

**STATE OF NEW MEXICO  
BEFORE THE WATER QUALITY CONTROL COMMISSION**

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In the Matter of:	)	
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	)	
PROPOSED AMENDMENT	)	No. WQCC 12-01(R)
TO 20.6.2 NMAC (Copper Rule)	)	
	)	
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**EXHIBIT SHELLEY – 5-2**

**FIRST AMENDMENT TO SETTLEMENT AGREEMENT  
AND STIPULATED FINAL ORDER**

The New Mexico Environment Department (“Department”); and Freeport-McMoRan Tyrone Inc. (“Tyrone”), formerly Phelps Dodge Tyrone, Inc., (jointly the “Parties”) entered into a Settlement Agreement and Stipulated Final Order (“Tyrone Agreement”) dated December 20, 2010. The Department and Tyrone have made substantial progress in completing the actions required by the Tyrone Agreement but agree that additional time is needed to accomplish those actions. The Tyrone Agreement contemplates that the time to complete the actions required by the Tyrone Agreement can be extended by agreement of the parties. Therefore, the Department and Tyrone hereby agree to amend the Tyrone Agreement as follows:

1. The Department and Tyrone acknowledge that all Conditions Precedent to Settlement stated in Section II of the Tyrone Agreement have been satisfied.

2. With respect to paragraph 30 in section IV.A of the Tyrone Agreement, the Department approved the Stage 1 Abatement Plan Final Report submitted by Tyrone.

3. With respect to paragraphs 31 and 32 in section IV.A of the Tyrone Agreement, the Department has agreed to the proposed modeling approach and Tyrone has submitted a Stage 2 Abatement Plan containing the results of the model for review and approval by the Department.

4. The Department and Tyrone agree to waive the requirements of subsection A of section V of the Tyrone Agreement entitled “Variance Procedures and Criteria” with respect to the Petition for Rulemaking filed by the Department with the Water Quality Control Commission on or about October 30, 2012 and further agree that subsection A of section V of the Tyrone Agreement shall be struck from the Tyrone Agreement.

5. Paragraph 49 in section VI of the Tyrone Agreement is amended to read as follows: If the Court grants the motion to stay the matter, the Parties will proceed with the actions identified

in this Tyrone Agreement. The Parties will provide status reports to the Appellate Mediation Office as may be required by the Court during the pendency of this Tyrone Agreement. If final agency action by the Department or the Commission is completed by December 31, 2013 in a manner that the Parties agree is consistent with the terms specified in this Tyrone Agreement, including: (1) MMD grant of a waiver; (2) renewal of Tyrone's closure permit; (3) grant of a petition for alternative abatement standards; and (4) adoption of final, non-appealable rules for copper mines, the Parties shall promptly file a joint motion to dismiss the pending appeal under Rule 12-401(B) NMRA.

6. Paragraph 50 in section VII of the Tyrone Agreement is amended to read as follows: If by December 31, 2013 or any extension thereof agreed to by the Parties, the matters set forth in Subparagraphs (a) through (e) below are not resolved, this Tyrone Agreement shall terminate:

a) final agency action by the Department or the Commission renewing DP-1341 consistent with this Tyrone Agreement; and

b) MMD grants a waiver of reclamation requirements within the Open Pit Surface Drainage Area depicted on Map 1, consistent with the terms of this Tyrone Agreement; and

c) the Commission adopts alternative abatement standards consistent with the terms of this Tyrone Agreement; and

d) the Commission adopts rules for copper mines consistent with the terms of this Tyrone Agreement.

Neither Party shall unreasonably oppose or unreasonably seek to delay the resolution of any of these matters.

7. The Tyrone Agreement, as amended by this First Amendment to Settlement Agreement and Stipulated Final Order, remains in full force and effect.

8. Each person executing this Tyrone Agreement represents that he or she has the authority to bind the Party he or she represents and such representation shall be legally sufficient evidence of actual or apparent authority to bind such Party to this Tyrone Agreement.

**For the NEW MEXICO ENVIRONMENT DEPARTMENT:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
**JIM DAVIS**  
**DIRECTOR**  
**WATER AND WASTE MANAGEMENT DIVISION**

**For FREEPORT- McMoRAN TYRONE INC.:**

By:  Date: 12/20/12  
**L. RICHARDS MCMILLAN II**  
**SENIOR VICE-PRESIDENT**  
**FREEPORT-McMoRAN TYRONE INC.**

This First Amendment to Settlement Agreement and Stipulated Final Order, agreed to by the Department and Freeport-McMoRan Tyrone, Inc. is hereby **APPROVED** as a **FINAL ORDER** under NMSA 1978, § 74-6-10.G.

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**DAVID MARTIN**  
**SECRETARY OF ENVIRONMENT**

**Date:** \_\_\_\_\_