Gila Resources Information Project
Promoting Healthy Communities by Protecting Our Environment Since 1998

October 12, 2016

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1220 South St. Francis Drive
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Michelle Hunter, Chief
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New Mexico Environment Department
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Via e-mail: Fernando.martinez@state.nm.us; michelle.hunter@state.nm.us

RE: Third-Party Guarantee for Freeport-McMoRan Chino, Tyrone and Continental Mining Facilities, Mining and Minerals Division Permit Nos. GR009RE, GR010RE, GR002RE, New Mexico Environment Department Discharge Permit Nos. 1340, 1341, and 1403

Dear Mr. Martinez and Ms. Hunter:

Given the dire financial situation of Freeport-McMoRan Inc., and its failure to pass the Mining Act's Financial Soundness Test three times, the Gila Resources Information Project (GRIP) is very concerned about the company's applications and proposals for replacement of Third-Party Guarantees issued by Freeport-McMoRan Inc. (FCX) for financial assurance (FA) for the Chino, Tyrone and Continental mines.

The most recent applications and proposals by FCX request a Third Party Guarantee (TPG) of $104 million for all three mines, seek consideration of replacement of the Third Party Guarantor with FCX subsidiary Freeport Minerals Corporation, and rely on overvalued ranches as collateral. The applications and proposals are not in the public's best interest as they put the State of New Mexico in a position of significant environmental and financial risk.

The attached memo from consulting engineer Jim Kuipers discusses in more detail the concerns outlined below.

Failed Third Party Guarantee has not been replaced.

Freeport-McMoRan Inc. has failed the Mining Act's Financial Soundness Test (FST) for 2015 and the first and second quarters of 2016. Failure to pass the FST makes FCX ineligible to serve as the Third Party Guarantor, and the Mining Act requires replacement of the Third Party Guarantee (TPG) with a secure form of financial assurance. However, the current Freeport applications and proposals request a reduction in the Third Party Guarantee to 28% of the reclamation cost ($104 million) and do not outline a plan to wholly replace the TPG. Additionally, more than 200 days have elapsed since Freeport notified the state that it did not pass the FST. The current failure to have a legitimate financial assurance mechanism in the form of cash or surety to replace the failed TPG mechanism is inconsistent with the requirements of the Mining Act as is MMD's allowance for the situation to be extended.

Freeport-McMoRan Inc.'s financial situation is unlikely to turn around soon and could worsen. The company's high debt in conjunction with low global copper prices are cause for concern over the long-term according to market analysts.[1] Moody's downgraded FCX to junk bond status in January[2] and Standard & Poor's followed suit in late September.[3]

Not having a valid financial assurance mechanism for part of the FA puts the State of New Mexico at risk of having insufficient funds to reclaim the Chino, Tyrone and Continental mines should Freeport-McMoRan go bankrupt. To accept $104M in TPG when the guarantor has failed the FST is not only contrary to the Mining Act, but is irresponsible in the face of the company's continued financial decline.

GRIP is also concerned that the cash trusts for all three mines may not be protected from bankruptcy court should Freeport default.

Replacement of FCX as Third Party Guarantor with Freeport Minerals Corporation should not be accepted.

FCX's proposal to substitute the TPG with Freeport Minerals Corporation (FMC) should not be seen as constituting an acceptable TPG. FMC is a wholly owned subsidiary of FCX whose assets constitute the former Phelps Dodge. According to the 2016 annual filing with the Arizona Corporation Commission, Richard Adkerson is Chief Executive Officer and President of both FCX and its subsidiary FMC. Additionally, 14 of the 21 directors and

[1] "Sell Freeport, The Future is Grim," Brian Dempster. *Seeking Alpha*, October 10, 2016. http://seekingalpha.com/article/4011117-sell-freeport-future-grim

[2] Moody's downgrades FCX's ratings, assigns B1 CFR; outlook negative. January 27, 2016. https://www.moodys.com/research/Moodys-downgrades-FCXs-ratings-assigns-B1-CFR-outlook-negative--PR_343032

[3] "S&P Downgrades Freeport-McMoRan (FCX) to 'BB-'; Outlook is Stable" September 29, 2016. http://www.streetinsider.com/Credit+Ratings/S%26P+Downgrades+Freeport-McMoran+(FCX)+to+BB-%3B+Outlook+is+Stable/12083163.html

officers of Freeport Minerals Corporation are also directors and/or officers of Freeport-McMoRan Inc. demonstrating the high degree of control of the parent over its subsidiary.

