

State of New Mexico  
Energy, Minerals and Natural Resources Department

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**Michelle Lujan Grisham**  
Governor

**Sarah Cottrell Propst**  
Cabinet Secretary

**Todd Leahy, JD, Ph.D.**  
Deputy Cabinet Secretary

**Jerry Schoeppner, Director**  
Mining and Minerals Division



June 3, 2020

Mr. Leslie Billingsley  
Billali Mine, LLC  
P.O. Box 207  
Duncan, AZ 85534

**RE: Technical Comments on Water Discharge Pipeline and Pond, Modification 20-1, Billali Mine, Grant County, New Mexico, Permit No. GR058MN**

Dear Mr. Billingsley,

The Mining and Minerals Division (“MMD”) received an application from Billali Mine, LLC for Modification 20-1 to construct a mine dewatering discharge pipeline along Bitter Creek Road and infiltration pond on private land approximately two miles west of the Billali Mine claim. In accordance with 19.10.3.304.H NMAC, MMD requested comments from cooperating agencies including the New Mexico Environment Department (“NMED”), Department of Game and Fish (“DGF”), Historic Preservation Division (“HPD”), Office of the State Engineer (“OSE”) and State Forestry.

After review of the application, MMD has the following technical comments to be addressed in writing:

1. The application proposes to lay a ~2.5” diameter pipeline from the Billali Mine opening to a proposed infiltration pond on the Earven Ranch, which is about 2 miles west of the Billali Mine. The map provided in the application shows the approximate route of the pipeline.
  - a. Does the proposed pipeline layout cross private property or BLM property to get to the Earven Ranch? Please address.
  - b. Please provide supporting calculations for the pipeline, pump and dewatering plan to ensure they are sufficient to transport and discharge the volume of water being proposed a distance of 2 miles.
  - c. Please provide supporting calculations as to the proposed dimensions of infiltration pond to contain the discharged mine water plus any stormwater.
2. If the pipeline needs to cross Bitter Creek Road, how will this be accomplished? Please address.

June 3, 2020

Re: Technical Comments on Water Discharge Pipeline and Pond, Modification 20-1, Billali Mine, Grant County, New Mexico, Permit No. GR058MN

3. MMD requires a permit, written statement or other written authorization from Grant County allowing Billali Mine, LLC to place the proposed pipeline in the Bitter Creek Road right-of-way. Please address.
4. MMD requires a written statement from the Earven Ranch owner stating that the ranch owner is allowing Billali Mine, LLC and State of New Mexico personnel access to their private property for purposes of inspection of the infiltration pond and permit compliance. Please address.
5. Please address concerns/questions from the New Mexico Environment Department, which are provided in the attached memo.
6. Please address concerns/questions from the Historic Preservation Division, which are provided in the attached email.
7. Please address concerns/questions from the Department of Game and Fish, which are provided in the attached letter.

Please provide written responses to these technical comments within 45-days after receipt. If you have any questions, please contact me at 505-372-8634 or by email at [david.ennis@state.nm.us](mailto:david.ennis@state.nm.us).

Sincerely,



David ("DJ") Ennis, P.G.  
Permit Lead / Reclamation Specialist

Attachments: NMED Memorandum dated May 22, 2020  
Department of Game and Fish Letter dated May 25, 2020  
Historic Preservation Division email dated May 7, 2020



**Michelle Lujan Grisham**  
Governor

**Howie C. Morales**  
Lieutenant Governor

**NEW MEXICO  
ENVIRONMENT DEPARTMENT**

Ground Water Quality Bureau

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**James C. Kenney**  
Cabinet Secretary

**Jennifer J. Pruett**  
Deputy Secretary

**MEMORANDUM**

Date: May 22, 2020

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

Through: Anne Maurer, Mining Environmental Compliance Section

From: George Llewellyn, Mining Environmental Compliance Section  
John Moeny, Surface Water Quality Bureau  
Rhett Zyla, Air Quality Bureau

Subject: **NMED Comments, Modification 20-1, Billali Mine, Grant County, New Mexico Mining Act Permit No. GR058MN**

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The New Mexico Environment Department (NMED) received correspondence from the Mining and Minerals Division (MMD) on May 4, 2020 requesting NMED review and provide comments on the above-referenced MMD permitting action. The operators of the Billali Mine are requesting to modify Permit No. GR058MN. MMD requested comments on the workplan within 20 days of receipt in accordance with Section 19.10.5.503 C. NMAC. NMED has the following comments.

