

State of New Mexico  
Energy, Minerals and Natural Resources Department

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Cabinet Secretary

**Todd E. Leahy, JD, PhD**  
Deputy Cabinet Secretary

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



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**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

June 7, 2019

Gerald Smith, President  
GEO Southwest, LP  
P.O. Box 353  
9751 Hwy. 86  
Silverton, TX 79257

**RE: Financial Assurance and Closeout Plan for the Deming Mill and Tailing Facility;  
Permit No. LU009RE, Luna County, NM**

Dear Mr. Smith:

Thank you for responding to The Mining and Minerals Division's (MMD) May 2, 2019 letter regarding Financial Assurance and Closeout Plan for the Deming Mill and Tailing Facility, Permit No. LU009RE. MMD received your letter, dated June 1, 2019 addressing our questions concerning the interim financial assurance (FA) and progress on the Closeout Plan. Additionally, MMD appreciates meeting with you and your attorney Lanny Voss on June 4, 2019, to discuss a plan for interim FA in the form real property for a collateral bond, and the related real property instruments. We follow-up these discussions with this letter summarizing a path forward regarding interim FA, permanent FA and updating the closeout plan.

**Interim Financial Assurance**

In your discussion with us on June 4, 2019, we agreed that interim FA could be addressed with real property collateral, for the short term, until a more permanent instrument or instruments can be provided. Specifically, we agreed in principal that for the purposes of establishing interim FA, the process that GEO Southwest (GSW) already started in September 18, 2014, would suffice with regard to the necessary appraisals and environmental assessments. You indicated that you are still interested in using the portions of Tracts 3, 4, 5, and 6 identified in the revised real property collateral proposal and shown in the Quarrell Surveying's October 4, 2018 survey plat, attached to GSW letter dated April 13, 2019.

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What remains would be to put in place a first Mortgage, first deed of trust, or perfected first-lien security interest in real property with a right to sell in accordance with the Rules for the New Mexico Mining Act addressed under 19.10.12.1211 NMAC. Based on the meeting, the next step is GSW preparing a draft first deed of trust document for MMD review. We understand that GSW prefers one deed of trust that would incorporate all tracts proposed for interim FA. We also understand that the deed of trust may be subject to an appropriate subordination agreement to address power line easements that may be recorded against one or more of the tracts proposed for the interim FA.

We agreed that the interim FA amount would be based on the last cost estimate of \$245,912.00, for reclaiming the disturbance, provided by GSW in a letter dated October 17, 2016. As indicated in the MMD letter dated November 17, 2017, the rules contemplate a FA amount in excess by reasonable margin to cover market fluctuations and legal fees, and MMD requires a margin of 20 percent, which accepts 80 percent of the appraised value. Thus, the proposed 2012 appraised value of the collateral properties in the amount of \$317,570.26 for the acceptable 524.054 acres is reduced by 20% and the resulting FA amount is approximately \$254,056.21, which is greater than cost estimate.

### **Long Term Financial Assurance**

Putting in place long term FA would involve updating and completing the Closeout Plan, then developing an updated cost estimate on the Closeout Plan. Financial assurance instruments would then be provided to address the updated and approvable reclamation cost estimate. Financial assurance would involve whatever FA instruments might be identified at the time. If real property collateral is to be used, the interim collateral would have to be updated with new property (if necessary and appropriate), new appraisals, title reports, deeds of trust, and possibly Phase 1 Environmental Assessments. In support of the above described requirements, regarding collateral, GSW must provide MMD with the current or updated information pursuant to 19.10.12.1208.C(3)(b) and 19.10.12.1208.C(3)(c) NMAC. Alternatively, GSW may submit another more readily approvable form of FA that doesn't require the evaluation of real property as collateral FA; other acceptable forms of FA are limited to surety bonds, letters of credit or cash accounts described in 19.10.12.1208 NMAC.

### **Updated Closeout Plan**

As we discussed, the Closeout Plan for the Deming Mill and Tailings Facility, still needs to be updated to address changes since GWS acquired the property on April 9, 2014. In addition, in MMD's letter to GSW, dated September 19, 2016, we indicated that GSW's application for the Closeout plan revision was technically incomplete and required more information from GSW, based on GSW's June 24, 2016, submittal. GSW provided a revised cost estimate on October 17, 2017. Much of the FA information regarding the collateral properties, acreage, survey and form of instrument has been revised.

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Based on the timeframe set in MMD's May 2<sup>nd</sup> letter, please provide MMD with the required information for establishing interim FA, by **July 2, 2019**.

In order to maintain momentum related to updating and completing the 2016 Closeout plan, reclamation cost estimate, 2016 Phase 1 ESA, 2012 appraisals, and other long-term FA documents outlined above, please provide updates of these documents by **December 2, 2019**. The cost estimate update will address costs in current dollars for the reclamation to be performed at closeout and incorporate revisions to the survey and FA related documents. NMED comments dated March 9, 2017 and January 1, 2017, on the 2016 Closeout plan and 2016 Phase 1 ESA report are enclosed for your convenience. During the next few months, MMD will schedule a meeting or teleconference to address any remaining comments from the Agencies to better assist in your update and completion of the 2016 Closeout plan.

If you have any questions concerning this letter, please contact me at 505-476-3436 or Kevin Myers at 505-476-3438.

Sincerely,



Holland Shepherd, Program Manager  
Mining Act Reclamation Program/MMD

**Enclosure:** Two Review and Comment Letters from NMED

**cc:** Mine File - Permit LU009RE  
Dana David, Assistant General Counsel, MMD  
Kevin Myers, Permit Lead, MARP/MMD