



Tyrone Operations
P.O. Box 571
Tyrone, NM 88065

January 31, 2025

Via Electronic Mail

Ms. Alaina Osimowicz
Energy, Minerals and Natural Resources Department
Mining and Minerals Division
Mining Act Reclamation Program
1220 South St. Francis Drive
Santa Fe, NM 87505

Dear Ms. Osimowicz:

**Re: Response to Comments, Tyrone Peak Project,
Regular (Part 4) Exploration Permit Application, Permit No. GR093ER**

Freeport-McMoRan Tyrone Inc. (Tyrone) applied for a minimal impact (Part 3) exploration project, also known as the Tyrone Peak Project, on January 22, 2024. In response to agency inspections and survey results, Tyrone and the agency agreed to convert the application to a regular impact project (Part 4) and submitted an amended application on August 29, 2024. On December 12, 2024, Tyrone received comments on the application from the New Mexico Mining and Mineral Division (MMD), various state agencies, Tribes, and the public. This letter provides responses to these combined comments. Tyrone has also attached an updated permit application to address some of the agency comments and so the project information is contained in one updated location for future reference. The scope of the project remains the same as previously submitted.

Below are the agency comments in italics followed by Tyrone's responses.

State Agencies

MMD Comments Addressing the Amended Application, Page 1

1. This is a significant increase in acres as "planned disturbance" that is not specifically indicated on a map. Any disturbance following the planned 4.5 acres consisting of roads and drill pads, would need written notification to MMD to be considered a part of the 35.5 acres of contingency reflected in the current draft estimate of Financial Assurance calculation. The 35.5 acres of "Other Disturbances", described on page 8 Section E. of

PAP is described as “cut and fill disturbances, borrow areas if needed, reclamation/regrading to match original topography, and unforeseen improvements or changes to roads or designs as a disturbance contingency.” MMD rules state planned disturbance shall be indicated. Unplanned disturbance could be covered in the Financial Assurance calculation but would not be considered approved until a review by MMD through a written notification process. A review would include a map of the area that has not been previously indicated in the PAP as disturbance and associated acreage.

If “Other Disturbances” is intended for another phase of exploration, this will need to be noticed in writing to MMD and the PAP will need to reflect the intention of the use of “Other Disturbances” for this current exploration application, GR093EM. If other phases of exploration can be identified or are anticipated, state so in the response to MMD comments.

All planned disturbances have been indicated in the permit application. During the field inspection conducted by MMD on October 21st through the 22nd of 2024, it was communicated to Tyrone that minor alterations could be made in the field given the disturbances remained within the boundaries of the archeological and biological clearances (cleared area). One example of this is the identification of the kangaroo rat mounds located on the road leading to Pad G. The road will have to be adjusted around the mounds and this will create a minor increase in disturbance.

Tyrone understands the agency’s concerns about creating disturbances outside of the scope of what is submitted in the permit application. In accordance with 19.10.4.406, the scope does indicate the types of miscellaneous or “other” disturbances that could take place within the cleared area and Tyrone is supplying additional financial assurance (FA) to cover those possibilities. It is unlikely that the entire 36 acres of “other disturbances” will actually be disturbed. However, Tyrone is voluntarily including this additional acreage and financial assurance to reclaim it and ensure that there are no disturbances over the acreage allowed by the permit. This is also consistent with the Tyrone Mine Permit No. GR010RE “miscellaneous disturbed areas”. It is difficult to list every possible unforeseen situation, but they could include what was mentioned in the permit application, the one just mentioned above, reclamation of sites to match original topography, and instances such as leaving large mature trees as recommended by NM Department of Game and Fish. This concept was discussed with MMD during discussions regarding concerns with the Part 3 permit for this project and the potential that disturbances may exceed allowable limits. Tyrone agreed to apply for a Part 4 permit and now simply seeks to ensure that it is permitted with financial assurance that allows for the issues described above with plenty of contingency to avoid any potential of non-compliance. Tyrone will notify MMD of “unplanned disturbances” however, real-time operational flexibility is needed in the field during construction of the roads and drill pads to avoid costly delays once equipment is mobilized.

