

Gila Resources Information Project
305A North Cooper Street
Silver City, New Mexico
88061 575.538.8078
grip@gilaresources.info

September 29, 2022

Lloyd Valentine
District Supervisor
District III
New Mexico Office of the State Engineer
321 West Spruce Street
Deming, New Mexico 88030

Re: Gila Resources Information Project's Protest of Freeport Minerals Corporation Application for Temporary Permit M-04979 for an Additional Point of Diversion of Groundwater in the Mimbres Underground Water Basin

Dear Mr. Valentine:

Pursuant to the New Mexico Water Code, NMSA 72-5A-5(C), (D), Gila Resources Information Project hereby protests the application of Freeport Minerals Corporation, a subsidiary of Freeport-McMoRan Corporation, for a temporary ten-year water use permit (File No. M-04979), submitted to the Office of the State Engineer on July 21, 2022. Freeport seeks an additional point of diversion of groundwater in the Mimbres Underground Water Basin to consumptively use 116 acre-feet of water per year to dewater the proposed open pit as part of the Emma Pit Expansion Project at the Tyrone Mine in Grant County, New Mexico. Approval of this application would be contrary to the conservation of water and detrimental to the public welfare in New Mexico.

Gila Resources Information Project (GRIP) is a New Mexico nonprofit organization, tax-exempt under section 501(c)(3) of the Internal Revenue Code (26 U.S.C.), established in 1998, and based in Silver City, New Mexico. Our mission is to promote community health by protecting the environment and natural resources of southwest New Mexico, including protecting groundwater supplies for current or potential future use as drinking water. GRIP advocates for protection of groundwater and surface water, conservation of wildlife, and preservation of free-flowing rivers.

GRIP engages in various activities to support its goals, including public outreach, education and advocacy. These activities also include publishing a newsletter, communicating with supporters via a website, e-mail, and social media, holding community meetings, issuing press releases, placing display advertisements, and encouraging and facilitating public participation in regulatory deliberations regarding mines and mining in southwest New Mexico.

Since 1998, GRIP has participated in numerous proceedings before the New Mexico Environment Department and the New Mexico Water Quality Control Commission involving discharge

permits under the New Mexico Water Quality Act, including permits for the Freeport-McMoRan (formerly Phelps Dodge) Tyrone Mine, Chino Mine, and Little Rock Mine in Grant County. GRIP participated in the Appeal of the Supplemental Discharge Permit for Closure for the Tyrone Mine. GRIP also participated in the proceedings on the groundwater discharge permit for the proposed Copper Flat Mine in Sierra County, including multiple appeals.

Further, GRIP has participated in administrative proceedings before the Mining and Minerals Division (MMD) of the Energy, Minerals and Natural Resources Department involving mining permits under the New Mexico Mining Act for the Tyrone Mine, including the recent MMD hearing on the Emma Expansion Project. GRIP also participated in MMD proceedings on the mining permit for the proposed Copper Flat Mine.

In addition, GRIP is a protestant in the Office of the State Engineer proceeding on the proposed temporary transfer of groundwater rights for the operation and reclamation of the Copper Flat Mine.

Most GRIP members live in southwestern New Mexico, including areas in the vicinity of the proposed Emma Pit Expansion Project. GRIP members use and enjoy the natural resources of southwest New Mexico, including the areas in the vicinity of the Emma Pit Expansion Project, such as private, federal, and state trust lands. They use these areas for domestic water use as well as various forms of recreation, including birding, wildlife watching, hiking, and photography.

GRIP therefore has a substantial and particular interest in this proceeding.

Our protest is based on the following considerations, which are not exhaustive:

1. Adding an additional point of diversion for 116 acre-feet of water per year from M-04979 to the move-to location of the proposed Emma Pit will deplete both groundwater and surface water in and along Cherry Creek.
2. Two springs located along Cherry Creek and identified by the U.S. Geological Survey will be depleted by drawdown caused by pit dewatering.
3. Domestic wells located as close as a half mile from the proposed Emma Pit will be significantly impaired by drawdown caused by dewatering the proposed Emma Pit.
4. Freeport's application seeks a permit for a temporary diversion for ten years. The Technical Memorandum prepared by Brionna O'Connor and Steven T. Finch of John Shomaker & Associates, submitted with the application, estimates drawdown for a period of ten years. However, according to its Closure/Closeout Plan submitted to MMD, Freeport will need to dewater the proposed Emma Pit in perpetuity.
5. Once the Emma Pit project is constructed, dewatering of the pit will be necessary in perpetuity. The mine-impacted groundwater that flows into the open pit – both during and after mining operations – will need to be removed and treated to meet the requirements of the New Mexico Water Quality Act. The State Engineer will not have the option to deny future permit

renewals after the ten-year term of the proposed permit.

6. Consequently, the application and the accompanying Technical Memorandum significantly underestimate the cumulative effects of pumping on surface water and groundwater over time, since pumping will necessarily take place in perpetuity.

7. In deciding whether to approve this permit application, the State Engineer must take into consideration the cumulative hydrologic effects of pumping the Emma Pit in perpetuity. The State Engineer must take into consideration the requirements of the New Mexico Mining Act and the New Mexico Water Quality Act. He or she must consider the proposed Emma Pit Expansion Project in its entirety.

8. To make an accurate determination of water right impairment, the State Engineer must make a well-by-well determination of the lowest practical pumping level. The drawdown allowance of 2.6 feet accumulated in 10 years referenced in the Morrison guidelines (2017) is inappropriate in the case of this application because dewatering would occur in perpetuity making a 40-year analysis necessary. Moreover, given the low yields of the domestic wells in the vicinity of the proposed Emma Pit, and the large dynamic drawdown, a well-by-well determination of the lowest practical pumping level is appropriate. The Office of the State Engineer guidelines encourage case-by-case determinations of drawdown allowances and lowest practical pumping levels in appropriate circumstances such as exist here.

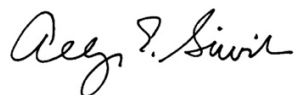
9. Moreover, Freeport-McMoRan proposes to partially backfill the Emma Pit at closure and use a barge pump to pump mine-impacted water back to the Tyrone Mine for process water or for treatment. Unlike a sump pump, a barge pump will necessitate the creation of a small pit lake. Consequently, a significant volume of water will be perpetually lost to evaporation from the pit lake.

10. For all these reasons, approval of the permit application would be contrary to the conservation of water in New Mexico.

11. For all these reasons, approval of the permit application would be detrimental to the public welfare of New Mexico.

We request the State Engineer conduct a hearing on this protest. Please address all correspondence on this matter to the above address.

Sincerely,



Allyson Siwik
Executive Director

cc: Mike Hamman, New Mexico State Engineer