

**BEFORE THE DIRECTOR OF THE MINING AND MINERALS DIVISION
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT**

IN THE MATTER OF:

**THE APPLICATION OF NEW MEXICO
COPPER CORPORATION FOR A REGULAR
NEW MINE PERMIT FOR THE COPPER
FLAT MINE UNDER PART 6 OF THE
MINING ACT RULES, 19.10.6 NMAC,
PERMIT TRACKING NO. SI027RN**

**DIRECTOR’S ORDER WITHDRAWING ORDER ISSUED MARCH 31, 2020 AND
ADOPTING SETTLEMENT AGREEMENT**

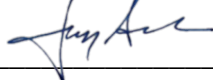
THIS MATTER comes before the Director of the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department of the State of New Mexico (“MMD”) upon the application of the New Mexico Copper Corporation (“NMCC”) for a permit (assigned Permit Tracking No. SI027RN) for a regular new mining operation under Part 6 of the Mining Act Rules, 19.10.6 NMAC, for the Copper Flat Mine, located in Sierra County near Hillsboro, New Mexico.

The Director, being fully informed in the premises, hereby rescinds the March 31, 2020 Director’s Order, in consideration of the Settlement Agreement between MMD and NMCC attached as Attachment A.

THEREFORE, THE DIRECTOR ORDERS as follows:

- A. the March 31, 2020 Director's Order is withdrawn, including its rescission of the June 13, 2018 notice of technical approvability; and,
- B. the permitting process shall proceed in accordance with the Settlement Agreement attached to this Order as Attachment A.

By Order of the Director of Mining and Minerals Division



Jerry Schoeppner

June 5, 2020

Date

CERTIFICATE OF SERVICE

The Director hereby certifies that on June 5, 2020, copies of this Director’s Order Withdrawing Director’s Order Issued March 31, 2020 and Adopting Settlement Agreement in the matter of the application for Permit No. SI027RN were emailed to the persons listed below. Copies will be mailed first class upon request to the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department.

<p>New Mexico Copper Corporation Attn: Mr. Jeff Smith, Chief Operating Officer P.O. Box 4209 Truth or Consequences, NM 87901 jsmith@themacresourcesgroup.com</p>	<p>Sierra County Commission Attn: Mr. James E. Paxon, Chair 855 Van Patten Truth or Consequences, NM 87901 jpaxon@sierraco.org</p>
<p>Modrall Sperling Attn: Mr. Stuart Butzier, General Counsel P.O. Box 9318 Santa Fe, NM 87504 sbutzier@modrall.com</p>	<p>New Mexico Environmental Law Center Attn: Mr. Charles de Saillan, Staff Attorney 1405 Luisa Street, Suite 5 Santa Fe, NM 87505 cdesaillan@nmelec.org</p>
<p>Mr. Kurt Vollbrecht NMED Ground Water Quality Bureau Mining Environmental Compliance Section P.O. Box 5469 Santa Fe, NM 87502 kurt.vollbrecht@state.nm.us</p>	<p>Barncastle Law Firm Attn: Ms. Samantha R. Barncastle, Attorney P.O. Box 1556 Las Cruces, NM 88004 samantha@h20-legal.com</p>
<p>Dr. Ghassan Musharrafieh Office of the State Engineer P.O. Box 25102 Santa Fe, NM 87504-5102 ghassan.musharrafieh@state.nm.us</p>	<p>Elephant Butte Irrigation District Attn: Mr. Gary Esslinger, Treasurer 530 South Melendres Las Cruces, NM 88005 gesslinger@ebid-nm.org</p>
<p>Dr. Matthew Wunder NM Department of Game and Fish P.O. Box 25112 Santa Fe, NM 87504 matthew.wunder@state.nm.us</p>	<p>Rio Grande Compact Commission Attn: Mr. Pat Gordon, Commissioner 401 E. Franklin Ave., Ste 560 El Paso, TX 79901-1212 pgordon@gordonmottpc.com</p>
<p>Ms. Leighandra Keeven Bureau of Land Management 1800 Marquess St. Las Cruces, NM 88005 lkeeven@blm.gov</p>	<p>Gordon Davis Johnson & Shane P.C. Attn: Mr. Pat Gordon 4695 North Mesa Street El Paso ,TX 79912 pgordon@gordonmottpc.com</p>