At the time of the application and this letter, no other phases of this project have been anticipated. This current phase will determine if future exploration is needed in this area. For possible future phases, Tyrone has agreed to submit a permit revision and renewal that would capture any new drill holes, pads, or roads. It is understood that any financial assurance left over from phase one of this project, would be carried over into the subsequent phases. If additional FA is needed at the time, Tyrone will ensure it is secured. Tyrone has also agreed to submit as-built documentation at the time of renewal or termination, so the agency may evaluate the disturbances and track the amount of financial assurance remaining for future phases.

MMD Mapping Requirements

1. *Mapping and Location – Section 4 page 6 - provide a detailed map including what is required in MMD rule 19.10.4.402 D (5):*

1. *“A map at a scale of at least 1-inch equals 2,000 feet (1:24,000) showing the areas of land to be disturbed by the proposed exploration and reclamation. The map shall specifically show the boundary of the proposed permit area, proposed and existing roads, previously disturbed areas, occupied dwellings, and pipelines; existing bodies of surface water, springs, wetlands, and riparian areas; topographic and drainage features; and oil, gas and water wells on the permit area. Areas and types of proposed disturbance shall be indicated. The anticipated depth of each proposed method of exploration shall also be provided.”*

After reviewing the original map submitted with the application, Tyrone noticed that the topographic lines had been affected by the photocopier. Tyrone has included a higher quality version with the updated application.

2. *Drill pads should be to close to scale on provided map or given a “buffer” around the pad to indicate where disturbance is anticipated. This may require multiple, smaller maps to be provided that focus on each individual drill pad. If during drilling, a new disturbance, not indicated on the map, is needed, this will need to be noticed to MMD prior to creation of any new disturbance. A map will need to be submitted of the proposed new disturbance.*

Tyrone has included the series of additional maps in the updated application. The buffer zone around the pad and road locations is based on the archeological and biological clearances. As mentioned in Tyrone’s response to Comment 1 in *MMD Comments Addressing the Amended Application*, this buffer area would be the extent of where field fitting adjustments would be made, whether it be due to rock preventing construction, borrow areas, avoidance of wildlife habitat or trees, or any

other unforeseen circumstance. It may also be due to operators recognizing alternate paths or pad configurations that would result in less disturbance, which is the optimal result. Due to this fact, the pad locations are subject to minor changes in orientation however, the location of the drill hole will remain the same as permitted through OSE. Pad sizes will not exceed 80 by 100 feet, nor will they be adjusted outside of the cleared areas.

3. *Provide MMD with shapefiles compatible with ArcGIS or KML/KMZ files with all indicated planned disturbance and the permit area.*

These resources will be provided through the shared Microsoft Teams channel. Tyrone requests that additional requirements such as this, that are not outlined in the Mining Act permit application requirements, be withheld from the formal permitting process. Resources such as this should not affect the technical completeness determination and potentially cause permitting delays as the operator is unable to submit a “complete” application if this requirement is not defined in the rules.

4. *Section 5 E. Label existing borrow area on map. There is contradictory wording stating no new borrow areas in the application, but it is later listed under “other disturbances” as a potential for a new borrow source.*

As mentioned in Tyrone’s response to Comment 1 in *MMD Comments Addressing the Amended Application*, Tyrone does not anticipate any borrow areas at this time, but that could potentially change once operators start breaking ground on pads. There is a possibility that shallow bedrock could prevent the operators from constructing a pad without the use of additional borrow material, especially on steep rocky outcrops. This is another example of a situation where Tyrone is asking for that operational flexibility and supplying additional FA to cover these circumstances. The material would likely be borrowed from the area adjacent to the pad location which would be inside the cleared area. If the material must be borrowed from a different site, not indicated in the scope, or approved by MMD, Tyrone would then submit a written request and wait for MMD approval.

5. *Provide table with updated associated planned disturbance breakdown. FA may be recalculated based on disturbance provided on the map.*

Tyrone has included this table in Section 5 of the updated application. No adjustments to FA were made because the total disturbance has not changed from the original scope.

- 6. Differentiate, delete or color code TP23-I pad that is within Tyrone Mine Permit. MMD would be okay removing this pad from the application map since it is within the Tyrone Mine permit area.*

Tyrone has modified the color of TP23-I on the figures.