Moreover, FMC is subject to the same market forces as FCX, as described in the previous section above, and is supported financially by its parent. Moody's downgraded FMC in January 2016 to B1 from Baa3 reflecting "the fact that this debt is at the operating company level and benefits from a downstream guarantee from FCX."[4]

As pointed out by Mr. Kuipers in the attached memorandum, the environmental liabilities of other mines reside within FMC and would be even more pronounced with the more limited assets of FMC. Therefore, they should be accorded more significance and raise greater concern with respect to the proposed use of FMC as a third-party guarantor.

Given that Freeport Minerals Corporation has the same risk portfolio as its parent FCX and the fact that if FCX goes bankrupt, so too would its subsidiary FMC, acceptance of Freeport Minerals Corporation as the Third Party Guarantor would also put the state of New Mexico at risk of not having sufficient funds to cover the full cost of cleanup should FCX or FMC default.

<u>Lack of transparency in replacement of TPG with Freeport Minerals Corporation is unacceptable.</u>

Given Freeport-McMoRan's refusal to provide Freeport Minerals Corporation financial information, the public is denied access to the data upon which FCX claims that it can pass the Financial Soundness Test with FMC as the Third Party Guarantor. It is unreasonable for Freeport to expect that it be allowed to provide a $104 million I.O.U. with no public review when the public sector and taxpayers would be on the hook for cleanup costs should the company go bankrupt.

We hope that MMD can work with FCX to provide the public with information that could provide insight into the FST results without compromising any FMC confidential business information.

<u>Acceptance of ranch properties as Tyrone and Continental Mines financial assurance is questionable.</u>

Freeport-McMoRan proposes that $62.5M in financial assurance for Tyrone and Continental mines be covered by collateral in the form of ranch properties owned by FCX. Although the Mining Act allows collateral to be used as a form of financial assurance, there are problems with ensuring the value of any form of collateral other than cash or equivalents. In particular, real estate is vulnerable to changes in value and could be subject to lien. There are a number of specific problems with Freeport's collateral proposal:

[4] Moody's. January 27, 2016.

- GRIP questions the significant increase – 100% to 200% increase over 2004 – 2005 appraisals -- in appraised values for many of the ranches proposed as collateral for financial assurance. We believe that the 3rd party review conducted for MMD was insufficient to adequately assess the validity of the appraisals.
- Appraisals are dated (more than two years old) and based upon comps more than five years old. This is not standard practice.
- Freeport ranch properties represent 30% of the deeded land in Hidalgo County and 7.5% of the deeded land in Grant County. If the state had to liquidate ranch properties in the event of an FCX default, putting that much land on the market at once would flood the market and depress prices. Because of this, it is likely that the values proposed are overestimated.
- We encourage thorough investigation of FCX ranch properties for existing liabilities, liens, or other issues that may compromise property value. For example, Winn Canyon on Winn Canyon Ranch is the proposed location for a storage reservoir under the Arizona Water Settlements Act. Both Doyle and Miller Canyons, also located on Winn Canyon Ranch, have been examined as possible reservoir sites. If this project moves forward, ranch land could be condemned for construction of a reservoir and would lower its total value.
- It is also unclear if collateral would be protected from bankruptcy court should FCX default, calling into question whether or not the State of New Mexico would have access to the $62.5 million in collateral.

