

**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES
MINING AND MINERALS DIVISION**

**IN THE MATTER OF THE APPLICATION BY
FREEPORT-MCMORAN TO REVISE AND UPDATE
THE CLOSURE CLOSEOUT PLAN FOR CHINO MINE,
PERMIT REVISION 24-2,
GRANT COUNTY, NEW MEXICO
PERMIT NO. GR009RE**

HEARING OFFICER REPORT

Introduction

Applicant Freeport-McMoRan Chino Operations ('FMI', 'Applicant' or 'Chino') submitted to the Mining and Minerals Division (MMD) of the Energy, Minerals and Natural Resources Department (EMNRD) an application to revise and update the permit and Closure Closeout Plan (CCP) for the Chino Mine located ten miles east of Silver City near the town of Bayard, in Grant County, New Mexico.

The application was received October 30, 2024, and proposes changes to reclamation designs and water treatment plans, as well as a new waste rock stockpile.

On April 21, 2026, the undersigned Hearing Officer accepted testimony and public comment during a hearing at the Grant County Veterans Memorial Business and Conference Center in Silver City, New Mexico as part of continued information gathering necessary for the Director of MMD to reach a decision on the permit revision application under Section 19.10 NMAC.

The hearing was conducted pursuant to Section 19.10.9.905 NMAC, Hearing Procedures. Following introductory remarks by the Hearing Officer, all comment was taken under oath and subject to questioning by others present. Written comment was

also submitted and accepted. The hearing followed an informational open house, started at 6:00 p.m., and continued for two hours. Approximately 60 people, including Applicant's representatives, EMNRD staff, and representatives of the Gila Resources Information Project (GRIP), participated in person; the sign-in sheets show 53 names and are in the record.

Notice of the hearing and opportunity to provide comment was sent by mail, email, and posted on the EMNRD webpage. The Hearing Officer also announced that following the hearing, written comment would be accepted by the Division through May 8, 2026, more than two weeks following the hearing.

Hearing Testimony from the Mining and Mineral Division

Kevin Barnes, MMD Permit Lead within the Mining Act Reclamation Program, testified while presenting a slide show, which is part of the administrative record. Mr. Barnes described the purposes of the public hearing; the process by which a permit revision application is handled under the Mining Act rules as a regular existing mine permitted under Part 5; the Mining Act Reclamation Program (MARF) permits that outline a plan for surface reclamation upon closure; a summary of the Chino CCP and its proposed revisions; comments requested on the application from other governmental agencies; the review of financial assurance required for the CCP; the permit revision timeline; and the information needed to submit written comment on the permit revision application following the hearing.

Mr. Barnes described reclamation as the employment of measures to mitigate mining-related surface disturbances, stabilize those disturbances to minimize future

environmental impacts, and protect air and water resources. The goal of reclamation is to achieve a self-sustaining ecosystem or a beneficial post-mining land use following the completion of a mining project. A mine reclamation plan is known as a Closeout Plan. Section 19.10.5.506 NMTAC requires a Closeout Plan to outline work plans, designs, and the costs of mine reclamation that will be implemented at closure.

Closure Closeout Plans include many components: topographic maps and cross-sections; surface hydrology and environmental setting; soil data and revegetation plans; wildlife, rare plant, and cultural resource surveys; erosion and surface water control structures; reclamation cover and borrow materials; regrading plans; and post-mining land use.

Mine operators are required to provide financial assurance under 19.10.12 NMAC to cover the cost of reclamation if performed by a third party in the event of default or abandonment of the mine. Financial assurance comes in many forms: surety bonds, letters of credit, certificates of deposit, collateral, or third-party guarantees. The amount is determined through a reclamation cost estimate based on the approved CCP. The current CCP for Chino Mine includes conceptual reclamation designs for the North Mine Area, the South Mine Area, and the Pipeline Corridor. The proposed revision includes proposals for the Lampbright Far East Sump Project and the Kessel Stockpile.

Going forward, prior to approval of permit revision, the next steps include MMD's determination of technical completeness and review of the reclamation cost estimate, a request for a written determination from NMED, MMD's preparation of a draft permit, and a review of financial assurance documents and calculation of net

present value. All comment offered during the hearing and the written comment received after the hearing will be considered in the review. MMD will also review last comments by the operator and comments from other agencies.

Hearing Testimony from Permittee Freeport-McMoRan Chino Operations

FMI representatives testified while presenting a slide show, which is part of the administrative record: Sherry Burt-Kested, Chino Environmental Services Manager; Walt Niccoli, of Telesto Solutions; Christopher Durant, of Engineering Analytics; and Raechel Roberts, Chino Senior Environmental Scientist.

