



July 21, 2022

To: David Ennis  
P.G. Permit Lead  
New Mexico Mining and Minerals Division

To: Ronald Kellermueller  
Mining and Energy Habitat Specialist  
State of New Mexico Game and Fish Department

Dear Mr. Ennis and Mr. Kellermueller,

Please find our response to the comment letter submitted by Mogollon resident Bob Moore related to the Mexican Spotted Owl (MSO) survey conducted by Everett Ecological and NV5 in accordance with the requirements of our minimal impact permit.

We appreciate the local experience of Mogollon residents and share their interest in Mexican Spotted Owl (MSO) conservation. However, many years of MSO observations in the area were never reported to the U.S. Forest Service (USFS), U.S. Fish and Wildlife Service (FWS), or New Mexico Department of Game and Fish (NMDGF).

Conversely our surveys were conducted by trained qualified biologists using the most recent U.S. Fish and Wildlife Service Mexican Spotted Owl Survey Protocol and in accordance with current New Mexico Department of Game and Fish recommendations.

***The most important finding of our survey is that it is reasonable to conclude that the project area is not located in an area likely to result in adverse impact on the MSO.***

Attached to this letter is a document that responds to Mr. Moore's comments point-by-point. Our survey is based on the best and most recent science related to MSO conservation and protection and we stand by the results.

I look forward to discussing this with you in the near future.

Sincerely,

A handwritten signature in blue ink, appearing to read "Galen McNamara", with a long horizontal flourish extending to the right.

Galen McNamara  
CEO & Director  
Summa Silver Corp

**Summa Silver**  
**Comment Response Matrix**  
**Re: Summa Silver Corp. Drilling Permit, Mogollon, NM – Mexican Spotted Owl Surveys**

Page	Line(s)	Bob Moore Comment	Summa Response
1	13-14	<i>I am a long-time resident of Mogollon who, among other local residents, has observed local Mexican spotted owls for many years.</i>	While we appreciate the local experience of Mogollon residents and share their interest in Mexican spotted owl (MSO) conservation, these many years of MSO observations in the area were never reported to the U.S. Forest Service (USFS), U.S. Fish and Wildlife Service (FWS), or New Mexico Department of Game and Fish (NMDGF). As part of standard due diligence before conducting MSO surveys, NV5 and Everett Ecological gathered current and historical MSO presence/absence data via informal consultation with USFS, FWS, and NMDGF. A review of the datasets showed no current indication of professionally verified MSO occurrence within approximately 2 miles of Mogollon. Historical records of the area last showed a detection several decades ago. If local observations had been reported to and verified by the appropriate authorities, it would have been valuable data to aid in current MSO survey efforts, permit planning, and mitigation resolution as part of lawful work activities. We respectfully recommend that any other sensitive species encountered by residents be reported to the appropriate federal and state agencies to continue to collaborate in our collective efforts to support effective natural resource conservation in the area.
1 2	27-47 2-19	<i>See section beginning on Page 1, Line 27: “1) Graveyard Gulch Survey Interpretation”</i>	Two male MSOs were detected within the AOI in Graveyard Gulch (Survey 1); however, no further detections occurred during subsequent surveys. In this instance, the Graveyard Gulch detection was monitored by two daytime follow-up surveys, three nighttime surveys, and two extensive raptor nest surveys. These results suggest that the Graveyard Gulch detection likely occurred as a result of: (a.) territorial males from Silver and Mineral Creeks

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			<p>responding to surveyor calls, (b.) the males were “floaters” responding to surveyor calls, or (c.) a combination of a. and c. Therefore, the results suggest that qualified biologists using U.S. Fish and Wildlife Service Mexican Spotted Owl Survey Protocol and in accordance with New Mexico Department of Game and Fish recommendations did not locate an occupied breeding territory or roost in Graveyard Gulch.</p>
<p>2 3</p>	<p>21-46 1-20</p>	<p><i>See sections beginning on Page 2, Line 21: “1) Mineral Creek Survey Interpretation” and Page 3, Line 45: “1) Silver Creek Survey Interpretation”</i></p>	<p>MSO habitat models developed by the FWS and US Forest Service (USFS) suggest that the buffer zone is unlikely to contain suitable habitat and that suitable habitat is present in riparian corridors outside the buffer zone, which survey findings support. Extensive nighttime presence/absence surveys coupled with multiple daytime follow-up MSO nest searches, including widespread raptor nest searches in April and May, did not detect occupied MSO nest sites within the buffer zone. However, two consistently occupied MSO territories were found in suitable riparian habitats approximately 0.25 miles north (Mineral Creek) and south (Silver Creek) of the buffer edge. The April 2022 survey report also details that additional MSO surveys are occurring in June-July 2022 and shall occur April-July 2023, including follow-up surveys on previous detections.</p> <p>The first phase of 2022 MSO surveys focused on the AOI, which is a .5-mile buffer delineated around project worksites. For the Mogollon Project Area of Interest (AOI), one season of surveys is sufficient to demonstrate compliance with Permit requirements because, as a result of extensive surveys going beyond seasonal protocol recommendations: (a.) no MSO breeding territories were</p>