<p>Hillsboro Pitchfork Ranch, LLC Attn: Mr. Robert Cunningham and Ms. Kathy McKinney P.O. Box 478 Hillsboro, NM 88042 bcunni4668@aol.com</p>	<p>Gila Resources Information Project Attn: Ms. Allyson Siwik, Executive Director 305A North Cooper St. Silver City, NM 88061 grip@gilaresources.info</p>
<p>Turner Ranch Properties L.P. HC 31, Box 95 Caballo, NM 87931 steve.dobrott@tedturnerexpeditions.com</p>	<p>Sally Malavé Assistant Attorney General Director, Open Government Division NM Office of the Attorney General PO Drawer 1508 Santa Fe, New Mexico 87504-1508 smalave@nmag.gov</p>

ATTACHMENT A TO DIRECTOR'S ORDER

SETTLEMENT AGREEMENT

The Mining and Minerals Division of the Energy, Minerals and Natural Resources Department of the State of New Mexico ("MMD"), and the New Mexico Copper Corporation ("NMCC"), together the "Parties," agree as follows:

RECITALS

WHEREAS:

- A. NMCC submitted an application for a permit for a regular new mining operation under Part 6 of the Mining Act Rules, 19.10.6 NMAC for the Copper Flat Mine, Permit Tracking No. SI027RN, located in Sierra County near Hillsboro, New Mexico.
- B. NMCC submitted various portions of the Permit Application Package ("PAP") between 2012 and 2018 under authority of 19.10.6.602 NMAC.
- C. As required by 19.10.6.605(E) NMAC, the Director notified the NMCC that the PAP was technically approvable on July 13, 2018.
- D. Based on the information explained in the *Director's Findings of Fact and Conclusions of Law and Order to Reopen Review of the Permit Application* ("the March 31, 2020 Director's Order"), the Director concluded that NMCC had not obtained water rights sufficient to operate and reclaim the Copper Flat Mine as explained in the PAP.
- E. Pursuant to this Settlement Agreement, MMD agrees to withdraw its March 31, 2020 Director's Order, including its rescission of the June 13, 2018 notice of technical approvability, and NMCC agrees to make certain demonstrations as to the availability of water rights sufficient to permit operation and complete reclamation of the Copper Flat Mine in accordance with the PAP, to submit a supplement financial assurance proposal to include contingent costs of

acquiring water rights if necessary therefor, and to otherwise complete the remaining steps under 19.10.6.606 necessary to obtain a Part 6 permit under the Mining Act Rules.

F. By entering into this Settlement Agreement, the Parties wish to avoid an administrative appeal and agree to the requirements set forth in this Agreement.

G. Any terms used in this Agreement that are defined in the Mining Act or the Mining Act Rules shall be understood as they are defined or used in those authorities. Otherwise, abbreviations and definitions used in this Agreement are as set forth and explained in the March 31, 2020 Director's Order.

AGREEMENT

WHEREFORE, the Parties agree as follows:

1. The Director shall only issue a Part 6 mining permit for the Copper Flat Mine once NMCC has met the requirements of 19.10.6.605(F) and 19.10.6.606(B)(2), (3), (5), (6)(but only for the purposes of 19.10.6.605(F)), (8), (9), (10), and (12) NMAC and the demonstrations described in paragraphs (1)(a), (b), and (d), below. If NMCC has not obtained the permits or approvals required under (1)(c) and (1)(e) prior to the issuance of the permit, the permits or approvals must be obtained before mining activities can begin. MMD otherwise retains its discretion to subject a Part 6 permit for the Copper Flat Mine to conditions necessary to meet the requirements of the Mining Act and the Mining Act Rules.

