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STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT
No. GWB 18-06(P)

IN THE MATTER OF THE APPLICATION
OF NEW MEXICO COPPER CORPORATION FOR
A GROUNDWATER DISCHARGE PERMIT FOR
THE COPPER FLAT MINE, DP-1840

TRANSCRIPT OF PROCEEDINGS
Volume 2

BE IT REMEMBERED that on the 25th day of
September, 2018, this matter came on for hearing before
FELICIA ORTH, Hearing Officer, at the Ralph Edwards
Auditorium in Truth or Consequences, New Mexico, at the
hour of 9:06 a.m.

**RANCHES
EXHIBIT
22**

CROSS EXAMINATION

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BY MR. DE SAILLAN:

MR. DE SAILLAN: So good afternoon,
Mr. Vollbrecht.

MR. VOLLBRECHT: Good afternoon.

MR. DE SAILLAN: I'm going to ask you a few
questions to begin with about financial assurance.

I suppose I should have a microphone.

MS. ORTH: Yes.

MR. DE SAILLAN: I project pretty well.

MR. KNIGHT: You can have mine unless I
object.

MR. DE SAILLAN: Thank you.

So I'm going to begin by asking you a few
questions about financial assurance.

Now, I thought I heard you mention in your
direct testimony that the Environment Department would
be requiring financial assurance for 100 years; is that
correct?

MR. VOLLBRECHT: Yes, that is correct.

MR. DE SAILLAN: Could you explain that in a
little bit more detail?

MR. VOLLBRECHT: There's -- associated with
financial assurance you typically determine the amount
of time for that financial assurance, and a net present

1 value calculation is done where costs are escalated out
2 into the future, and then there's a discount rate that
3 brings that back based on the value of that money.

4 What we do for sites that require long-term
5 water treatment, such as the Chino Mine and Tyrone Mine,
6 is require that financial assurance cost estimate to be
7 for a period of 100 years. That is a sufficiently long
8 enough time period that it ensures there is adequate
9 money for long-term -- long-term care of the facility.

10 And so in the case of Copper Flat, we won't
11 have long-term water treatment, but we would require
12 long-term monitoring, long-term maintenance and any care
13 that needs to be taken.

14 MR. DE SAILLAN: Okay. So the financial
15 assurance would reflect monitoring and maintenance of
16 the facility for 100 years?

17 MR. VOLLBRECHT: That is correct.

18 MR. DE SAILLAN: Okay.

19 And has New Mexico Copper Corporation agreed
20 to that?

21 MR. VOLLBRECHT: I've informed them of that
22 during the last meeting we had amongst the agencies at
23 New Mexico Copper. So they are aware of that. Yes.

24 MR. DE SAILLAN: Okay. They're aware of it.
25 Have they agreed to it?

1 MR. VOLLBRECHT: I haven't heard back from
2 them, but it is our intent to require that.

3 MR. DE SAILLAN: Okay.

4 It's -- that is not currently reflected in the
5 financial assurance proposal that's been submitted to
6 the state, is it?

7 MR. VOLLBRECHT: That is correct.

8 MR. DE SAILLAN: Okay.

9 And Mr. Knight refers to a revised permit that
10 would be subsequent to the August 10th, 2018, permit.

11 Would the 100-year requirement be reflected in
12 that permit?

13 MR. VOLLBRECHT: Mr. de Saillan, we had not
14 intended to do that. We could consider that. We're --
15 we're still early in the financial assurance review
16 process at this -- at this time. We will be providing
17 written comments on October 15th back to the Mining and
18 Minerals Division which would include this requirement
19 from the state -- or from the Environment Department.

20 It's certainly something we could consider.

21 MR. DE SAILLAN: Okay.

22 How often is financial assurance renewed?

23 MR. VOLLBRECHT: The financial assurance is
24 subject to renewal every five years upon permit renewal,
25 which is required pursuant to the Water Quality Control

1 Commission regulations.

2 MR. DE SAILLAN: Okay.

3 And has it been the practice of the
4 Environment Department at other mine sites where
5 long-term financial assurance is required to continue to
6 require 100 years of financial assurance when the permit
7 is renewed each five years?

8 MR. VOLLBRECHT: Yes.

9 MR. DE SAILLAN: And you expect that will be
10 the practice with New Mexico Copper Corporation?

11 MR. VOLLBRECHT: I do.

12 MR. DE SAILLAN: I nevertheless want to go
13 through some of the -- some of the financial assurance
14 proposal just to -- just to establish the Environment
15 Department's position on certain issues.

16 So first of all, what is the total estimated
17 cost for closure on which the financial assurance
18 proposal is based?

19 MR. VOLLBRECHT: I can't state exactly what
20 the number was. I believe it was 55 million,
21 approximately, I saw on a slide yesterday.

