



Gila Resources Information Project

Ten Years of Promoting Healthy Communities by Protecting Our Environment



New Mexico

Environmental Law Center

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NM GRANT COUNTY GROUNDWATER SUPPLIES PROTECTED TODAY

SILVER CITY and SANTA FE, N.M.—The Gila Resources Information Project (GRIP) and New Mexico Environmental Law Center today hailed state regulators for placing valuable New Mexican groundwater supplies ahead of Freeport-McMoRan mining company profits at its Tyrone copper mine in Grant County.

GRIP, represented by the New Mexico Environmental Law Center (NMELC), both non-profit organizations that depend on grants and donations for their work, successfully argued against the company's interpretation of the law.



“In an arid state like New Mexico that is so dependent on groundwater supplies, we cannot afford to use our aquifers as waste dumps,” says Allyson Siwik, GRIP executive director. “We need every drop. The NM Environment Department issued a solid permit back in 2003 and the Commission made the right decision today in supporting it.”

“This case has significant statewide implications for how we treat our most valuable resource—our water,” says Bruce Frederick, NMELC attorney for GRIP. “The Water Quality Control Commission has studied this issue for more than a year, and heard 24 days of expert testimony on the importance of protecting that resource for the people of our state now and well into the future. The Commission's decision is a clear loss for Freeport and goes a long way toward protecting New Mexico's water resources.”

Freeport-McMoRan, formerly Phelps Dodge Corporation, had already taken the six-year-old case to the state Court of Appeals, objecting to two conditions the commission placed on its Tyrone Mine closure plan in 2003.

The company argued that groundwater supplies under the Tyrone mine site are not required to be protected under the Water Quality Act as they would not be withdrawn for use in the foreseeable future, and that it could count on “institutional controls” such as signs and zoning laws to prevent people from using the contaminated water for centuries to come.

The Water Quality Control Commission made several important determinations that were directly contrary to the company’s arguments. It said that the purpose of the Water Quality Act is to protect all present and reasonably foreseeable uses of groundwater that contains total dissolved solids (TDS) of 10,000 mg/l or less.

Most importantly, the Water Quality Control Commission unequivocally rejected that land ownership and control of the land surface are relevant to determining whether groundwater will be used in the future. Instead, it directed the NM Environment Department to only consider objective factors such as aquifer characteristics, present use of water, pre-mining water quality, and reasonably foreseeable use of the groundwater at issue over a time horizon of at least the next 100 years.

Although the Commission stated that Freeport-McMoRan failed to meet its burden of proving that the aquifers beneath its mine site were not so-called “places of withdrawal of water” and thus did not need to be protected under the Water Quality Act, it stopped short of saying that every cubic inch of the aquifer under the mine site needed to be protected. Instead it ordered the NM Environment Department to reevaluate within 18 months the effectiveness of permit conditions 4 and 17 in light of today’s determination.

“This battle is not finished and we must still work closely with the Department on its ‘place of withdrawal’ determination over the next 18 months,” states Siwik. “We will carefully evaluate the written order of the Commission when it comes out a month from now.”

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INTERVIEWS AND IMAGES ARE AVAILABLE UPON REQUEST

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