

One Congress Plaza
111 Congress Avenue
Suite 1000
Austin, TX 78701-4073
512.691.4000 tel
512.691.4001 fax
www.kattenlaw.com

SARA M. BURGIN
sara.burgin@kattenlaw.com
(512) 691-4005 direct
(512) 532-0745 fax

September 15, 2014

VIA FEDERAL EXPRESS

Ms. Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

**Re: Docket No. CWA-06-2014-1832
In the Matter of Chevron Mining Inc.
Answer to Administrative Complaint and Request for Hearing**

Dear Ms. Vaughn:

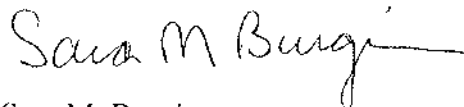
Enclosed for filing, pursuant to 40 CFR § 22.15, is an original and two copies of Respondent's Answer to Administrative Complaint and Request for Hearing ("Answer") in the above-cited Docket No. CWA-06-2014-1832.

Please file-stamp and return a copy to me in the enclosed self-addressed, stamped envelope.

By copy of this letter, the Answer is being sent to Mr. Efron Ordoñez.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Sara M. Burgin

Enclosures

cc: Efron Ordoñez
Bruce Yurdin
David Patridge

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED

2014 SEP 16 PM 3:21

REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of

**Chevron Mining Inc.,
a Colorado company,
Respondent**

NPDES Permit No. NM0030180

§
§
§
§
§
§
§

Docket No. CWA-06-2014-1832

**Proceeding to Assess a Class II
Civil Penalty under Section 309(g)
of the Clean Water Act**

**RESPONDENT'S ANSWER TO ADMINISTRATIVE COMPLAINT
AND REQUEST FOR HEARING**

Chevron Mining Inc. ("CMI") files this answer and request for hearing.

RESPONSE TO FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. In response to paragraph 1, CMI denies that the company was incorporated under the laws of the State of Colorado. CMI was incorporated in the State of Missouri. CMI admits that it is a person as defined at Section 502(5) of the Clean Water Act ("CWA"), 33 U.S.C. § 1362(5).
2. In response to paragraph 2, CMI admits that the discharges authorized by National Pollutant Discharge Elimination System ("NPDES") Permit No. NM003180, which became effective on July 1, 2009 ("2009 NPDES Permit"), are from the Ancho-Gachupin-Brackett Mine. But, CMI denies the allegation to the extent it implies that the mine was operating as a mine during the term of the 2009 NPDES Permit. As noted on Page 1 of 2 of the 2009 NPDES Permit at Part I, Section A, CMI was authorized to discharge only "mine drainage due to precipitation events from reclamation areas."
3. To the extent Paragraph 3 is intended to list outfalls through which CMI is authorized to discharge, CMI admits that the 2009 NPDES Permit lists the outfalls through which CMI is authorized to discharge as Outfall(s) 004-007, 011-012, 014-023, 030-034. CMI admits that the 2009 NPDES Permit states that CMI is authorized to discharge to Salyers Canyon, Ancho Canyon, Gachupin Canyon, Brackett Canyon, and tributaries to Vermejo River, thence to the Canadian River in Segment No. 20.6.4.309 of Canadian River Basin. CMI neither admits nor denies whether each of the listed features is a water of the United States within the meaning of Section 502 of the Clean Water Act ("CWA"), particularly as that definition has been interpreted during the period between July 1, 2009 and June 30, 2014, the permit expiration date.