Ms. Burt-Kested displayed location maps for Chino Mine, and described the copper mining process: depending on grade, the ore stays at the site or goes to Mexico; after crushing sulfuric acid is used to obtain copper-bearing solution and ultimately copper plates through the electrowinning process. The Mine is not closing now; the Rules require them to describe design plans for closure when mining operations are complete. Moreover, new disturbances require approval by the Division.

The new and updated facilities in the North Mine Area include the Lampbright Far East Sump (LFES), the Kessel Waste Rock stockpile, and the Reservoir 9 Expansion. On the east side, the LFES supports process water management and stormwater collection and control. The current collection system has a capacity only for five acre-feet; the upgrade triples the capacity to fifteen acre-feet. It will also support the separation of the pregnant leach solution into a stainless-steel tank; both the solution and the stormwater can gravity-drain, which is helpful during power outages. The proposed design for the LFES improves functionality, ensures long-term containment

and performance, and will be sized to handle a 100-year storm. Reclamation following mining operations will include ripping the liners, removing the infrastructure, and burial and cover by the Lampbright reclamation.

Ms. Burt-Kested noted that the Kessel Waste Rock Stockpile will be located on the south side as a storage area for waste rock, to provide capacity for ongoing operations. Chino is running out of room; Kessel will cover the Mine's needs for 20-30 years. It will be approximately 800 acres total, with private and BLM land, and include 200 acres of existing disturbance. Environmental protections at Kessel will include lined stormwater ponds, containment systems, monitoring wells, and groundwater controls. They will save as much topsoil as possible for future reclamation; that topsoil will be stored at the Rubio Peak RCM Stockpile. Work will proceed in five-year increments.

Currently, Reservoir 9, which holds contaminated stormwater inside the area of hydrological open pit containment, has a capacity of 15 million gallons. It is adjacent to the former one billion-gallon Reservoir 3A. The proposed expansion would increase the capacity of Reservoir 9 to 720 million gallons, still within the area of open pit hydrological containment. The expansion would support future mining by moving water from the pit.

Mr. Niccoli addressed Telesto's estimate of related reclamation costs for the revised CCP. They had to examine the highest mine cost year over the next five years for earthwork and water management, among other activities. The earthwork reclamation plan includes regrading, cover material placement, revegetation, and stormwater controls. Steep piles carry the highest costs for earthwork. Monitoring and

maintenance are then necessary to prevent erosion. The North Mine Area reclamation will require 3-foot cover for 3 thousand acres. In the South Mine Area, some of the stockpiles and ponds have already been reclaimed. They believe the submitted plan complies with regulations.

Mr. Durant described the proposed water management and treatment plan, similar to water management plans approved in earlier CCPs. Years 1-5 will include process water elimination and evaporation through continued water cycling on leach stockpiles. In Years 6-100 groundwater interceptor wells will capture un-impacted pit groundwater inflow, which has low total dissolved solids (TDS) and will be treated with reverse osmosis (RO). As in a previously approved CCP, there will be enhanced evaporation of high TDS water. Capturing water before it gets to the pit makes treatment simpler and cleaner.

Mr. Durant enumerated the benefits of the updated water treatment plan: overall system location improvement, an achievable plan with current site information, a higher volume of lower TDS water, reducing resource use by eliminating polymers, no lime sludge requiring storage on site, a lower carbon footprint by removing sludge transport, a simpler and more sustainable treatment system, and 1,000 acre-feet per year of available treated water.

Mr. Niccoli added to his earlier statements that given the CCP scope of work, the related cost estimate for reclamation in current dollars is \$227 million for earthwork, and \$131 million for water management and treatment, for a total of \$358 million. They continue to respond to agency comments. When the scope of work is approved, they

will propose the appropriate instruments of financial assurance in accordance with applicable regulations.

Ms. Burt-Kested ended the Chino presentation by noting that this is reclamation at a large scale, that they are committed to protecting the local flora and fauna, including the collared lizard, and that they are certified Gold by the Wildlife Habitat Council. She thanked all for participating in the hearing.

Hearing participants had questions for the Chino Mine panel. Allyson Siwik of GRIP asked about the timeline for approval of mining activities on BLM land. Ms. Roberts stated that the request had been submitted in October 2025, that the Department of Interior was doing a NEPA review, and that they hoped to have a response by the end of 2026. Ms. Siwik also asked about how the cleanup area was defined—this was through samples, at 4,000 acres—and whether the revegetation would use the same seed mix as at the site—yes. Ms. Siwik asked about water treatment and salts; the design for the evaporation of high TDS water is better than 20 years ago and the salts “fall out.” The water balance numbers are based on comments from NMED. As to fugitive dust, planned activities will be inside the pit for the next 5 years. They will meet NPDES drinking water levels.

