



NEW MEXICO ENVIRONMENT DEPARTMENT



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BUTCH TONGATE
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Acting Deputy Secretary

October 21, 2016

Mr. Jeff Smith
Chief Operating Officer
New Mexico Copper Corporation
4253 Montgomery Blvd NE, Suite 130
Albuquerque, NM 87109

Re: Current and Proposed Pit Water Body, Copper Flat Mine, New Mexico Copper Corporation, Sierra County, New Mexico

Mr. Smith,

This letter responds to your communication of August 5, 2016, regarding the applicable surface water quality standards for the water body located at the Copper Flat Mine site. Specifically, your letter requests clarification on whether the pit lake (a.k.a. "water body") would be considered a "surface water of the state" as defined in the New Mexico Administrative Code at 20.6.4.7(S)(5) NMAC, and if any surface water quality standards would apply to the current or future water body.

The water body in question is located in an artificially constructed pit in Sierra County, and was originally created as the result of copper mining activity that occurred decades ago. New Mexico Copper Corporation (NMCC) contends that a survey indicates the water body is located entirely on privately held lands owned by NMCC in the form of patented mining claims. Currently, only stormwater from rainfall events ("overland flow") flows into this pit. No other surface waters flow into this pit. Greyback Arroyo, which originally flowed through the location of the current water body, was diverted around the area that was to become the pit before mining operations began.

We understand from your letter that the United States Army Corp of Engineers (USACE) has issued a determination¹ that the water body in question is not a water of the United States, as that term is defined in federal codes and statutes. Further, a groundwater flow model report² submitted by your company to the Department with the ground water discharge permit

¹ Approved Jurisdictional Determination – Action No. SPA-2014-00364-LCO

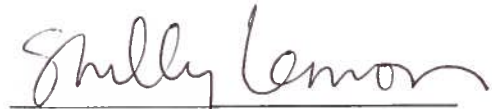
² Jones MA, Shomaker JW & ST Finch, Jr. (2014). Model of groundwater flow in the Animas uplift and Palomas basin, Copper Flat Project, Sierra County, New Mexico.

application contains hydrologic modeling showing that the water body does not combine with other surface or subsurface waters. The modeling shows that the water body is an evaporative sink, meaning that ground water within a certain radius will flow exclusively toward the pit, where it will be evaporated along with any stormwater that enters the pit. Additional hydrologic modeling also demonstrates that at the end of mining, the pit will remain an evaporative sink.

Provided that the land surveys and modeling are accurate, the current water body would meet the exception in 20.6.4.7(S)(5) that excludes “private waters that do not combine with other surface or subsurface water, or any other water under tribal jurisdiction pursuant to Section 518 of the Clean Water Act.” 20.6.4.7(S)(5) NMAC. In other words, if NMCC limits the surface expression of this water body exclusively to private lands and continues to do so, then the water body will continue to meet this exception, and would therefore not be subject to the state’s surface water quality standards found at 20.6.4 NMAC and administered by the New Mexico Environment Department.

The Department requests that you work with the Bureau of Land Management (BLM) to verify and document that the land surveys are indeed accurate, and BLM concurs that the water body is entirely on private lands. If it is found that the current and/or proposed future water body is not entirely on private lands, the water body would be considered a “surface water of the state” subject to the surface water quality standards codified in 20.6.4 NMAC.

Sincerely,

A handwritten signature in cursive script that reads "Shelly Lemon". The signature is written in black ink and is positioned above a horizontal line.

Shelly Lemon, Acting Chief
Surface Water Quality Bureau