

State of New Mexico
Energy, Minerals and Natural Resources Department

Michele Lujan Grisham
Governor

Sarah Cottrell Propst
Cabinet Secretary

Todd E. Leahy, JD, PhD
Deputy Cabinet Secretary

Jerry Schoepner, PG, Director
Mining and Minerals Division



Electronic Transmission

September 27, 2022

Bob Newcomer, Principle
Toltec Mesa Resources LLC
7823 Quintana Dr. NE
Albuquerque, NM 87109

**RE: Request for Additional Information, Modification 22-1 Application, Permit No. OT005MN,
Orogrande Placer Gold**

Dear Mr. Newcomer,

The New Mexico Mining and Minerals Division ("MMD") received an application to modify Permit No. OT005MN, Orogrande Placer Gold, on July 20, 2022 from Toltec Mesa Resources LLC on behalf of W.W. Mining and Production ("WWMP"). The application for permit modification ("Application") was assigned Modification 22-1 by MMD. MMD received supplemental information regarding the Application on September 9, 2022. The Application was submitted as a condition of the Amended Settlement Agreement between MMD and WWMP and proposes to update the mining plan, expand the permit area, and provide financial assurance for the operation.

Pursuant to §19.10.3.304.H and §19.10.6.608.D(3) of the New Mexico Administrative Code ("NMAC"), MMD requested the review of the Application by the Mexico Department of Game and Fish ("NMDG&F"), the New Mexico Environment Department ("NMED"), the New Mexico Office of the State Engineer ("NMOSE"), the New Mexico State Forestry Division ("NMFD"), and the New Mexico Department of Cultural Affairs ("NMDCA").

MMD received written comments from NMOSE, NMDCA, NMDG&F, and NMED. Copies of the comments from these agencies are attached. Please review these responses and note the guidance listed in them. MMD did not receive any comments from the NMFD.

MMD Comments:

MMD has reviewed the Application and has found it to be *technically incomplete* pending receipt of acceptable supplemental information identified in this letter. Please respond no later than 30 days of receipt of this letter, to the following items:

1. MMD understands that there was recently a transfer in ownership of the permit area. Please provide an update in right of access information pursuant to 19.10.3.304.D.(1).

2. During the site inspection on August 31, 2022, the main erosion feature on the western edge of the reclaimed area which had been repaired earlier this spring had redeveloped after the repairs were completed and monsoon rains had started. NMDG&F also observed these erosion features and expressed concern over the stability of the site in their comment letter. Please provide an erosion mitigation plan to address preventing further head cutting on this feature. MMD will require that this plan be implemented within 30 days of the plan submittal.
3. Provide a cost estimate based on the existing disturbed area, reclaimed area, and design limit. MMD guidance for estimating reclamation costs for Minimal Impact Mining Operations may be used and found at: https://www.emnrd.nm.gov/mmd/wp-content/uploads/sites/5/MMD_Part3FAGuidelines_Sept2013.pdf
4. MMD will set revegetation standards as a permit condition in Modification 22-1. To determine whether the site has achieved a self-sustaining ecosystem after reclamation is complete, typically the vegetation on the reclaimed areas is compared with vegetation on an undisturbed reference area. Please propose vegetation standards to include in the permit and propose a vegetation reference area (map).

NMDCA Comments:

Please review the comment letter received by NMDCA and respond to the recommendation that a qualified professional archaeologist visit LA 118296 and inspect the proposed placer locations and any staging areas to determine if intact archaeological deposits will be adversely affected.

NMDG&F Comments:

Please review the comment letter received by NMDG&F.

NMED Surface Water Quality Bureau Comments (“NMED/SWQB”)

Please review the comment letter received by NMED/SWQB and respond to the following: “SWQB recommends that the Applicant contact the USACE-Albuquerque District, Las Cruces Field Office (575)-652-4574, to ensure that the proposed mining activity will not require dredge-and-fill permit authorization”.

NMED Air Quality Bureau Comments (“NMED/AQB”)

Please review the comment letter received by NMED/AQB.

Should you have any questions, comments, or require additional information concerning this letter or any enclosures, please contact me at (505) 216-8399 and/or carmen.rose@emnrd.nm.gov.

