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Via Email BLM_NM_LCDO_Comments@blm.gov,
dhaywood@blm.gov, and U.S. Mail

Doug Haywood, Project Lead
BLM Las Cruces District Office
1800 Marquess Street
Las Cruces, NM 88005

Re: New Mexico Pecan Growers Comments to Copper Flat Mine Draft
Environmental Impact Statement

Dear Mr. Hayward:

I am writing to submit comments on the Copper Flat Copper Mine ("Mine") Draft Environmental Impact Statement ("DEIS") on behalf of the New Mexico Pecan Growers ("NMPG"). NMPG is a New Mexico non-profit organization with over 300 members throughout central and southern New Mexico representing approximately 70% of the total pecan producers in the State. The purpose of NMPG is to promote and protect the interests of its members and the New Mexico pecan industry.

The majority of NMPG's membership is located in Sierra and Doña Ana Counties where over 25,000 acres of pecan orchards are located. These members irrigate with both surface and ground water in the Lower Rio Grande ("LRG") basin. Reliable access to water is absolutely vital to our members and many of the water rights owned by NMPG members are senior water rights—some with the oldest priorities available to any water rights user in the basin. NMPG members have invested extensively to secure reliable sources of water because, unlike many other crops, pecan trees are a permanent crop that cannot be fallowed during times of water shortage. NMPG's members have grave and valid concerns regarding the Mine's groundwater pumping impacts on the water supply in the LRG.

As set forth below, NMPG believes the DEIS contains misrepresentations of fact and law that mislead the reader into believing that the public has been, or will be, provided opportunity to participate in a determination of the effects of the Mine's groundwater use on LRG water supply. Further, it inadequately addresses the impacts of the mine's proposed groundwater pumping on the overall water supply in the LRG. The DEIS is fundamentally flawed with regard to the mine's

proposed water uses, the necessary permitting requirements for its uses, and the impacts of those uses. Inaccurate and incomplete information presents an unjustifiable and imbalanced analysis of the effects of water use at the Mine in violation of NEPA's requirement for a full and transparent disclosure of issues and impacts. Without accurate information, the public cannot credibly comment on the Mine's proposals.

For example, Section 1.6.2.1.3 of the DEIS contains a description of the role of the New Mexico Office of the State Engineer ("OSE") and purports to set forth the permitting and legal requirements that must be achieved in order for the Mine to use water. The statement "all water users in New Mexico must have a permit from the OSE" is legally inaccurate. In fact, the Mine claims the right to use water under a Declaration of water rights filed in 1984 that asserts the right to use up to 6,462 acre feet of water per year. 80% of its claim to use water has never been used and, if re-establishment of the mine is permitted, its use will be a completely new appropriation of water in the LRG which is already fully appropriated.

Further, the statement that "[s]tate water law also requires that the applicant publish the application in a newspaper and provide anyone with a legitimate objection the chance to protest the application," while generally accurate, is misleading to the reader. Given this description, the reader would expect that the Mine would be required to apply for a permit to use groundwater for its mining operations, and that notice of the application would be published so that anyone who may be affected could protest the application. However, in fact, when the Mine applied to the State Engineer for a permit to deepen and repair its wells, the Mine did not publish notice of its application and NMPG's members had no opportunity to protest the granting of the application. The matter is currently pending in the State Engineer's hearings unit where no other interested person is afforded the opportunity to participate on matters regarding the Mine's impacts to water supplies resulting from its pumping large amounts of groundwater that have never been used before.

Further, on p. 4-8 of the DEIS, the reader is informed that the "Proposed Action and alternatives would reduce groundwater discharge to Caballo Reservoir and the Rio Grande, decreasing surface water quantities there. This impact is expected to have a long-term, large-extent, and probable cumulative effect on these surface water resources." However, the DEIS claims that the "cumulative magnitude of the effect can only be determined through a comprehensive mid-basin study of Caballo Reservoir and the Rio Grande." Thus, while acknowledging that the potential impacts to surface water supplies in the Rio Grande would be "long-term" and of a "large extent" worthy of complex analysis, the DEIS simply concludes that "impacts from the Proposed Action and alternatives may be offset to a degree by watershed management practices and riparian habitat improvements." This is an insufficient and incomplete description of the potential impacts and the **known** and **existing methods** by which such impacts may be offset.

