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## STATE OF NEW MEXICO DEPARTMENT OF GAME & FISH

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OCT 19 2010

MINING & MINERALS DIVISION

October 13, 2010

David Otori, Permit Lead  
EMNRD Mining & Minerals Division  
1220 South St. Francis Drive  
Santa Fe NM 87505

Re: Tyrone Mine Application for Closeout Plan Waiver Modification, Revision 10-1, Permit No. GR010RE; NMDGF Project No. 13784

Dear Mr. Otori:

In response to your letter dated September 14, 2010, the New Mexico Department of Game & Fish (NMDGF) has reviewed the above referenced document. Freeport-MacMoRan Tyrone, Inc., (FMTI) is requesting a modification of their conditional waiver from the requirement to achieve a post-mining land use (PMLU) and self-sustaining ecosystem (SSE). The proposed modification would add 135 new acres of open pit and 462 acres of interior stockpile slopes to the previously approved waiver area. The total proposed waiver area would be 1,833 acres, or 37% of total surface disturbance within the primary mining area. Under the Mining Act Rules, the MMD Director may grant a waiver for open pits and/or waste units at an existing mine operation if the permittee demonstrates that achieving a PMLU or SSE is technically infeasible, economically infeasible or environmentally unsound. Current approved PMLUs for the Tyrone Mine are wildlife habitat and industrial use.

Throughout the application document, many of the arguments presented by FMTI appear to hinge on cost-benefit analysis of alternative actions, rather than evidence of infeasibility or unsoundness. This approach may not meet the intent of the Mining Act waiver provision.

It is evident from Figure 1 of the application, Existing Waiver & Proposed Waiver Areas, that large extents of reclaimed area within the expanded waiver perimeter would become "islands" or "peninsulas" of habitat, surrounded by unreclaimed and/or industrial use areas. The loss of connectivity to surrounding undisturbed or reclaimed habitat would adversely affect the functionality of these areas in support of a wildlife PMLU. If the waiver is approved, in whole or in part, NMDGF requests adjustment be made to the configuration of waiver areas such that corridors of connectivity are maintained to the extent feasible.

Regarding the wildlife protection measures to be taken inside the proposed waiver area (page 5-6), FMTI should prepare a list of ponds, sumps, tanks or other liquid impoundments that will remain after cessation of mining operations. For each water feature, list the predicted water quality (in terms of

meeting or not meeting the NM Water Quality Control Commission surface water and wildlife/livestock specifications) and trapping hazard potential, and measures that will be taken to exclude wildlife or otherwise mitigate the hazard. Exclusion or mitigation may take the form of various combinations of exclusion fencing, escape ramps, netting or hazing, as appropriate to the particular feature being protected. If the perimeter fence is intended to exclude mule deer, the height should be increased to eight feet. NMDGF requests an opportunity to review the proposed alignment of the perimeter fence.

On page 11 of the application document, the last paragraph seems to imply that a change of PMLU for certain areas may be requested. Please provide additional details if a PMLU change is included in this closeout plan modification.

Thank you for the opportunity to comment on this permit action. If there are any questions, please contact Rachel Jankowitz at 505-476-8159, or [rjankowitz@state.nm.us](mailto:rjankowitz@state.nm.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Wunder". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Matthew Wunder, PhD  
Chief, Conservation Services Division

cc: Wally Murphy, Ecological Services Field Supervisor, USFWS  
Pat Mathis, SW Area Habitat Specialist, NMDGF  
Kurt Vollbrecht, NMED Groundwater Quality Bureau