

State of New Mexico  
Energy, Minerals and Natural Resources Department

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**Susana Martinez**  
Governor

**David Martin**  
Cabinet Secretary

**Tony Delfin**  
Deputy Cabinet Secretary

**Fernando Martinez, Director**  
Mining and Minerals Division



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**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

April 21, 2016

Mr. Charles Mottley, President, CEO  
El Capitan Precious Metals, Inc.  
8390 Via de Ventura, Suite F-110  
Scottsdale, AZ 85258

**RE: Notice of Non-Compliance, Capitan Iron Mine, Permit No. LI005ME**

Dear Mr. Mottley:

This letter is a notice of noncompliance of the Capitan Iron Mine with specific conditions required by Permit LI005ME, Modification 14-1 and the NM Mining Act Rules (“Rules”). The Mining and Minerals Division (“MMD”) inspection of March 25, 2016 recognized that El Capitan Precious Metals, Inc. (“ECPMI”) has placed and/or disposed of mining waste outside the authorized Permit Area and outside the approved 5 acre Phase I design limit. This mining operation is not in compliance with Section 2 of Permit LI005ME, Modification 14-1, which states that:

*The Permittee is authorized to conduct mining and reclamation operations only on those lands within the five (5) acre Phase 1 permit design limit. For this Permit and Modification 14-1, the Permit Area is defined by Plate 2 of Mod 14-1 PAP, as received November 3 2014 from R.T. Hicks Consultants, Ltd.*

Furthermore, this mining operation is not in compliance with Section 8.A of Permit LI005ME, Modification 14-1, which states that:

*The Permittee shall conduct mining and reclamation operations only as described in the approved PAP and the Permit, as modified by this Modification 14-1 and any other modifications or revisions approved by the Director. The Permittee shall comply with the Act, Regulations, the Permit, all modifications and revisions, and all other applicable law.*

Additionally, this mining operation is not in compliance with Section 9.A of Permit LI005ME, Modification 14-1, which states that:

*Within the approved Phase 1 five (5) acre design limit, the Permittee will stage a pit extraction area as well as excavation equipment, overburden piles, crusher, screen, tailings waste pile, surface salvage material stockpile, magnetic separator, backhoe, pickup trucks, trailers and hand tools. The Permit Area shall be accessed via existing USFS road. All separated and concentrated material will be removed off-site to be processed. Overburden and other excavated materials not removed off-site will be returned to the surface pit for use in reclamation. Mining and reclamation is anticipated to occur exclusively within the Phase 1 five (5) acre disturbance limit as described in the PAP.*

In particular ECPMI is not in compliance with the requirement that any and all modifications to the approved Capitan Iron Mine closeout plan will be approved by the Director of MMD. According to Section 19.10.5.505(D) NMAC of the Rules requires the following:

*A permit modification or revision for a mining operation is required for each new discreet processing, leaching, excavation, storage or stockpile unit located within the permit area and not identified in the permit and for each expansion of such a unit identified in the permit that exceeds the design limits specified in the permit for such units.*

### **Site Inspection Findings**

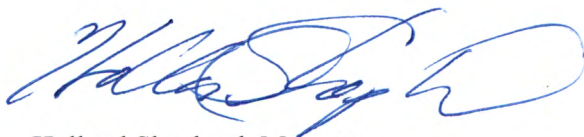
Chris Eustice and James Hollen of MMD were accompanied by ECPMI's representative Randy Bouldin during an inspection of the Capitan Iron Mine on March 25, 2016. That MMD inspection discovered new disturbances and mine waste stockpiled outside the 5 acre Phase I design limit. Stockpiled overburden and salvaged topsoil had been placed outside the fenced Phase I (5 acre) area. Additionally, some mine waste had been placed and used as berms alongside the access road, FR 489A. The inspection noted the total area of disturbance may now be greater than the approved 5 acres design limit, and perhaps exceeding the 10 acre maximum allowed for a minimal impact mine pursuant to Section 19.10.5.303.A NMAC of the Rules

### **Enforcement**

In order to bring ECPMI into compliance with the permit and the Rules, and to avoid issuance of a Notice of Violation and penalty assessment, MMD requires that ECPMI submit a survey of the current total acres of disturbance, including those areas of the FR 489A access road, that have been disturbed by mine wastes. ECPMI must also provide an application for a permit modification, to incorporate the new disturbance, related to the access road, into the mine permit. This survey of total acres of disturbance and permit modification application must be submitted to MMD within 60 days of the receipt date, of this letter.

MMD is available to meet and discuss this letter at your convenience. Please contact Gabriel Wade, Assistant General Counsel, at: (505) 476-3451, or via email at: [gabriel.wade@state.nm.us](mailto:gabriel.wade@state.nm.us) if you would like to discuss this notice further or to schedule a meeting.

Sincerely,

A handwritten signature in blue ink, appearing to read "Holland Shepherd", is written over a horizontal line.

Holland Shepherd, Manager  
Mining Act Reclamation Program/MMD

cc: Jeff Llewellyn, Mining Act Team Leader, NMED/GWQB-MECS  
Christina Thompson, USFS Lincoln National Forest  
Diane Tafoya, USFS  
Mine File LI005ME