4. CMI admits paragraph 4 to the extent that the Ancho-Gachupin-Brackett Mine and CMI are subject to the CWA and the NPDES permit program. CMI neither admits nor denies any additional allegations contained in paragraph 4.
5. CMI admits the allegations in paragraphs 5 and 6.
6. To the extent paragraph 7 states that CMI applied for and was issued NPDES Permit No. NM0030180, which became effective on November 13, 2002, CMI admits paragraph 7. But, CMI denies that “during the relevant period” the permit that became effective on November 13, 2002, indicated the specific terms and conditions under which CMI could discharge during September 2009 to September 2013, the dates covered in Attachment B. CMI denies that the NPDES permit that became effective on November 13, 2002, should be defined as the “permit” for purposes of the remainder of the Administrative Complaint.
7. To the extent paragraph 8 alleges that the NPDES permit that became effective in 2002 contains the limitations set out in Attachment A, CMI neither admits nor denies the allegation. To the extent paragraph 8 applies to discharge monitoring reports (“DMRs”) filed by CMI during the time period addressed in Attachment B, CMI admits that Attachment B lists DMR results submitted on the dates and for outfalls identified, with the corrections noted on Exhibit “A” hereto. CMI neither admits nor denies that Attachment B includes a comprehensive list of discharges that exceed the permit limitations specified in Attachment B.
8. To the extent paragraph 9 makes any allegations, CMI neither admits nor denies them.
9. CMI neither admits nor denies that the U.S. Environmental Protection Agency (“EPA”) notified the State of New Mexico of issuance of the Administrative Complaint.
10. CMI neither admits nor denies that EPA notified the public and afforded the public an opportunity to comment.

RESPONSE TO PROPOSED PENALTY

11. To the extent paragraph 12 makes any allegations, CMI denies the allegations.
12. In response to paragraph 13, CMI denies that the proposed penalty of \$130,000 adequately accounts for the statutory factors specified in Section 309(g)(3) of the CWA. 33 U.S.C. § 1319(g)(3). The nature, circumstances, extent and lack of gravity of the violations identified in Attachment B, and considerations of justice, demand a much lower penalty. A much lower penalty is also justified by EPA’s 1995 Interim Clean Water Act Settlement Policy (“Settlement Policy”).

Gravity factors for the intermittent, rainfall-induced discharges measured as Total Aluminum are extremely low because the discharge concentrations reflect those in unimpacted area surface waters.

The 0.75 milligrams per liter (“mg/L”) Total Aluminum limitation in the 2009 NPDES Permit is not a consistently achievable limitation for mine drainage due to precipitation events from reclamation areas in this part of New Mexico. There is an abundance of naturally-occurring aluminum available to surface water systems from soils, clays, and rocks present in New Mexico. There are several water bodies located within various New Mexico watersheds that have an EPA-approved Total Maximum Daily Load (“TMDL”) for either chronic or acute exposure to aluminum. According to the TMDL documents, watersheds in New Mexico consist of mafic and intermediate volcanic rock-based soils (i.e., basalt, andesite, and rhyolite) that contain anywhere from 14 to 17 percent aluminum oxide. Total aluminum concentrations can be affected by the sediment that washes into the surface water system.

Attached hereto as Exhibit “B” are tables that show analytical results for Dissolved Aluminum and Total Aluminum in the Vermejo River at three locations and an associated map. Location VR-0 is upstream from any mining activities. Location VR-2 is mid-way through the mining activities and VR-4 is downstream from mining activities. Total Aluminum results at all three sites indicate great variability. More results exceed 0.75 mg/L at each location than not. No difference is apparent between results above and below the mining site. These results show that it would be impossible for a mine site in this area that discharges only as a result of highly variable and intermittent rainfall events to consistently achieve Total Aluminum limitations of 0.75 mg/L in those discharges.

One problem is that the analytical method for Total Aluminum in the 2009 NPDES Permit does not provide for filtering of sediment, which is partially composed of aluminum. The Total Aluminum concentration in the storm water drainage discharged at outfalls regulated in the 2009 NPDES Permit is not indicative of a discharge of aluminum pollution associated with mine drainage due to precipitation events from reclamation areas. The concentration merely reflects the concentrations of Total Aluminum in area storm water. Once retention basins are at capacity, the volumes of storm water discharged are based upon the intensity, magnitude and frequency of rainfall events over which CMI had no control. CMI does not add to flow. CMI’s reclamation activities, including storm water retention basin management and repair are undertaken based upon CMI’s Surface Mining and Reclamation Act authorization. CMI does not achieve an economic benefit related to the discharges.