**Background**

Modification 20-1 is for 1) construction of an approximately 1-acre water detention pond to be constructed on private property, and 2) installation of a 2-to 3-inch nominal diameter pipeline along the Bitter Creek Road right-of-way. Groundwater pumped from the decline will be conveyed through the pipeline to the water detention pond for storage.

**Air Quality Bureau**

The Air Quality Bureau comments are attached.

**Surface Water Quality Bureau**

The Surface Water Quality Bureau comments are attached.

**Mining Environmental Compliance Section (MECS)**

MECS staff communicated with Mr. Les Billingsley, the operator of the Billali Mine on May 8, 2020 regarding the proposal to pump groundwater from the decline and convey it to a storage pond. MECS staff stated to Mr. Billingsley that a Notice of Intent to Discharge (NOI) must be submitted to NMED for the proposed activity, which must include recent analysis of the groundwater quality from the decline. Mr. Billingsley sampled the groundwater from the decline on April 7, 2020. MECS received the water quality results from the sample taken from the decline on May 12, 2020. NMED received the NOI via email on May 20, 2020. The NOI is currently being reviewed and processed.

**NMED Summary Comment**

NMED will respond to the NOI and will provide any additional comments and requirements necessary to ensure protection of surface water and groundwater. Following determination regarding the NOI, NMED will provide a final response to MMD as to whether the water management proposed in Modification 20-1 will be protective of the environment if done in accordance with the approved permits, pollution controls, and the comments above.

If you have any questions, please contact Kurt Vollbrecht at (505) 827-1095.

cc: Jerry Schoeppner, Director, EMNRD-MMD  
David Ennis, Lead Staff, EMNRD-MMD  
Kurt Vollbrecht, Program Manager, MECS  
Shelly Lemon, Bureau Chief, GWQB-SWQB



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**James C. Kenney**  
Cabinet Secretary

**Jennifer J. Pruett**  
Deputy Secretary

### MEMORANDUM

Date: May 21, 2020

To: Anne Mauer, Mining Act Team Leader (Acting)  
Mining Environmental Compliance Section  
Ground Water Quality Bureau (GWQB)

From: John Moeny  
Watershed Protection Section  
Surface Water Quality Bureau (SWQB)

Subject: **Request for Comments, Modification 20-1 Application, Billali Mine, New Mexico Mining Act Permit No. MK058MN**

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On May 4, 2020, NMED received a request for comments regarding a modification to an existing minimal impact mine permit located in Grant County near Lordsburg.

#### *Summary of Proposed Action*

The Applicant seeks to modify the Billali Mine permit to construct a new, off-site dewatering pond. The pond would collect and infiltrate pumped mine water from the underground mine workings at the Billali Mine. It is estimated that up to 100 gallons per minute would be pumped to dewater the mine with less volume required to maintain dry working conditions. The pond would be approximately 1 acre in size and located on private lands approximately two miles down gradient from the mine.

#### *Relevant State and Federal Water Quality Regulations*

Both the Billali Mine and the proposed infiltration pond lie adjacent to Bitter Creek, an unclassified water of the state. Intermittent water quality standards under 20.6.4.98 NMAC apply to all unclassified waters of the state including ephemeral drainages in the project area, until a hydrology protocol (HP) survey is conducted and a Use Attainability Analysis (UAA) is approved by the Water Quality Control Commission (WQCC) in accordance with 20.6.4.15 NMAC.

The U.S. Environmental Protection Agency (USEPA) administers the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Federal Clean Water Act (CWA) in the State of New Mexico. Coverage under the NPDES Construction General Permit (CGP) is required for storm water discharges to waters of the U.S. from construction projects that **disturb one or more acres, and smaller sites that are part of a larger common plan of development or sale**. More information on USEPA's NPDES Stormwater Program is available at on-line at <https://www.epa.gov/npdes/npdes-stormwater-program>. Construction activity includes disturbance of soils (or 'breaking ground') associated with clearing, grading, or excavating activities or other construction-related activities (e.g., stockpiling of fill material; placement of raw materials at the site).

The U.S. Army Corps of Engineers (USACE) regulates the discharge of dredged or fill material into waters of the United States, including wetlands, under Section 404 of the Federal Clean Water Act (CWA). The USACE issues or authorizes Standard Individual Permits (IPs), Nationwide Permits (NWP), and the Emergency Regional General Permit (RGP) for activities such as earth-moving work within wetlands, lakes, and streams (including ephemeral streams or arroyos) that are waters of the United States. If you have questions about activities within watercourses or wetlands that may require coverage under a CWA Section 404 permit, then more information is available on-line from the USACE, Albuquerque District, Regulatory Division at: <http://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/>.

