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**NEW MEXICO
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James C. Kenney
Cabinet Secretary

Jennifer J. Pruett
Deputy Secretary

MEMORANDUM

Date: January 13, 2020

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

Subject: **NMED Comments, Review of Hydrogeologic Resources Report, Regular Exploration Project, Comexico, LLC, Tererro Exploration Project, Santa Fe County, New Mexico, New Mexico Mining Act Permit No. SF040ER**

The New Mexico Environment Department (NMED) received correspondence from the Mining and Minerals Division (MMD) on December 6, 2019 requesting NMED review and provide comments on the above-referenced MMD permitting action. In accordance with 19.10.4.402.F. NMAC, NMED has the following comments.

Background

Comexico, LLC (Applicant) proposes a regular exploration project to advance up to 30, 3 to 5.5-inch diameter borings to a depth of up to 4,000 feet below ground surface. The project is on federal land managed by the United States Forest Service in Section 1, T17N, R11E. The purpose of the proposed exploration project is to evaluate potential reserves of copper, gold, zinc, lead, and silver.

Surface Water Quality Bureau

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

Holland Shepherd, Program Manager

January 13, 2020

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NMED Summary Comment

NMED supports the comments provided by the Surface Water Quality Bureau and requests the Hydrogeologic Resources Report be revised and submitted to MMD for NMED review and comment.

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

cc: Rebecca Roose, Director, Water Protection Division
Shelly Lemon, Bureau Chief, SWQB
Liz Bisbey-Kuehn, Bureau Chief, AQB
Mike Tompson, Interim Division Director, EMNRD-MMD
David Otori, Lead Staff, EMNRD-MMD
Kurt Vollbrecht, Program Manager, MECS



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MEMORANDUM

DATE: December 31, 2019

TO: Jeff Lewellin, Mining Act Team Leader, NMED-GWQB

FROM: Alan Klatt, Watershed Protection Section, NMED-SWQB

SUBJECT: Request for Comments, Hydrogeologic Resources Report, Regular Exploration Project, Comexico, LLC, Tererro Exploration Project, Santa Fe County, MMD Permit No. SF040ER

On December 19, 2019 the Surface Water Quality Bureau (SWQB) received a request for comments regarding the above referenced report which was prepared on behalf of Comexico, LLC, a subsidiary of New World Cobalt Limited (the Permittee) by SWCA Environmental Consultants as part of a complete permit application package (PAP) for Permit No. SF040ER, a regular exploration operation subject to the New Mexico Mining Act. Pursuant to 19.10.4.402 New Mexico Administrative Code (NMAC), SWQB has prepared the following comments.

SWQB provided comments dated September 4, 2019 in response to a request for comments regarding the initial PAP submitted to the Mining and Minerals Division by the Permittee on June 3, 2019. The October 2019 Hydrogeological Resources Report (the Report) addressed many of those SWQB comments as documented by:

- a commitment by the Permittee to utilize a vacuum truck to safely dispose of drilling fluids;
- a commitment by the Permittee to not widen any existing roads;
- a commitment by the Permittee to develop a road maintenance plan with the USFS for which Section 7.2.2.2 of the Hydrogeological Resources Report thoroughly outlines.

SWQB has prepared the following additional comments:

- Page 14 of the Report states, “The USFWS NWI does not identify any perennial waters or true wetlands in the vicinity of the project site, with the exception of Indian Creek, Macho Creek, and the Pecos River. All other drainages are identified as intermittent.” Wetlands are surface waters of the state and are defined in 20.6.4 NMAC as:

“... those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico.”

The state definition does not require all three wetland attributes (i.e. hydric soils, hydrophytic plants, and supporting hydrology) to be present at the same time for an area to be classified as a wetland. Therefore, SWQB disagrees with the statement that there are no true wetlands in the vicinity of the project site. This is an important distinction for New Mexico, a semi-arid state, which often goes through severe seasonal and inter-annual periods of drought which can contribute to conditions where a wetland might not be recognized federally (with all three wetland attributes present); however, the wetland area is still capable of providing numerous wetland benefits to New Mexicans (e.g. water storage and drought resilience, flood attenuation, water quality purification, wildlife habitat, etc.). SWQB notes three separate Riverine-Intermittent wetland areas that are classified on the U.S. Fish and Wildlife Service's National Wetland Inventory (USWFS NWI) Mapper which fall within the proposed project area, in addition to the three springs that are described on page 30 of the Report. Such wetland areas are subject to the General Criteria under 20.6.4.13 NMAC which includes standards for suspended or settleable solids, oil and grease, toxic pollutants, total dissolved solids, as well as additional criteria not listed here. Mining related activities in these areas should be conducted with Best Management Practices (BMPs) to ensure that, "Surface waters of the state shall be free of any water contaminant in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or unreasonably interfere with the public welfare or the use of property." (20.6.4.13 NMAC)

- Page 19 of the Report says that all of the CWA Section 303(d) listed streams are "well downstream of the project site and the Sangre de Cristo Mountains, and are not pertinent to the project activities." Clean Water Act Section 303(d) listed portions of Macho Canyon Creek are approximately 1.5 miles downstream of the project site following a tributary that is approximately 100 feet from Pad 13/Drill Hole 05. In addition, the Report's finding on page 23 references USFS and NMED findings from 1992:

"...existing roads and drill pads may have increased the volume of sediment delivery to both stream systems [Macho Creek and Indian Creek]. Serious rills, gullies, and headcuts, some in excess of 24" deep are features of the existing exploration road network. In some locations, sediment transport from exploration road networks and drill pads have accumulated to depths sufficient to have killed native vegetation."

Given the close proximity of a 303(d) listed water, along with the Report's finding noted above, and the current road conditions reported on page 27 that describes many of the 24 culverts as being currently blocked and contributing to ruts and rills, SWQB considers the proposed project activities to be very pertinent to surface water quality protection and maintenance. Close adherence to the road maintenance plan will be critical in determining the success of the project in terms of protecting and maintaining state water quality standards within and downstream of the proposed project.

- Page 21 of the Report says that a Construction General Permit (CGP) would cover drilling activities if the disturbance area exceeds 1 acre; however, stormwater discharges from industrial activities related to this proposed project would need coverage under the NPDES Multi-Sector General Permit (MSGP), "Sector G: Metal Mining (Ore Mining and Dressing) Facilities"¹ (see SWQB comments from September 2019). For additional information, contact:

¹ https://www.epa.gov/sites/production/files/2017-07/documents/sector_g_metalmining.pdf

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or Jennifer Foote, NMED-SWQB, at (505) 827-0596.

- On Page 28, “Regulate traffic during wet periods” should be clearly described so that operators know when to suspend construction and off-road travel. SWQB’s comments from September 2019 reference the Bureau of Land Management’s Gold Book which recommends suspending traffic when traveling on wet roads causes rutting at which point road safety and soil loss concerns may be significant.

For questions related to these comments, please contact Alan Klatt, SWQB, at 505-827-0388.