CMI submits it is the responsibility of the State of New Mexico and EPA to develop scientifically-based, reasonable methods to incorporate the New Mexico Surface Water Quality Standards (“NMSWQS”), including numeric criteria for aluminum, into NPDES permits. In 2009, the NMSWQS for aluminum for protection of aquatic life from acute toxicity was 0.75 mg/L for dissolved aluminum. The determination by EPA to incorporate the water quality-based limitation into the 2009 NPDES Permit as Total Aluminum instead of dissolved aluminum resulted in an overly conservative limitation such that exceedances do not indicate harm to the environment.

The CMI NPDES permit that became effective on September 1, 2014 (“2014 NPDES Permit”), moves toward recognition that at a minimum, sediment should be filtered from the sample before it is analyzed for aluminum, and the limit takes into account effects of

hardness of the receiving water. On April 30, 2012, EPA approved the application of a hardness-dependent equation for aluminum in those waters in the state with a pH of 6.5-9. In the Vermejo River, the hardness-dependent equation results in an aquatic life criteria to protect for acute toxicity of 5.423 mg/L. The 2014 NPDES Permit was issued using the aluminum criteria approved in 2012.

The fact that EPA and the State have made changes to the aluminum limitation and the method for analyzing for aluminum in the 2014 NPDES Permit is evidence that with exceedances of the Total Aluminum limitation in the 2009 NPDES Permit, EPA should use its power under Section 309(g)(3), and discretion under the Settlement Policy to accept a much lower penalty than the penalty that was proposed.

13. In response to paragraph 14, CMI has filed an answer and request for hearing in response to the Administrative Compliant contesting certain of the proposed findings of fact/conclusions of law and the proposed penalty amount.
14. In response to paragraphs 15-24, CMI has followed the requirements set forth in 40 CFR § 22.15. To the extent paragraphs 15-24 make an allegation concerning a proposed finding of fact or conclusion of law, CMI denies the allegation.

REQUEST FOR HEARING AND INFORMAL SETTLEMENT CONFERENCE

15. CMI requests a hearing to contest the appropriateness of the proposed penalty based upon factors set out in Section 309(g)(3), 33 U.S.C. § 1319(g)(3). CMI also requests an information settlement conference to pursue the possibility of settlement of these matters.

Respectfully submitted,

KATTEN MUCHIN ROSENMAN LLP

By: Sara M Burgin
Sara M. Burgin
State Bar No. 13012470
111 Congress Avenue, Suite 1000
Austin, Texas 78701
Tel: 512.691.4005
Fax: 512.691.4001

ATTORNEYS FOR CHEVRON MINING INC.

CERTIFICATE OF SERVICE

I certify that on September 15, 2014, the foregoing Answer to Administrative Complaint and Request for Hearing was sent to the following persons in the manner specified:

Original and one copy
by overnight mail:

Regional Hearing Clerk (6RC-D)
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Copy by overnight mail:

Mr. Efrén Ordoñez (6RC-EW)
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Copy by certified mail,
return receipt requested:

Mr. Bruce Yurdin, Acting Bureau Chief
Surface Water Quality Bureau
New Mexico Environment Department
P. O. Box 5469
Santa Fe, New Mexico 87502



Sara M. Burgin

EXHIBIT “A”

