

Ennis, David, EMNRD

From: Roth, Daniela, EMNRD
Sent: Friday, November 16, 2018 3:22 PM
To: Ennis, David, EMNRD
Subject: RE: Request for Comments on Modification 18-1, Expansion of Permit Area, Brie I Mine, McKinley County (Permit No. MK039MN)

Dear David Ennis:

Thank you for giving me the opportunity to review and comment on Modification 18-1, Expansion of Permit Area into T19N R5W Sec 7, Brie I Mine, in McKinley County, NM (No. MK039MN).

I do not anticipate any impacts to state listed endangered plants from the proposed expansion.

Please let me know if I can be of further help.

Sincerely,

Daniela Roth

Botany Program Coordinator
EMNRD – Forestry Division
1220 S. Saint Francis Drive
Santa Fe, NM 87505
505-476-3347

<http://www.emnrd.state.nm.us/SFD/>

GOVERNOR
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TO THE COMMISSION
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DEPUTY DIRECTOR
Vacant

STATE OF NEW MEXICO DEPARTMENT OF GAME & FISH

One Wildlife Way, Santa Fe, NM 87507
Post Office Box 25112, Santa Fe, NM 87504
Tel: (505) 476-8000 | Fax: (505) 476-8123
For information call: (888) 248-6866

www.wildlife.state.nm.us

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3 December 2018

David J. (DJ) Ennis, P.G., Permit Lead
Mining Act Reclamation Program
Mining and Minerals Division
1220 South St. Francis Drive
Santa Fe, NM 87505

RE: Modification 18-1 Application, Expansion of Permit Area Into T19N, R5W, Section 7, Brie I Mine, Permit No. MK039M; NMDGF No. 18783

Dear Mr. Ennis,

The Department of Game and Fish (Department) has reviewed the application for permit modification referenced above. Miocene, LLC, is proposing to modify permit MK039MN to incorporate part of Section 7, T19N, R5W, into the mine permit area.


The proposed expansion area contains habitat that could support Gunnison's prairie dog (*Cynomys gunnisoni*) colonies. Gunnison's prairie dog is designated by the Department as a Species of Greatest Conservation Need, and their colonies provide important habitat for other grassland wildlife. The Department recommends that, wherever possible, occupied prairie dog colonies are left undisturbed, and that mining activities be directed off the prairie dog colony. Burrowing owl (*Athene cunicularia*) may be associated with prairie dog colonies and use abandoned burrows as breeding (1 March-1 September) and sometimes as wintering habitat. The Department recommends conducting Burrowing Owl surveys during the breeding season prior to any ground disturbing activities. The Department's Burrowing Owl guidelines (<http://www.wildlife.state.nm.us/conservation/habitat-information/habitat-handbook/project-guidelines/Burrowing-Owl-Surveys-and-Mitigation-2007.pdf>) provide information on appropriate procedures. Burrowing owls are protected against direct take under the federal Migratory Bird Treaty Act (16 U.S.C. Sections 703-712) and New Mexico State Statutes (17-2-13 and 17-2-14 NMSA), which provide protection against take that could result if active burrows are disturbed before the young have fully fledged and all owls have left the area. If mining operations cannot be delayed until the burrows are vacant, then a permit must be obtained from the U.S. Fish and Wildlife Service and the Department to safely capture and relocate owls from the area.

Papers Wash and Salazar Wash traverse through the western and eastern portions of the proposed mine expansion area. To minimize soil erosion, the Department recommends maintaining a buffer zone of intact native vegetation that is undisturbed by mining activity for at least 150 feet on both sides of Papers Wash and Salazar Wash.

With implementation of these recommendations, the Department does not anticipate adverse effect to wildlife or sensitive habitats from this project.

Thank you for the opportunity to review and comment on the proposed mine permit modification. If you have any questions, please contact Ron Kellermueller, Mining and Energy Habitat Specialist, at (505) 476-8159 or ronald.kellermueller@state.nm.us.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Hayes". The signature is written in a cursive style.

Chuck Hayes, Assistant Chief
Ecological and Environmental Planning Division

cc: USFWS NMES Field Office

MEMORANDUM
OFFICE OF THE STATE ENGINEER
Hydrology Bureau

DATE: December 3, 2018

TO: David J. Ennis, P.G., Permit Lead, MARP, Mining and Minerals Division

THROUGH: Ghassan Musharrafieh, Ph.D, P.E., Chief, Hydrology Bureau GRM

FROM: Douglas Rappuhn, P.G., Hydrology Bureau DHR

SUBJECT: Evaluation of MMD Request for Comments on MMD MK039MN
Modification 18-1 Application, Expansion of Permit Area for Brie I Mine
into T19N-R5W-Section 7, NMOSE Rio Grande Basin, McKinley County
west of Cuba

The NMOSE Hydrology Bureau received your November 13, 2018 request for comments on the subject MMD humate mine expansion application. Thank you for the opportunity to respond.