Gabriel Apodaca, a small farmer, asked about water quality near the highway. When the tailing impoundments end at 2032-2033, some will have high sulfates, and there will be a new impoundment directly to the south. Dust storms will not create a health impact as to heavy metals. Gilbert Quintana asked about water use; Chino does use water, but at closure they have to capture, treat, reclaim, and release.

Hearing Testimony on Behalf of Gila Resources Information Project (GRIP)

Ms. Allyson Siwik, GRIP's Executive Director, stated that GRIP was founded in 1998; its mission is to promote community health by protecting the environment and natural resources in Southwestern New Mexico. GRIP facilitates informed public participation and natural resources decisions that will have profound and long-lasting impacts on the region. For more than 25 years, GRIP has worked to ensure that copper mining is done responsibly in Grant County. [See GRIP's slides in the record, which include a mix of the questions posed above and these affirmative statements.]

Ms. Siwik urged the inclusion of necessary conditions in NMED DP-1340 for surface water quality protection at the Mine until New Mexico has primacy for surface water and the state permitting program is operational. There is private land within the Mine's permit boundary, and updated maps are needed, especially near the intersection with Highway 152. Additionally, the pit waiver area has changed substantially since 2003; the pit waiver map should be updated every year to track with the CCP.

As to stockpile reclamation, GRIP supports the inclusion of the Reclamation Cost Estimate (RCE) for Reservoir 9 as the highest cost reclamation option to ensure sufficient financial assurance for this area. Prior to the approval of Reclamation Cover Material (RCM), test plots for the Kessel/Rubio Peak material should be required to assure that it will successfully grow vegetation and establish a self-sustaining ecosystem. Lining the Kessel Stockpile would facilitate "leach to the last drop" and protect groundwater.

GRIP supports the reclamation of windblown tailings downwind of Pond 7; its questions are how the cleanup area was defined, what is the acreage, what are the contaminants, and how the area will be revegetated?

Water treatment costs will be the largest post-treatment cost at the Mine, as treatment will be required “in perpetuity,” longer than 100 years. The capital replacement costs of the water treatment system must be accounted for, and calculated at Net Present Value (NPV). Containment: interceptor wells must operate in perpetuity to contain groundwater contamination at the site; and the Mine must assure sufficient containment around Pond 7, as the Apache Tejo area groundwater is part of the Grant County Regional Water Supply Project. Monitoring of the surface water discharge to Whitewater Creek from the water treatment facility is necessary, and additional groundwater monitoring wells are needed on the west side of Pond 7 to protect the Apache Tejo wells.

Although the revised RCE is not available yet, the current Chino CCP seems to underestimate indirect costs; they do not reflect the U.S. Forest Service Guidance. The Forest Service recommends indirect costs as 38%-108% of direct costs; the 2020 Chino CCP applies 30% to capital direct costs and 17.5% to O&M direct costs.

Finally, the Chino financial assurance must include the NPV calculation to prevent a shift in the long-term liability for reclamation and cleanup to the public and future generations. The calculation should be run longer than 100 years to account for replacement costs, and use a discount rate less than 3% following MMD’s guidance. The financial instrument approved should be a less risky form of assurance, not a third-party

or corporate parent guarantee, which is essentially self-bonding, but a cash trust, letter of credit, or surety bond. Notably, the Forest Service and BLM do not allow for parent company guarantees.

Following the hearing, GRIP timely submitted written comment for the administrative record on the permit application supporting its testimony at hearing. In addition to the hearing statements above, the written comment expressed appreciation for the Division's adherence to the 5-year reclamation plan review period; a recommendation that a conservative approach be taken to avoid flood risk with a revision to the conveyance design for Tailing Pond 4 East; a suggested requirement for an updated precipitation analysis when the new NOAA Atlas 15 numbers are available; suggested additional dust control measures for evaporative sprayer operations and brine storage facilities to prevent off site contamination from windblown dust; and substantial detail regarding financial assurance calculations and instruments.

Public Comment

Public comment in addition to GRIP's was offered during the hearing.

Senator Gabriel Ramos spoke about the economic impact of the Mine. The dust has really calmed down. Clean energy depends on copper. The Grant County Commission has adopted the toughest copper mine rules in the nation, and he appreciates FMI for their commitment to the community.

Representative Luis Terrazas noted the Mine's huge economic impact. His father was an electrician there. He thanked the Mine for their transparency. Timely approval of the permit revision application is important, especially given the 5-year cycles. The

interception of contamination is a good thing. The reclamation plan is now just a plan; the Mine is not closing.

Eloy Medina is the Grant County Commissioner for District 2. He expressed his strong support for approval of the application. FMI is a responsible mining company.

Dr. Sabrina Pack of the Silver City Grant County Chamber of Commerce noted that the Mine has played an important role in the County's economic foundation for generations. Long-term success requires responsible stewardship and thoughtful planning, evident on the Mine's part in this process. The Chamber supports their plan, and a timely review in the regulatory process. [Ms. Pack also submitted written comment.]

