pursuant to the requirements of the Part 19 regulations under the Mining Act. In addition, in the intervening years between formal appraisals, Tyrone has contracted for market analysis letters from an expert assessing the state of the market for large ranches in the counties of New Mexico where the ranches are situated. Throughout the fifteen years there has been a consistent pattern that remains to this day, which is that ranch values overall have steadily increased—in some cases significantly—in value and have not been subject to price fluctuations of concern that GRIP's comments speculate might be the case. Moreover, even in the

Mr. David Otori  
November 18, 2020  
Page 4

hypothetical event of any decreases in ranch values, additional financial assurance would have to be posted by Tyrone to address this situation.

### *Selling Ranches "At Once"*

GRIP's comments rest on false premises that all of the ranches securing reclamation and closure of the Tyrone Mine will have to be placed on the market all "at once," and that ranch values might be adversely impacted, thus jeopardizing the State's ability to fund reclamation and closure. The expense of reclamation and closure of the Tyrone Mine will of course not occur all at once, but it is assumed that the net present value of the reclamation cost, will be placed into investments. However, a flaw in GRIP's assumption is that there is nothing prohibiting the State to hold the collateral assets until it deems the market is right to sell the assets incrementally or at once. Although upon any forfeiture the State itself potentially will receive escrowed deeds to the ranches under the mortgage instruments that Tyrone and the State agreed would be used as the means of pledging the ranches to the State, no requirements of the mortgages, the escrow arrangements or of the Part 19 regulations themselves place an obligation on the State to attempt to sell the ranches all "at once," as assumed by GRIP. Real Estate (particularly farms and ranches) are a stable form of investment, and that portion of the financial assurance could be left in place to gain value and sold as needed or even when the real estate is at its highest value. That is what most wise investors would do, and under the circumstances there would be no compulsion for the State to sell if prices are low, nor to flood the ranch market with the ranches all at once.

The second flaw in the comments lie in GRIP's mistaken assumption that the Part 19 regulations do not already account for the practical realities of liquidating collateral assets. In fact, they do. The Part 19 regulations, which on this point are incorporated more specifically into the agreements between Tyrone and the State, provide for a discounting of collateral values to protect the State against transactional costs and any uncertainties of liquidating collateral properties. The substantial twenty percent (20%) discount agreed to by Tyrone—which dramatically impacts the credit Tyrone receives for its collateral—more than adequately accounts for the concerns raised by GRIP, particularly given the increasing valuation histories of the ranches in question and the flexibility the State will have in sequencing the sale of ranches as reclamation and closure expenses arise over many future years. The issues raised by GRIP relating to liquidating the ranches are unfounded and ill-informed. Ranch real estate is less vulnerable to the U.S. economy and typically suffers less fluctuation during depressed economic times. In fact, it is common to see increased interest in ranch and farm real estate when other investments such as the stock market become more volatile. Investors typically see real estate as a safer investment, particularly when they produce an income like these properties. The state could continue to generate an income from the ranches in the unlikely event of a default scenario and use the money for additional FA. This income is not accounted for in the calculation of the collateral valuation.



The issue of selling off 30% of the deeded land in Hidalgo County and 7.5% of the deeded land in Grant County and the claim that it would saturate the market and adversely impact values is unsubstantiated. It is common in the western U.S., and in New Mexico in particular—where private ownership is largely held by a few wealthy landowners—to see properties constituting 10-50% of a particular county selling. Ted Turner/Singleton Ranches/Zane Kiehne, for example, have purchased properties in NM that likely account for as much as 20-40% of the deeded land in a particular county. In fact, the company has received unsolicited inquiries from parties such as these to purchase some of its properties. The appraisal process used on Tyrone's posted ranches, moreover, bases values on the ability to sell the property on a full year, and the 20% contingency represented by the value discount will give the State protection and flexibility in selling these properties as needed to meet unfolding demands of reclamation and closure under the CCP.

