



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

March 18, 2016

Monique A. Cenac  
Jones Walker LLP  
mcenac@joneswalker.com

Re: Freeport-McMoRan Inc.  
Incoming letter dated February 5, 2016

Dear Ms. Cenac:

This is in response to your letters dated February 5, 2016 and March 16, 2016 concerning the shareholder proposal submitted to Freeport by Newground Social Investment on behalf of Harold Neufeldt. We also have received a letter on the proponent's behalf dated March 11, 2016. Copies of all of the correspondence on which this response is based will be made available on our website <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair  
Senior Special Counsel

Enclosure

cc: Danielle Fugere  
As You Sow  
dfugere@asyousow.org

March 18, 2016

**Response of the Office of Chief Counsel**  
**Division of Corporation Finance**

Re: Freeport-McMoRan Inc.  
Incoming letter dated February 5, 2016

The proposal requests that the board report on company actions being taken to reduce and mitigate potential health harms, environmental harms and negative community impacts that arise from the company's enhanced oil recovery operations in urban areas of California.

We are unable to concur in your view that Freeport may exclude the proposal under rule 14a-8(i)(3). We are unable to conclude that the portions of the proposal you reference impugn the character, integrity or personal reputation of the company's management, without factual foundation, in violation of rule 14a-9. Accordingly, we do not believe that Freeport may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(3).

We are unable to concur in your view that Freeport may exclude the proposal under rule 14a-8(i)(5). Accordingly, we do not believe that Freeport may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(5).

Sincerely,

Ryan J. Adams  
Attorney-Adviser

**DIVISION OF CORPORATION FINANCE  
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matter under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the Company in support of its intention to exclude the proposals from the Company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure.

It is important to note that the staff's and Commission's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholders proposals in its proxy materials. Accordingly a discretionary determination not to recommend or take Commission enforcement action, does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the management omit the proposal from the company's proxy material.



Monique A. Cenac  
Direct Dial 602-366-7604  
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[mccnac@joneswalker.com](mailto:mccnac@joneswalker.com)

March 16, 2016

**Via Email (shareholderproposals@sec.gov)**

Securities and Exchange Commission  
Office of Chief Counsel  
Division of Corporation Finance  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Freeport-McMoRan Inc. Response to Letter dated March 11, 2016, from Newground Social Investment on Behalf of Harold Neufeldt

Ladies and Gentlemen:

Freeport-McMoRan Inc. (the "Company") has received a copy of the letter dated March 11, 2016, from Newground Social Investment ("Newground") on behalf of Harold Neufeldt (the "Proponent") regarding the Company's February 5, 2016 No-Action Request related to the stockholder proposal (the "Proposal") submitted on behalf of the Proponent for inclusion in the Company's proxy statement and form of proxy for its 2016 annual meeting of stockholders (the "2016 Proxy Materials").

The Company strongly disagrees with the Proponent's contention that the Company has failed to meet the criteria enumerated under Rule 14a-8(i)(5) under the Securities Exchange Act of 1934 to properly exclude the Proposal from the 2016 Proxy Materials. The Company's Los Angeles Basin oil and gas properties are its only properties located in urban areas of California and represent an insignificant portion of the Company's overall business. For the fiscal year ended December 31, 2015, the Company's oil and gas operations in the Los Angeles Basin accounted for less than 1 percent of the Company's net production revenues, and less than 1 percent of the Company's gross sales. Moreover, for the fiscal year ended December 31, 2015, *all* of the Company's onshore California oil and gas operations (which include operations that are not located in or near urban areas) accounted for less than 3.5 percent of the Company's net production revenues and less than 3 percent of the Company's gross sales.

It is clear that the Proponent does not understand the Commission's full cost accounting rules. Contrary to the Proponent's ill-informed contention that the Company has *willfully chosen* not to provide information regarding the percentage of its assets in the Los Angeles Basin, as the Commission knows, it is *not possible* for the Company to provide an amount for such assets under generally accepted accounting principles because such information is *not available* under the full cost accounting method. In an effort to illustrate the level of insignificance of the

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Company's oil and gas operations in the Los Angeles Basin, the Company provided information based on metrics that were available to the Company – net production revenues, acreage, production, and the present value of the estimated future oil and gas revenues, reduced by direct expenses and discounted at an annual rate of 10 percent, or PV-10. The Company has presented clear and convincing evidence that the Company's Los Angeles Basin operations meet the quantitative thresholds to exclude the Proposal under Rule 14a-8(i)(5).

In addition, the Company does not believe the Proponent has effectively rebutted our arguments demonstrating that the Proposal is not otherwise significantly related to the Company's business, and that the Proposal and supporting statement are materially false and misleading. Accordingly, we respectfully request that the Staff concur with the Company's position that it may exclude the Proposal from the 2016 Proxy Materials in reliance on Rule 14a-8(i)(5) and Rule 14a-8(i)(3).

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If you have any questions or would like additional information regarding the foregoing, please do not hesitate to contact the undersigned at (602) 366-7604.

Very truly yours,



Monique A. Cenac

cc: Douglas N. Currault II  
Harold Neufeldt  
Newground Social Investment  
Austin Wilson, As You Sow Foundation  
David Shugar, As You Sow Foundation

**VIA ELECTRONIC DELIVERY TO:** <ShareholderProposals@sec.gov>  
<Douglas\_Currault@fmi.com>  
<MCenac@joneswalker.com>

March 11, 2016

Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**Re: RESPONSE TO NO-ACTION REQUEST, in Regard to Freeport-McMoRan Shareholder Proposal that Requests a Report on Urban Fracking Risks  
Harold Neufeldt, Proponent**

Dear Ladies and Gentlemen:

I write on behalf of Harold Neufeldt (the "Proponent") and Newground Social Investment ("Newground"), to respond to a February 5, 2016 No-Action request sent to the Securities & Exchange Commission by Monique Cenac of Jones Walker, LLP on behalf of Freeport-McMoRan, Inc. (the "Company" or "Freeport"), which was submitted in regard to a Proposal filed December 29, 2015 by Newground on behalf of the Proponent. In accordance with SEC Rules, a copy of this correspondence is being sent contemporaneously to the Company.

The Company contends that the Proposal may be excluded from the 2016 proxy statement by virtue of Rule 14a-8(i)(5) and Rule 14a-8(i)(3). However, based upon the relevant rules, the Company has not discharged its burden to establish that the Proposal is excludable under 4a-8(i)(5) or Rule 14a-8(i)(3). The Proposal is, in fact, significantly related to the Company's business and, in contrast to Company claims, makes no false or misleading statements.

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### **THE PROPOSAL**

The Proposal asks that the shareholders of the Company adopt the following resolution:

**BE IT RESOLVED:** Shareholders request that the Board of Directors report on company actions being taken (excluding actions taken to comply with law) to reduce and mitigate potential health harms, environmental harms, and negative community impacts that arise from Freeport's enhanced oil recovery operations (such as hydraulic fracturing, steam injection, gravel packing, and acidizing) in urban areas of California. This report should be prepared at reasonable cost, omitting confidential information, by November 30, 2016.

The full text of the Proposal is set forth in Exhibit A.

## Summary

The Proposal requests that the Company report to shareholders on the actions being taken to reduce and mitigate potential health harms, environmental harms, and negative community impacts arising from the Company's use of non-conventional methods to enhance oil production in urban areas.<sup>1</sup> Shareholders understand that Freeport implements a variety of methods to enhance oil production, including the use of acid, gravel, and water flooding, in the Los Angeles Basin as well as steam injection in the San Joaquin Basin. The company or its predecessor has also conducted hydraulic fracturing in Inglewood as recently as 2013, which operations may still pose environmental health risks to vulnerable communities. The Company has failed to inform shareholders about the actions it is taking to mitigate the environmental and community impact risks associated with these urban drilling operations.

The Company claims that the proposal is excludable under Rule 14a-8(i)(5) due to insufficient nexus to the Company's business. However, the Company fails to meet the three criteria necessary to demonstrate an insufficient nexus. The Company has not shown that the revenue generated by these operations are less than 5%, that the assets at issue under this Proposal are less than 5%, or that the proposal is not "otherwise significantly related" to the company's oil and gas segment.

The use of non-conventional techniques to enhance oil production from wells in close proximity to homes and schools has created significant controversy and concern as reflected by community actions, substantial media attention, and legal controversy.<sup>2</sup> Calls for bans and moratoria are increasing in California, just as they have been across the U.S. If Freeport were to cause a major health or environmental accident in an urban area, the litigation, reputational, and legal implications would redound to harm the company's entire oil and gas operations, which is significantly greater than 5% of its revenues and assets and is significantly related to the company's business.

Indeed, a company whose primary business is resource extraction will face substantial repercussions from a high-profile release in a population dense area that harms a significant number of people or harms crucial environmental resources such as groundwater. These repercussions can readily and negatively impact all of the Company's resource extraction operations, including causing widespread reputational damage, increased regulatory scrutiny, inability to obtain permits for current or future

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<sup>1</sup> The term "enhanced oil recovery" operations is used in the Proposal to generically refer to these non-conventional methods that increase and enhance oil production. The Company contests the Proposal's use of the term "enhanced oil recovery" as inaccurate with regard to the operations at issue in the Proposal. As set forth in Section 1.A. below, the Company's hyper-technical distinction between whether the listed operations "stimulate" oil flows or "improve" oil flows or otherwise assist in extracting oil is not relevant to the Proposal's request. The Proposal is focused on ensuring the Company disclose the actions it is taking to reduce risk when it uses any of the listed methods, no matter how they might technically enhance oil production.