Sincerely,



Carmen Rose, Permit Lead
Mining Act Reclamation Program (MARP)/MMD

September 27, 2022

Page **3** of **3**

CC: Holland Shepherd, Program Manager, MARP/MMD
Wade White, W.W. Mining and Production

Enclosures: July 29, 2022 Letter to MMD from NMOSE
August 8, 2022 Letter to MMD from NMDCA
September 19, 2022 Letter to MMD from NMDG&F
September 23, 2022 Letter to MMD from NMED

From: [Tintor, William, OSE](#)
To: [Rose, Carmen, EMNRD](#)
Cc: [Zemlick, Katie, OSE](#)
Subject: Hydrology Review of MMD Orogrande Placer Gold, Permit No. OT005MN
Date: Friday, July 29, 2022 10:19:57 AM

Dear Ms. Rose,

On July 26, 2022, the Hydrology Bureau at the NM OSE received a MMD “Request for Comments on Modification 22-1 Application, Orogrande Gold Placer, Permit No. OT005MN, W.W. Mining and Production, Otero County, New Mexico”.

NM OSE Hydrology has reviewed the information included in the Modification 22-1 Application for the Orogrande Placer Gold on the MMD website and the information from previous applications for Orogrande Placer Gold provided to NM OSE by the MMD. The applicant does not anticipate or intend to encounter, consumptively use, or otherwise affect the availability of surface or ground water. Therefore, the Hydrology Bureau has no comments related to the Modification Application.

If you have any questions regarding the above, please contact me.

Will Tintor, PhD

Hydrology Bureau
New Mexico Office of the State Engineer
Cell: (217) 415-7098
Email: williaml.tintor@state.nm.us



Michelle Lujan
Grisham
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

August 8, 2022

Carmen Rose, Permit Lead
Mining Act Reclamation Program ("MARF")
New Mexico Mining and Minerals Division
1220 So. St. Francis De.
Santa Fe, NM 87050
carmen.rose@state.nm.us

Re: HPD Log# 117692, Request for Comments on Modification 22-1 Application, Orogrande Gold Placer,
Permit No. OT005MN, W.W. Mining and Production, Otero County, New Mexico

Dear Ms. Rose:

I am writing in response to your request for review and comment on the above referenced Mine Modification Permit Application received at this office July 26, 2022.

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 (SRCP) or be located in a known cemetery or other burial ground.

According to our files, there are no cultural resources listed on either the NRHP or the SRCP in the proposed, expanded 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.

However, the project area does contain an archaeological site, LA 118296, that is eligible for the NRHP. The placement of gold placers in previously undisturbed terrain may adversely affect this site. Therefore, the State Historic Preservation Officer (SHPO) recommends that a qualified professional archaeologist visit LA 118296 and inspect the proposed placer locations and any staging areas to determine if intact archaeological deposits will be adversely affected by this project. 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>

Finally, as a portion of LA 118296 is situated on Bureau of Land Management (BLM) property. The BLM should be consulted for this permit modification so that they are aware of this project and can confirm that BLM resources will not be affected by proposed mining activities.

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

Sincerely,

Richard Reycraft

Richard. Reycraft
HPD Staff Archaeologist

cc: tamiller@blm.gov

GOVERNOR
Michelle Lujan Grisham



DIRECTOR AND SECRETARY
TO THE COMMISSION
Michael B. Sloane

STATE OF NEW MEXICO DEPARTMENT OF GAME & FISH

One Wildlife Way, Santa Fe, NM 87507

Tel: (505) 476-8000 | Fax: (505) 476-8123

For information call: (888) 248-6866

www.wildlife.state.nm.us

STATE GAME COMMISSION

SHARON SALAZAR HICKEY
Chair
Santa Fe

DEANNA ARCHULETA
Vice Chair
Albuquerque

GREGG FULFER
Jal

TIRZIO J. LOPEZ
Cebolla

ROBERTA SALAZAR-HENRY
Las Cruces

16 September 2022

Carmen Rose, Reclamation Specialist
Mining Act Reclamation Program
Mining and Minerals Division (MMD)
1220 South St. Francis Drive
Santa Fe, NM 87505

RE: Permit Modification 21-1 Application, Orogrande Gold Placer, W.W. Mining and Production, Otero County, New Mexico, Permit No. OT005MN; NMDGF No. NMERT-2015.

Dear Ms. Rose:

The Department of Game and Fish (Department) has reviewed the above referenced permit modification application submitted by Toltec Mesa Resources, LLC on behalf of W.W. Mining and Production (WW). WW is requesting a modification of the minimal impact, new mining permit for the Orogrande Gold Placer mine and proposes to increase the design limit and permit area of the mining operation while maintaining minimal impact status. Staff from the Department, MMD, and the Operator conducted a pre-reclamation site inspection on 30 June 2022. The Department conducted a follow-up, post-reclamation site visit on 12 September 2022.