<u>Closure/closeout plans have not been updated in more than a decade.</u>

The Closure/Closeout Plans and associated financial assurance and permits for the Chino, Tyrone and Continental mines have not been updated and approved in more than a decade. Although several reductions to FA have been made given completion of reclamation work, additional water treatment and discharge costs are likely to be incurred. For example, the settlement of GRIP's appeal of DP-1340 resulted in Freeport's commitment to implementing water treatment in order to eliminate the use of dilution to meet water quality standards. This water treatment cost is not included in the existing financial assurance amounts, since the discharge permit for closure (DP-1340) has not been updated and approved. Thus FCX's FA applications and proposals do not reflect the current cost of reclamation and cleanup of the three mines and leave the State bearing an even greater degree of risk.

<u>Recommendations</u>

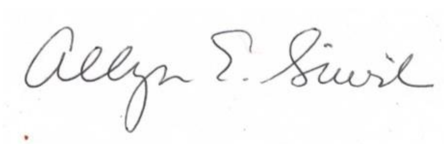
In order to eliminate environmental and financial risk to New Mexico, GRIP encourages the Mining and Minerals Division and the NM Environment Department to work together to implement the following recommendations:

- Phase out completely the Third Party Guarantee for the Chino, Tyrone and Continental mines.

- Ensure that cash trusts for all three mines are shielded from bankruptcy court should Freeport-McMoRan default.
- Approve as quickly as possible the updated Closure/Closeout Plans, associated reclamation cost estimates, and financial assurance for the Chino, Tyrone and Continental mines. As part of the updates,
    - Require more secure forms of FA rather than overvalued real estate collateral currently part of FA for the Tyrone and Continental mines.
    - Mandate that up to two years of water management costs for the Chino, Tyrone and Continental mines be set aside in cash and be immediately available to the State of New Mexico should FCX go bankrupt and the State is required to step in and manage the mines.
- Require that any non-publicly traded company requesting to be a Third Party Guarantor provide the public with financial information sufficient to adequately assess its eligibility under the Mining Act's financial soundness tests.

Thank you for your consideration of our comments on this critical issue.

Sincerely,



Allyson Siwik
Executive Director

Cc: Jim Kuipers, Kuipers and Associates

James Kuipers P.E.
Principal Consulting Engineer
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PO Box 145
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October 10, 2016

To: Allyson Siwik, Gila Resources Information Project (GRIP)

From: Jim Kuipers P.E., Kuipers and Associates

Re: **Evaluation of Current Closure/Closeout Financial Assurance for the Chino, Tyrone and Continental/Cobre Mines in New Mexico**

In response to your request I have reviewed the available information as referenced herein concerning the current closure/closeout financial assurance (FA) amounts and mechanisms held for the Chino, Tyrone and Continental/Cobre Mines owned by Freeport-McMoRan Inc. (listed with the SEC as and herein "FCX") required and held by the State of New Mexico Energy Minerals and Natural Resources Department (EMNRD).

I have also evaluated the information with respect to both the requirements of the New Mexico Mining Act, but also with respect to my own expert professional opinions. Those opinions are based on my extensive knowledge of financial assurance cost estimation, regulatory practices and mechanisms accumulated over more than 35 years of professional experience including involvement in the implementation of the New Mexico Mining Act (NMMA) beginning in 1997 including in establishing financial assurance requirements and mechanisms for the Chino, Tyrone and Continental/Cobre Mines but also at other major mines in the state including Questa.