Proponents will use the term "enhanced oil production" operations in this response to avoid the debate about whether the Company is stimulating flows or improving flows, both of which enhance oil production.

<sup>2</sup> Requests for disclosures about activities such as hydraulic fracturing are considered a significant policy issue under SEC precedent, and have been upheld. See *Chesapeake Energy Corporation* (April 13, 2010); *Exxon Mobil Company* (March 19, 2014).

operations, reduced profits, bans or moratoria across California, and potentially significant legal costs, among others.

Nor is the Proposal materially false or misleading. The Proposal cites third party reports raising concerns about harms resulting from the Company's operations. That the Company disagrees with the content of such reports does not make the content of the resolution false or misleading to shareholders. However, if the Staff finds any problems with factual representations of the Proposal, the proponents are willing to revise it to correct such issues.

The Proposal's objective is for the Company to provide shareholders with key information on how it is managing the risks posed by these controversial operations in urban locations. Southern California Gas' record-breaking methane leak, in the heart of Los Angeles, is a timely and stark reminder of the reputational damage the Company's urban oil drilling can create, and the costs it can incur, for operational failures. Shareholders deserve to vote on this resolution, and the Company has not met its burden to keep the Proposal from the proxy.

## **Background**

Enhanced oil production methods are controversial nationally, and have been under increased scrutiny in California.<sup>3</sup> Hydraulic fracturing, acidizing, and other enhanced oil production techniques commonly employ toxic chemicals in the fluids used to fracture subterranean rock and to dissolve, using acids and chemicals, minerals between rocks, freeing oil for extraction. These toxic chemicals, including benzene and hydrochloric acid, can contaminate water supplies and cause or increase air pollution, resulting in human and environmental health harms. A 2015 study testing 329 hydraulic fracturing wells in California found that 98% of the wells exceed federal and state water quality standards for benzene, a carcinogen, and that benzene levels average over 700 times the federal limit.<sup>4</sup> Chemicals used in enhanced oil recovery, including crystallized silica and formaldehyde, can also contaminate water and air, and have been proven to cause serious health harms.<sup>5</sup> Between June 2013 to 2014, California oil companies, including Freeport, reported using more than 45 million pounds of such chemicals – including 44 different airborne toxins – in Los Angeles and Orange counties alone.<sup>6</sup> This averages to nearly three and a half pounds of toxic chemicals per Los Angeleno, based on 2014 population estimates.<sup>7</sup>

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<sup>3</sup> Huffpost Los Angeles. California Offshore Fracking More Widespread Than Anyone Believed. Oct, 2013. [http://www.huffingtonpost.com/2013/10/21/california-offshore-fracking\\_n\\_4136956.html](http://www.huffingtonpost.com/2013/10/21/california-offshore-fracking_n_4136956.html)

<sup>4</sup> Los Angeles Times. High levels of benzene found in fracking waste water. Feb, 2015. <http://www.latimes.com/local/california/la-me-fracking-20150211-story.html>

<sup>5</sup> See TEDX The Endocrine Disruption Exchange. Chemicals in Oil and Gas Operations. Heath Effects Spreadsheet and Summary. <http://endocrinedisruption.org/chemicals-in-natural-gas-operations/chemicals-and-health>

<sup>6</sup> The Center for Biological Diversity. Air Toxics One-Year Report: Oil Companies Used Millions of Pounds of Air-Polluting Chemicals in Los Angeles Basin Neighborhoods. June, 2014.

[https://www.biologicaldiversity.org/campaigns/california\\_fracking/pdfs/14\\_6\\_9\\_Air\\_Toxics\\_One\\_Year\\_Report.pdf](https://www.biologicaldiversity.org/campaigns/california_fracking/pdfs/14_6_9_Air_Toxics_One_Year_Report.pdf)

<sup>7</sup> The United States Census. State & County QuickFacts. Accessed Feb, 2016. <http://quickfacts.census.gov/qfd/states/06/06037.html>

Problems also exist concerning wastewater resulting from enhanced oil recovery, an issue amplified by water stress created by California's prolonged drought. Studies have identified hundreds of unlined waste water pits in California which can contaminate surface water and groundwater in aquifers.<sup>8</sup> Millions of gallons of oil waste water has also been allegedly pumped into protected aquifers through injection wells, resulting in at least one legal action in 2015.<sup>9</sup>

The use of techniques to enhance oil production in urban regions is especially problematic. In addition to the air and water toxicity risks that characterize enhanced oil production methods generally, Freeport is conducting oil drilling in proximity to – or beneath – densely populated urban areas in Los Angeles. This escalates risks associated with enhanced oil production methods by subjecting large populations to the environmental and health risks noted above. The Los Angeles basin is a focal point for the urban drilling debate across the nation and has been the subject of significant media coverage, public demonstrations, litigation, and efforts to ban fracturing and acidization in the area.<sup>10,11</sup>

The public controversy stems from oil companies' use of enhanced oil production methods beneath sizable, and in many cases, vulnerable low income communities. For example, an internal report issued by the Division of Oil, Gas and Geothermal Resources assessing oil wells in the L.A. region found that "47% of well records did not contain information vital to understanding the integrity of the well" and "that testing and methods to ensure that fluids injected into the ground don't contaminate aquifers or drinking water sources are inadequate and need to be updated".<sup>12</sup>

Freeport is one of the largest oil producers in California and an operator of multiple urban drilling sites including the Inglewood Oil Field. The Inglewood Oil Field is the largest urban oil field in the country and is located amidst the residences of 300,000 people.<sup>13</sup> Other Freeport oil operations in Los Angeles include the Jefferson and Murphy drill sites, which are surrounded by homes and are located within a half-mile of multiple schools and day care centers.<sup>14</sup> The Company admits that the Los Angeles operations are risky: "Our oil and gas operations are also subject to operating hazards, including well blowouts, cratering, explosions, fires, uncontrollable flows of oil, gas or well fluids and pipeline ruptures, as well as natural disasters such as earthquakes, mudslides and hurricanes. *Our operations in California, including transportation of oil by pipelines within the city and county of Los Angeles, are especially susceptible to*

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<sup>8</sup> Los Angeles Times. Hundreds of illicit oil wastewater pits found in Kern County. Feb, 2015.

<http://www.latimes.com/local/lanow/la-me-ln-pits-oil-wastewater-20150226-story.html>;

<sup>9</sup> Center for Biological Diversity. Lawsuit Seeks to Halt Illegal Dumping of Toxic Oil Waste Into California's Imperiled Water Supplies. May, 2015. [https://www.biologicaldiversity.org/news/press\\_releases/2015/oil-waste-05-07-2015.html](https://www.biologicaldiversity.org/news/press_releases/2015/oil-waste-05-07-2015.html)

<sup>10</sup> New York Times. The Danger of Urban Oil Drilling. Nov, 2015. <http://www.nytimes.com/2015/11/28/opinion/the-danger-of-urban-oil-drilling.html>

<sup>11</sup> Los Angeles Times. L.A. lawmakers press for action on fracking ban despite new report. November, 2014.

<http://www.latimes.com/local/lanow/la-me-ln-planning-fracking-ban-20141113-story.html>

<sup>12</sup> Los Angeles Times. Oil well oversight in L.A. Basin is 'inconsistent,' audit finds. Oct, 2015.

<http://www.latimes.com/local/california/la-me-oil-report-health-20151009-story.html>

<sup>13</sup> Baldwin Hills Oil Watch. Fracking in Culver City. <http://baldwinhillsoilwatch.org/>

<sup>14</sup> Liberty Hill. Drilling Down: Community Consequences of Expanded Oil Development in Los Angeles. 2015.

[http://www.libertyhill.org/sites/libertyhillfoundation/files/Drilling%20Down%20Report\\_1.pdf](http://www.libertyhill.org/sites/libertyhillfoundation/files/Drilling%20Down%20Report_1.pdf)

*damage from earthquakes and involve increased risks of personal injury, property damage and marketing interruptions because of the population density of southern California.” [emphasis added].<sup>15</sup>*

Despite operating oil extraction sites which subject frontline communities in one of the biggest cities in the U.S. to serious public and environmental health risks, the Company does not disclose if or what actions it is taking to recognize or manage such risks. Freeport’s website, annual reports, and other publically available documents fail to address whether the Company is taking any action to reduce the impacts of its enhanced oil recovery drilling in urban locations.<sup>16</sup> These risks create the real possibility of a significant catastrophe in one of the U.S.’ largest cities. Accordingly, Freeport is exposed to a significant level of reputational risk, litigation risk, risks of fines and damages, and ultimately public opposition that could threaten its social license to operate across California and potentially across operations outside of California.

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## ANALYSIS

### I. THE PROPOSAL IS SUFFICIENTLY RELATED TO THE COMPANY’S BUSINESS

The topic of the Proposal is significantly related to the Company’s business and the Company has not provided sufficient evidence to demonstrate that the Proposal is excludable under Rule 14a-8(i)5. Rule 14a-8(i)5 states that a shareholder proposal can be excluded if: (1) the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and (2) for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and (3) is not otherwise significantly related to the company's business." A company fails to meet its burden if any of the three criteria are not met. Here, not only does the Proposal likely impact more than 5% of the company’s gross sales and assets but it qualifies as “otherwise significantly related to the company’s business” due to the significant policy issues and legal and reputational risks associated with enhanced oil recovery operations and their risks to public and environmental health.