- 7. Section 3B. Provide GPS coordinates or label claims on map that are within the permit area.*

Tyrone has included the claim labels next to each parcel on Figure 1.

MMD General Comments

- 1. Because only 10,000 ft. of bonding is being provided for the exploration drill hole portion of the FA, only 10,000 ft. of open boreholes can be left un-plugged at one time. To move past the 10,000 ft. limit, approved OSE borehole plugging reports must be provided to MMD.*

Tyrone's policy is to immediately plug each borehole upon completion of drilling so no more than one borehole (up to 2,500 feet) will be present at any point in time. Tyrone only secures financial assurance (FA) for 10,000 ft of "open" boreholes to prevent drilling standby fees while waiting for the completion of MMD's administrative approval process. This procedure is for FA purposes only under the Mining Act. Tyrone submits the plugging record, along with an affidavit from the driller, to both MMD and OSE which verifies that the holes have been plugged in accordance with OSE standards. Tyrone has confirmed with MMD that this comment is to reiterate the requirement of this procedure.

- 2. Attachment A: Provide an update on OSE POD's when available. MMD will need these prior to issuance of the permit.*

Tyrone disagrees that the OSE PODs are necessary prior to permit issuance. The regulations for a Part 4 Exploration Permit do not include this requirement. 19.10.4.404 NMAC states: "Enforcement of other state or federal laws, regulations or standards shall be conducted by the agency charged with that responsibility under the applicable state or federal law, regulation or standard.". Additionally, 19.10.13.1303 NMAC provides assurance that the agency will avoid "duplicative and conflicting requirements" and for this situation, "to avoid enforcement of other statutes or regulations to be conducted by the agency charged with that responsibility under the applicable state or federal statute.". Tyrone must obtain permits through the OSE prior to drilling and it is not necessary for

MMD to ensure that is completed. This MMD practice requiring OSE permits at the time of MMD application submittal creates multiple issues for operators that Tyrone would like to address.

The OSE POD numbers have been provided on the updated application. However, due to the time restraints in processing this permit, additional newly established requirements by OSE, and modifications to the project such as the depth of holes, Tyrone must renew and modify the OSE permit.

OSE permits are only valid for one year and are typically issued within two months of the application date. Since MMD permitting timeframes may be much longer than OSE, operators are at risk of having to reapply or renew OSE permits months before MMD permits expire. Additionally, MMD requires OSE permits at the time of application and prior to the agency field inspections. Often after the inspections, the agencies request that pad locations be moved for various reasons, and this triggers an amendment of the already permitted OSE POD locations.

For these reasons, and because the regulations for a Part 4 exploration permit do not require the prior issuance of OSE permits, Tyrone is requesting that for this and all future exploration projects, MMD instead should modify permit language to acknowledge the operator will obtain OSE permits prior to conducting any drilling which is required by the OSE. MMD may also eliminate redundant language and rely on the statements already in regulation and permits that remind operators to meet other regulatory requirements.

- 3. Section 8 B. MMD recommends the use of berms and embankments on drill pads that will be left un-reclaimed for more than 6 months to help minimize erosion.*

Tyrone acknowledges this recommendation and may use a variety of best management practices for controlling erosion, as stated in section 8.B of the permit application.

- 4. The proposed pad TP23-G may be within 100 feet of an arroyo. If feasible, provide a buffer of 100 feet from this arroyo when constructing this drill pad.*

Tyrone will maintain the largest buffer possible but would have to obtain an OSE permit modification to move the drill hole. As mentioned in Comment 2 above, this is another example of why the MMD permitting process should take place prior to OSE permits. Despite this concern, Tyrone will most likely not move any soil for this pad due to the relatively flat land surface.

5. *The “road improvement” segment to TP23-Q. MMD considers this a new road due to the mature vegetation established in the proposed road. Any bladed vegetation is considered disturbance. Change on map and correct the disturbance calculation to reflect this change.*

The disturbance calculation already included the entire length and width of this road. The only change required is the designation which has been changed to “new road” on the map and in the applicable section of the updated application.