As part of the new permit application requirements, MMD directed WW to stabilize the permit area by backfilling, regrading, and reseeding erosion damage that has occurred since the first reclamation attempt in 2013 and that the reclamation work be completed by 31 August 2022. The reclamation work was completed on 1 July 2022. Monsoonal rains have facilitated plant growth on the reclamation site and a good diversity of native plant species are present. However, significant erosion is still occurring at the site, and the current reclamation efforts appear to be failing like the 2013 actions. Issues noted at the site include: 1) significant erosion along the western edge of the reclamation area that has undercut the two rows of straw wattles that were installed to control erosion; 2) four unsecured hay bales placed in an eroded channel in an attempt to mitigate erosion; 3) substantial rilling in the central portion of the reclamation site. The Department recommends that MMD not approve the permit application until the erosion issues on the reclamation site are remedied, including repairs to the currently eroded areas and addition of sufficient design features to adequately prevent future erosion.

The Department does not anticipate significant impacts to wildlife or sensitive habitats from the proposed minimal impact mining operation.

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) 270-6612 or ronald.kellermueller@state.nm.us.

Sincerely,

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

cc: USFWS NMES Field Office



Electronic Transmission

MEMORANDUM

Date: September 23, 2022

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

Through: Anne Maurer, Mining Act Team Leader, Mining Environmental Compliance Section (MECS)

From: John Moeny, Surface Water Quality Bureau (SWQB)
Sufi Mustafa, Air Quality Bureau (AQB)

Subject: **New Mexico Environment Department (NMED) Comments, Orogrande Gold Placer, Modification 22-1, W.W. Mining and Production, Otero County, New Mexico, New Mexico Mining Act Permit No. OT005MN**

The New Mexico Environment Department (NMED) received correspondence from the Mining and Minerals Division (MMD) on July 26, 2022 requesting that NMED review and provide comments on the above-referenced MMD permitting action. Pursuant to the Mining Act, the Orogrande Gold Placer Mine is a minimal impact new mine. MMD requested comments on the application within 45 days of receipt of the request for comments. NMED requested an extension to submit comments by September 23, 2022. NMED has the following comments.

Background

Toltec Mesa Resources, LLC on behalf of W.W. Mining and Production (applicant) submitted the Modification 22-1 application that proposes to increase the design limit and permit area of the operation while maintaining minimal impact status.

Mr. Holland Shepherd
Orogrande Gold Placer, OT005MN
September 23, 2022

Air Quality Bureau

The AQB comments are attached.

Surface Water Quality Bureau

The SWQB comments are attached.

Mining Environmental Compliance Section

Based on a review of the Office of the State Engineer well data, groundwater is located at a depth approximately 500 feet below ground surface. Given the significant depth to groundwater, the MECS does not have any comments.

NMED Summary Comment

NMED has determined that the activities proposed in the application will be protective of the environment if done in accordance with Modification 22-1 permitting requirements and comments referenced above.

If you have any questions, please contact Anne Maurer at (505) 660-8878.

cc: Carmen Rose, Permit Lead, EMNRD-MMD
Joseph Fox, Acting Program Manager, NMED-MECS
Shelly Lemon, Bureau Chief, NMED-SWQB
Elizabeth Bisbey-Kuehn, Bureau Chief, NMED-AQB



MEMORANDUM

DATE: September 12, 2022

TO: Anne Maurer, Mining Act Team Leader, Mining Environmental Compliance Section, NMED

FROM: Sufi Mustafa, Staff Manager, Air Dispersion Modeling and Emission Inventory Section, Air Quality Bureau.

Request for Review and Comment, Modification 22-1, Orogrande Gold Placer, Otero County, New Mexico, Mining Act Permit No. OT005MN

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.

Details

Toltec Mesa Resources LLC (TMR) has requested a permit modification of their existing minimal impact mining permit. TMR will continue to operate the mine within the conditions of the Amended Settle Agreement it has with EMNRD.

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.

20.2.15 NMAC, *Pumice, Mica and Perlite Processing*. Including 20.2.15.110 NMAC, *Other*

Particulate Control: "The owner or operator of pumice, mica or perlite process equipment shall not permit, cause, suffer or allow any material to be handled, transported, stored or disposed of or a building or road to be used, constructed, altered or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne."

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.”

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:

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

Completion of closeout/closure measures will reduce truck traffic. Revegetation of disturbed ground and erosion protection will reduce fugitive dust.