#### A. The Proposal Relates to the Company’s Oil & Gas Segment, which Contributes More than 5% of the Company’s Revenue

The Company’s oil and gas operations, which is the business segment related to the Proposal, constitutes a significant portion of the Company’s total revenue. The Company conducts oil and gas operations in California, Wyoming, Louisiana, and the Gulf of Mexico. In 2014, oil and gas sales

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<sup>15</sup> Freeport McMoRan. 2014 10k p.51

<https://www.sec.gov/Archives/edgar/data/831259/000083125915000016/a2014form10-k.htm>

<sup>16</sup> Freeport McMoRan Website. <http://www.fcx.com/>

contributed to 22% of the company's revenue – over four times greater than the 5% limit.<sup>17</sup> Additionally, 34% of the Company's oil sales in 2014 resulted from California operations.<sup>18</sup>

As noted above, inadequate management of the negative public health and environmental impacts associated with the Company's urban oil drilling operations can create reputational, litigation, and regulatory ramifications that have the potential to significantly and deleteriously impact not only the Company's oil and gas business, but the Company as a whole.

**B. The Company Has Failed to Provide Relevant Evidence Demonstrating that the Proposal Relates to Operations Representing Less than 5% of Company Assets**

The Company has not provided evidence that the Proposal constitutes less than 5% of the Company's total assets. With regard to specific urban drilling locations, the Company states that it "is not able to provide an exact figure under generally accepted accounting principles for the percentage of its total assets represented by its oil and gas operations in the Los Angeles Basin at December 31, 2015." It has therefore failed to meet its burden of demonstrating assets under 5%. In fact, in 2014, the Company's oil and gas properties, subject to amortization, constituted 15.6% of the Company's total assets.<sup>19</sup> Additionally in 2014, California constituted 39% of the Company's proved oil and gas reserves and 48% – nearly half – of the Company's proved reserves that have already been developed and are more easily accessible to be monetized.<sup>20</sup>

The only information the Company does provide is a statement that the acreage associated with the Los Angeles basin properties is only a small portion of the company's total oil and gas acreage. Acreage, by area, does not indicate the value of assets associated with the operations on such acreage. High value operations on high value real estate may not have a significant real estate footprint, but it does have significant value, as does the oil resources under that land. Additionally, analysis based solely on the Los Angeles basin does not include the Company's Arroyo Grande oil field in San Luis Obispo that has had opposition from neighbors due to the risks of community impacts.<sup>21</sup>

Indeed, the Company's acreage "calculations" appear designed to distract from the fact that *the Company admits it cannot definitively demonstrate* that the Proposal's scope affects less than 5% of the

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<sup>17</sup> Freeport McMoRan. 2015 10K. <http://d1lge852tjjqow.cloudfront.net/CIK-0000831259/396a6e56-7402-4689-8d7d-eec89c948de3.pdf> (pg 79)

<sup>18</sup> Freeport McMoRan. 2015 10K. <http://d1lge852tjjqow.cloudfront.net/CIK-0000831259/396a6e56-7402-4689-8d7d-eec89c948de3.pdf> (pg 41)

<sup>19</sup> Freeport McMoRan. 2015 10K. <http://d1lge852tjjqow.cloudfront.net/CIK-0000831259/396a6e56-7402-4689-8d7d-eec89c948de3.pdf> (pg 42)

<sup>20</sup> Freeport McMoRan. 2015 10K. <http://d1lge852tjjqow.cloudfront.net/CIK-0000831259/396a6e56-7402-4689-8d7d-eec89c948de3.pdf> (pg 134)

<sup>21</sup> Center for Biological Diversity. Arroyo Grande Oil Field Neighbors Ask State for Personalized Maps. Dec, 2015. [https://www.biologicaldiversity.org/news/press\\_releases/2015/oil-and-gas-12-17-2015.html](https://www.biologicaldiversity.org/news/press_releases/2015/oil-and-gas-12-17-2015.html); KSBY. Residents voice opposition to expansion of Arroyo Grande oil field. Sept, 2015. <http://www.ksby.com/story/30084290/residents-voice-opposition-to-expansion-of-arroyo-grande-oil-field>

Company's assets.<sup>22</sup> The actual answer is known only to the Company. Yet, despite being in possession of full accounting records of its California operations, the Company has declined to share this information with shareholders and the SEC. The Company's failure to establish this element alone means that it cannot meet its burden to show that the Proposal is excludable under Rule 14a-8(i)5.

### **C. The Proposal is Significantly Related to the Company's Business**

The Proposal is significantly related to the Company's business. The enhanced oil production methods Freeport uses in urban areas raise important health and environmental risks that could escalate and negatively impact the Company's oil and gas portfolio and threaten the Company's social license to operate locally, in California and, potentially nationwide and worldwide.

Enhanced oil production operations in urban locations magnify the associated risks due to the large numbers of people living in close proximity to operations and subject to potential harm. Potential health harms could include costly litigation given the density of the population in the urban areas where the Company is drilling; tens of thousands of potential plaintiffs exist. In addition, in urban areas, impacts such as truck traffic, air pollution, and potential water pollution, for example, are magnified due to density, already poor air quality, and the high number of people that will be impacted by any drinking water degradation. Enhanced oil operations, such as fracking, have caused concern to communities in areas that are far less densely populated.

The magnitude of harms associated with enhanced oil recovery operations in urban areas could cause significant negative media and reputational damage to the Company; could instigate more limiting legislation to be passed locally or in California; or could lead to moratoria or bans on enhanced oil recovery across California and even the nation. California has already been subject to a great deal of work to limit enhanced oil recovery operations due to potential risk; any incident in a highly populated area would add greatly to that pressure.

Further, a disaster like Southern California Gas' methane catastrophe could result in fines and damages that threaten to destabilize the Company's already precarious balance sheet, reduce asset value, and undermine future earnings. Inadequate environmental and public health impact management of the Company's urban drilling operations therefore presents risk to the Company as a whole, not just its Los Angeles operations. Shareholders seek disclosure and transparency about how the company is addressing these risks which threaten to have significant negative impacts on the Company's ability to conduct its oil and gas operations. These risks – to the Company's brand, goodwill, operations, profitability, and license to operate – qualify the resolution as "otherwise significantly related to the Company's business" and should not be excluded regardless of whether the Proposal is less than 5% of the Company's asset and gross sales limit.

The Division's no-action letters support this interpretation of the (i)(5) exclusion. A proper starting point is *Lovenheim v. Iroquois Brands Ltd.*, 618 F. Supp. 554 (D.D.C. 1985), which involved a proposal dealing with humane treatment of animals used in creating pate de foie gras, a product that

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<sup>22</sup> Freeport No Action Letter, page 3 (the Company is not able to provide an exact figure under generally accepted accounting principles for the percentage of its total assets represented by its oil and gas operations in the Los Angeles Basin).

represented only a small fraction of the company's revenues. The court sided with the investor, noting that the (i)(5) exclusion may not allow companies to exclude proposals that have ethical or social significance, even if the dollar amount (however calculated) is small. The court added that the ethical or social issue must not be "significant in the abstract," however, but must have a "meaningful relationship to the business of the company in question. *Id.* at 561 n.16.

What does that mean in practice?

Freeport correctly notes that the Division has allowed the exclusion of proposals that fall into one of two categories: proposals asking a company to cease operations or close a facility in a given country (*Hewlett-Packard Co.* (Jan. 7, 2003)) or to take action to limit the sales or advertising of a single controversial product out of the dozens or hundreds of items that are either sold or advertised (*American Stores Co.* (March 25, 1994) (end tobacco sales); *Kmart* (March 11, 1994) (ban sale of firearms); *Tribune Co.* (Jan. 27, 1994) (request to develop ethical criteria for cigarette advertising).

These authorities are not pertinent to the facts here and do not provide a complete or adequate survey of the pertinent authorities in this area. Proposals that focus on one product out of the hundreds that are sold or advertised lack what *Lovenheim* termed a "meaningful relationship" to the company's business operations. They are too small to be "meaningful" and in any event may raise questions of ordinary business. See *Trinity Wall Street v. Wal-Mart Stores, Inc.*, 792 F.3d 323 (3d Cir. 2015). This case is not applicable here, where the enhanced oil recovery practices at issue have a clear and meaningful relationship to the Company's business operations. As for proposals about doing business in a particular country, *Hewlett-Packard* involved a proposal to close shop in Israel in response to alleged attacks by Israel on Palestinians, an ethical concern to be sure, but one that was not substantially related to the company's operations. See also (*AT&T Co.* (Jan. 30, 1992); *Texaco Inc.* (Feb. 21, 1995) (same).

Even in such situations, however, proposals are not to be automatically excluded. A good illustration of the differences in this area is *The Gap* (March 14, 2012), where the Division denied no-action relief as to a proposal that sought an end to the company's trade partnership in Sri Lanka until the government ceased its human rights violations. Unlike the situations in the prior paragraph, *The Gap* was one of the largest apparel manufacturers in Sri Lanka, and its presence there raised issues about whether the company was endorsing the government and its practices. Similarly, in *Exxon Corp.* (Jan. 30, 1995), the Division allowed a proposal seeking a report on the human, social and environmental consequences of the company's mining operations in a given country.

Even in situations where a company's activities can impact only a small number of individuals or area, the Division has allowed proposals to go forward: *Unocal Corp.* (Jan. 20, 1995) seeking a report on an oil company's activities in the Lubicon territory in Alberta, Canada with a focus on the implications of these activities on indigenous societies. (Current estimates are that fewer than 300 members of the Lubicon tribe live on their traditional lands.) See [https://en.wikipedia.org/wiki/Lubicon\\_Lake\\_Indian\\_Nation](https://en.wikipedia.org/wiki/Lubicon_Lake_Indian_Nation) (accessed March 2, 2016).