#### *Recommendations to protect Surface Water Quality*

The SWQB also recommends that the infiltration pond be sized to accommodate the anticipated maximum volume of pumped mine water, **and** large precipitation events or run-on surface flows that may enter the pond. The pond should have adequate set-back from Bitter Creek to prevent direct discharge to the creek in the event of pond failure or breaching.

The SWQB also requests results from routine water quality analyses required under Mining Act permit MK058MN to ensure that discharged water does not exceed surface water quality standards.

In addition to the regulations above, the following best management practices are recommended to protect surface water quality.

- Fuel, oil, hydraulic fluid, lubricants, and other petrochemicals must have a secondary containment system to prevent spills.
- If feasible, set-back construction staging areas and fuel storage a minimum of 100 feet from the Bitter Creek channel.

Appropriate spill clean-up materials such as absorbent pads must be available on-site at all times during road construction, site preparations, drilling and reclamation to address potential spills.

Report all spills immediately to the NMED as required by the New Mexico Water Quality Control Commission regulations (20.6.2.1203 NMAC). For non-emergencies during normal business hours, call 505-428-2500. For non-emergencies after hours, call 866-428-6535 or 505-428-6535 (voice mail, twenty-four hours a day). For emergencies only, call 505-827-9329 twenty-four hours a day (NM Dept of Public Safety).

The SWQB finds the Applicant's proposed exploration is likely to have a minimal impact to surface waters if operated and reclaimed with the approved permits and pollution controls and the comments above.

If you have any questions, please phone me at (575) 956-1545.



**NEW MEXICO  
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**James C. Kenney**  
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Deputy Secretary

**MEMORANDUM**

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DATE: May 18, 2020

TO: Kurt Vollbrecht, Program Manager, Mining Environmental Compliance Section

FROM: Rhett Zyla, Environmental Scientist & Specialist - Air Quality Bureau

RE: Request for Agency Comments, Modification 20-1, Billali Mine, Grant County, New Mexico, Permit No. MK058MN

The New Mexico Air Quality Bureau (AQB) has completed its review of the above-mentioned mining project. Pursuant to the New Mexico Mining Act Rules, the AQB provides the following comments.

**Air Quality Permitting History**

The AQB has not issued any air quality permits for this operation.

**Details**

The Applicant is requesting a modification to permit MK058MN, for the dewatering and discharge/disposal of groundwater from the Billali Mine decline, located in Township 16S Range 21W. Specifically, modification 20-1 is for the following:

- Excavation/construction of a water retention pond within soil located on private property identified as the Earven Ranch located approximately 2 miles west of the Billali Mine. The dimensions of the proposed retention pond are not specified by the operator but is expected to be of sufficient volume to allow for infiltration of 100 gallons/minute of water for initial dewatering. For purposes of this modification, MMD is anticipating a pond approximately 1 acre in aerial extent.
- Placement of a 2-3" nominal diameter pipeline along the Bitter Creek Road right-of-way. Bitter Creek Road is a dirt road that is periodically graded by Grant County. The pipeline is anticipated to be a mostly located on the surface right-of-way with occasional shallow burial where necessary to allow vehicular traffic over the pipeline where necessary.



### **Air Quality Requirements**

The New Mexico Mining Act of 1993 states that “Nothing in the New Mexico Mining Act shall supersede current or future requirements and standards of any other applicable federal or state law.” Thus, the applicant is expected to comply with all requirements of federal and state laws pertaining to air quality. Current requirements which may be applicable in this mining project include, but are not limited to the following:

Paragraph (1) of Subsection A of 20.2.72.200 NMAC, *Application for Construction, Modification, NSPS, and NESHAP - Permits and Revisions*, states that air quality permits must be obtained by:

“Any person constructing a stationary source which has a potential emission rate greater than 10 pounds per hour or 25 tons per year of any regulated air contaminant for which there is a National or New Mexico Ambient Air Quality Standard. If the specified threshold in this subsection is exceeded for any one regulated air contaminant, all regulated air contaminants with National or New Mexico Ambient Air Quality Standards emitted are subject to permit review.”