RE: Request for Review and Comment, Modification 22-1, Orogrande Gold Placer, Otero County, New Mexico, Mining Act Permit No. OT005MN

Page 3

The Air Quality Bureau has no objection to the permit modification request.

This written evaluation does not supersede the applicability of any forthcoming state or federal regulations.

If you have any questions, please contact me at 505 629 6186



MEMORANDUM

September 23, 2022

To: Anne Maurer, Mining Act Team Leader
Mining Environmental Compliance Section
Groundwater Quality Bureau (GWQB)

From: John Moeny
Watershed Protection Section
Surface Water Quality Bureau

Subject: **Request for Review and Comment, Modification 22-1, Orogrande Gold Placer, Otero County, New Mexico, Mining Ace Permit No. OT005MN.**

On July 8, 2021, NMED received a request for comments regarding a permit modification submitted by W.W. Mining and Production ("Applicant"). The mine is in Otero County, approximately 3 miles north of Orogrande on private deeded lands that are contiguous with Bureau of Land Management lands which contain abandoned and historic mine workings and infrastructure.

Summary of Proposed Action

The Applicant would like to restart placer mining within a 2-acre permitted mine boundary having completed abatement activities described in an Amended Settlement Agreement. The agreement required, among other financial and administrative tasks, reclamation of a portion of the mine area. The applicant will restart placer mining by initially reprocessing the many wasterock piles that remain from past mineral exploration and mining in the area. These piles lie within an unnamed, ephemeral channel. Once the existing piles have been processed and cleared from the channel, the applicant will excavate and process alluvial material from the channel, proceeding until bedrock is encountered at an estimated 10- 20 feet below the existing surface. Excavated material will be wet processed using a closed-loop system, using water purchased from a nearby ranch or the municipal supply in Orogrande. Mine life is estimated at 20 years and reclamation will be concurrent with mining as excavated portions of the channel will be backfilled with processed alluvium as mining proceeds downgradient.

Relevant State and Federal Water Quality Regulations

On August 30, 2021 a federal judge vacated the Navigable Waters Protection Rule. Excavation or construction in areas outside of an existing jurisdiction determination by the US Army Corps of Engineers and within the Ordinary High Water Mark of drainages may now be subject to Clean Water Act section 404 permitting. The SWQB recommends that Applicant contact the USACE-Albuquerque District, Las Cruces Field Office (575)-652-4574, to ensure that the proposed mining activity will not require dredge-and-fill permit authorization.

Mine activities may affect Surface Waters of the State as defined in 20.6.4.7 NMAC, which includes ephemeral arroyos within the mining operations and are subject to 20.6.4.98 NMAC. Furthermore, operations must ensure protection of surface waters of the state including General Criteria at 20.6.4.13 NMAC, established to sustain

and protect existing or attainable uses of surface waters of the State. These general criteria apply to all surface waters of the state at all times. 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.

For surface waters of the State, limited-duration turbidity increases caused by dredging, construction or other similar activities may be allowed provided all practicable turbidity control techniques have been applied and all appropriate permits, certifications and approvals have been obtained (20.6.4.13(J) NMAC). Necessary erosion sediment and control best management practices may include dust control, temporary stabilization during construction and mining activities, and final stabilization post-construction and after mining activities.

If the discharges from this activity (water and dredge or fill material) will potentially affect surface waters of the State, then the Applicant must submit a Notice of Intent to the Surface Water Quality Bureau per 20.6.2.1201 NMAC. Please contact Susan Lucas-Kamat, Point Source Regulation Program Manager at 505-946-8924 for questions regarding the Notice of Intent to discharge. Additional evaluation, treatment pilot studies, and monitoring may be required to ensure compliance with State Ground Water and Surface Water Regulations and Standards.

The Applicant is required to 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).

In addition to the above regulatory standards, SWQB requires the following practices to avoid contamination and to protect surface and groundwater quality:

- Process water must be contained within the closed-loop system and may not be discharged unless a discharge permit has been secured from the EPA and/or NMED.
- Fuel, oil, hydraulic fluid, lubricants, and other petrochemicals must have a secondary containment system to prevent spills. Store these materials outside of the flood-prone zone.
- Perform all work, when practicable, in the dry season and postpone work during wet and muddy conditions.
- When backfilling and returning processed material to excavated areas in the channel bottom, ensure that final grades match adjacent undisturbed channel bottom elevations and the channel slope remains consistent with upstream and downstream reaches.
- 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.

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