Other decisions are to the same effect. Issues related to pollution and environmental impacts are recognized as the kind of ethical issue that precludes exclusion under Rule 14a-8(i)(5). *Synagro Technologies, Inc.* (March 28, 2006) requesting that the board of directors report on the environmental,

health and safety impacts of New York Organic Fertilizer Company on the South Bronx, New York community. Pollution issues were found to make the issue “otherwise related” despite less than 5% financial connection.

*CONSOL Energy Inc.* (March 23, 2007) involved a request for a report on how the company is responding to rising regulatory, competitive, and public pressure to significantly reduce carbon dioxide and other emissions from the company’s power plant operations. *Merrill Lynch & Co.* (February 25, 2000) report reviewing the underwriting, investing and lending criteria of Merrill Lynch with a view to incorporating criteria related to a transaction’s impact on the environment, human rights, and risk to the company’s reputation. See also *Coach, Inc.* (August 7, 2009), *Wal-mart Stores, Inc.* (March 30, 2010), which denied no-action relief as to proposals related to issues of animal cruelty, a significant ethical issue that directly affects the company’s business.

Numerous other instances in recent years have involved proposals which might not have met the numerical thresholds of Rule 14a-8(i)(5), but which were nevertheless deemed to be non-excludable under the rule because the issues involved had a potential impact on the company’s reputation. To cite a few examples: *Devon Energy Corp.* (March 27, 2012) annual report on lobbying; *Gap, Inc.* (March 14, 2012) ending trade partnerships with the government of Sri Lanka until that government ceases human rights violations; *BJ Services Company* (December 10, 2003) land procurement policy that incorporate social and environmental factors; *Halliburton Co.* (March 14, 2003) review of company operations in Iran, with reference to financial and reputational risks associated with those activities. *Corning Incorporated* (Feb. 11, 2015), where the Division denied no-action relief for a proposal seeking adoption of equal employment opportunity principles to govern its Israel workforce, where operations in Israel accounted for less than 1% each of the company’s total assets, net earnings, and gross sales, on the basis that avoidance of discrimination across its operations was otherwise significantly related to the Company’s business. In each of these instances, the principal reason why the operations that were less than 5% of the company nevertheless met the relevancy test is that there was a reputational connection.

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## II. THE PROPOSAL IS NEITHER VAGUE NOR FALSE AND MISLEADING

The Company’s argument as to the Proposal being vague or false and misleading is incorrect.

### A. The Company Has Used and May Be Likely to Use Hydraulic Fracturing in the Future

The Company states that the proposal is misleading because the proposal suggests that the company is using hydraulic fracturing in urban areas and that the company has not used hydraulic fracturing in the L.A. basin since 2013.

None of Freeport McMoRan’s public disclosures specify whether hydraulic fracturing is currently being used.<sup>23</sup> When posted to the SEC website, the Company’s No Action letter will itself be one of the

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Company's most loquacious and transparent reports on its activities in either its shareholder reports or on its website. The only statement in the Proposal that suggests Freeport currently uses hydraulic fracturing is in reference to the Inglewood oil field, which is supported by available public documents. In 2012, a report by Cardno ENTRIX found that there were 23 wells in the Inglewood oil field using hydraulic fracturing, and the California Council on Science and Technology estimated that 100% of the wells in the Inglewood Oil Field are supported by hydraulic fracturing, frac-packing, or high-rate gravel packing (HRGP).<sup>24</sup> Other third party sources also suggest that Freeport McMoRan engaged in hydraulic fracturing after taking ownership of the site and commonly associates hydraulic fracturing with the company.<sup>25</sup> Additionally, before 2013, there were multiple hydraulic fracturing tests done at the Inglewood site, with the results indicating that future hydraulic fracturing development should be viable in the future as well as safe.<sup>26</sup> Regulators have also studied the effects of hydraulic fracturing at the Inglewood site due to "the high likelihood of enhancement techniques" being used in the near future, subsequently finding the differing result that "significant and unavoidable" environmental damage can be expected at this field as a result of fracking.<sup>27</sup>

There is no statement or policy on Freeport's website or in its investor documents indicating that Freeport McMoRan is not engaged in hydraulic fracturing in the L.A. basin or that hydraulic fracturing will not be used in the future, other than the Company's own comments in its No-Action letter.

Further, the plain text of the Proposal requests that the company disclose its risk management related to the enhanced oil recovery methods it employs, examples of which are given in the proposal and include "hydraulic fracturing." The Proposal is not limited to hydraulic fracturing, but applies to multiple enhanced oil production techniques. The words hydraulic fracturing are included as part of an example, which is how any shareholder will interpret it. The statement is not misleading.

## **B. The Proposal Is Sufficiently Clear as to the Term "Enhanced Oil Recovery"**

The Company argues that "enhanced oil recovery" is not an appropriate term for its activities and that the Company should not be "required to guess which practices should be included in the Proponent's imprecise conception of enhanced oil recovery operations." The Company is not credible when it states

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<sup>23</sup> Securities and Exchange Commission. FCX 2014 10K.

<https://www.sec.gov/Archives/edgar/data/831259/000083125915000016/a2014form10-k.htm> ; Freeport McMoRan. <http://www.fcx.com/> ; Freeport McMoRan: Inglewood Oil Field. <http://www.inglewoodoilfield.com/>

<sup>24</sup> California Council on Science and Technology. A Case Study of the Petroleum Geological Potential and Potential Public Health Risks Associated with Hydraulic Fracturing and Oil and Gas Development in The Los Angeles Basin (pg 238). <http://ccst.us/publications/2015/vol-III-chapter-4.pdf>

<sup>25</sup> Baldwin Hills Oil Watch. Fracking in Culver City. <http://baldwinhillsoilwatch.org/>; California Frack Facts. Urban Oil Extraction. <http://www.cafrackfacts.org/fracking-in-california/urban-oil-extraction/>

<sup>26</sup> Freeport McMoRan: Inglewood Oil Field. Hydraulic Fracturing Study. Oct, 2012. (pg 3-31)  
<http://www.inglewoodoilfield.com/res/docs/102012study/Hydraulic%20Fracturing%20Study%20Inglewood%20Field%2010102012.pdf>

<sup>27</sup> KCET. Report: Fracking Imperils Southern California Residents, Wildlife. January, 2015.  
<http://www.kcet.org/news/define/rewire/natural-gas/report-fracking-imperils-southern-california-residents-wildlife.html>

that it must guess as to what the Proposal is asking the Company to do. The techniques that are to be addressed are listed in the Proposal's resolved clause itself "(hydraulic fracturing, steam injection, gravel packing, and acidizing)."<sup>28</sup>

Use of the term "enhanced oil recovery" for these types of operations is not unusual. The educational non-profit organization California Frack Facts, one of the best resources on such operations, specifically uses the term "Companies Using Enhanced Oil Recovery" when identifying Freeport's California operations.<sup>29</sup> Various news articles link or treat the terms fracking, acidizing and steam injection as equivalent to "enhanced oil recovery".<sup>30</sup>

The company spends much time in its no action letter distinguishing between whether the operational methods set forth in the Proposal "improve oil flow" to *enhance* recovery or "stimulate" oil flows by increasing permeability. This is a distinction without a difference for purposes of this Proposal,<sup>31</sup> which asks the Company to report on the actions it is taking to reduce risk for all of the listed methods. While the Company may, in its day-to-day business refer to technical sources such as Schlumberger to understand specific technical terminology in its operations, reference to such technical materials is not necessary or appropriate with regard to shareholder proposals. Shareholders must simply understand what the Proposal requests; it is clear that the Proposal requests the Company to report on how the Company is reducing risks associated with the listed operations in its urban locations.

We thus submit that the references in the Proposal are neither materially false nor misleading nor vague.

### **C. The Proposal Does Not State that the Company is Violating Local Ordinances or Causing Health Harm; the Proposal States that Citizen Groups Have Made these Allegations**

The Company argues that the Proposal falsely suggests that the Company has violated local zoning ordinances "with a reckless regard" for the community in connection with its onshore California operations.

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<sup>28</sup> Without conceding the point, if the Company does not use or has not used a specific method that is listed in the Proposal, and thus does not require risk mitigation such as monitoring of groundwater for past hydraulic fracturing operations, or other proactive best management practices to reduce risk and avoid the outlined harms, Proponents are willing to delete from the Proposal such term(s) as the company can identify as not being used. The key for shareholders is to understand what actions the Company is taking to prevent and mitigate risk from operations undertaken by the Company to enhance oil recovery.

<sup>29</sup> California Frack Facts. Companies Using Enhanced Oil Recovery. <http://www.cafrackfacts.org/fracking-in-california/who-is-fracking-in-california/>

<sup>30</sup> DESMOG. California's Wastewater Injection Problem Is Way Worse Than Previously Reported. <http://www.desmogblog.com/2015/02/11/not-hundreds-thousands-oil-industry-injection-wells-dumping-wastewater-protected-california-aquifers>

<sup>31</sup> Hydraulic fracturing, steam injection, gravel packing, and acidizing are all examples of methods that increase oil production from oil fields. If the term enhanced oil "recovery" is incorrect, Proponents can easily change the term to enhanced oil "production," which each of the listed techniques do.