Tyrone respectfully suggests however that considering the blading of any vegetation that has grown on previously established roads as new disturbance, is a counterproductive policy. It is common practice to blade old, previously established roads in remote/rural areas even when vegetation has started to grow, rather than create new roads in areas that have been undisturbed. To minimize new disturbance, incentive should be given to improving previously disturbed roads over creating a new road which in some cases, would be easier and less expensive with modern equipment. This current MMD interpretation of “new roads” disincentivizes operators from attempting to minimize disturbance by planning roads and drill pads on previously established roads which has been Tyrone’s practice in the past.

6. *Access to TP23-K is a very steep powerline road. MMD requests a topographic map of the final placement of the road access to this pad before permit approval.*

The final placement of the road to TP23-K remains to be what is shown on the attached figures to the updated application. During the field inspection, agencies communicated the slope concern and discussed a possible alternative route following the contours of the adjacent hill. After review, Tyrone determined that alternate route would create more disturbance, more potential for erosion, and portions would fall outside of the cleared area. Tyrone has already included FA to improve the entire length of this road, even though it is an existing road that will remain open for use by FMI and utilities companies into perpetuity. As per the requirements, Tyrone will implement erosion control practices on this road and will maintain it as necessary.

Surface Water Quality Bureau (SWQB)

Freeport-McMoRan Tyrone, Inc. (Tyrone) acknowledges the New Mexico Environment Department (NMED) – Surface Water Quality Bureau (SWQB)’s comments in the memorandum dated 10/31/2024 regarding the Tyrone Peak Exploration Project.

The earth-disturbing activities associated with the Tyrone Peak Exploration Project will be minimal in nature and comply with the applicable requirements in Part 8.G.4 of the MSGP-2021. Tyrone is presently reviewing the Stormwater Pollution Prevention Plan (SWPPP) and

will update the SWPPP accordingly to comply with applicable provisions of MSGP-2021, which may include adding additional routine facility inspections, visual assessments, and benchmark monitoring. The SWPPP plan will be updated and implemented prior to earth disturbing activities at Tyrone Peak.

In addition to reviewing and updating the SWPPP, Tyrone will install and maintain appropriate erosion and stormwater controls as a pollution prevention best management practice. Spill kits will also be made available on-site to address potential spills.

Air Quality Bureau (AQB)

Tyrone acknowledges the AQB's comments regarding relevant air quality regulations. While Tyrone is not an owner or operator of pumice, mica, or perlite processing equipment such that the requirements in 20.2.15 NMAC do not apply, Tyrone will comply with any applicable federal and state air regulations and requirements per 20.2 NMAC. Tyrone will also implement dust control measures, as appropriate, to minimize the impacts of fugitive dust.

New Mexico State Historic Preservation Office (SHPO)

The SHPO finds the avoidance measures proposed in the report, flagging a 100-foot buffer for avoidance around eligible and potentially eligible (undetermined) sites will result in a determination of no adverse effect on historic properties.

In order to complete my review, Westland Resources will need to upload the survey and site shapefiles into the NMCRIS database. The LA forms for each site will also need to be uploaded into the NMCRIS database.

Tyrone appreciates SHPO's review of the archeological survey. Tyrone contacted Westland Resources to upload the files to the NMCRIS database. Since Tyrone has already adjusted the pad locations and plans to actively avoid these sites, SHPO's review may take place at any time without impacting the progression of this project.

New Mexico Department of Game and Fish (NMDGF)

- 1. The mud pits should also be adequately fenced to prevent larger animals from walking onto the tarps and potentially becoming injured or entrapped. To exclude mule deer (*Odocoileus hemionus*) and other large animals, the above-ground fence height should be a minimum of 8 feet. The Department continues to recommend that Tyrone use a closed loop drilling system. Closed loop systems eliminate the need to build fences or*

install netting or similar materials to exclude wildlife from mud pits, reduce the amount of surface disturbance associated with the drill pad sites, and consume significantly less water.

Tyrone appreciates the review and comments provided by the NM Department of Game and Fish. We have considered this recommendation along with our extensive experience with drilling in this area of the desert southwest and have determined that taller fencing is unnecessary. We have not encountered entrapped animals in active drilling mud pits when following the procedures described in our application. Plastic tarps placed over the mud during the short time before the pit is covered with soil is a standard accepted practice that has been implemented effectively.