Attachment B

Permit Effluent Violations; Permit Number: NM0030180

| Date | Outfall | Parameter | Violation | Permit Limit |
|----------------|---------|---------------------|-----------|--------------|
| July 2010 | 004A | Aluminum, Daily Max | 37 mg/L | 0.75 mg/L |
| August 2011 | 004A | Aluminum, Daily Max | 23 mg/L | 0.75 mg/L |
| September 2011 | 004A | Aluminum, Daily Max | 17 mg/L | 0.75 mg/L |
| October 2011 | 004A | Aluminum, Daily Max | 21 mg/L | 0.75 mg/L |
| August 2012 | 004A | Aluminum, Daily Max | 53 mg/L | 0.75 mg/L |
| July 2013 | 004A | Aluminum, Daily Max | 26 mg/L | 0.75 mg/L |
| August 2013 | 004A | Aluminum, Daily Max | 54 mg/L | 0.75 mg/L |
| September 2013 | 004A | Aluminum, Daily Max | 4.7 mg/L | 0.75 mg/L |
| July 2010 | 005A | Aluminum, Daily Max | 160 mg/L | 0.75 mg/L |
| August 2010 | 005A | Aluminum, Daily Max | 60 mg/L | 0.75 mg/L |
| August 2011 | 005A | Aluminum, Daily Max | 57 mg/L | 0.75 mg/L |
| September 2011 | 005A | Aluminum, Daily Max | 3.8 mg/L | 0.75 mg/L |
| July 2013 | 005A | Aluminum, Daily Max | 26 mg/L | 0.75 mg/L |
| August 2013 | 005A | Aluminum, Daily Max | 28 mg/L | 0.75 mg/L |
| September 2013 | 005A | Aluminum, Daily Max | 11 mg/L | 0.75 mg/L |
| July 2010 | 006A | Aluminum, Daily Max | 75 mg/L | 0.75 mg/L |
| August 2010 | 006A | Aluminum, Daily Max | 48 mg/L | 0.75 mg/L |
| August 2011 | 006A | Aluminum, Daily Max | 61 mg/L | 0.75 mg/L |
| September 2011 | 006A | Aluminum, Daily Max | 26 mg/L | 0.75 mg/L |
| August 2012 | 006A | Aluminum, Daily Max | 59 mg/L | 0.75 mg/L |
| July 2013 | 006A | Aluminum, Daily Max | 22 mg/L | 0.75 mg/L |
| August 2013 | 006A | Aluminum, Daily Max | 27 mg/L | 0.75 mg/L |
| September 2013 | 006A | Aluminum, Daily Max | 8.1 mg/L | 0.75 mg/L |
| July 2010 | 007A | Aluminum, Daily Max | 12 mg/L | 0.75 mg/L |
| September 2009 | 011A | Aluminum, Daily Max | 40 mg/L | 0.75 mg/L |
| August 2010 | 011A | Aluminum, Daily Max | 64 mg/L | 0.75 mg/L |
| August 2011 | 011A | Aluminum, Daily Max | 8.8 mg/L | 0.75 mg/L |
| September 2011 | 011A | Aluminum, Daily Max | 62 mg/L | 0.75 mg/L |
| August 2012 | 011A | Aluminum, Daily Max | 98 mg/L | 0.75 mg/L |
| October 2012 | 011A | Aluminum, Daily Max | 65 mg/L | 0.75 mg/L |
| July 2013 | 011A | Aluminum, Daily Max | 67 mg/L | 0.75 mg/L |
| August 2013 | 011A | Aluminum, Daily Max | 14 mg/L | 0.75 mg/L |
| September 2013 | 011A | Aluminum, Daily Max | 17 mg/L | 0.75 mg/L |
| July 2010 | 012A | Aluminum, Daily Max | 43 mg/L | 0.75 mg/L |
| August 2010 | 012A | Aluminum, Daily Max | 28 mg/L | 0.75 mg/L |
| July 2013 | 014A | Aluminum, Daily Max | 57 mg/L | 0.75 mg/L |
| July 2010 | 015A | Aluminum, Daily Max | 20 mg/L | 0.75 mg/L |
| July 2013 | 015A | Aluminum, Daily Max | 40 mg/L | 0.75 mg/L |
| July 2010 | 018A | Aluminum, Daily Max | 66 mg/L | 0.75 mg/L |
| September 2010 | 018A | Aluminum, Daily Max | 11 mg/L | 0.75 mg/L |
| September 2011 | 018A | Aluminum, Daily Max | 27 mg/L | 0.75 mg/L |
| June 2013 | 018A | Aluminum, Daily Max | 46 mg/L | 0.75 mg/L |
| July 2013 | 018A | Aluminum, Daily Max | 53 mg/L | 0.75 mg/L |
| August 2013 | 018A | Aluminum, Daily Max | 70 mg/L | 0.75 mg/L |
| September 2013 | 018A | Aluminum, Daily Max | 32 mg/L | 0.75 mg/L |
| July 2013 | 031A | Aluminum, Daily Max | 21 mg/L | 0.75 mg/L |
| August 2013 | 031A | Aluminum, Daily Max | 14 mg/L | 0.75 mg/L |
| August 2013 | 034A | Aluminum, Daily Max | 6.1 mg/L | 0.75 mg/L |
| August 2013 | 037A | Aluminum, Daily Max | 13 mg/L | 0.75 mg/L |