At no point does the Proponent allege that the Company has violated zoning ordinances or acted with reckless disregard. As noted in the Proposal, these are claims made as a matter of record by third parties unrelated to the Proponent. The supporting statement cited in the company's argument references a letter submitted to the Los Angeles Planning Committee claiming Freeport McMoRan's violation of various zoning ordinances, infringements, and treating the community with "reckless regard".<sup>32</sup> This letter provides images and statements documenting the alleged community impacts and zoning ordinance violations, which is further supported by other appeals submitted to the Los Angeles Planning Committee.<sup>33</sup> These allegations raise shareholders' concern and are therefore noted in the Proposal.

**D. The Proposal's Statement that Freeport's Urban Drilling Operations Face Significant Resistance from Communities that Have Suffered Health Problems Is Supported by a Range of Sources and Is Neither False nor Misleading – It Is Descriptive.**

The Company further complains that one of the Proposal's whereas clauses states that "Freeport's California operations face significant resistance from adjacent communities that have suffered health problems and endured chemical odors related to Freeport's oil operations." This resolution clause is supported by multiple cited sources. At the Murphy Drill site, the frontline community has documented, on a public website, excessive odors, community members suffering from respiratory problems, chronic nosebleeds, skin irritation, and headaches.<sup>34</sup> The Air Quality Management District responded to public complaints at the Murphy drill site and found a natural gas leak exceeding 400% of the allowable limit in the area.<sup>35</sup> From 2013-2014, Freeport reported using 133,766 pounds of corrosive acids and toxic chemicals at the Jefferson Drill site, where the frontline community has raised similar concerns regarding strong chemical odors and health impacts.<sup>36,37</sup> Indeed, the Jefferson drilling site is 85 feet from homes, 145 feet from a church, and 770 feet from an elementary school.<sup>38</sup> Community opposition is current; one of the community groups protesting Freeport's operations include the Holman

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<sup>32</sup> Make Jefferson Beautiful. Public Comment: RE: ZA 17528(PA4).

[http://makejeffersonbeautiful.weebly.com/uploads/4/9/7/8/49781361/2013-09-20\\_-\\_community\\_leadership\\_letter\\_upload\\_size.pdf](http://makejeffersonbeautiful.weebly.com/uploads/4/9/7/8/49781361/2013-09-20_-_community_leadership_letter_upload_size.pdf)

<sup>33</sup> Jefferson Park United. Case No. ZA 15227 (O) (PA4) – Review of Plans, Gas Plant Expansion, Amendment of Appeal.

[http://jeffersonparkunited.org/sites/jeffersonparkunited.org/files/user160/pdf\\_nodes/Peckman%20Appeal%20FMO%20CEB%20140324%20\(Rdctd\).pdf](http://jeffersonparkunited.org/sites/jeffersonparkunited.org/files/user160/pdf_nodes/Peckman%20Appeal%20FMO%20CEB%20140324%20(Rdctd).pdf)

<sup>34</sup> Stand – L.A. The Murphy Site. <http://www.stand.la/murphy.html>

<sup>35</sup> Stand – L.A. The Murphy Site. <http://www.stand.la/murphy.html>

<sup>36</sup> Liberty Hill. Drilling Down: Community Consequences of Expanded Oil Development in Los Angeles. 2015.

[http://www.libertyhill.org/sites/libertyhillfoundation/files/Drilling%20Down%20Report\\_1.pdf](http://www.libertyhill.org/sites/libertyhillfoundation/files/Drilling%20Down%20Report_1.pdf)

<sup>37</sup> Stand – L.A. The Jefferson Site. <http://www.stand.la/jefferson.html>

<sup>38</sup> Center for Biological Diversity. Air Toxics One-Year Report: Oil Companies Used Millions of Pounds of Air-Polluting Chemicals in Los Angeles Basin Neighborhoods. June, 2014, p. 6.

[https://www.biologicaldiversity.org/campaigns/california\\_fracking/pdfs/14\\_6\\_9\\_Air\\_Toxics\\_One\\_Year\\_Report.pdf](https://www.biologicaldiversity.org/campaigns/california_fracking/pdfs/14_6_9_Air_Toxics_One_Year_Report.pdf)

Methodist Church, which organized a march of hundreds of children to the Murphy and Jefferson drill site.<sup>39</sup>

The Company cites studies suggesting that there has been no evidence of public health harm, yet the merit of these studies remain in question. For example, a study from the Los Angeles County Public Health Bureau is referenced to support the finding that no statistical difference of mortality or acute illness rates were found at neighborhoods close to the Inglewood drilling site. Yet, the California Committee of Science and Technology stated that the study's methods were unsound and that the "study design is insufficient for establishing causality and has many major limitations."<sup>40</sup> Other critics note the study only addresses the near-term effects and fails to address long-term health impacts – and community resistance and qualitative evidence remains persistent.<sup>41</sup> The studies mentioned in the Company's response do not prove that the operations do not create adverse environmental effects, nor does it prove that the information contained in the resolution is misleading. In many cases, the Company's urban neighbors are low-income individuals from underserved communities who do not have access to the resources necessary to carry out epidemiological studies with which to counter the report writing capability of a multinational company worth billions of dollars. The Company certainly is aware of this. The Proposal addresses the issue of urban health harms as an area of current controversy and the Company is free to respond to in its opposition statement.

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## IN CONCLUSION

Based upon the foregoing analysis, we urge the Staff to notify the Company that the proposal is not excludable and that therefore the Company may not omit the Proposal from its 2016 Proxy Materials in reliance on Rule 14a-8 or 14a-9.

The Company has failed to demonstrate that it meets any of the three criteria necessary to exclude the Proposal on the basis that it is not significantly related to the Company's business. In fact, using enhanced oil production operations in densely populated urban areas, where the potential for human and environmental harms are magnified, present significant risk that could affect the Company's ability to extract resources across the Company's operations. The resolution's citation to allegations of harm made by community groups is not misleading to shareholders, but is descriptive of the current situation and the heightened risk of these operations. Similarly, the extraction operations about which shareholders are concerned and are seeking greater transparency are clearly listed; a lack of precise technical descriptions about *how* those methods increase the Company's ability to extract oil successfully

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<sup>39</sup> Redeemer Community Partnership. Kids Advocacy Day. <http://www.redeemercp.org/#!/Kids-Advocacy-Day/c6a0/55ce085b0cf2b503a1a415d4>; Aljazeera America. California communities mount protests against fracking, oil drilling. July, 2015. [http://america.aljazeera.com/articles/2015/7/24/california-communities-mount-protests-against-fracking-oil-drilling.html?utm\\_campaign=americatonight&utm\\_source=twitter&utm\\_medium=SocialFlow](http://america.aljazeera.com/articles/2015/7/24/california-communities-mount-protests-against-fracking-oil-drilling.html?utm_campaign=americatonight&utm_source=twitter&utm_medium=SocialFlow)

<sup>40</sup> California Council on Science and Technology. A Case Study of the Petroleum Geological Potential and Potential Public Health Risks Associated with Hydraulic Fracturing and Oil and Gas Development in The Los Angeles Basin <http://ccst.us/publications/2015/vol-III-chapter-4.pdf> p. 217

<sup>41</sup> Los Angeles Times. Amid protests, report finds no harm from fracking. Oct, 2012. <http://articles.latimes.com/2012/oct/16/local/la-me-fracking-baldwin-hills-20121016>

are not necessary to shareholders and certainly do not make the Proposal vague or ambiguous to the Company.

Therefore, we respectfully ask that Staff deny the Company's No-Action request.

We are available to further clarify anything presented herein, and request the opportunity to expand on these views or offer additional reflections should the Company present a response to this rebuttal of its No-Action request. As always, we thank the Staff for its time, diligence, and careful handling of these important aspects of the shareholder engagement process.

Sincerely,

Danielle Fugere  
President

cc: Douglas Currault, Freeport-McMoRan, Inc.  
Harold Neufeldt, Proponent  
Bruce Herbert, Newground Social Investment

enc: Exhibit A, Shareholder Proposal

**RESOLVED:** Shareholders request that the Board of Directors report on company actions being taken (excluding actions taken to comply with law) to reduce and mitigate potential health harms, environmental harms, and negative community impacts that arise from Freeport's enhanced oil recovery operations (such as hydraulic fracturing, steam injection, gravel packing, and acidizing) in urban areas of California. This report should be prepared at reasonable cost, omitting confidential information, by November 30, 2016.

#### **SUPPORTING STATEMENT:**

Hydraulic fracturing, acidizing, and similar enhanced oil recovery *operations* ("oil operations"), are highly controversial extraction methods whose potential to create public health hazards and environmental harm has resulted in bans both domestically and internationally. In California, bans and moratoriums on various oil operations have already been established in 4 counties and 3 cities.

Oil operations have the potential to contaminate water supplies, release toxic fumes, and harm communities. A *Physicians for Social Responsibility* study reports that 90% of compounds used in hydraulic fracturing cause adverse health effects. Acidizing, for instance, uses hydrofluoric acid and other chemicals that cause severe respiratory problems. From June 2013 to June 2014 – in the Los Angeles Basin alone – oil companies used 45 million pounds of air-polluting chemicals, including 44 known toxic substances. (Center for Biological Diversity, June 2014).

Freeport, one of the largest oil producers in California, has substantial oil operations in and around Los Angeles County. In Jefferson Park, for instance, Freeport uses hazardous chemicals at sites located as close as 85 feet from homes and schools. Freeport also uses hydraulic fracturing and other "enhanced" recovery methods in the Inglewood Oil Field, which is in the middle of a community of 300,000 people. At 1,100 acres, the Inglewood Oil Field is the largest urban oil field in the United States.