Further, Paragraph (3) of this subsection states that air quality permits must be obtained by:

“Any person constructing or modifying any source or installing any equipment which is subject to 20.2.77 NMAC, *New Source Performance Standards*, 20.2.78 NMAC, *Emission Standards for Hazardous Air Pollutants*, or any other New Mexico Air Quality Control Regulation which contains emission limitations for any regulated air contaminant.”

Also, Paragraph (1) of Subsection A of 20.2.73.200 NMAC, *Notice of Intent*, states that:

“Any owner or operator intending to construct a new stationary source which has a potential emission rate greater than 10 tons per year of any regulated air contaminant or 1 ton per year of lead shall file a notice of intent with the department.”

In addition, pursuant to Subsection A of 19.10.3.302 NMAC, *Minimal Impact Exploration Operations*:

“A minimal impact exploration operation will not exceed 1000 cubic yards of excavation per permit. Disturbances for constructed roads, drill pads and mud pits shall be no more than 5 acres total and will not be counted in the excavated materials. The type of road construction, the number and type of drill pads, and other disturbances when considered with site specific conditions will be major factors in determining eligibility for minimal impact status which is in the discretion of the director.”

The above is not intended to be an exhaustive list of all requirements that could apply. The applicant should be aware that this evaluation does not supersede the requirements of any current federal or state air quality requirement.

### **Fugitive Dust**

Air emissions from this project should be evaluated to determine if an air quality permit is required pursuant to 20.2.72.200.A NMAC (e.g. 10 lb/hour or 25 TPY). Fugitive dust is a common problem at mining sites and this project will temporarily impact air quality as a result of these emissions. However, with the appropriate dust control measures in place, the increased levels should be minimal. Disturbed surface areas, within and adjacent to the project area, should be reclaimed to avoid long-term problems with erosion and fugitive dust. EPA's *Compilation of Air Pollutant Emission Factors, AP-42, "Miscellaneous Sources"* lists a variety of control strategies that can be included in a comprehensive facility dust control plan. A few possible control strategies are listed below:

Unpaved haul roads and traffic areas: paving of permanent and semi-permanent roads, application of surfactant, watering, and traffic controls, such as speed limits and traffic volume restrictions.

Paved roads: covering of loads in trucks to eliminate truck spillage, paving of access areas to sites, vacuum sweeping, water flushing, and broom sweeping and flushing.

Material handling: wind speed reduction and wet suppression, including watering and application of surfactants (wet suppression should not confound track out problems).

Bulldozing: wet suppression of materials to "optimum moisture" for compaction.

Scraping: wet suppression of scraper travel routes.

Storage piles: enclosure or covering of piles, application of surfactants.

Miscellaneous fugitive dust sources: watering, application of surfactants or reduction of surface wind speed with windbreaks or source enclosures.

### **Recommendation**

The AQB has no objection to the current request for a permit modification.

The applicant is expected to comply with all requirements of federal and state laws pertaining to air quality. This written evaluation does not supersede the applicability of any forthcoming state or federal regulations.

If you have any questions, please contact me at (505) 476-4304.

**From:** [Reycraft, Richard, DCA](#)  
**To:** [Ennis, David, EMNRD](#)  
**Subject:** HPD Log#112994, Request for Agency Comments, Modification 20-1, Billali Mine, Grant County, New Mexico, Permit No. GR058MN  
**Date:** Thursday, May 7, 2020 4:37:15 PM  
**Attachments:** [Log#112994.pdf](#)

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Dear Mr. Ennis:

I am writing in response to your request for comment on the above referenced modification to the Billali Mine permit received at this office May 5, 2020.

Pursuant to 19.10.5.505 NMAC, Permit Modifications and Revisions, the Director shall determine whether a permit modification would have an adverse impact on cultural resources listed on either the National Register of Historic Places (NRHP) or the State Register of Cultural Properties or be located in a known cemetery or other burial ground.

According to our files, there are no cultural resources listed on either the National Register of Historic Places or the State Register of Cultural Properties in the permit area. There are also no known cemeteries or other burial grounds. Based on this information, this permit will have no adverse impacts to cultural resources listed on the National or State Registers.

Although there are no cultural resources listed on either the National Register of Historic Places or the State Register of Cultural Properties, the permit area has been archaeologically surveyed and the proposed pipeline route contains three archaeological sites and two historic structures. Two of these archaeological sites and one historic structure have been deemed eligible for the NRHP. The eligibility of the other two historic properties for the NRHP remains undetermined pending further investigation

Therefore, the SHPO recommends that a qualified professional archaeologist revisit these historic properties to assess their current condition and to provide direction for the pipeline construction to avoid these important historic resources.