July
August

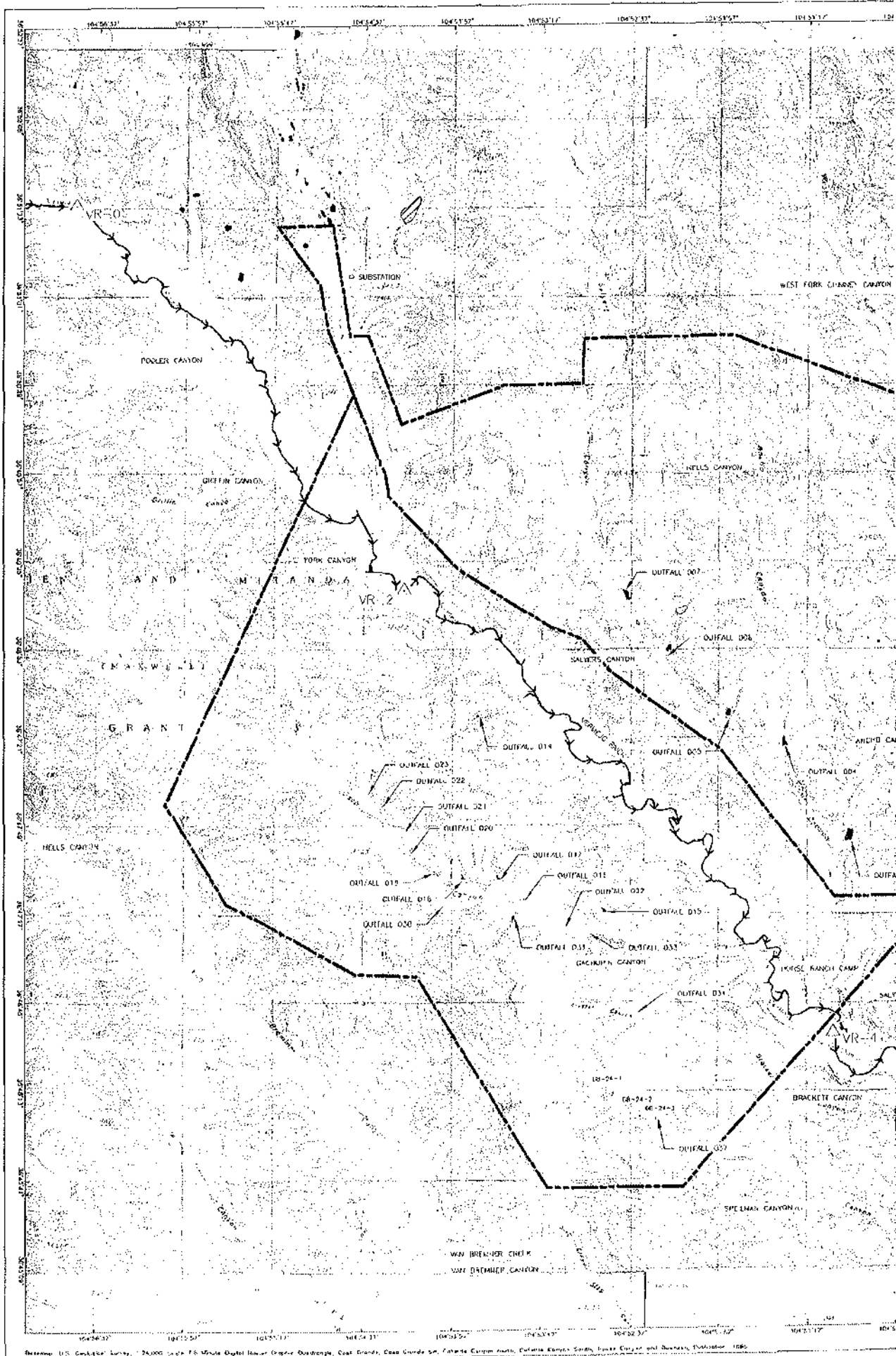
EXHIBIT “B”