22 MR. DE SAILLAN: I think that's right, and I
23 think that's close enough for our purposes.

24 Do you think that this overall amount is an
25 underestimate?

1 MR. VOLLBRECHT: That's a difficult thing for
2 me to answer, Mr. de Saillan. I can say I do have -- we
3 have a staff person assigned to the review and comment
4 on that who is very familiar with cost estimates and
5 will be providing comments on that. It would be more
6 appropriate for me to probably make that -- respond to
7 that after October 15th depending on the comments.

8 I -- there is not agreement on that number. I
9 can tell you that.

10 MR. DE SAILLAN: Okay.

11 Is that staff person here today?

12 MR. VOLLBRECHT: No.

13 MR. DE SAILLAN: Okay.

14 Okay. There is an estimated Engineering,
15 Design and Construction Plan cost which is \$1,771,000.

16 Do you agree that that estimate is too low?

17 MR. VOLLBRECHT: I cannot comment directly on
18 that.

19 MR. DE SAILLAN: Okay.

20 The plan also includes a \$2,657,000 estimate
21 for contingency costs.

22 Do you agree that those are too low?

23 MR. VOLLBRECHT: Likewise I can't comment
24 directly on that number.

25 I can say that the New Mexico Environment

1 Department and the Mining and Minerals Division have
2 created a guidance document on contingencies with
3 perhaps a component of the indirect costs, and we will
4 be reviewing that, certainly.

5 MR. DE SAILLAN: Okay.

6 And I'll ask you again. The cost estimate
7 includes 2,657,000 for -- excuse me. Next one.

8 Strike that last one.

9 Okay. Mr. Vollbrecht, if the cost estimate is
10 too low, who would bear the cost of closure of the
11 Copper Flat Mine once the mine is shut down and stopped
12 operating?

13 MR. VOLLBRECHT: Is it safe to assume you're
14 talking about the final approved cost estimate as
15 opposed to that that's been submitted as proposed?

16 MR. DE SAILLAN: Absolutely. That is what I
17 meant. Thank you for that clarification.

18 MR. VOLLBRECHT: Certainly.

19 If it did turn out that the cost estimate was
20 too low, the State of New Mexico would be the one,
21 assuming the company that was responsible was no longer
22 financially viable.

23 MR. DE SAILLAN: Okay.

24 And that means ultimately the taxpayers; is
25 that correct?

1 MR. VOLLBRECHT: That is correct.

2 MR. DE SAILLAN: Now, is it your understanding
3 that a discount rate will be applied to the cost
4 estimate for closure?

5 MR. VOLLBRECHT: Yes. That is my
6 understanding.

7 MR. DE SAILLAN: And that will have the effect
8 of reducing the -- the amount of financial assurance
9 that is required to be -- to be posted at this point; is
10 that correct?

11 MR. VOLLBRECHT: That is correct. It does
12 work in conjunction with an escalation rate, as well.

13 MR. DE SAILLAN: Okay.

14 And do you know at this point what the
15 discount rate will be?

16 MR. VOLLBRECHT: I do not know what the
17 specific number is.

18 MR. DE SAILLAN: Do you know what the
19 escalation rate will be?

20 MR. VOLLBRECHT: I do not know that number.
21 That will need to be determined prior to approval, and,
22 once again, all three agencies will need to be in
23 agreement prior to approval of that.

24 MR. DE SAILLAN: Okay.

25 Will the public have an opportunity to comment

1 on the final financial assurance in the context of the
2 groundwater Discharge Permit?

3 MR. VOLLBRECHT: I can say not directly, but
4 indirectly, as I stated, by when the financial assurance
5 cost estimate is -- is finally agreed to and an
6 instrument is put in place, that will be done, finalized
7 pursuant to the Mining Act permit, and there will be
8 opportunity for a hearing on the Mining Act permit, and
9 we would participate in that hearing.

10 MR. DE SAILLAN: Okay.

11 Now, looking at the -- the financial assurance
12 proposal that has been submitted, is it your
13 understanding that the cost estimate assumes that 25
14 years after closure New Mexico Copper will be able to
15 cease all monitoring and maintenance and water
16 management at the mine site?

17 MR. VOLLBRECHT: That is my understanding,
18 yes, that that was what was proposed.

19 MR. DE SAILLAN: Okay.

20 And do you think that's a realistic
21 assumption?

22 MR. VOLLBRECHT: As I stated, we intend to
23 require 100 years of postclosure monitoring.

24 MR. DE SAILLAN: Okay.

25 And similarly is it your understanding that

1 for the purposes of the closure cost estimate New Mexico
2 Copper Corporation estimates that the period of time
3 that will -- that water will continue to drain from the
4 tailing storage facility is 25 years after cessation of
5 mining operations?

6 MR. VOLLBRECHT: It's my understanding that's
7 what was provided. Yes.

8 MR. DE SAILLAN: Okay.

9 And again do you think that period is
10 unrealistic?

11 MR. VOLLBRECHT: I can't speak to that
12 directly other than to say we are currently reviewing
13 that.

14 MR. DE SAILLAN: Okay.

15 And is it your understanding that for -- that
16 for purposes of the current submitted closure cost
17 estimate New Mexico Copper Corporation has estimated
18 that the period of time that groundwater monitoring will
19 be necessary is 25 years after cessation of mining
20 operations?