Freeport's California operations face significant resistance from adjacent communities that have suffered health problems and endured chemical odors related to Freeport's oil operations. Freeport faces stiff opposition in the West Adams neighborhood, Inglewood Oil Field, Jefferson Park, and other locations. Residents of San Luis Obispo County have protested Freeport's application for an aquifer exemption for wastewater injection, citing contamination of local water supplies.

Impacted communities have submitted official comments alleging that Freeport violated local zoning ordinances "with a reckless regard" for the community. (Los Angeles Planning Department, Public Comment Case No: ZA 17528(PA4), September 2013).

Freeport does not publicly disclose its practices, if any, to manage, reduce, or avoid the risks of its oil operations to populations in these urban centers. This lack of key disclosure metrics denies investors the information they need to assess the reputational, legal, and financial risks that arise from the Company's urban drilling operations in California.

Therefore, vote FOR this common-sense report that will protect public health, improve internal controls, and enhance shareholder value.



Montque A. Cenac  
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February 5, 2016

**Via Email (shareholderproposals@sec.gov)**

Securities and Exchange Commission  
Office of Chief Counsel  
Division of Corporation Finance  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Freeport-McMoRan Inc.  
Shareholder Proposal Submitted by Newground Social Investment on Behalf of Harold Neufeldt

Ladies and Gentlemen:

Freeport-McMoRan Inc. (the “Company”) has received a stockholder proposal (the “Proposal”) from Newground Social Investment (“Newground”) on behalf of Harold Neufeldt (the “Proponent”) for inclusion in the Company’s proxy statement and form of proxy for its 2016 annual meeting of stockholders (the “2016 Proxy Materials”). The Proposal is attached as Exhibit A.

On behalf of the Company and pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, we give notice of the Company’s intention to omit the Proposal from the 2016 Proxy Materials for the reasons discussed below. We respectfully request the confirmation of the Staff of the Division of Corporation Finance (the “Staff”) that it will not recommend any enforcement action to the Securities and Exchange Commission (the “Commission”) if the Company excludes the Proposal from the 2016 Proxy Materials.

In accordance with Staff Legal Bulletin 14D (November 7, 2008) (“SLB 14D”), we are submitting this request for no-action relief via the Commission’s email address, [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov). In accordance with Rule 14a-8(j), this letter is being filed with the Commission no later than 80 calendar days before the Company intends to file the 2016 Proxy Materials with the Commission, and we are contemporaneously sending a copy of this letter and its attachment to the Proponent, Newground and representatives from the As You Sow Foundation, as requested by the Proponent and Newground.

Rule 14a-8(k) and SLB 14D provide that a proponent is required to provide the company a copy of any correspondence that the proponent elects to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

### **SUMMARY OF THE PROPOSAL**

The Proposal requests that the Company's Board of Directors report on actions being taken by the Company "to reduce and mitigate potential health harms, environmental harms, and negative community impacts that arise from [the Company's] enhanced oil recovery operations (such as hydraulic fracturing, steam injection, gravel packing, and acidizing) in urban areas of California." See Exhibit A for the full text of the Proposal.

### **BASES FOR EXCLUSION**

The Company believes that the Proposal may be properly excluded from the 2016 Proxy Materials for the following principal reasons, each of which is discussed in more detail below:

- The Proposal pertains to operations of the Company that are not significantly related to the Company's business, and therefore the Company may properly exclude the Proposal from the 2016 Proxy Materials pursuant to Rule 14a-8(i)(5); and
- The Proposal and its supporting statement contain materially false and misleading statements in violation of the proxy rules, including Rule 14a-9, and therefore the Company may properly exclude the Proposal from the 2016 Proxy Materials pursuant to Rule 14a-8(i)(3).

### **ANALYSIS**

#### **A. The Proposal May be Excluded Under Rule 14a-8(i)(5) Because it is Not Significantly Related to the Company's Business.**

Rule 14a-8(i)(5) provides a basis for a company to exclude a proposal "[i]f the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business."

The Proposal requests the Company's Board of Directors to report on certain Company actions taken in connection with the Company's oil and gas operations in urban areas of California. The Company is a premier U.S.-based natural resources company with a global portfolio of mineral assets and oil and gas resources, with consolidated revenues for the fiscal year ended December 31, 2015 of \$15.9 billion. The Company's portfolio of mineral assets

includes the Grasberg minerals district in Indonesia, one of the world's largest copper and gold deposits; significant mining operations in the Americas, including the large-scale Morenci minerals district in North America and the Cerro Verde operation in South America; and the Tenke Fungurume minerals district in the Democratic Republic of Congo. As of and for the fiscal year ended December 31, 2015, the Company's mining operations accounted for approximately 83 percent of the Company's total assets, 82 percent of the Company's net production revenues<sup>1</sup>, and 87 percent of the Company's gross sales. The Company is the world's largest publicly traded copper producer. The Company's oil and natural gas assets are primarily located in the U.S. in the Deepwater Gulf of Mexico, onshore and offshore California, in the Haynesville natural gas shale in Louisiana, the Madden area in Wyoming, and in the Inboard Lower Tertiary/Cretaceous natural gas trend onshore in South Louisiana.

The Company prepares financial information related to its oil and gas operations in accordance with the full cost accounting rules set forth in Regulation S-X, Rule 4-10. Under this method of accounting, all costs associated with oil and gas property acquisition, exploration and development are capitalized into cost centers on a country-by-country basis and amortized to expense based on estimates of the related country-by-country oil and natural gas reserves. Because depreciation, depletion and amortization related to the Company's oil and gas properties are only measured on a country-by-country basis, the Company believes that the most appropriate metric for measuring the Company's net earnings associated with its oil and gas operations in urban areas of California is net production revenues, which is the difference between revenues from sales, and the production and delivery costs.

The Company's Los Angeles Basin oil and gas properties are its only properties located in urban areas of California and represent an insignificant portion of the Company's overall business. For the fiscal year ended December 31, 2015, the Company's oil and gas operations in the Los Angeles Basin accounted for less than 1 percent of the Company's net production revenues, and less than 1 percent of the Company's gross sales. Moreover, for the fiscal year ended December 31, 2015, all of the Company's onshore California oil and gas operations accounted for less than 3.5 percent of the Company's net production revenues and less than 3 percent of the Company's gross sales.

For the reasons discussed above, the Company is not able to provide an exact figure under generally accepted accounting principles for the percentage of its total assets represented by its oil and gas operations in the Los Angeles Basin at December 31, 2015. However, based on developed and undeveloped oil and gas acreage in which the Company held interests as of December 31, 2015, the total gross acreage of the Company's Los Angeles Basin properties represented only 0.14 percent of the Company's total gross oil and gas acreage. In addition, for the fiscal year ended December 31, 2015, the Company's oil and gas operations in the Los Angeles Basin accounted for only 6.5 percent of the Company's total oil and gas production, and the Company's total oil and gas revenues accounted for only 12.6 percent of the Company's total consolidated revenues. Further, as of December 31, 2015, in accordance with the Commission's rules on the full cost accounting method, the present value of the estimated future oil and gas

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<sup>1</sup> Defined as the difference between revenues from sales and production and delivery costs in order to be consistent with the quantitative data related to the Company's oil and gas operations provided in this correspondence.

revenues, reduced by direct expenses and discounted at an annual rate of 10 percent (“PV-10”), of the proved oil and gas reserves at the Company’s Los Angeles Basin properties was approximately 5.0 percent of the PV-10 of all of the Company’s proved oil and gas reserves. Accordingly, the Company believes that it meets the quantitative thresholds to exclude the Proposal under Rule 14a-8(i)(5).

Even if a proposal relates to operations that do not meet the quantitative thresholds discussed above, a company may not exclude the proposal under Rule 14a-8(i)(5) if it is “otherwise significantly related to the company’s business.” As the Commission has previously noted:

Historically, the Commission staff has taken the position that certain proposals, while relating to only a small portion of the issuer’s operations, raise policy issues of significance to the issuer’s business. . . . For example, the proponent could provide information that indicates that while a particular corporate policy involves an arguably economically insignificant portion of an issuer’s business, the policy may have a significant impact on other segments of the issuer’s business or subject the issuer to significant contingent liabilities.<sup>2</sup>

The Commission has additionally stated that proposals relating to ethical issues “may be significant to the issuer’s business, when viewed from a standpoint other than a purely economic one.”<sup>3</sup>

However, proposals must be more than “ethically significant in the abstract” and must have a “meaningful relationship to the [company’s] business.”<sup>4</sup> The Staff has historically allowed the exclusion of proposals relating to ethically significant issues that have minimal impact on a company’s business.<sup>5</sup> In addition, the Staff has previously found proposals addressing an isolated aspect of a company’s overall business not to be otherwise significantly related to its business and excludable pursuant to Rule 14a-8(i)(5). In *American Stores Co.* (March 25, 1994), the Staff agreed that a proposal related to the sale of tobacco products by a food and drug retailer that sold thousands of different products was not significantly related to

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<sup>2</sup> Exchange Act Release No. 34-19135 (October 14, 1982).

<sup>3</sup> Exchange Act Release No. 34-19135 (October 14, 1982).

<sup>4</sup> See *Lovenheim v. Iroquois Brands, Ltd.*, 618 F. Supp. 554, 561 n.16 (D.D.C. 1985).

