



Empire Trust, Inc.  
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Albuquerque, NM 87107  
505-344-2244

April 26, 2021

Clint Chisler – Permit Lead, MK046RE  
Mining Act Reclamation Program (“MARP”)  
New Mexico Mining and Minerals Division

*Via Email*

**RE: Response to Conditional Approval for Final Reclamation Plan, Southwest Resources., Inc. Section 12 Mine, McKinley Co., NM, Permit Tracking NM. MK046RE, dated July 2020**

Hello Clint:

Please find enclosed a copy of the responses to the conditional approval from MMD. Our responses are identified in red.

If you have any questions, please feel free to contact me at (505) 344-2244.

Sincerely,

Skyler Wildenstein  
President

State of New Mexico  
Energy, Minerals and Natural Resources Department

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**Michelle Lujan Grisham**  
Governor

**Sarah Cottrell Propst**  
Cabinet Secretary

**Todd Leahy, JD, PhD**  
Deputy Cabinet Secretary

**Jerry Schoeppner PG, Director**  
Mining and Minerals Division



*ELECTRONIC SUBMITTAL*

November 16, 2020

Mr. Skyler Wildenstein  
Trustee for Southwest Resources Inc.  
4011 Mesa Verde Rd. NE  
Albuquerque, NM 87110

Pete Domenici Jr.  
Domenici Law Firm  
320 Gold Ave. SW Suite # 1000  
Albuquerque, NM 87102

**Conditional Approval for Final Reclamation Plan, Southwest Resources Inc., Section 12 Mine, McKinley Co., NM, Permit Tracking No. MK046RE, dated July 2020**

Greetings:

The New Mexico Mining and Minerals Division (“MMD”) and the New Mexico Environment Dept (“NMED”) have reviewed the Final Reclamation Plan (“FRP”), Southwest Resources Inc. (“SRI”), Section 12 Mine, McKinley Co., NM, Permit Tracking No. MK046RE, date July 2020 and response submitted by email on October 5, 2020. MMD and NMED approves the FRP with the following conditions.

Conditions

1. Signed and sealed engineering designs, drawings, and specifications indicated on Page 3 of Appendix G. will be provided to MMD for review 90 days prior to commencing reclamation earthwork on the site.  
**90 days is too long and could make it very difficult to fit all the work into one field season. We can have everything to them in less than 90, so 60 days is enough.**
2. An inventory of all radiological contaminated building components with manner of clean up and/or disposal will be provided to MMD in the Reclamation Summary Report.
3. 30 days prior to reclamation of the main shaft SRI shall submit a design for MMD approval including at a minimum:
  - A clay layer incorporated in the mounded cap to help minimize infiltration of water into the backfilled shaft.
  - Discussion of how the compacting of material will occur during the backfilling process.
  - A drawing showing vertical and horizontal extent of the cap.

**This will be part of the submittal in #1 above.**

After backfilling has occurred on the main shaft MMD will require:

- A list of non-earthen materials that are put into the shaft.
- SRI to monitor that specific area for subsidence, caving, or piping in the main shaft footprint for a period of 5 years to ensure stability. SRI shall correct any subsidence, caving, or piping in the main shaft footprint found during this

monitoring period to include revegetation.

“..ensure stability” needs specific criteria to be measureable and enforceable.  
“ correct any subsidence...” is not appropriate. Some subsidence will occur, and the only possible response is to place surcharge (extra fill) on the top of the shaft in the form of a dome of soil above ground surface. Piping is unlikely because there is no ground water present. Caving would not be visible but might occur during, and as a contributing factor to, subsidence and would be treated like subsidence.

4. Above ground steel casing associated with west vent shaft shall be removed, the west vent shaft shall be capped or backfilled, and the west vent shaft area shall be reclaimed to blend in with the current surrounding ground surface including revegetation.
5. Above ground steel casing associated with east vent shaft shall be removed and a bat cupula design shall be submitted to MMD for approval 60 days prior to installation.

At least one foot of casing above ground should be left in place as support for the bat closure

6. Regarding the proposed Borrow Area “B” on Figure 6. SRI shall not disturb within 100 ft. of the current highwater mark of Ambrosia Lake for borrow of cover material.

What is MMD’s basis for this? They do not explain the technical reasoning for it. Substantial areas of the lake basin must be disturbed to remove waste rock located there, and that will expose valuable clay. If not available for borrow soil in those locations, clay would have to be excavated elsewhere, causing unnecessary additional disturbance.

7. Include in the seed mix Firewheel (*Gaillardia pulchella*) at a rate of 5 lbs to the acre.
8. Vegetative Success Criteria shall be as follows:
  - a. Revegetation Success shall represent a self-sustaining ecosystem through the comparison of ground cover, productivity, and diversity and shall be made on the basis of the approved reference area.
  - b. Foliage or basal cover and productivity of living perennial plants of the revegetated area shall be established equal to 75% of the reference area to within a 90-percent statistical confidence.
  - c. Diversity of plant life forms (woody plants, grasses, forbs) shall consider what is reasonable based on the physical environment of the reclaimed area.
  - d. Vegetation success will be evaluated after a minimum period of 5 years.
9. Provide MMD with the decided removal option for the headframe by 1<sup>st</sup> Quarter 2021.

This will depend on Rich’s decision.

10. The reclaimed site will be evaluated for stability to evaluate success. Criteria for stability will include subsidence, erosion, and revegetation. Site stability success will be determined after a minimum period of 5 years.

The concept of “evaluated for stability to evaluate success” needs specificity – as it is, it’s entirely subjective and leaves SRI/ Rich vulnerable to MMD’s interpretation of this.

11. The waste rock repository shall be located above the 100-year base flood elevation as indicated by the Federal Emergency Management Agency’s Map Number 35031C2100E.

We can do this with our existing design, with some minor adjustments.

12. The waste rock repository must be designed to prevent the release of contaminants to Ambrosia Lake should the repository become inundated.

Per the *Director's Order of Abatement on Consent Section 12 Mine, McKinley County, New Mexico*, signed January 14, 2020 ("D.O."), SRI shall align all future submittals with the timelines specified in Sections 30 – 36 of the D.O

Should you have any questions, comments, or require additional information concerning this letter, please contact me at (505) 467-9589, or via email at: [clinton.chisler@state.nm.us](mailto:clinton.chisler@state.nm.us).

Sincerely,

A handwritten signature in blue ink, appearing to read "Clinton Chisler".

Clint Chisler – Permit Lead, MK046RE  
Mining Act Reclamation Program ("MARP")  
New Mexico Mining and Minerals Division

**Cc:** Holland Shepherd, Program Manager, MARP/MMD  
Dana David, Assistant General Counsel  
Anne Maurer, Mining Act Team Leader, NMED  
Kurt Vollbrecht, MECS Program Manager, NMED  
Mine File (MK046RE)

Attachment: Federal Emergency Management Agency's Map Number 35031C2100E