I have identified and am providing comments specific to the following major findings and recommendations of my review:

1. The Chino Closure/Closeout Plan and FA are not current. Since the original amounts of FA were determined for the three mines in the 2001 – 2005 time- period, the Closure/Closeout Plans and FA have not been consistently updated. The NMMA requires that the plans and FA be updated periodically (NMAC 19.10.5.504)[5], while typical regulatory practice is to review the amounts from yearly to at least every five years.[6] According to MMD permit files, while the Tyrone and Continental/Cobre FA amounts have been recently updated in 2013 and 2014 respectively, the permit revisions have not been approved, so those updated estimates are not in effect. At Chino, neither the Closure/Closeout Plan nor the FA estimate have been updated since 2008. During this period several reductions have been made in the amount crediting reclamation activities conducted since 2008. However, at the same time various legal rulings have determined that additional water

[5] NMAC 19.10.5.504.D. The Director shall periodically review the amount of financial assurance filed with the Director under 19.10.12 NMAC. The Director may require adjustments to the amount of financial assurance to reflect inflationary increases or increases in the anticipated costs of reclamation.
[6] Kuipers, James R., Hardrock Reclamation Bonding Practices in the Western United States, February 2000.

treatment and discharge costs are likely to be incurred than have previously been estimated. The current closure/closeout plan and financial assurance for the Chino mine is inconsistent with the requirements of the NMMA and accepted regulatory practice.

2. On February 2nd, 2016 FCX informed MMD that it failed the Financial Soundness Test for its third party guarantee which constitutes part of the FA for each of the Chino, Tyrone and Continental/Cobre Mines, followed by additional letters on March 1st and 7th, 2016 further informing MMD of ongoing and then additional failure by FCX of the Financial Soundness Test. MMD first responded to the FCX notices in a March 18, 2016 letter providing a 90-day notice to FCX to adjust the third party guarantees to meet the Financial Soundness Test, or replace them with another form of financial assurance, within 90 days. FCX instead responded with another letter informing MMD of ongoing failure of the Financial Soundness Test on May 20th, 2016, which was followed by another MMD letter providing a second 90-day notice on June 9, 2016. On July 7, 2016 FCX responded with proposed permit modifications to address the failures that proposed using accrued trust funds for the mines to replace part but not all of the third party guarantees by FCX. This was followed by a letter from FCX to MMD on July 18, 2016 initiating a process wherein Freeport-McMoRan Inc. (FCX) would replace its third-party guarantee with a third-party guarantee from Freeport Minerals Corporation (FMC), a subsidiary of FCX which in turn was followed by another letter from FCX to MMD on July 25, 2016 requesting MMD give credit for existing cash and real estate collateral. On August 15, 2016 FCX informed MMD that it continued to fail the Financial Soundness Test. MMD approved a permit modification for the Chino Mine on September 1, 2016 allowing replacement of the FA giving credit for the value of the existing cash. Most recently, on September 16, 2016, MMD informed FCX that it had 90 days to replace the FCX third party guarantees.

    a. <u>The failed third-party financial assurance has yet to be replaced.</u> As of September 29th well more than seven months (210) days have passed since FCX first informed MMD that they failed the Financial Soundness Test. However, with the provision of an additional 90 days as of September 16th, MMD will have allowed over 300 days to elapse since first being informed that FCX failed the test. The NMMA requires that FA be replaced with 90 days with provisions for up to two 30-day extensions (NMAC 19.10.12.1208.G(10)).[7] While the amount of the third-party guarantee has been reduced and replaced by cash during this period, FCX still fails the FST and therefore they should have been required to replace the entire amount within the initial 90-day period. The current failure to have a legitimate financial assurance mechanism in the form of cash or surety to replace the failed third party guarantee mechanism is inconsistent with the requirements of the NMMA as is MMD's allowance for the situation to be extended. Not having a valid financial assurance mechanism for part

[7] 19.10.12.1208.G(10)) At any time that the guarantor's financial condition is such that the guarantor no longer qualifies pursuant to this part, the permittee shall be deemed without financial assurance coverage. The director shall specify to the permittee in writing a reasonable period, not to exceed 90 days, to replace the financial assurance coverage. If adequate financial assurance is not provided by the end of the period allowed, the permittee shall cease mining and shall immediately begin to conduct reclamation or closeout measures in accordance with the reclamation or closeout plan. The director may, for good cause shown, grant up to two 30-day extensions. Mining operations shall not resume until the director has determined that an acceptable replacement financial assurance has been provided.