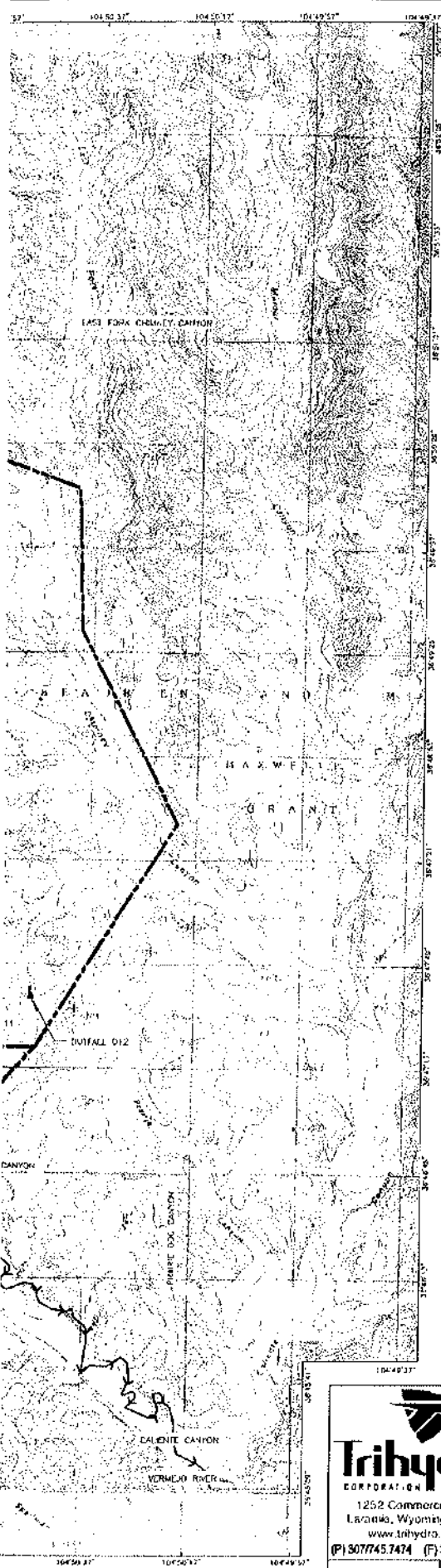
Dissolved and Total Aluminum at Vermeho River Sites

| VERMEJO RIVER UPSTREAM OF MINE | | | |
|-----------------------------------|-------------|--------------------------|------------------------------|
| Location | Sample Date | Total Aluminum (mg/L) | Dissolved Aluminum (mg/L) |
| VR-0 | 9/7/2011 | 0.31 | ND (0.10) |
| VR-0 | 6/6/2013 | 7.3 | 0.055 |
| VR-0 | 7/9/2013 | 9.2 | 0.038 |
| VR-0 | 8/5/2013 | 2 | 0.051 |
| VR-0 | 9/23/2013 | 10 | 0.069 |
| VR-0 | 7/17/2014 | 1.3 | 0.019 |

| VERMEJO RIVER DOWNSTREAM OF UPPER MINE | | | |
|---|-------------|--------------------------|------------------------------|
| Location | Sample Date | Total Aluminum (mg/L) | Dissolved Aluminum (mg/L) |
| VR-2 | 8/10/2011 | 0.92 | ND (0.10) |
| VR-2 | 8/11/2011 | 0.47 | ND (0.10) |
| VR-2 | 8/22/2011 | 13 | 0.39 |
| VR-2 | 9/7/2011 | 0.5 | ND (0.10) |
| VR-2 | 9/8/2011 | 11 | 0.021 |
| VR-2 | 10/3/2011 | 0.17 | ND (0.10) |
| VR-2 | 8/23/2012 | 0.53 | ND (0.10) |
| VR-2 | 8/24/2012 | 0.57 | ND (0.10) |
| VR-2 | 10/1/2012 | 0.19 | ND (0.10) |
| VR-2 | 6/6/2013 | 14 | 1.7 |
| VR-2 | 7/8/2013 | 11 | 0.063 |
| VR-2 | 7/9/2013 | 12 | 4.3 |
| VR-2 | 7/15/2013 | 55 | 0.41 |
| VR-2 | 8/5/2013 | 6 | 0.071 |
| VR-2 | 8/9/2013 | 26 | 0.031 |
| VR-2 | 9/16/2013 | 7.8 | 0.048 |
| VR-2 | 7/17/2014 | 38 | 1.1 |
| VR-2 | 8/5/2014 | 15 | 0.078 |