Glenn Griffin raised several concerns: mining activities will result in a half million tons of CO₂, contributing to air pollution and climate change; the endangered Gila Leopard Frog may suffer; and the viewshed may be impacted, will the Kessel Stockpile interfere with a view of the Kneeling Nun, or cover archeological sites? [Mr. Griffin also submitted written comment, focusing on cultural resources, stockpile lining, tailings pond containment, private landowners within the permit boundary, and financial assurance calculations.]

Carol Martin is a member of the New Mexico Native Plant Society. Chino should work with the Society on an updated plant list.

Kim Clark stated that the New Mexico Copper Rule is the strictest in the US; she supports approval of the project.

Written Public Comment

Written comment was timely submitted following the hearing, aside from the comments submitted by the speakers above:

Kay Plavidal wrote with her concerns about toxic pollution releases to water, air, and soil, and the necessity of dust control. Systems should be required to fully capture and monitor contaminated groundwater, especially to protect the Apache Tejo wells. Ample funds must be assured to fully cover the costs of reclamation, long-term water treatment and perpetual care to protect residents and taxpayers.

Catherine Swain wrote that Chino should safeguard our environment during operation and cleanup, preventing releases, managing dust control, lining the Kessel Stockpile, protecting the Apache Tejo wells, and providing financial assurance that does not shift the cleanup costs to taxpayers.

Delia deVer Mudge wrote on behalf of the Chiricahua Apache Nation and National Foundation to request that the Chino Mine work be conducted with the utmost environmental sensitivity and safety. They are returning to their Traditional Territory, which includes the Grant County region. They have been affected by mining interests since the early 1800s and seek to fund a cultural center in Silver City.

Laura Watchempino urges sufficient dust control at the mine site with evaporative sprayers, and the double-lining of the Kessel Stockpile with a leak detection system to prevent groundwater contamination in the Apache Tejo wellfield. Financial assurance should not come in the form of a third-party guarantee from FMI, and should

be sufficient to cover all foreseeable costs of reclamation, long-term water treatment, and perpetual care.

Maree McHugh is in awe of the size and history of the Mine, and encourages FMI to ensure reclamation that prevents releases to air, land, and water, as well as dust control, monitoring, and containment. Financial assurance must fully cover the costs of reclamation, long-term water treatment, and perpetual care, and should not be a third-party guarantee, which is not a reliable, dedicated source of funds for cleanup.

Patrice Mutchnick wrote to urge MMD to ensure the Mine's reclamation plan prevents releases to air, land, and water, as well as dust control, monitoring, and containment. Financial assurance must fully cover the costs of reclamation, long-term water treatment, and perpetual care, and should not be a third-party guarantee, which is not a reliable, dedicated source of funds for cleanup.

Randy Chulick attended the hearing and wrote to urge several actions by MMD: require test plots for Kessel and Rubio material before it is approved as Reclamation Cover Material; line Kessel Stockpile to protect groundwater; ensure sufficient containment around Tailings Pond #7; monitor surface water into Whitewater Creek; notify landowners within the permit boundary of the mine and advise of possible impacts from CCP activities; factor in capital replacement costs of water treatment, and calculate indirect costs at a minimum of 38%.

Sally Smith has serious concerns about air and water quality as the Mine continues to expand. Monitoring, post-mining land use, replacement costs, and water treatment are of the utmost importance. MMD should ensure the Mine's reclamation

plan prevents releases to air, land, and water, as well as dust control, monitoring, and containment. Financial assurance must fully cover the costs of reclamation, long-term water treatment, and perpetual care, and should not be a third-party guarantee, which is not a reliable, dedicated source of funds for cleanup.

Steve Mudge wrote regarding the grading of excavated soils when the Mine ceases operations. Aesthetically, instead of contouring the excavations pyramid style, as they currently are, would it be possible to make more natural, rounded (hilly) contours so the Mine fits into the surrounding landscape better? It would be a great gift to Silver City to have a more natural vista again. He also hopes there are plans to hydro seed native seeds over the finished grade to hasten the regrowth of the ecosystem.

Janet Wallet-Ortiz wrote to urge MMD to ensure the Mine's reclamation plan prevents releases to air, land, and water, as well as dust control, monitoring, and containment. Financial assurance must fully cover the costs of reclamation, long-term water treatment, and perpetual care, and should not be a third-party guarantee, which is not a reliable, dedicated source of funds for cleanup.

William R. Norris set out his observations on the list of plants, some non-native, planned for revegetation as described in Appendix C of Attachment 1 for the FMI Emma Project.

Respectfully submitted,

-signed by-

Felicia L. Orth, Hearing Officer