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April 26, 2018

Leighandra Keeven, Geologist  
Bureau of Land Management  
Las Cruces District Office  
1800 Marquess Street  
Las Cruces, NM 88005

**Subject: Copper Flat Administrative Final Environmental Impact Statement**

Dear Ms. Keeven:

Through a memorandum of understanding between the New Mexico Environment Department ("NMED") and the Bureau of Land Management ("BLM"), NMED is listed as a cooperating agency on this Administrative Final Environmental Impact Statement ("EIS") for the Copper Flat Mine ("CFM"). Therefore, the Surface Water Quality Bureau ("SWQB") of the NMED provided comments dated April 17, 2018 on the above-titled document. The SWQB would like to provide the following clarifying points regarding comment #4 and a surface waters of the state determination.

- 4) In accordance with 20.6.4.7 S(5) NMAC, a "...water of the state does not include private waters that do not combine with other surface or subsurface water...". A property plat for the pit area was completed and sealed by a registered land surveyor, recorded with Sierra County, and submitted to BLM for review. The survey and plat confirm that the current and future mine pit lake is entirely on patented mine claims, and thus private lands. Furthermore, probable hydrologic consequences related to the development of the Copper Flat Project have been evaluated using a numerical model developed from the United States Geological Survey ("USGS") groundwater-flow modeling code MODFLOW. The model was calibrated and verified, and the results demonstrate an evaporative sink for the future open pit lake, such that the pit lake waters will not mix with subsurface waters.

Pursuant to 19.10.6.606 NMAC of the New Mexico Mining Act, no Mining Act permit shall be issued until the Secretary of the Environment Department has provided a written determination stating that the applicant has demonstrated that the activities to be permitted or authorized will be expected to achieve compliance with all applicable air, water quality, and other environmental standards if carried out as described in the permit application. The land

survey and hydrologic model are the key components to the determination of applicable surface water quality standards. However, a determination by SWQB on the status of the pit lake as a water of the state and applicability of surface water quality standards has not yet been made, even though there is sufficient information, because it is not the appropriate time in the process to issue a written determination by the NMED Secretary.

The SWQB also would like to provide the following clarifying points regarding comment #6 and actions to eliminate or reduce exposure of wildlife to stormwater.

- 6) The National Pollutant Discharge Elimination System (“NPDES”) program regulates stormwater discharges from eleven categories of industrial activity. Category three (iii) is related to coal and mineral mining. Permit coverage is required of all phases of mining operations, whether active or inactive, as long as there is exposure to significant materials. Common requirements for coverage under an industrial stormwater permit include a stormwater pollution prevention plan (SWPPP). The SWPPP is a written assessment of potential sources of pollutants in stormwater runoff and control measures that are implemented to minimize the discharge of pollutants in runoff from the site.

The SWQB acknowledges that compliance with a SWPPP that meets the requirements of the stormwater permit is generally assumed to be protective of surface water quality.

Again, thank you for the opportunity to review and comment on the BLM’s Administrative Final EIS for the Copper Flat Mine. If you have any questions, please contact me by email at [shelly.lemon@state.nm.us](mailto:shelly.lemon@state.nm.us), or Bryan Dail by email at [bryan.dail@state.nm.us](mailto:bryan.dail@state.nm.us).

Sincerely,



Shelly Lemon, Chief  
Surface Water Quality Bureau  
New Mexico Environment Department

- Cc: Andrew Knight, Office of General Counsel, NMED (via email)  
Kurt Vollbrecht, Program Manager, Ground Water Quality Bureau (via email)  
Brad Reid, Environmental Scientist, Ground Water Quality Bureau (via email)  
Kris Barrios, Program Manager, SWQB (via email)  
Jennifer Fullam, Standards, Planning & Reporting Team Leader, SWQB (via email)  
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