A list of state permitted archaeologists and archaeological firms are available from this office upon request or can be downloaded from our web site at:

<http://www.nmhistoricpreservation.org/documents/consultants.html>

If you have any questions concerning these comments, please do not hesitate to contact me by phone at (505)-452-6115 or e-mail me at [richard.reycraft@state.nm.us](mailto:richard.reycraft@state.nm.us)

Sincerely,

Richard Reycraft

Richard. Reycraft  
Staff Archaeologist



DIRECTOR AND SECRETARY  
TO THE COMMISSION  
Michael B. Sloane

STATE OF NEW MEXICO  
DEPARTMENT OF GAME & FISH

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Placitas

25 May 2020

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

**RE: Modification 20-1, Billali Mine, Grant County, New Mexico. Permit No. GR058MN.  
NMERT No. 593.**

Dear Mr. Ennis,

The New Mexico Department of Game and Fish (Department) has reviewed the permit modification referenced above. For the purpose of de-watering the Billali Mine, Billali Mine LLC is proposing the excavation of a water retention pond on the privately owned Earven Ranch, and the construction of a two to three inches diameter pipeline that will run along the Bitter Creek Road right-of-way, that will be approximately two miles in length. MMD anticipates that the size of the water retention pond will be approximately one acre. The proposed project is located in Township 16S, Range 21W, Sections 21, 22, 26, and 27 in Grant County, NM. The Department provides the following comments to minimize impacts to wildlife.

If trenching will be required during pipeline construction, please refer to and follow the Department's Trenching Project Guidelines;

<http://www.wildlife.state.nm.us/conservation/habitat-handbook/>.

Trenching best management practices should include, at minimum, the following mitigation measures:

- Whenever possible, locate trenching activities within previously disturbed areas, such as existing road or pipeline right-of-ways. To the extent possible, avoid trenching in undisturbed habitat.
- Trench during the cooler months (October – March).
- Utilize concurrent trenching, pipe-laying and backfilling. Keep trenching, pipe-laying and backfilling crews as close together as possible to minimize the amount of open trench at any given time. When trenching activities are temporarily halted (e.g. overnight, weekends, holidays, weather shutdowns), protect wildlife from accessing any open trench between digging and backfilling operations by using one or more of the methods described below.

- Avoid leaving trenches open overnight. When trenches cannot be backfilled immediately, escape ramps should be constructed no greater than 30 meters apart. Escape ramps can be constructed parallel or perpendicular to the existing trench. The escape ramp slope should not exceed 45 degrees (1:1), and ideally be less than 30 degrees. If pipe has been installed and backfilling has not occurred, escape ramps may need to be constructed on both sides of the trench, since the pipe may block access of amphibians, reptiles, and small mammals to the ramps if only constructed on one side.
- Any trenches that have been left open overnight should be inspected the following day by a qualified biologist. Any animals remaining in the trench should be removed prior to backfilling. Required tools include snake tongs for removing snakes, and a dip net for capturing and removing amphibians, reptiles and small mammals. Many animals trapped in a trench will burrow under loose soil, so to the extent possible, the biologist should disturb loose soil in the trench to uncover trapped animals for removal. Animals should be relocated at least 50 meters away from the open trench in undisturbed habitat.
- Place end caps on open end(s) of the pipe once it has been laid in the trench, to preclude trapped animals from entering. Staged pipe on the surface should be capped until placed in the trench, or checked for wildlife before being placed into the trench.

The water retention pond should have slopes that are at an angle of less than 45 degrees to prevent animal entrapment, and if the pond is going to require a liner, it should be made of a textured material that will provide a non-slippery surface for wildlife.

Gila monster (*Heloderma suspectum*) has been documented near the proposed project area. The Gila monster is a state endangered species and is a Species of Greatest Conservation Need. To minimize the potential for unintentional take of this species the Department recommends conducting surveys during excavation and pipeline ground disturbance activities. Surveys should occur concurrently with construction activities by a qualified biologist during the Gila monster's peak surface activity period (April – May and late July – August). If a Gila monster is detected, it should be relocated at least 0.5 mile away from road and construction areas, into appropriate habitat.

Thank you for the opportunity to review and comment on the proposed 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](mailto:ronald.kellermueller@state.nm.us).

Sincerely,



Matt Wunder, Ph.D.  
Chief, Ecological and Environmental Planning Division

cc: USFWS NMES Field Office