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New Mexico Environment Department Prevails in Precedent-Setting Case Affirming State's Authority to Protect All Groundwater in New Mexico

New Mexico Water Quality Control Commission Rules Unanimously that Freeport McMoRan Copper & Gold Must Clean Up Pollution

(Santa Fe, N.M.) The New Mexico Environment Department prevailed today in a major case before the Water Quality Control Commission that reaffirms the state's ability to enforce the Water Quality Act to protect the state's precious groundwater resources.

The ruling establishes that groundwater beneath Freeport McMoRan Copper and Gold's Tyrone Mine in Grant County is protected. The decision will require the company to continue to take steps to protect groundwater and clean up pollution beneath the mine property. The case reaffirms the state's authority to protect groundwater at any site it regulates, including mines, dairies and national laboratories.

"The commission upheld the department's longstanding position that in an arid state like New Mexico – where we derive 90 percent of our drinking water from groundwater – all aquifers must be protected," said New Mexico Environment Department Secretary Ron Curry. "The commission re-established the state's right to protect water quality and all groundwater now and for future generations. This precedent setting decision is important not only for the Tyrone mine site but for the regulation of groundwater quality in Grant County and the rest of the state as well."

The decision will require Freeport, formerly Phelps Dodge Mining Corp., to continue to follow requirements the department established to protect groundwater at the mine site.

The case hinged on Freeport's argument that groundwater within the Tyrone mine site – consisting of several thousand acres -- was exempt from state groundwater protections as long as the company did not cause groundwater off site to become contaminated. The result of this argument would have been to create a groundwater "sacrifice zone" at the mine site. The department has long maintained that groundwater underneath the site should be protected now and into the future.

The commission rejected Freeport's contention that this groundwater is not protected.

The case began in 2002 and has been ongoing ever since. The company, after a lengthy hearing, challenged the New Mexico Environment Department's hearing officer's initial decision in the case. The hearing officer affirmed the state's right to issue a permit with conditions for the protection of groundwater quality and require the company to follow provisions of the Water Quality Act. The case was subsequently heard before the commission, which upheld the department's authority. Freeport then appealed the case to the state Court of Appeals, which largely affirmed the commission's decision but remanded the case to the commission on the limited issue of groundwater protection. Today's decision was the result of that remand.

"I commend the commission on its hard work, technical expertise and thorough review and deliberation that required hundreds of hours of work," Secretary Curry said.

The New Mexico Legislature in 1967 passed the Water Quality Act, which provides protection for all groundwater in the state.

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