Currently, the Office of the New Mexico State Engineer requires any new groundwater depletion in the LRG to be offset by existing water rights. The amount of water from irrigated land available for non-irrigation offset uses, such as commercial mining use, is 2.6 consumptive acre feet of water per irrigated acre. As set forth in the DEIS, at pp. 3-73 through 3-89, the reduction of flows of waters flowing into and within the Rio Grande resulting from the Mine's groundwater pumping ranges from 2,718 acre feet to 3,785 afy under the Proposed Action and Alternatives Nos. 1 and 2. If true,¹ in order to adequately offset the surface water impacts in the Rio Grande the Mine would have to acquire consumptive-use water rights from approximately 1,045 to 1,305 acres of irrigated lands. Drying up such a large amount of acreage would have social, economic and environmental impacts that are not addressed in the DEIS. The failure to address the impacts of an existing regulatory requirement of the Office of the State Engineer violates NEPA's requirement that impacts be disclosed to the public so that they may understand them.

Clearly, the DEIS skirts the issue of the methods by which the Mine may be required to mitigate impacts to Rio Grande water supply by deferring to the need of a "comprehensive study" in the future. In doing so, it then completely fails to identify the economic impacts and legal implications of a significantly large, new depletion of surface water in the Rio Grande Project. The DEIS fails to provide any discussion of lawsuits filed by the State of Texas and the United States against New Mexico in the United States Supreme Court. Texas and the US have alleged that New Mexico is allowing illegal and excessive groundwater pumping that is affecting the Rio Grande Project's water supply. Texas has claimed that New Mexico is already under-delivering surface water to Texas in violation of the Rio Grande Compact. It has claimed damages in excess of \$1 billion dollars. Clearly, the potential for Texas to make additional allegations of damages arising from a completely new depletion in the Project is a significant matter that should be disclosed to the public. The existence of this suit is no secret and the BLM, as a federal agency, should be aware of at least the US Department of Interior's involvement in the matter. There is no reasonable explanation for the BLM's failure to address this litigation in an analysis of impacts arising from the Mine's proposed groundwater use.

Further, in 2013 the Office of the State Engineer's power to adopt Active Water Resource Management ("AWRM") regulations pursuant to state statute was confirmed by the New Mexico Supreme Court. AWRM will undoubtedly result in more active water management in the Lower Rio Grande, especially in light of the pending interstate litigation. Clearly, these issues are "Reasonably Foreseeable Actions" that should have been included in the DEIS, but were not.

In conclusion, the DEIS's failure to correctly describe permitting and factual issues relevant to the Mine's groundwater use, and its lack of analysis of the social and economic impacts to other water users and the State of New Mexico, violate the fundamental purpose of an

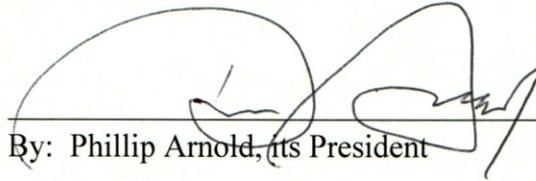
¹ NMPG does not accept as true the DEIS's projected estimates of impacts to the water supplies in the Lower Rio Grande.

Environmental Impact Statement—the disclosure of prospective impacts sufficient for the public to understand them. To meet NEPA’s legal requirements, NMPG requests that the BLM submit a revised Draft EIS that addresses these deficiencies for the public’s review and not proceed to issue a Final EIS until after the public has adequate opportunity to submit comments to the revised draft.

NMPG thanks you for the opportunity to submit comments to the DEIS for the Copper Flat Mine.

Sincerely,

NEW MEXICO PECAN GROWERS



By: Phillip Arnold, its President

- cc: Susana Martinez, Governor of the State of New Mexico
- Hector Balderas, New Mexico Attorney General
- Tom Blaine, New Mexico State Engineer
- Gary Esslinger, Elephant Butte Irrigation District
- Shayne Franzoy, Southern Rio Grande Diversified Crop Farmers