

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

In the Matter of:)	
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PROPOSED AMENDMENT TO 20.6.2 NMAC (Copper Rule))	No. WQCC 12-01(R)
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WRITTEN REBUTTAL TESTIMONY OF LEWIS MUNK

My name is Lewis Munk. I am presenting this written rebuttal testimony on behalf of Freeport regarding the Petition to Adopt 20.6.7 NMAC and Request for Hearing filed by the New Mexico Environment Department (“NMED”) on October 30, 2012 and the Amended Petition filed by the Department on February 18, 2013, which propose new rules for copper mines (“Proposed Rule”). My experience and qualifications are presented in my written direct testimony previously filed in this matter.

I. REBUTTAL TESTIMONY IN RESPONSE TO WRITTEN DIRECT TESTIMONY OF MR. BRIAN SHIELDS

I am providing rebuttal testimony in response to Brian Shields’ written direct testimony, particularly his Exhibit 1 (AmigosBravos_proposal_feb22.pdf), which represents a redline markup of the Advisory Committee draft regulations. More specifically, at issue are changes suggested to Section 20.6.7.33 NMAC, subsection F, paragraphs (1) and (2). Mr. Shields’ testimony does not specifically address the changes identified in the exhibit; nonetheless, I am providing a technical rebuttal of the changes suggested to these paragraphs.

The change in 20.6.7.33 NMAC, subsection F, paragraph (1) suggests adding the word “native” to modify plant growth. Because the types of vegetation that are appropriate for

reclamation is primarily a function of the approved post-mining land use under the Mining Act, the Mining and Minerals Division (“MMD”) of the Energy, Minerals and Natural Resources Department typically review and approves proposed vegetation for reclamation. The use of native species may be appropriate for some, but not all post-mining land uses. Thus, specifying the use of native, and only native species, may result in unintended conflicts with the other aspects of the Mining Act. In my experience, discharge permits issued by NMED defer to MMD on this point. Consequently, I recommend that the Commission reject this change.

The suggested modification in section 20.6.7.33 NMAC, Subsection F, paragraph (2) would change the water holding capacity requirement from 35 percent, as NMED proposes in the Proposed Rule, to 40 percent of long-term average summer precipitation. The 35 percent of long-term summer precipitation metric is based on a variety of studies conducted in the southwestern New Mexico, which are discussed in my direct written testimony. In the absence, of technical support for this change from Mr. Shields, I recommend that the suggested modification be rejected by the Commission.

For these reasons, I encourage the Commission to reject the above changes to the Proposed Rule advocated by Mr. Shields on the point discussed above. This concludes my written rebuttal testimony.



Lewis Munk