of the FA puts the State of New Mexico at risk of having insufficient funds in the event the use of the FA becomes necessary (e.g. bankruptcy of Chino Mines/FCX).

b. FCX's proposal to replace its third-party guarantee with that of a subsidiary company should be considered invalid. FCX's proposal to substitute a third-party guarantee from Freeport Minerals Corporation (FMC), a subsidiary company, should not be seen as constituting an acceptable third-party guarantee and in fact is nothing more than a corporate shell-game. If FCX goes bankrupt FMC would go bankrupt, and there is no guarantee that FMC will not fail to meet the FST in the future, particularly given that it is mining focused and lacks the diversification of FCX. As noted by Moody's “"The Ba2 debt rating of Freeport Minerals reflect the fact that this debt is at the operating company level and benefits from a downstream guarantee from FCX."[8] As long as oil and gas prices remain depressed FMC may appear to be stronger than FCX, but if metals prices remain depressed it is highly likely if not certain that FMC represents an even greater risk than FCX in terms of solvency. The fact that FCX appears to be unable to replace their third-party guarantee (TPG) with a legitimate form of financial assurance (FA) when they are unable to meet the Financial Soundness Test (FST) validates our previous findings that with self-bonding or corporate guarantees such as FCX's TPG, the responsible agency is typically not able to replace the FA once the guarantor no longer meets the FST.[9] It should also be noted that as long as NM allows corporate guarantees it will be inconsistent with the prevailing practice in the U.S. and will be inconsistent with the federal land management agencies (US Forest Service and Bureau of Land Management) in that they do not allow any form of corporate guarantee as FA.

c. The use of real estate is questionable as a form of financial assurance. Currently more than $62.5M in financial assurance is represented by collateral, in the form of real estate owned by FCX. As I have previously noted, New Mexico is the only state that to my knowledge accepts collateral bonds backed by property (typical collateral bonds are cash deposits, governmental securities, or negotiable certificates of deposit of any financial institution) as a form of FA, and it is explicitly not allowed by many States and by the federal agencies.[10] The problem with ensuring the value of any form of collateral other than cash or equivalents is well known, with real estate being particularly vulnerable to changes in value, in addition to the need to ensure that collateral is not subject to any other lien or used as collateral for any other liability.

3. The current situation puts the State of New Mexico in a position of significant environmental and financial risk. Not having current plans and financial assurance for the Chino Mine, having financial assurance that does not meet the FST, FCX's proposal to replace FMC as the TPG, and continued use of real estate as a collateral bond, puts the State of New Mexico at significant and serious risk of having insufficient funds in the event the use of the FA becomes necessary (e.g. bankruptcy of Chino Mines, Tyrone Mines, Cobre Mines or FCX).

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[8] January 5, 2016, https://www.moodys.com/research/Moodys-reviews-FCXs-ratings-Baa3-sr-unsecured-and-subsidiary-ratings--PR_341989

[9] Ibid.

[10] Ibid.

> The current situation is a prime example of the incipient nature of any form of corporate or third party guarantee in that they cannot be replaced in a timely or adequate manner and therefore should not be used as a legitimate financial assurance mechanism. Continued use of guarantees and collateral threatens the intent and objectives as well as accomplishments of the NMMA overall. If it is the intent of the NM mining industry, legislature, regulators and citizens to be seen as being socially responsible and progressive in this regard, then it is critical that the current situation be reconciled with provision by FCX of legitimate FA and changes be made to the NMMA that not allow TPG's or real estate as a form of FA.

I have directly and substantively been involved in the implementation of the NMMA since 1998. From that time on I have repeatedly voiced concerns about both the need for constant update of financial assurance amounts and mechanisms, but also about the NMMA provisions for allowing third-party guarantees, including for the very reasons outlined herein. In summary, the information provided to date shows that third-party guarantees are neither stable nor easily convertible and therefore are high risk and should be considered unacceptable as financial assurance. This should also be the perspective of a responsible and sustainable mining industry which is not reflected in the failure to update their reclamation and closure plans and financial assurance as required every five years and their proposal to continue to use third-party guarantees despite their financial condition no longer, if it ever did, warranting that antiquated and socially unacceptable approach.