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			<p>located in the buffer; (b.) suitable breeding habitat is scarce in the buffer, (c.) comprehensive suitable breeding habitat was identified outside of the buffer, and (d.) breeding territories were identified outside of the buffer. These conclusions are based on data collected by independent wildlife biologists employed by NV5 and Everett Ecological who are considered experts in the profession, share extensive experience with MSO, and have years of experience in the Gila. Therefore, beyond a reasonable doubt, it can be rationally determined that there are no active nest sites within the buffer, as the primary objective of MSO surveys per permit requirements is to identify the presence or absence of active nest sites within .5-miles of the project work sites.</p> <p>Lastly, clarifying any confusion regarding the appropriate use of pre-call and nighttime calling surveys is essential. There appears to be a significant degree of concern that less than four nighttime calling surveys were conducted at select calling stations in the survey area. The number of nighttime surveys conducted can be easily misinterpreted by those who are not confidentially familiar with the survey protocol or may lack sufficient field experience necessary to make refined decisions about responsible survey implementation.</p> <p>However, the Mexican Spotted Owl Survey Protocol, FWS, 2012 [Updated 3/15/2022] provides guidance on this issue. Concisely, the number of calling surveys per calling station is variable depending on the results of each survey relative to each calling station so as to minimize disturbance to MSO:</p>

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			<p><i>“...surveyors should conduct four complete surveys during each breeding season. A complete survey can be a combination of a pre-call (daytime reconnaissance of habitat to be night called), a nighttime calling survey, and, if owls are detected, a daytime follow-up survey. If owls are not detected during daytime calling, night calling must be completed. However, if owls are located during a pre-call, night calling of the survey area is not required. Surveyors might want to conduct additional surveys if there is evidence that additional owls remain undetected in the area.” (FWS 2022, Section 3, Part A).</i></p> <p><i>“If the owl is heard clearly, and the call type and direction are confirmed, there is no need to continue calling. If, however, there is some doubt as to whether a response was detected, or from which direction, the surveyor should listen carefully for a few minutes, as an owl may call again if given the opportunity. If the owl does not respond after two to five minutes, the surveyor should continue calling to confirm owl presence and better assess the direction of the call. Do not call any more than is necessary. By stimulating the owl(s) to move you may harass a female owl off a nest or increase an owl’s risk of predation.” (FWS 2022, Section 4, Part C.)</i></p> <p><i>“Owls may move before or after they begin calling. Make every effort to estimate and map the location of the owl when you heard the first response. After you have determined the owl’s location (see section 4.B above), move approximately 800 to 1,200 meters (0.5 to 0.75 mile) away (depending upon topography) before</i></p>

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			<p><i>continuing surveys to avoid response by the same owl. If the owl responds from the original detection area, then move farther away before continuing to call.” (FWS 2022, Section 4, Part D.)</i></p> <p><i>“If no owl(s) are located during complete daytime follow-up visits, the surveyor should return to conduct nighttime surveys. The survey protocol recommends a minimum of four complete surveys to an area, but surveyors should assess the confidence of the nighttime and daytime responses and determine if additional nighttime surveys are needed to more accurately determine the location of the responding owl(s). Field personnel conducting surveys need to be given the flexibility to return as many times as necessary to find the owl(s).” (FWS 2022, Section 5, Part F.)</i></p> <p><i>“Surveyors should minimize the amount of disturbance to owls. For example, surveyors must not linger in nest sites or over-call an area.” (FWS 2022, Section 5, Part H.)</i></p>
3 4	22-47 1-27	See section beginning on Page 3, Line 22: “In Conclusion,”	<p>Confusion surrounding language in the FWS Survey Protocol is important to clarify. Indeed, the protocol recommends that two seasons of surveys (two years), each composed of four individual surveys (eight surveys total), be accomplished to constitute a complete inventory. However, the protocol also explains that the document “expresses the FWS’s scientific opinion on adequate owl survey methods and includes guidance and recommendations. It does not constitute law, rules, regulations, or absolute requirements.” (FWS 2022 p. 1, pp. 2). The protocol is intended to be generally applied as guidance across various circumstances involving a diverse range of surveyor knowledge, skills, and</p>

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			<p>abilities. Therefore, it is practical to espouse protocol recommendations reasonably and prudently relative to the available data concerning the specific circumstances of individual projects.</p> <p>Based on the currently available data, it is reasonable to conclude that the project area is not located in an area likely to result in adverse impact. This conclusion also confirms Permit Section 4 - Part B2, Findings of Fact, which found that the Project area is not located in MSO designated critical habitat nor situated in a location determined by NMDGF to likely result in adverse impact on the MSO. The results of the 2022 surveys have provided stakeholders with a trove of baseline critical data necessary to base objective conclusions upon, and future surveys will continue to add to this knowledge. To reiterate, the findings of the 2022 MSO Survey Report are transparently based on all currently available data as interpreted relative to verbatim guidelines established throughout the most recent FWS MSO Survey Protocol. As further data is gathered, the conclusions may or may not be subject to modification.</p>