| VERMEJO RIVER DOWNSTREAM OF MINE | | | |
|-------------------------------------|-------------|--------------------------|------------------------------|
| Location | Sample Date | Total Aluminum (mg/L) | Dissolved Aluminum (mg/L) |
| VR-4 | 8/10/2011 | 1.6 | ND (0.10) |
| VR-4 | 8/11/2011 | 1.7 | ND (0.10) |
| VR-4 | 8/22/2011 | 45 | 0.33 |
| VR-4 | 9/7/2011 | 1.9 | ND (0.10) |
| VR-4 | 9/8/2011 | 28 | 0.035 |
| VR-4 | 10/3/2011 | 0.45 | 0.052 |
| VR-4 | 8/23/2012 | 74 | 0.27 |
| VR-4 | 8/24/2012 | 5.4 | ND (0.10) |
| VR-4 | 10/1/2012 | 0.66 | ND (0.10) |
| VR-4 | 6/6/2013 | 30 | 0.051 |
| VR-4 | 7/8/2013 | 42 | 0.26 |
| VR-4 | 7/15/2013 | 65 | 1.8 |
| VR-4 | 8/5/2013 | 21 | 0.095 |
| VR-4 | 9/16/2013 | 7.2 | 0.033 |
| VR-4 | 9/23/2013 | 5.9 | 0.027 |
| VR-4 | 7/17/2014 | 110 | 1.5 |
| VR-4 | 8/5/2014 | 20 | 0.018 |





EXPLANATION

- VR-4
△ SURFACE WATER SAMPLING LOCATION AND DESIGNATION
- DRINKING WATER WELL LOCATION
- ANCHO-GACHUPIN-BRACKETT PERMIT BOUNDARY
- - - INTERMITTENT OR EPHEMERAL STREAM
- ← VERMEJO RIVER WITH FLOW DIRECTION
- IMPOUNDMENTS
- ▲ ROCK CHECK DAMS

ANCHO OUTFALLS

| OUTFALL | DESCRIPTION |
|---------|------------------|
| 004 | IMPOUNDMENT A-4 |
| 005 | IMPOUNDMENT A5-B |
| 006 | IMPOUNDMENT A6-C |
| 007 | IMPOUNDMENT A7-A |
| 011 | IMPOUNDMENT A8 |
| 012 | IMPOUNDMENT A9-B |

GACHUPIN-BRACKETT OUTFALLS

| OUTFALL | DESCRIPTION |
|---------|--|
| 014 | IMPOUNDMENT GB-1 |
| 015 | IMPOUNDMENT GB-2 |
| 016 | GB-3 ROCK CHECK DAM AND SEDIMENT FENCE |
| 017 | IMPOUNDMENT GB-4 |
| 018 | IMPOUNDMENT GB-5 |
| 019 | GB-6 ROCK CHECK DAM |
| 020 | GB-7 ROCK CHECK DAM |
| 021 | GB-8 ROCK CHECK DAM |
| 022 | GB-9 SEDIMENT FENCE & GRASS FILTER |
| 023 | GB-10 SEDIMENT FENCE & GRASS FILTER |
| 030 | GB-17 ROCK CHECK DAM |
| 031 | IMPOUNDMENT GB-18 |
| 032 | GB-19 ROCK CHECK DAM |
| 033 | GB-20 ROCK CHECK DAM |
| 034 | GB-21 ROCK CHECK DAM |
| 037 | GB-24 ROCK CHECK DAMS 1, 2, & 3 |



1252 Commerce Drive
Laramie, Wyoming 82070
www.trihydro.com
(P) 307.745.7474 (F) 307.745.7728

FIGURE 1 ANCHO-GACHUPIN-BRACKETT MINE OUTFALL AND VERMEJO RIVER LOCATIONS

CHEVRON MINING INC.
RATON, NEW MEXICO

Drawn By: REP Checked By: CT Scale: 1" = 3,000' Date: 12/2013 File: 476009-ANCHONPDES 201409