The following Appendices provide additional information and discussion in support of these findings and recommendations.

Appendix A - Timeline of Events

November 21, 2008	Chino Closure/Closeout Plan Update and Financial Assurance Estimate
July 15, 2013	Tyrone Closure/Closeout Plan Update and Financial Assurance Estimate
September 17, 2014	Tyrone Financial Assurance Face Amount Adjustment
February 2, 2016	FCX Letter to MMD Re: Failed Alternative #2 of the Financial Soundness Test
March 1, 2016	FCX Letter to MMD Re: Failed Alternative #2 of the Financial Soundness Test
March 7, 2016	FCX Letter to MMD Re: Failed Alternative #1 of the Financial Soundness Test
March 18, 2016	MMD Letter to Freeport-McMoRan Inc. (FCX) Re: Notice of Failure to Maintain Financial Soundness, Chino, Tyrone and Cobre. First 90 Day Notice
May 20, 2016	FCX Letter to MMD Re: Failed Alternative #1 of the Financial Soundness Test
June 9, 2016	MMD Letter to Freeport-McMoRan Inc. (FCX) Re: Notice of Failure to Maintain Financial Soundness, Chino, Tyrone and Cobre. Second 90 Day Notice.
July 7, 2016	MMD Letter to Freeport-McMoRan Inc. (FCX) Re: Applications for Permit Modifications Required for the Chino, Tyrone and Continental Mining Facilities to Address Failure to Maintain Financial Soundness
July 18, 2016	FCX Letter to MMD Re: initiation of a process to review the financial statements of Freeport Minerals Corporation in anticipation of a proposal to replace the current FCX guarantees with guarantees issued by Freeport Minerals Corporation.
July 25, 2016	FCX to MMD Re: Applications requesting the agencies give credit for the value of the existing cash and real estate collateral along with commensurate reductions in the amounts of the FCX guarantees.
August 15, 2016	FCX Letter to MMD and ED Re: Third Party Guarantees for the Chino, Tyrone and Continental Mining Facilities, Failed Alterative #1 of the FST
September 1, 2016	Permit Modification 16-4 to Permit No. GROO9RE allowing the replacement of FA for the Chino Mine
September 21, 2016	Cobre Mod 16-1

Appendix B - Summary of Existing FA

Chino

The financial assurance costs for Chino were last estimated in 2007 as contained in the Chino Closure/Closeout Plan Update prepared by Golder Associates and dated August 28, 2007. The costs for capital and operation and maintenance were estimated as follows:

Table 1 – Chino Mine Financial Assurance Cost Summary

Item	Amount
Capital Costs	
Earthwork	$176,311,000
Water Treatment	$24,068,000
Total Capital Costs	$200,379,000
Operation and Maintenance Costs	
Earthwork (2007 total dollars)	$ 25,460,689
Water Treatment (2007 total dollars)	$268,008,000
Total O&M Costs	$293,468,689

These estimates do not include GRIP's settlement agreement with FCX on the dilution issue that required them to update the water treatment cost estimate to eliminate the use of dilution, resulting in an increase of in water treatment costs of approximately $50M (2008$).

According to MMD, as of July 7, 2016[11] the following summarizes the current amount of financial assurance ("FA") for the Chino Mine.

Table 2 – Chino Mine Financial Assurance Form and Amount Summary

Form	Amount
Third Party Guarantee	$45,336,545
Trust Fund	$120,464,355
Shortfall	$535,645
Total Required FA	$166,336,545

The permit revisions for the MMD closeout permit and the supplemental discharge permit for closure have not been updated.

