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ENVIRONMENT DEPARTMENT



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March 1, 2013

Via E-mail

Sally Smith, President
Gila Resources Information Project
305A North Cooper St.
Silver City, NM 88061

Re: NMED's Proposed Copper Rule

Dear Ms. Smith:

Thank you for your letter dated January 27, 2013. The Environment Department's goal in proposing regulations was to strike the appropriate balance between the environmental and economic impacts of mining. We believe the proposed copper rules, which are the most stringent environmental regulations for the copper mining industry in the country, achieve this goal.

I am sorry you believe the Advisory Committee process was "frustrated" or "circumvented" by the proposed rules. The Environment Department believes the Advisory Committee process was a success since many of the recommendations we received from the Committee were ultimately incorporated into the proposed rule. We are grateful for all of the advice and recommendations we received from the Advisory Committee's participants, including GRIP, and believe the proposed copper rules benefitted from the multitude of perspectives represented on the Committee.

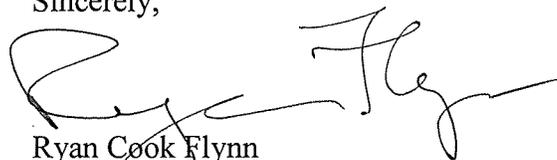
The Environment Department understands that GRIP supports an interpretation of the Water Quality Act that requires all ground water to meet water quality standards at all locations within a mine site. While we are aware that this was an interpretation previously favored by the Environment Department, the actual practice of the Department since the adoption of the Water Quality Act has been to issue permits without requiring all ground water at all locations within a mine site to meet ground water standards. Thus, we believe our proposed rule promotes regulatory transparency by codifying the Environment Department's past practices.

Moreover, our experience over the past decade has demonstrated that the approach previously employed by the Environment Department was flawed. As you are aware, the interpretation of the Water Quality Act previously favored by the Environment Department resulted in nearly a decade of protracted litigation - litigation that the Department ultimately lost. The New Mexico Court of Appeals soundly rejected the Environment Department's previous approach, calling it "a broad and impractical interpretation of the [Water Quality] Act." *Phelps Dodge Tyrone, Inc. v. New Mexico Water Quality Control Com'n*, 140 N.M. 464, 143 P.3d 502, 2006-NMCA-115 (N.M.App. Jul 19, 2006). As the Court of Appeals noted, this approach does "not reflect a balance between the competing policies of protecting water and yet imposing reasonable requirements on industry." *Id.* In fact, it was this decade-long litigation that prompted the Legislature to amend the Water Quality Act in 2009. The Environment Department cannot ignore an appellate opinion characterizing its regulatory approach as impractical. We need to learn from our mistakes and focus the Ground Water Quality Bureau's limited resources on doing everything it can to effectively and practically protect New Mexico's ground water.

Finally, the proposed copper rule was not developed by any single person within the Environment Department. The statements made by you and others indicating that I was responsible for "radical changes" to the final draft of the proposed rule are false. As you are aware, I never worked for Freeport McMoran or Phelps Dodge. False personal attacks only serve to distract us from the important, water quality issues. We should be focused on protecting ground water from the environmental impacts of mining, not pursuing false personal attacks.

Ultimately, the Water Quality Control Commission will decide whether the proposed copper rules satisfy the requirements of the Water Quality Act and will adopt the final regulations it believes are best for New Mexico. I hope we can have a constructive, professional dialogue about the important water quality issues at stake and look forward to your participation in the upcoming hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Cook Flynn". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ryan Cook Flynn
General Counsel