<sup>5</sup> See *Hewlett-Packard Company* (January 7, 2003) (concurring in the exclusion of a proposal requesting that the company relocate or close its offices in Israel, divest itself of land owned in Israel and declare that the company could not continue to maintain a presence in Israel while the country violated international human rights standards where the company represented that the amount of revenue, earnings and assets attributable to its operations in Israel was less than five percent and the proposal was not otherwise significantly related to its business) and *Tribune Co* (January 27, 1994) (concurring in the exclusion of a proposal requesting that the company develop ethical and moral criteria relating to cigarette advertising where the company represented that cigarette advertising did not satisfy the five percent thresholds provided under Rule 14a-8 and the proposal was not otherwise significantly related to its business).

the company's business. Additionally, in *Kmart Corp.* (March 11, 1994), the Staff agreed that a proposal related to the sale of firearms by a discount general merchandise retailer that sold a broad variety of products was not significantly related to the company's business.

As noted above, the Company's Los Angeles Basin properties, which are its only properties located in urban areas of California, represent an insignificant portion of the Company's overall business. The Proponent requests that the Company's Board of Directors provide information on "enhanced oil recovery operations" in urban areas of California, and cites as examples "hydraulic fracturing, steam injection, gravel packing, and acidizing." However, the Company does not use hydraulic fracturing or steam injection in the Los Angeles Basin *at all*. In addition, "gravel packing" and "acidizing" are not properly categorized as "enhanced oil recovery operations." "Enhanced oil recovery" involves techniques to alter the original properties of oil to improve fluid flow in the reservoir, and consists of a more or less continuous process designed to move oil to the wellbore.<sup>6</sup> Examples include steam injection and waterflooding. In contrast, "well stimulation" involves methods to increase the permeability of the formation, such as hydraulic fracturing.<sup>7</sup> While the Company does use gravel and acid in its oil and gas operations in the Los Angeles Basin, the Company does not use them in any manner that would be considered "well stimulation" either as commonly understood in the industry or under California law.<sup>8</sup>

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<sup>6</sup> According to the Schlumberger Oilfield Glossary, a comprehensive glossary of oil and gas terms widely referred to by participants in the oil and gas industry, "enhanced oil recovery" is defined as "[a]n oil recovery enhancement method using sophisticated techniques that alter the original properties of oil. Once ranked as a third stage of oil recovery that was carried out after secondary recovery, the techniques employed during enhanced oil recovery can actually be initiated at any time during the productive life of an oil reservoir. Its purpose is not only to restore formation pressure, but also to improve oil displacement or fluid flow in the reservoir. The three major types of enhanced oil recovery operations are chemical flooding (alkaline flooding or micellar-polymer flooding), miscible displacement (carbon dioxide injection or hydrocarbon injection), and thermal recovery (steamflood or in-situ combustion). The optimal application of each type depends on reservoir temperature, pressure, depth, net pay, permeability, residual oil and water saturations, porosity and fluid properties such as oil API gravity and viscosity."

<sup>7</sup> According to the Schlumberger Oilfield Glossary, "well stimulation" is defined as "[a] treatment performed to restore or enhance the productivity of a well. Stimulation treatments fall into two main groups, hydraulic fracturing treatments and matrix treatments. Fracturing treatments are performed above the fracture pressure of the reservoir formation and create a highly conductive flow path between the reservoir and the wellbore. Matrix treatments are performed below the reservoir fracture pressure and generally are designed to restore the natural permeability of the reservoir following damage to the near-wellbore area. Stimulation in shale gas reservoirs typically takes the form of hydraulic fracturing treatments."

<sup>8</sup> The regulations implementing California Senate Bill No. 4 define "well stimulation treatment" as "a treatment of a well designed to enhance oil and gas production or recovery by increasing the permeability of the formation.... Well stimulation is a short term and non-continual process for the purposes of opening and stimulating channels for the flow of hydrocarbons. Examples of well stimulation treatments include hydraulic fracturing, acid fracturing, and acid matrix stimulation." The regulations recognize the distinction between well stimulation and enhanced oil recovery methods: "Well stimulation treatments and underground injection projects are two distinct kinds of oil and gas production processes." "Underground injection project" is defined by these regulations as "sustained or continual injection into one or more wells over an extended period in order to add fluid to a zone for the purpose of enhanced oil recovery, disposal, or storage."

The only enhanced oil recovery method used by the Company in the Los Angeles Basin is waterflooding, which is not mentioned at all by the Proponent. The waterflood recovery method used on the Company's Los Angeles Basin properties represents an insignificant, isolated aspect of the Company's overall business. The Proponent provided no information indicating that the waterflood recovery method used on the Company's Los Angeles Basin properties could significantly impact other segments of the Company's business or expose the Company to significant contingent liabilities. The Company does not believe its Board of Directors should be required to guess which practices should be included in the Proponent's imprecise conception of enhanced oil recovery operations. Further, as discussed in more detail below, the Proponent's attempts to connect the Company's business to the policy and ethical issues raised in the Proposal are misleading and not supported by evidence.

Because the Proposal relates to operations that account for less than 1 percent of the Company's net production revenues and less than 1 percent of the Company's gross sales, are an insignificant part of the Company's total assets, and are not otherwise significantly related to the Company's business, we respectfully request that the Staff concur with the Company's position that it may exclude the Proposal from the 2016 Proxy Materials in reliance on Rule 14a-8(i)(5).

**B. The Proposal May be Excluded Under Rule 14a-8(i)(3) Because it is Materially False and Misleading.**

Rule 14a-8(i)(3) provides a basis for a company to exclude a proposal "[i]f the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." As noted by the Staff in Staff Legal Bulletin 14B (September 15, 2004) ("SLB 14B"), "rule 14a-8(i)(3), unlike the other bases for exclusion under rule 14a-8, refers explicitly to the supporting statement as well as the proposal as a whole."

Note (b) to Rule 14a-9 provides that "[m]aterial which directly or indirectly impugns character, integrity or personal reputation, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation," may be misleading within the meaning of Rule 14a-9 and, as a result, excludable from a company's proxy materials by virtue of Rule 14a-8(i)(3). The Staff has consistently used this basis to allow the exclusion of proposals which suggest a company has engaged in wrongdoing without providing any factual support for such implication.<sup>9</sup>

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<sup>9</sup> See *ConocoPhillips* (March 13, 2012) (concurring in the exclusion of a proposal suggesting the company participated in money laundering), *Philip Morris Cos. Inc.* (February 7, 1991) (concurring in the exclusion of a proposal suggesting the company "advocates or encourages bigotry and hate"), *Motorola, Inc.* (March 4, 1988) (concurring in the exclusion of a proposal suggesting the company violated the proxy rules), *Detroit Edison Co.* (March 4, 1983) (concurring in the exclusion of a proposal suggesting the company unlawfully influenced the political process and engaged in "circumvention of regulation" and "corporate self-interest") and *Gulf & Western Industries, Inc.* (October 23, 1975) (concurring in the exclusion of a proposal suggesting the company was responsible for "acts of violence").

As discussed in more detail below, the Proposal and its supporting statement, which contain numerous unsubstantiated allegations and false statements directly calling into question the character, integrity and personal reputation of the Company, are categorically misleading. Consequently, the Company believes the Proposal is subject to exclusion from the 2016 Proxy Materials pursuant to Rule 14a-8(i)(3).

***1. The Proposal is materially misleading because it suggests that the Company uses hydraulic fracturing and steam injection in urban areas of California, which is false. The Proposal is also materially misleading because it suggests that the Company uses gravel and acid in manners that constitute well stimulation in urban areas of California, which is false.***

The Proponent's assertion that the Company uses hydraulic fracturing in urban areas of California is false. The Company has not used hydraulic fracturing at any of its production sites in California since 2013. While the Company does use steam injection on its San Joaquin Basin and Arroyo Grande field properties onshore in California, these properties are not located in or near any urban areas of California. Assertions to the contrary made in the Proposal are false and not supported by any evidence presented by the Proponent.

The Company uses gravel in its Los Angeles Basin oil and gas operations, but not in any manner that would be considered "well stimulation" either as commonly understood in the industry or under California law. "Gravel packing" is a well completion technique designed to prevent formation sand from flowing into the wellbore and is commonly used on water supply wells. Specific types of gravel packing operations commonly referred to as "high rate gravel packing" could potentially be defined as "well stimulation treatments" under California law and subject to regulation, depending on how the operation is designed. The Company has not used high rate gravel packing at any of its production sites in California, including those in the Los Angeles Basin, since 2013.

The Proponent's assertion that the Company uses "acidizing" in urban areas of California is also misleading. The Company uses acid in its Los Angeles Basin oil and gas operations, but not in any manner that would be considered "well stimulation" either as commonly understood in the industry or as defined under California law. The Company has not used acid in any manner that could be categorized as "well stimulation" at any of its production sites in California, including those in the Los Angeles Basin, since 2013.

***2. The Proposal is materially misleading because it states that the Company's onshore California operations have adverse health and environmental effects on adjacent communities and implies that the Company's operations have contaminated local water supplies, which is false and not supported by any evidence.***

The Proposal's supporting statement provides, in part, as follows: "Freeport's California operations face significant resistance from adjacent communities *that have suffered health problems and endured chemical odors related to Freeport's oil operations.* . . . Residents of San Luis Obispo County have protested Freeport's application for an aquifer exemption for wastewater injection, *citing contamination of local water supplies (emphasis added).*"

The Proponent's assertion that the Company's onshore California operations contribute to health problems, nuisances and contamination in surrounding communities is completely unsubstantiated and is also inconsistent with studies, surveys and regulatory investigations. Moreover, such statements disregard the rigorous regulatory standards applicable to all California production facilities, which limit both emissions and public exposure to any chemicals used in the production process.