Tyrone

The financial assurance costs for Tyrone were first estimated in 2003. The costs were revised for work completed through 2009 and at that time the total costs were estimated in 2003 dollars at $337,606,062 with a Net Present Value (NPV) of $185,559,631. The financial assurance was further reduced in 2009 to reflect work performed on the 1C/7A Stockpile that reduced the closure cost in 2003 dollars to $329,359,614 and a NPV of $177,869,685.

[11] July 7, 2016, MMD Letter to Freeport-McMoRan Inc. (FCX) Re: Applications for Permit Modifications Required for the Chino, Tyrone and Continental Mining Facilities to Address Failure to Maintain Financial Soundness

The financial assurance costs for Tyrone were estimated in 2013 based on 2012 dollars as contained in the Tyrone Closure/Closeout Plan Update prepared by Golder Associates and dated July 2013. The costs for capital and operation and maintenance were estimated as follows:

Table 3 – Tyrone Mine Financial Assurance Cost Summary

Item	Amount
Capital Costs	
Earthwork	$133,889,000
Water Treatment	$15,497,000
Total Capital Costs	$149,386,000
Operation and Maintenance Costs	
Earthwork (2007 total dollars)	$ 19,806,000
Water Treatment (2007 total dollars)	$311,312,000
Total O&M Costs	$331,118,000

According to MMD, as of July 7, 2016[12] the following summarizes the current amount of financial assurance ("FA") for the Tyrone Mine.

Table 4 – Tyrone Mine Financial Assurance Form and Amount Summary

Form	Amount
Third Party Guarantee	$50,804,400
Trust Fund	$48,029,957
Collateral	$48,549,200
Surety Bonds	$31,780,518
Letter of Credit	$170,874
Shortfall	$170,043
Total Required FA	$179,504,992

These revised cost estimates have not been updated in a revised permit.

Cobre/Continental

According to MMD, as of July 7, 2016[13] the following summarizes the current amount of financial assurance ("FA") for the Cobre/Continental Mine.

Table 5 – Cobre Mine Financial Assurance Form and Amount Summary

Form	Amount
Third Party Guarantee	$8,146,372
Trust Fund	$5,278,566
Collateral	$13,908,800
Shortfall	$21,534
Total Required FA	$27,355,272

[12] *Ibid.*
[13] *Ibid.*

These revised cost estimates have not been updated in a revised permit.

Appendix C – Comments on FCX and FCM Third-Party Guarantees

As a result of its failure to pass the NMMA third-party guarantee financial requirements, Freeport-McMoRan Inc. (FCX) is proposing to replace its existing third-party guarantee with a third-party guarantee from Freeport Minerals Corporation. It is hard to describe this as anything other than a shell-game given that Freeport Minerals Corporation is a subsidiary of FCX.[14] According to the 2016 annual filing with the Arizona Corporation Commission, Richard Adkerson is Chief Executive Officer and President of both FCX and its subsidiary FMC. Additionally, 14 of the 21 directors and officers of Freeport Minerals Corporation are also directors and/or officers of Freeport-McMoRan Inc.

"Freeport-McMoRan Inc. (FCX) is a natural resources company with headquarters in Phoenix, Arizona. FCX is the world's largest publicly traded copper producer, the world's largest producer of molybdenum, and a significant gold, oil and natural gas producer." "FCX's portfolio of metal assets includes the Grasberg minerals district in Indonesia, one of the world's largest copper and gold deposits; significant mining operations in North and South America, including the large-scale Morenci minerals district in Arizona and the Cerro Verde operation in Peru; and the Tenke Fungurume minerals district in the Democratic Republic of Congo. FCX's portfolio of oil and natural gas assets includes growth potential in the Deepwater Gulf of Mexico, established oil production facilities onshore and offshore California, natural gas production from the Madden area in central Wyoming, and a position in the Inboard Lower Tertiary/Cretaceous natural gas trend onshore in South Louisiana." FCX's global workforce, comprised of employees and contractors, includes approximately 75,000 members.[15]