- a) Demonstration by NMCC that it has secured the approximately 6,095 acre feet per year of water from the production wells and the open pit necessary (in the absence of an alternate water recovery plan that may be hereafter submitted and approved) to operate and reclaim the Copper Flat Mine as proposed in the PAP, either through resolution in

NMCC's favor of the determination of the water rights currently pending in *State of New Mexico, ex rel. Office of the State Engineer v. EBID et al.*, Case No. A-1-CA-37258, or by securing the necessary amount of valid water rights from a different source or lease of water rights for a term sufficient to cover the period of operation and complete reclamation of the Copper Flat Mine as proposed in the Mine Operation and Reclamation Plan;

- b) Demonstration by NMCC that the term (including option, extension and renewal terms) of any lease agreement for any water rights is sufficient to cover the period of operation and complete reclamation of the Copper Flat Mine as proposed in the Mine Operation and Reclamation Plan;
- c) Demonstration by NMCC by evidence that is satisfactory to MMD, that it has obtained approval or is likely to obtain approval of any transfer of water rights to the production wells and the open pit by the Office of the State Engineer ("OSE");
- d) As an alternative to proposing additional financial assurance amounts as specified in paragraph (3), below, for the water rights subject to NMCC's lease agreement with the Jicarilla Apache Nation, NMCC shall demonstrate that the term (including option, extension and renewal terms) of that lease, or any other lease executed for same purpose, or other water rights held by NMCC (whether by purchase or transfer) is sufficient to completely offset the depletion of a cumulative amount of approximately 16,382 acre feet of water from the Rio Grande/Caballo system through diversion at the production wells for the duration of the 45-year recovery period after pumping from the production wells ceases; and,

- e) Demonstration by NMCC, by evidence that is satisfactory to MMD, that it has obtained or is likely to obtain a dam safety permit from OSE for the tailing storage facility. When the Director determines that NMCC has completed its obligations set forth in paragraph (1) of this Agreement, MMD may in its discretion schedule a second public hearing.
2. NMCC agrees to hereafter propose, and MMD agrees to consider in due course, revision to the previously provided estimate of reclamation costs to include additional amounts sufficient to cover the conditional possibility of needing to acquire (whether by purchase, lease or transfer) valid water rights to satisfy the need for approximately 2,200 acre feet of water to accomplish the rapid fill of the pit by MMD and the 16,382 acre feet of water (plus any additional offset amounts calculated to mitigate losses incurred in delivery of the water to the point of depletion) needed to offset depletion of water from the Rio Grande/Caballo system in the event of default by NMCC.
3. The June 13, 2018 notice of technical approvability remains in effect. MMD's technical approvability determination shall in no way restrict MMD from considering and determining the adequacy of the demonstrations and submissions required by paragraph (1) of this Agreement.
4. Nothing in this Agreement shall be construed to limit the discretion of the Director under the Mining Act and the Mining Act Rules to determine that a proposal for an alternate water recovery plan qualifies as a modification of the PAP that requires additional technical review of any such recovery plan.
5. No obligation under the Mining Act or the Mining Act Rules for MMD to issue the requested permit shall arise until after NMCC complies with the requirements of this Agreement.

6. Nothing in this Agreement shall be construed to relieve NMCC of its duty to comply with applicable requirements of 19.10 NMAC for the Copper Flat Mine.

7. This Agreement incorporates all the agreements, covenants, and understandings between the Parties with respect to the water-rights matters memorialized in this Agreement, and all such covenants, agreements and understandings have been merged into this written agreement.


8. This Agreement shall not be altered, changed, or amended except in a writing executed by the Parties.

9. This Agreement may be executed through counterparts.

AGREED:

Signatures on following page:

FOR THE NEW MEXICO COPPER CORPORATION:



Jeff Smith, Chief Operating Officer

June 5, 2020

Date

FOR THE MINING AND MINERALS DIVISION:



Jerry Schoeppner, Director

June 5, 2020

Date