#### *The Bankruptcy Scenario and Liens*

Significant thought and expertise was brought to bear by Tyrone and the State when Tyrone posted the ranch collateral fifteen years ago, and one of the central components of the collateral arrangements involved the employment of mortgage instruments as the means of posting the ranches to the State. The choice of mortgage instruments was purposeful, and it was specifically to provide protection to the State from the hypothetical bankruptcy scenario imagined by GRIP in its comments. By virtue of the mortgage instruments prepared for each one of the posted ranches, in the event of a bankruptcy, the State has a first mortgage lien on the collateral. This priority position assures the State that it will have priority over other secured and unsecured lienholders. Moreover, even in the event ill-considered and baseless claims are asserted, the several million dollars in contingency value from the 20% discount will more than cover any court costs to defend the State's interest in the collateral property from claimants in the bankruptcy court. Moreover, the mortgage instruments themselves protect the State against the imposition of liens and other encumbrances. In summary, since the property and other financial assurance is held in priority status or in trust with the State, and since deeds to the ranches are already held in escrow and will automatically vest in the State upon any forfeiture or bankruptcy, it is not the case that the properties could be seized in a bankruptcy process. GRIP has failed to show that this authorized form of financial assurance is less secure or more vulnerable than a cash trust.

#### *Period of Long-Term Financial Assurance*

GRIP states that Tyrone should consider extending the financial assurance cash flow analysis beyond the current period required by Chino's closure discharge permit (100 years) to a longer period such as 500 years. The accepted practice over many years in New Mexico for the Chino and Tyrone Mines has been to utilize a 100-year period to represent the long-term closure/closeout period for cost estimating for O&M, even though there were (at the time the New Mexico Mining Act was passed) and still are examples of shorter periods utilized by other

similar programs and agencies in the US. For example, the standard O&M period utilized by the US Environmental Protection Agency for CERCLA is 30 years. This topic was discussed with state agencies many years ago and it was agreed that the 100-year period is sufficiently representative of long-term activities (including activities that have the potential to be required in perpetuity). The overall net present value of activities beyond 100 years is not a significant dollar amount and the incremental dollars that would be added to financial assurance are within the typical inaccuracies of estimating that far into the future and are accounted for by conservative estimates and contingencies included in the estimates. Though GRIP attached one example in Nevada of a very small site that used 500 years as a long-term estimating period, the Bureau of Land Management has not confirmed GRIP's claim that there is a trend to using 500 years as the appropriate period for estimating long-term financial obligations. Furthermore, Tyrone notes that the example site GRIP referenced uses other cost savings factors such as 2.5H:1V slopes for stockpile reclamation, less than 36 inches of cover, and similar capital indirect costs rate for a significantly smaller mine.

### **Stormwater Design**

Tyrone appreciates GRIP's comment that additional review of stormwater feature design in light of climate related risks should occur, and Tyrone's parent company, Freeport-McMoRan Inc., has similarly identified climate related physical risks as a salient risk and is committed to considering the resilience of design at its operations, including drought, storm intensity and frequency (see <https://view.publitas.com/freeport-mcmoran/2019-climate-report/page/14-15>). Tyrone's CCP and reclamation work are based on robust, industry standard analysis and designs that exceed State and Federal standards for similar facilities. Tyrone looks forward to the information that will be generated from these type of sustainability evaluations as they will inform future analysis and design for Closure/Closeout plans.

### **Water Treatment Costs**

Tyrone appreciates the clarification provided, and for the record, Tyrone's water treatment costs are based on careful analysis and realistic expectations for water treatment operations and maintenance (O&M) cost decreasing over time. The water treatment financial assurance cost estimate was developed based on current industry practice as well as site-specific information concerning planned water treatment plant operations. O&M costs will decrease over time. This is based on the sludge production and lime demand of the influent flow to the water treatment plant and the influent sulfate. As various facilities are reclaimed, and water that would otherwise be routed to the water treatment plant becomes clean runoff, there will be a decreasing load to the water treatment plant. Tyrone identified other factors contributing to this decrease such as the elimination of makeup water during the public meeting. Tyrone also applied industry experience in estimating monitoring and other labor O&M costs that will reduce over time and these also are related to decreases in the load to the plants. In fact, the example GRIP provides for the estimation of long-term O&M costs also includes a reduction in monitoring costs over

Mr. David Ohori  
November 18, 2020  
Page 7

time. All these concepts have been carefully considered in the Tyrone CCP documents and associated cost estimates.

Please contact Ms. Mandy Lilla at (575) 912-5388 if you have questions.

Sincerely,



for

Thomas L. Shelley  
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