"Freeport Minerals Corporation was formerly known as Freeport-McMoRan Corporation and changed its name to Freeport Minerals Corporation in July, 2014." "As of March 19, 2007, Freeport Minerals Corporation operates as a subsidiary of Freeport-McMoRan Inc. Freeport Minerals Corporation manufactures and markets copper, molybdenum, molybdenum-based chemicals, and continuous-cast copper rods. The company provides open-pit mining, underground mining, sulfide ore concentrating, leaching, solution extraction, and electrowinning services. In addition, it operates Ojos del Salado, Morenci, Bagdad, Sierrita, and Chino mines which produce gold and silver; the Bagdad, Sierrita, and Chino mines which offer molybdenum and rhenium; and the Cerro Verde mine which produces molybdenum and silver." Freeport Minerals Corporation's workforce is 15,600 employees.[16]

It is important to note that FCX suggests that "We will continue to monitor Freeport Minerals Corporation's situation, and if its financial condition changes such that it no long is able to meet the ratios, we will satisfy our financial assurance obligation with alternative forms." Rather than be seen as an assurance, this statement should be seen as a prediction that Freeport Minerals Corporation is also at high risk of being ineligible as a third-party guarantor, and that under this

[14] http://www.fcx.com/company/history.htm
[15] http://www.fcx.com/company/who.htm
[16] http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=32951

proposal New Mexico will continue to be one step behind providing adequate financial assurance.

The proposal by FCX is particularly frustrating from the viewpoint of transparency in that while the financial information on FCX is public knowledge, the information on FMC is not, and as a result

In the future the public won't be able to see the FST results. A responsible corporation would recognize this and allow the public to review not only the financial information submitted on FMC, but also ensure all records were provided for public inspection.

Conclusions and Recommendations

While the FCX provision of a third party guarantee should be considered unacceptable for the numerous reasons stated herein, a similar guarantee by a mining focused subsidiary of the same corporation should be even less acceptable. First, it represents less diverse and more limited assets that are tied heavily to the copper mining industry. Second, FCX is required to file annual reports with the SEC that together with other public available information makes their financial situation relatively transparent, whereas FMC is not required to file an annual report and therefore the public must rely on the agencies review of what FCX deems "confidential business information" therefore denying the public access to the information for FMC, even though it is within the information provided for FCX.

The State of New Mexico and in particular MMD should be aware that the environmental liabilities listed in FCX's August 15, 2016 letter to MMD contained in Exhibit A (Pro forma for Freeport-McMoRan Inc. as Guarantor, Certificate of Guarantor's Compliance with Section 19.10.12.1208.G(S)(a) NMAC, As of June 30, 2016) are significantly understated. For those properties FCX identifies in Third-Party Guarantees in Section b. All other guarantees for environmental permits issued in the United States for which

Guarantor is obligated the following should be noted:

- The majority of the mines listed are located in Arizona and administered by the Arizona Mine Inspector Program and the Arizona Department of Environmental Quality Aquifer Protection Permit Program.
- The amounts shown for the mines in Arizona are for the entire amount of financial assurance – in other words, corporate guarantees compromise 100% of the financial assurance for those sites and FCX has not provided any amount in any form of real financial assurance for those liabilities.
- The amounts are typically for minimal surface reclamation and limited post-reclamation obligations estimated to range from 2 – 30 years.
- Arizona water quality regulations allow for determination of groundwater impacts to be delayed until closure of the mine – this means the requirement for source controls and ground and/or surface water remediation post-mining has not been determined and therefore not included in the current Arizona financial assurance obligations.
- FCX fails to identify any financial assurance obligations outside of the U.S. although they may be significant and of importance given expectations of other governmental entities.
- Given that all these liabilities reside within FMC and would be even more pronounced with the more limited assets of FMC, they should be accorded more significance and raise greater concern with respect to the proposed use of FMC as a third-party guarantor.