21 MR. VOLLBRECHT: It is my understanding that
22 is what's provided in the estimate.

23 MR. DE SAILLAN: Okay.

24 And do you -- do you agree that that is an
25 unrealistically short period of time?

1 MR. VOLLBRECHT: Yes. I stated we would --
2 New Mexico Environment Department intends to require 100
3 years of postclosure monitoring.

4 MR. DE SAILLAN: Okay.

5 Is it your understanding that for purposes of
6 the closure cost estimate that New Mexico Copper has
7 submitted it estimates that the period of time for
8 maintenance is seven years after mining operations
9 cease?

10 MR. VOLLBRECHT: I'm not directly familiar
11 with that, but I would assume you are correct.

12 MR. DE SAILLAN: Okay.

13 Do you agree that the closure cost estimate
14 does not include costs for removal of large equipment,
15 piping and other infrastructure?

16 MR. VOLLBRECHT: Once again I'm not that
17 familiar with the details as I'm not the one doing the
18 review of that, but --

19 MR. DE SAILLAN: Do you agree that the closure
20 cost estimate as currently submitted does not include
21 costs for mitigation of water contaminated during road
22 reclamation?

23 MR. VOLLBRECHT: I'm not once again that
24 familiar with the details of that.

25 MR. DE SAILLAN: And do you agree that the

1 closure cost estimate does not include comprehensive
2 costs for waste disposal?

3 MR. VOLLBRECHT: Same answer.

4 MR. DE SAILLAN: Okay.

5 MR. VOLLBRECHT: I suppose I would add that
6 it's important to include all those things.

7 MR. DE SAILLAN: Okay. Thank you.

8 Do you agree that active water treatment will
9 likely be necessary at the Copper Flat Mine after
10 closure?

11 MR. VOLLBRECHT: Based on our analysis, we do
12 not expect -- well, with the caveat -- we do not expect
13 there to be a need for active water treatment, I guess,
14 with the caveat of managing the water that's draining
15 out of the tailing impoundment, and there's an active
16 and passive treatment phase for that which is
17 evaporation.

18 MR. DE SAILLAN: Do you agree that many of the
19 closure parameters that the cost estimate is based on
20 are highly uncertain?

21 MR. VOLLBRECHT: I -- I can't -- I'm not an
22 expert on financial assurance so I can't answer that
23 directly.

24 MR. DE SAILLAN: Well, this is not so much a
25 question that goes directly to financial assurance.

1 So things like, for example, the pit lake
2 level, pit lake water quality, the volume of leakage
3 from the tailing impoundments, things like that, would
4 you agree that those are highly uncertain?

5 MR. VOLLBRECHT: I would not say highly
6 uncertain. I think we understand the science behind
7 those -- those estimates fairly well, and I would expect
8 that we're in -- pretty close in the ballpark on where
9 those things will end up.

10 MR. DE SAILLAN: Do you know what the form of
11 financial assurance will be for the Copper Flat Mine?

12 MR. VOLLBRECHT: There has not been a
13 financial assurance instrument posed yet. There are
14 different requirements under the Mining Act as well as
15 under the federal regulations that BLM is required to
16 implement. I could say that the BLM requirements do not
17 allow for a corporate guarantee.

18 MR. DE SAILLAN: Okay. So is it your
19 understanding that the form of the financial assurance
20 will not be a corporate guarantee?

21 MR. VOLLBRECHT: It's my understanding that
22 the Bureau of Land Management would not allow a
23 corporate guarantee as a form of financial assurance.

24 MR. DE SAILLAN: Okay.

25 Now, Mr. Reid mentioned the possibility of the

1 Environment Department requiring additional -- and I
2 think he was referring to stormwater collection. There
3 was testimony, I think, in Mr. -- or Dr. Marcoline's
4 presentation that the Environment Department might at
5 some point require additional groundwater monitoring
6 wells if you found it was necessary.

7 Are these types of things covered in or will
8 they be covered in the financial assurance?

9 MR. VOLLBRECHT: If they apply for -- after
10 closure. So stormwater management highly certain. With
11 respect to groundwater monitoring, we would evaluate
12 what a postclosure scenario looks like with respect to
13 groundwater monitoring.

14 As you have pointed out, we agree that the
15 permit does come up for renewal every five years and so
16 those things would be reviewed at that time.

17 MR. DE SAILLAN: Okay. The -- the ranches and
18 the Environmental Law Center have proposed that New
19 Mexico Copper Corporation be required to do further
20 characterization of the andesite bedrock which underlies
21 the location of the proposed waste rock storage
22 facilities.

23 Are you familiar with that?

24 MR. VOLLBRECHT: I have seen that proposal.

25 Yes.