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New Mexico Court of Appeals Upholds Copper Rule

Santa Fe - Yesterday, the New Mexico Court of Appeals upheld the recently adopted Copper Mine Rule which manages groundwater impacts from copper mining operations. The Court found that the Copper Rule does not permit widespread groundwater pollution as alleged by the appellants. The opinion stated, "...we conclude that the notions that the Regulations allow widespread pollution or that they allow a mine facility to pollute groundwater underlying the entire facility or that the monitor wells may be 'distant' are unfounded or otherwise exaggerated."

New Mexico Environment Department Secretary Ryan Flynn praised the ruling, saying, "The Copper Rule, originally adopted by the Water Quality Control Commission and upheld by the New Mexico Court of Appeals yesterday, is among the toughest such regulations in the nation. It replaces an antiquated system that was inadequate in protecting New Mexico's precious groundwater resources. This rule represents a balanced approach to protecting our water while still allowing for economic development and job creation."

The New Mexico Legislature decided in 2009 that the previous system for regulating groundwater at copper mines needed to be reformed; that it had been arbitrary, inconsistent and had provoked years of protracted litigation with the mining industry. The New Mexico Court of Appeals had found earlier, in 2006, that existing groundwater protections did not reflect a balance between the competing policies of protecting water and imposing reasonable requirements on industry. In 2009, the Legislature passed SB 206 to amend the Water Quality Act and require the state's Environment Department (NMED) to develop regulations which would clearly set forth the appropriate controls to prevent or abate groundwater pollution.

NMED's rule, upheld in yesterday's decision, imposes stronger groundwater protections that delineate stringent design features for new mining facilities and for expansions of existing mining facilities. The Copper Rule also provides new criteria for closing a mine, including re-grading land and installing ground cover to minimize infiltration of precipitation into and through mined materials that might otherwise reach groundwater; new engineering design requirements for waste rock and leach stockpiles, and impoundments; and specific design technology requirements for impoundments, tanks and pipelines.

"The New Mexico Copper Rule comprises the most comprehensive and environmentally protective regulatory requirements for protecting groundwater from the impacts of copper mining, when compared with the mining regulations of other copper producing states," said Flynn.

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