

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION



**IN THE MATTER OF THE APPLICATION
OF NEW MEXICO COPPER CORPORATION
FOR A GROUND WATER DISCHARGE
PERMIT FOR THE COPPER FLAT MINE,
DP-1840, DOCKETED AS GWB 18-06 (P)**

No.: WQCC 19-02 (A)

FINAL ORDER

This matter comes before the Water Quality Control Commission (Commission) following a hearing before a Hearing Officer from September 24-28, 2018, in Truth or Consequences, New Mexico and the issuance of a Final Order by Secretary of Environment (Secretary) on December 19, 2018 granting the permit (DP-1840).

After DP-1840 was granted to the New Mexico Copper Corporation (Applicant) on December 21, 2018, two petitions for a permit review were filed with the Commission within the stipulated 30-day appellate window. Elephant Butte Irrigation Ditch (Petitioner) filed their petition on January 17, 2019 and Turner Ranch Properties, L.P., Hillsboro Pitchfork Ranch, LLC, and Gila Resources Information Project (Petitioner) jointly filed theirs on January 18, 2019. Both Petitioners, pursuant to NMSA 1978, § 74-6-5(O), could petition for a permit review. The Commission held a public permit review hearing in accordance with 20.1.3.16 NMAC and other applicable law during a regularly scheduled meeting on August 13-14, 2019 in Santa Fe, New Mexico.

Having considered the administrative record in its entirety, including all post-hearing submittals, the Hearing Officer's Report and the Final Order of the Secretary; and being otherwise fully advised regarding this matter,

THE WATER QUALITY CONTROL COMMISSION HEREBY ADOPTS THE SECRETARY'S FINAL ORDER, CORRECTIONS AND PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW, WITH THE ADDITIONS AND REVISIONS BELOW, AND AN ADDITIONAL PERMIT CONDITION:

Additional Findings and Conclusions

1. Finding #4 in the "Additional Findings and Conclusions" of the Secretary's Final Order is rejected, removed, and replaced with the Commission's Additional Findings and Conclusions #2.
2. The phrase "undue risk to property" as used in the Copper Rule, 20.6.7 NMAC, may be broader than potential impacts to water quality from the permitted discharges and shall be reviewed on a case by case basis.
3. Finding #13 in the "Additional Findings and Conclusions" of the Secretary's Final Order is rejected, removed, and replaced with the Commission's Additional Findings and Conclusions #4.
4. The Commission determines that Petitioners did not prove that the discharges from DP-1840's permitted mine operations will cause undue risk to the property of the Ranches or Elephant Butte Irrigation District. The decision is based on the totality of expert witness testimony in this matter, with more weight given to that from experts who based their conclusions on site-specific modeling and analysis and who addressed scientific likelihoods

rather than speculation.

5. Finding #14 in the “Additional Findings and Conclusions” of the Secretary’s Final Order is rejected, removed, and replaced with the Commission’s Additional Findings and Conclusions #6.

6. Neither the Petitioners nor the record sufficiently demonstrated a hazard to public health in this case.

7. Finding #7 in the “Additional Findings and Conclusions” of the Secretary’s Final Order is revised as follows: The andesite bedrock has been adequately evaluated and characterized.

IT IS THEREFORE ORDERED:

New Mexico Copper Corporation's application for the discharge permit is granted, and DP-1840 shall be issued by the Ground Water Quality Bureau in the form set forth in the final revised Draft Permit dated 11-16-18 and attached to the Bureau’s post- hearing submittal, with the following condition:

- a.) The Applicant shall not cause any disturbance associated with new mining under DP-1840 unless and until all agencies involved in negotiations on the Applicant’s financial assurance have approved final and complete financial assurance (including, but not limited to, the type of financial assurance, the discount rate and the escalation rate) to adequately cover all aspects of closure and remediation (if needed) for the entire period needed.



Jennifer J. Pruett
Chair

New Mexico Water Quality Control Commission

NOTICE OF RIGHT TO REVIEW

Any aggrieved party may seek appellate review in the New Mexico Court of Appeals, pursuant to NMSA 1978, §74-6-7, 20.1.3.21 (F) NMAC and Rules of Appellate Procedure, 12-601 NMRA. Direct appeals from orders shall be taken by filing a notice of appeal with the appellate court clerk within thirty (30) days from the date of the Order.

Certificate of Service

I hereby certify that on September 10, 2019 a copy of the **Final Order** was emailed to the persons listed below. A copy will be mailed first class upon request.

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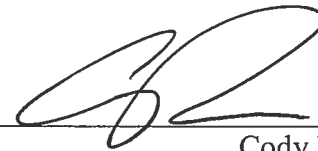
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