The Proponent produces no evidence whatsoever to substantiate its allegations and insinuations. In fact, there is publicly available information that refutes the Proponent's claims. For example, in 2012, the Los Angeles County Public Health Bureau of Toxicology and Environmental Assessment conducted a health survey of the neighborhoods within 1.5 miles of the Inglewood Oil Field (located in the Los Angeles Basin) in response to allegations of adverse health consequences attributable to oil field operations. The survey found no statistical difference in mortality or acute illness rates between the neighborhoods surrounding the Inglewood Oil Field and any other part of the Los Angeles Basin, including those parts where no oil and gas operations are present.

In 2014, the Company's Murphy Drill Site in the West Adams neighborhood of the City of Los Angeles was the subject of a multiday inspection by the U.S. Environmental Protection Agency ("EPA") conducted in response to allegations by local activists that the site had adverse health impacts on the surrounding community. No violations were discovered in connection with the inspection, which concluded that nothing suggested the site posed a threat to public health.

In 2014, the Company's Murphy and Jefferson Drill Sites in the City of Los Angeles were the subject of more than 20 unannounced inspections by the South Coast Air Quality Management District ("SCAQMD"), the regulatory agency with primary authority over stationary sources of toxic air contaminant emissions in Los Angeles County and which oversees regulatory compliance. One of these inspections was a "Blue Sky" inspection, the most in-depth type of inspection the SCAQMD conducts. These inspections discovered nothing that posed an environmental or public health concern. The SCAQMD conducted a subsequent inspection of the Jefferson Drill Site in November of 2015, which discovered no violations or odors related to the site.

The Proponent's assertion that the Company "uses hazardous chemicals at sites located as close as 85 feet from homes and schools" in Jefferson Park is also materially misleading. First, the Company uses all chemicals in strict compliance with all applicable state and federal regulations and under strict controls. In addition, the Company's drill sites in the Los Angeles Basin (including the Jefferson Park and West Adams production facilities in Los Angeles County) are surrounded by cement walls.

The Proponent has misleadingly misstated facts relating to the aquifer exemption application for wastewater injection in San Luis Obispo County. First, the State of California, not the Company, is the actual applicant for the exemption. The decision to proceed with submitting an application for the exemption to the EPA was made jointly by the California

Division of Oil, Gas & Geothermal Resources and the California State Water Resources Control Board after the two agencies spent one year reviewing extensive geologic, scientific and technical information relating to the Company's operations on the Arroyo Grande field. The review also involved consultation from the Central Coast Regional Water Quality Control Board. The agencies concluded that the oil reservoir at issue was geologically contained and did not pose a risk of fluid migration to surrounding drinking water aquifers. No water contamination related to the Arroyo Grande field, which has operated for over 100 years, has ever been documented. Additionally, the Company is not aware of any protests by residents of San Luis Obispo County related to the application that have cited "contamination of local water supplies."

***3. The Proposal is materially misleading because it falsely suggests that the Company has violated local zoning ordinances "with a reckless regard" for the community in connection with its onshore California operations.***

The Proposal's supporting statement provides, in part, as follows: "Impacted communities have submitted official comments that allege Freeport violated local zoning ordinances 'with a reckless regard' for the community. (Los Angeles Planning Department, Public Comment Case No: ZA 17528(PA4), September 2013)."

The Proponent's suggestion that the Company's operations in the Los Angeles Basin violate zoning ordinances and indicate a "reckless regard" for the community is completely unsubstantiated and is contradicted by the Company's compliance history. The Proponent provides no evidence whatsoever (1) that the Company has violated any zoning ordinance or other regulation in connection with its operations in the Los Angeles Basin or (2) that the Company operates with indifference toward surrounding communities, both of which the Company vehemently denies and which are contradicted by publicly available information.

In fact, the compliance coordinators overseeing activity at the Inglewood Oil Field have offered high marks for the Company's regulatory compliance. Los Angeles County recently concluded a five year review of the Community Standards District ("CSD") regulations that govern drilling and other aspects of the Inglewood Oil Field, which is widely viewed as the most highly regulated oil field in the U.S. The review was conducted to gauge overall regulatory compliance and determine whether additional regulations were necessary. Due in large part to the Company's strong track record of compliance, the county concluded that the CSD regulations had been effective and no modifications were necessary.

Contrary to the Proponent's insinuation that the Company operates with "reckless regard" for the community, the Company maintains a website dedicated to providing information on future drilling and regulatory compliance related to its operations at the Inglewood Oil Field and is in the process of developing a similar website that will pertain to its operations at the Murphy and Jefferson Drill Sites. The Company participates in the Inglewood Oil Field community advisory panel, a monthly meeting open to the public during which the environmental compliance coordinators overseeing the Inglewood Oil Field and representatives of Los Angeles County provide information related to operations at the field. The Company also voluntarily participates in public forums hosted by local policy makers to address questions about operations

at the Murphy and Jefferson Drill Sites and attends local neighborhood council meetings in these communities when invited.

The Company holds an annual meeting with the Inglewood community at which the oil field's operations over the previous year are reviewed. Additionally, a newsletter containing information about oil field operations is distributed annually to more than 4,000 households surrounding the Inglewood Oil Field.

As demonstrated above, numerous assertions and insinuations made by the Proponent regarding the Company's operations in urban areas of California are not supported by any evidence presented by the Proponent and are contradicted by publicly available information, and therefore are false and misleading. These assertions directly impugn the character, integrity and personal reputation of the Company and its directors and management without factual foundation.

The Staff noted in Staff Legal Bulletin 14 (July 13, 2001) that it has a "long-standing practice of issuing no-action responses that permit shareholders to make revisions that are minor in nature and do not alter the substance of the proposal," and that it "adopted this practice to deal with proposals that generally comply with the substantive requirements of the rule, but contain some relatively minor defects that are easily corrected." The Staff noted its intent to limit this practice to minor defects in SLB 14B, where it recognized that it "may find it appropriate for companies to exclude the entire proposal, supporting statement, or both as materially false or misleading if a proposal or supporting statement would require detailed and extensive editing in order to bring it into compliance with the proxy rules." As shown above, the Proposal's defects are neither "relatively minor" nor "easily corrected." The Company believes that because it would require "detailed and extensive editing" to become compliant, the Proposal is excludable under Rule 14a-8(i)(3).<sup>10</sup>

## CONCLUSION

On the basis of the foregoing, the Company respectfully requests that the Staff confirm it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from the 2016 Proxy Materials in reliance on Rule 14a-8(i)(5) and Rule 14a-8(i)(3).

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<sup>10</sup> See *Staples, Inc.* (April 13, 2012) (concurring in the exclusion of a proposal after proponent requested ability to revise to resolve ambiguity).

If you have any questions or would like additional information regarding the foregoing, please do not hesitate to contact the undersigned at (602) 366-7604.

Very truly yours,



Monique A. Cenac

MAC

Attachment

cc: Douglas N. Currault II (w/att.)  
Harold Neufeldt (w/att.)  
Newground Social Investment (w/att.)  
Austin Wilson, As You Sow Foundation (w/att.)  
David Shugar, As You Sow Foundation (w/att.)

**EXHIBIT A**  
**Copy of the Proposal**

**WHEREAS:** Hydraulic fracturing, acidizing, and similar *enhanced oil recovery operations* (“oil operations”), are highly controversial extraction methods whose potential to create public health hazards and environmental harm has resulted in bans both domestically and internationally. In California, bans and moratoriums on various oil operations have already been established in 4 counties and 3 cities.

Oil operations have the potential to contaminate water supplies, release toxic fumes, and harm communities. A *Physicians for Social Responsibility* study reports that 90% of compounds used in hydraulic fracturing cause adverse health effects. Acidizing, for instance, uses hydrofluoric acid and other chemicals that cause severe respiratory problems. From June 2013 to June 2014 – in the Los Angeles Basin alone – oil companies used 45 million pounds of air-polluting chemicals, including 44 known toxic substances. (Center for Biological Diversity, June 2014).

Freeport, one of the largest oil producers in California, has substantial oil operations in and around Los Angeles County. In Jefferson Park, for instance, Freeport uses hazardous chemicals at sites located as close as 85 feet from homes and schools. Freeport also uses hydraulic fracturing and other “enhanced” recovery methods in the Inglewood Oil Field, which is in the midst of a community of 300,000 people. At 1,100 acres, the Inglewood Oil Field is the largest urban oil field in the United States.

Freeport’s California operations face significant resistance from adjacent communities that have suffered health problems and endured chemical odors related to Freeport’s oil operations. Freeport faces stiff opposition in the West Adams neighborhood, Inglewood Oil Field, Jefferson Park, and other locations. Residents of San Luis Obispo County have protested Freeport’s application for an aquifer exemption for wastewater injection, citing contamination of local water supplies.

Impacted communities have submitted official comments that allege Freeport violated local zoning ordinances “with a reckless regard” for the community. (Los Angeles Planning Department, Public Comment Case No: ZA 17528(PA4), September 2013).

Freeport does not publicly disclose its practices, if any, to manage, reduce, or avoid the risks of its oil operations to populations in these urban centers. This lack of key disclosure metrics denies investors the information they need to assess the reputational, legal, and financial risks that arise from the Company’s urban drilling operations in California.

**THEREFORE, BE IT RESOLVED:** Shareholders request that the Board of Directors report on company actions being taken (excluding actions taken to comply with law) to reduce and mitigate potential health harms, environmental harms, and negative community impacts that arise from Freeport’s enhanced oil recovery operations (such as hydraulic fracturing, steam injection, gravel packing, and acidizing) in urban areas of California. This report should be prepared at reasonable cost, omitting confidential information, by November 30, 2016.