A review was conducted of the 2013 MK039MN application and granted permit for humate mining within Section 11-Township 19 North-Range 6 West to check previously authorized project activities. It was noted that the subject application to expand the permitted mining area regards land within Section 7-Township 19 North-Range 5 West, a separate tract located approximately 1-2 miles east of the currently-permitted MK039MN mining operations.

Few project specifics were offered in the 2018 application, so we have assumed that mining and reclamation processes vetted in granting the 2013 permit will be adhered to should this expansion be permitted. The humate deposit in Section 11 was to be excavated following initial drilling of 6"-diameter, 10' to 20'-deep exploratory boreholes. No specific number of exploratory borings associated with the requested expansion was provided the NMOSE.

Borehole plugging was permitted in 2013 to require adherence to the MMD's NMAC 19.10.3.302 regulations, should mining excavation not occur in the drilled area within a MMD-specified timeframe. It is assumed that plugging and all other elements of land reclamation relative to the requested expansion would follow 2013 MMD permit conditions or be made agreeable to the MMD. The NMOSE promulgated revisions to NMAC 19.27.4 regulations in 2017, including a current exclusion of NMOSE regulation of mineral exploration boreholes that do not encounter groundwater.

Presumably, the applicant's 2013 MK039MN exploratory drilling program is complete or underway, and **if groundwater was encountered at any depth penetrated by the drilling, that:**

- **NMOSE permits were obtained** (http://www.ose.state.nm.us//WR/Forms/Current/WR-07%20Application%20for%20Permit%20to%20Drill%20a%20Well%20with%20No%20Consumptive%20Use_2016-11-17_final.pdf);
- **NMOSE well completion records were filed** (http://www.ose.state.nm.us/WR/Forms/Current/WR-20%20Well%20Record%20and%20Log_2017-06-30Final.pdf);
- **The water-bearing exploratory boreholes were appropriately plugged under approved NMOSE Well Plugging Plan of Operations** (http://www.ose.state.nm.us/WR/Archive/Forms/WD-08%20Well%20Plugging%20Plan%20of%20Operations_2017-06-30_final.pdf);
- **NMOSE Well Plugging Records were filed as necessary** (http://www.ose.state.nm.us/STST/Forms/WD-11%20Plugging%20Record_2009-09-08_final.pdf).

Any recorded `encountering of groundwater during the exploratory drilling would constitute updated groundwater level information newer than what appears to exist in NMOSE and United States Geological Survey (USGS) databases. A current review of OSE regional well permits found none associated with the project, suggesting the applicant did not encounter groundwater during earlier mining or exploratory drilling.

Groundwater

Scant water level information exists in OSE files for the proposed Section 7-T19N-R5W expanded project area, although the existing recorded measurements strongly discount Miocene, LLC's 2013 contention of an expected groundwater level of approximately 1200' bgl. Wells RG-58843 and RG-58842, drilled to 400' in 1981 and located in Section 10-T19-R6W, both reflected static water levels in the 20 to 30' bgl range.

Circa-1986 USGS-measured water levels were found for separate wells measured in the NW-quarter of Section 4-T19N-R5W (USGS GWSI well 355447107224301; static water level at approximately 66.9' below ground level of 6660' NGVD), and in the NE-quarter of Section 4-T19N-R5W (USGS GWSI well 355435107221001; static water level at approximately 39.2' below ground level of 6625' NGVD).

Springs of unknown origin are indicated on the USGS 1:24000 topographic map in the center of Section 9-T19N-R5W (approximately one and a half miles east of the proposed expanded project area) at approximate ground elevation of 6630' NGVD. If they are contact springs, there may be a local, upgradient shallow water source; if they are artesian springs, they may be related to the local presence of a fault, fracture or abandoned borehole.

Old, possibly undocumented wells may exist in the vicinity of further mining. Should a water well be discovered in an area that will be excavated, the applicant shall contact the NMOSE District 1 for guidance on appropriate decommissioning of the well. Such decommissioning would require the services of a New Mexico-licensed water well driller under an OSE-approved Well Plugging Plan of Operations, currently available at: http://www.ose.state.nm.us/WR/Archive/Forms/WD-08%20Well%20Plugging%20Plan%20of%20Operations_2017-06-30_final.pdf .