- 2. During drilling operations, it is also important to prevent wildlife from entering and becoming trapped in stockpiled drill pipes. Capping piping is the most effective way to prevent wildlife entry. At a minimum, the Department recommends that each section of pipe be visually inspected prior to use to verify that wild animals are not inside.*

Tyrone will require the drill pipes to be inspected prior to use.

- 3. ... If ground-disturbing and clearing activities must be conducted during the breeding season, the area should be surveyed for active nest sites (with birds or eggs present in the nesting territory) and avoid disturbing active nests until young have fledged...*

Tyrone will continue to conduct nesting surveys from 1 March to 1 September if vegetation must be disturbed during the primary breeding season.

- 4. The Department recommends that, to the maximum extent feasible, large mature trees be left undisturbed during road and drill pad construction. Tree species that should be left undisturbed include alligator juniper (*Juniperus deppeana*), piñon pine (*Pinus edulis*), and all species of oak (*Quercus spp.*).*

Tyrone agrees with the agency and prefers to leave large mature trees undisturbed if possible. With MMD's flexibility of the pad locations and disturbance contingencies built into this application, this aspect is more achievable given the agency's approval to field fit pads and roads within the cleared area.

- 5. The Department concurs with the proposed seed mix. The Department also recommends that only certified weed-free seed be used to avoid inadvertently introducing non-native species to the reclamation site. Any alternate plant species, used to substitute for primary plant species that are unavailable at the time of reclamation, should also be native. When*

possible, the Department recommends using seeds that are sourced from the same region and habitat type as the reclamation site and suggests including seeds from a region that represents potential future climatic conditions at the site.

Acknowledged

6. *During the site inspection at hole #TP-23G, Department staff observed two banner-tailed kangaroo rat (*Dipodomys spectabilis*) burrow mounds along the proposed overland access route and near the proposed drill pad site. Tyrone agreed with the Department recommendation to avoid disturbing these banner-tailed kangaroo rat burrow mounds during road and drill pad construction by establishing, at minimum, a 20-foot buffer zone around the burrow complex.*

Tyrone will incorporate these agreements once the permit is approved and prior to construction commencing.

Forestry Division

*As noted in a previous letter with reference to this project (Permit Tracking No. GR093EM), it should be noted that an occurrence of *Scrophularia macrantha* (Mimbres figwort), a state endangered plant, has been documented approximately 20 miles northeast of the project area, adjacent to the Chino Mine. Mimbres figwort typically occurs within the lower slopes of steep, rocky, north-facing igneous cliffs, along canyon bottoms, within pinon-juniper woodlands or mixed coniferous forest (6,500-8,200 ft). While the habitat, coincident with proposed disturbance, does not appear appropriate for this species, it should not be assumed that *Scrophularia* does not therefore exist if no biological surveys have been done to specifically search for this species.*

*A botanical survey conducted by a person or private consulting company with expertise in the field botany and qualified to identify any state endangered plants (usually when plants are in flower and fruit) is recommended prior to disturbance. If *Scrophularia* is found, an incidental take permit will be required if plants are destroyed or harmed, or mitigation measures developed to minimize disturbance.*

Tyrone has conducted two rare plant surveys in two areas near the Tyrone mine, one being Emma which is located close to the Tyrone Peak project site. No Mimbres figwort was identified during those ground surveys and the biologists determined it was unlikely to occur in the area. Tyrone will conduct a rare plant survey in this project area prior to disturbance and share any findings. In the unlikely event this species is identified within the proposed disturbance areas, Tyrone will modify the disturbance to avoid it in compliance 19.21.2 NMAC. This is another example of the need for operational flexibility in the placement of roads and drill pads.

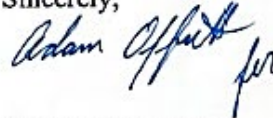
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New Mexico Office of the State Engineer (OSE)

Tyrone acknowledges the OSE's comments and will comply with all applicable regulations regarding 19.27 NMAC. Tyrone plans to submit the new directional requirements and other project amendments on the updated WR-07 application form in Q1 of 2025 to better align with MMD's timing of permit issuance.

Please contact Ms. Raechel Roberts at (575) 956-3290 if you have questions.

Sincerely,



Sherry Burt-Kested
Environmental Manager
New Mexico Operations

SBK:rmr
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Attachments