Surface water

Mining activities or reclaimed terrain should not impound surface water in excess of that impounded prior to mining activity. If new impounding of water is likely to occur, the applicant shall contact NMOSE Water Rights District 1 for guidance regarding the possible need for OSE administrative submittals.

Since it appears there will be no surface or ground water use, and surface water impoundment potential may be slight and related to an occasional torrential precipitation event, the NMOSE Hydrology Bureau has no further comment on the applicant request to expand the area of humate mining to include the specified portion of Section 7-T19N-R5W.



Susana Martinez
Governor

STATE OF NEW MEXICO
DEPARTMENT OF CULTURAL AFFAIRS
HISTORIC PRESERVATION DIVISION

BATAAN MEMORIAL BUILDING
407 GALISTEO STREET, SUITE 236
SANTA FE, NEW MEXICO 87501
PHONE (505) 827-6320 FAX (505) 827-6338

December 13, 2018

David J. Ennis, P.G.
Permit Lead
Mining Act Reclamation Program
Mining and Minerals Division
1220 South St. Francis Drive
Santa Fe, NM 87505

Re: Modification 18-1 Application, Expansion of Permit Area into T19N, R5W Brie 1 Mine,
McKinley County, New Mexico, MK039EM

Dear Mr. Ennis:

This letter is in response to the above new minimal impact exploration permit application received at the Historic Preservation Division (HPD) on November 13, 2018. According to the application, the proposed project is within Township 19 North, Range 5 West, Section 7.

In accordance with rule 19.10.3 NMAC, *Minimal Impact Operations*, I reviewed our records to determine if cemeteries, burial grounds or cultural resources listed on the State Register of Cultural Properties or the National Register of Historic Places exist within or near the permit area. Our records show that there are no cultural resources listed on the National Register or State Register within or near the proposed permit area and no known cemeteries or burial grounds. Although there are no cultural resources listed on the State or National Register, our records show several archaeological surveys within part of the permit area. These surveys identified archaeological sites.

The application states that the surface and mineral estate owner is the Bureau of Land Management (BLM), Farmington Field Office and that Miocene will have the area surveyed as requested by BLM. The BLM will review the results of the survey report and consider project effects on any archaeological sites that may be eligible for listing on the National Register pursuant to Section 106 of the National Historic Preservation Act. The BLM may require avoidance of any eligible archaeological sites and an archaeological monitor to ensure that eligible sites are not affected.

Please do not hesitate to contact me if you have any questions regarding these comments. I can be reached by telephone at (505) 827-4225 or by email at bob.estes@state.nm.us.

Sincerely,

Bob Estes Ph.D.
HPD Staff Archaeologist



SUSANA MARTINEZ
Governor

JOHN A. SANCHEZ
Lieutenant Governor

NEW MEXICO
ENVIRONMENT DEPARTMENT

Ground Water Quality Bureau
1190 South St. Francis Drive (87505)
P.O. Box 5469, Santa Fe, New Mexico 87502-5469
Phone (505) 827-2900 Fax (505) 827-2965
www.env.nm.gov



BUTCH TONGATE
Cabinet Secretary

BRUCE YURDIN
Acting Deputy Secretary

MEMORANDUM

Date: November 30, 2018

To: Holland Shepherd, Program Manager, Mining Act Reclamation Program

Through: Jeff Lewellin, Mining Act Team Leader, Mining Environmental Compliance Section

From: Alan Klatt, Surface Water Quality Bureau
Neal Butt, Air Quality Bureau

Subject: **NMED Comments, Miocene, LLC, Brie 1 Mine, Expansion of Permit Area Application, McKinley County, New Mexico, MMD Permit No. MK039MN, Modification 18-1**

The New Mexico Environment Department (NMED) received correspondence from the Mining and Minerals Division (MMD) on November 13, 2018 requesting NMED review and provide comments on the above referenced MMD permitting action. The modification is submitted to expand the permit area. The areal extent of the expanded permit area is not stated in the information provided by the Applicant. MMD requested comments within 20 days of receipt in accordance with Section 19.10.3.304.H NMAC. NMED has the following comments.

Background

The Miocene, LLC (Applicant), Brie 1 Mine, is a minimal impact new humate mine assigned MMD Permit No. MK039MN. This application proposes to expand the permit area to encompass a portion of Section 7, T19N, R5W. The proposed expansion area is on land managed by the Bureau of Land Management (BLM).

Air Quality Bureau

The Air Quality Bureau has no objection to the current request for expansion of the permitted area.

Surface Water Quality Bureau

The Surface Water Quality Bureau comments are attached under separate letterhead.

Mining Environmental Compliance Section

A search of the New Mexico Office of the State Engineer (OSE) database that contains information related to wells installed throughout New Mexico was performed. No wells are reported in the OSE database for Section 7, T19N, R5W. The mining of humate in Section 7 will occur above the probable depth to ground water and should have no adverse impacts to ground water.

NMED Summary Comment

NMED finds the proposed activities are likely to have a minimal environmental impact if conducted and reclaimed in accordance with the approved permit and recommendations listed above. It should be noted that although no areal extent of the proposed expansion area is provided, the proposed expansion area should not exceed the limits imposed pursuant to the Mining Act rules for a minimal impact site.

If you have any questions, please contact Jeff Lewellin at (505) 827-1049.

cc: Shelly Lemon, Bureau Chief, SWQB
Liz Bisbey-Kuehn, Bureau Chief, AQB
Fernando Martinez, Division Director, EMNRD-MMD
DJ Ennis, Lead Staff, EMNRD-MMD
Kurt Vollbrecht, Program Manager, MECS



SUSANA MARTINEZ
Governor

JOHN A. SANCHEZ
Lieutenant Governor

NEW MEXICO
ENVIRONMENT DEPARTMENT

Surface Water Quality Bureau
1190 South St. Francis Drive (87505)
P.O. Box 5469, Santa Fe, New Mexico 87502-5469
Phone (505) 827-2900 Fax (505) 827-2965
www.env.nm.gov



BUTCH TONGATE
Cabinet Secretary

BRUCE YURDIN
Acting Deputy Secretary

MEMORANDUM

DATE: November 30, 2018

TO: Jeff Lewellin, Mining Act Team Leader
Mining Environmental Compliance Section
Ground Water Quality Bureau

FROM: Alan Klatt, Environmental Scientist & Specialist
Watershed Protection Section
Surface Water Quality Bureau

Jennifer Foote, Environmental Scientist & Specialist-Supervisor
Point Source Regulation Section
Surface Water Quality Bureau

RE: **Request for Review of Modification 18-1, Brie I Mine, McKinley County,
MMD Permit No. MK039MN**

The New Mexico Surface Water Quality Bureau (SWQB) has completed its review of the Permit Application referenced above and has provided the following comments pursuant to section 19.10.3.304.H of the New Mexico Administrative Code (NMAC):

- The permit boundary includes Papers Wash and Salazar Wash which are both subject to 20.6.4.98 NMAC (State of New Mexico, Standards for Interstate and Intrastate Surface Waters) and have designated uses for livestock watering, wildlife habitat, marginal warmwater aquatic life, and primary contact. Salazar Wash is a tributary to Papers Wash which is a tributary to Torreon Wash, Arroyo Chico, the Rio Puerco, and then to the Rio Grande.
- SWQB staff reviewed the U.S. Environmental Protection Agency's (USEPA) Enforcement and Compliance History (ECHO) database¹ on November 16, 2018 and did not find permit coverage for storm water discharges from the Brie I Mine site under the National Pollutant Discharge Elimination System (NPDES) 2015 Multi-Sector General

¹ <https://echo.epa.gov/facilities/facility-search>

Permit (MSGP) program. Information on obtaining permit coverage can be found at the following USEPA website: <https://www.epa.gov/npdes/stormwater-discharges-industrial-activities>.

The Stormwater Pollution Prevention Plan (SWPPP) plan must be updated to include the activities described in Modification 18-1, and appropriate Best Management Practices (BMPs) must be designed, installed and maintained both during and after construction to prevent, to the extent practicable, pollutants in stormwater runoff from entering waters of the United States. Section 9.6.2.2 of the MSGP describes additional New Mexico specific requirements for inspections and stabilization.

- SWQB recommends extending all General Obligations, Conditions, and Best Management Practices included in the original permit and recommends updating the original permit application information to be current with Modification 18-1. For example, the areas to be disturbed, the locations of perennial and non-perennial waters, springs, wetlands, and riparian areas should be shown on a topographic map as applicable to 19.10.3.304.D NMAC.

If you have any questions related to these comments, please contact Alan Klatt at 505-827-0388.