

**Testimony to the Water Quality Control Commission**

**Proposed Water Quality Rules for Copper Mining Reference # WQCC 12-01 (R)**

**Submitted by Allyson Siwik, Executive Director, Gila Resources Information Project**

**May 3, 2013**

Good afternoon, my name is Allyson Siwik, Executive Director of the Gila Resources Information Project otherwise known as GRIP. GRIP was founded in 1998 and its mission is to promote community health by protecting the environment and natural resources in southwestern New Mexico. GRIP's role in the community has been to facilitate informed public participation in natural resource use decisions. GRIP assists residents in educating themselves and encourages them to participate in the public participation processes related to decisions that will have profound and long-lasting impacts on the region's environmental and economic health.

GRIP's Responsible Mining Program is a core function of our organization. We are not "anti-mining" as some would have you believe. We recognize that mining plays an important role in our modern society and contributes to our local economy. However, copper mining should not be conducted at the expense of our environmental quality and public health. Therefore, GRIP advocates for responsible mining: mining that is conducted in compliance with state and federal laws, that takes responsibility for cleanup and reclamation, that doesn't threaten our public health, and doesn't push the cost of cleanup onto us—the community, the taxpayer, and local, state and federal governments.

For 15 years, GRIP has participated in proceedings related to closure/closeout, operational discharge permits and financial assurances for reclamation and cleanup at the Chino,

Tyrone and Cobre copper mines. Our Board President and Director of Responsible Mining, Sally Smith, was involved in the development of the 1993 Mining Act regulations, served on the Mining and Minerals Division (MMD) Director's Advisory Committee for more than 5 years and tracked the MMD permitting process for the Tyrone, Chino and Cobre copper mines since passage of the Mining Act.

Ms. Smith has also served on the Community Work Group (CWG), a panel of community members that provides informed recommendations regarding cleanup of historical mine waste at the Chino mine. In 2012, Ms. Smith participated as a member of the Copper Regulation Advisory Committee convened by the New Mexico Environment Department to develop legislatively mandated rules to protect groundwater quality at copper mines – the subject of our public hearing this afternoon.

Thank you to the WQCC commissioners for coming to Silver City today and listening to input on the proposed copper rule from our community – from the people who have lived with impacts of mining for generations and from the people whose children and grandchildren will live with the legacy of mining here in Grant County for hundreds of years.

GRIP opposes the proposed copper rule as currently written as it violates the NM Water Quality Act. The proposed rule will allow mining companies to pollute at mine sites rather than prevent pollution which is in direct conflict with the express purpose of the Water Quality Act.

In addition to the illegality of this proposed rule, we hear every day in the news that New Mexico and the Southwest are being impacted by long-term drought. To allow mining companies to pollute our valuable groundwater supplies defies logic and common sense.

Let me highlight the major reasons why the proposed rule is in conflict with the Water Quality Act.

- The rule does not protect places of withdrawal of groundwater for present and reasonably foreseeable future use.
- The rule expressly allows copper mining companies to pollute groundwater above water quality standards, without the existing requirement of obtaining a variance. Variance proceedings are an important vehicle for the WQCC, nearby landowners, and the public to participate in review of permit conditions that would intentionally allow groundwater pollution. Every other polluter in the state must go through a variance process if it submits an application to pollute groundwater above standards through its activities. Freeport has been granted two variances for activities at its mines and GRIP agreed with the company's plans for both. This was not an onerous process.
- The proposed rule would also limit groundwater protection to designated monitoring wells located at poorly defined locations down-gradient from major (and often permanent) sources of pollution, such as acid and metals generating tailings ponds and stockpiles.

- The rule never unambiguously requires water quality standards to be met at any specific time or place. The lack of clear standards and requirements in the rule will lead to litigation as well as widespread water pollution.

Moreover, these major elements of the proposed rule change how NM regulates groundwater quality for mine sites away from pollution prevention to “containment” of pollution.

There is A LOT of pollution to contain. In December 2010, the Office of the Natural Resources Trustee and Freeport-McMoRan reached a \$13 million settlement for injuries to groundwater resources resulting from the release of hazardous substances from the Chino, Cobre and Tyrone mines. Hazardous substances found at the mines include sulfuric acid, sulfate and a variety of toxic metals measured at concentrations above water quality standards. Most or all the alluvial (shallow) aquifers at all three mine sites have been injured from mining activity. The total areal extent of injured groundwater is 20,743 acres with 19,299 acres of injured regional groundwater and 1,444 acres of injured alluvial groundwater. It is highly unlikely that concentrations of these constituents will decrease markedly over time. The ONRT assumed in their settlement with Freeport that injury will last for at least one hundred years at the mine sites.

Hundred(s) of years is a long time. At the Tyrone mine for example, Freeport-McMoRan will have to pump and treat contaminated water “in perpetuity” in order to contain on the mine site a soup of acidic waters and toxic metals. If for any reason, Freeport or its successor in interest goes bankrupt or disappears between now and the indefinite future (which is what “in

perpetuity” means), the Tyrone open pit will fill up with contaminated water. Somewhere between 40 and 50 years without pumping, as estimated by Freeport-McMoRan consultant and hydrologist Neil Blandford, this contaminated water will flow off the mine site into our regional aquifer. Silver City’s drinking water comes from this same regional aquifer. Our drinking water supplies may not be in danger now, but if we can’t contain contamination through pumping and treating “in perpetuity” the water supplies of future generations here in Grant County are seriously threatened.

The truth is mining companies won’t be around to pump and treat for hundreds or thousands of years. The Inspector General of the Environmental Protection Agency reported in its “Nationwide Identification of Hardrock Mining Sites” (March 2004, <http://www.epa.gov/oig/reports/2004/20040331-2004-p-00005.pdf>) that 59% of projected mine sites in EPA’s Superfund program will need 40 years to “in perpetuity” for cleanup and the agency questions the ability of businesses to sustain cleanup efforts for such lengths of time. Yet this is what we are talking about at our Grant County mines. Most corporations have existed for fewer than 100 years and few modern governments have operated for more than 200 years. This is why pollution prevention at mine sites is so important.

Along comes the proposed copper rule that is before you today that will allow mining companies to pollute groundwater above standards at mine sites and add more pollution to the thousands of acre-feet of existing groundwater pollution we already have. This is more pollution that will need perpetual treatment. Right now, one billion gallons (3,000 acre-feet) of contaminated water is produced annually at the Chino, Cobre and Tyrone mines as estimated in the May 2013 “Polluting the Future” report released on Wednesday by Earthworks and based on government data

([http://www.earthworksaction.org/media/detail/government\\_data\\_shows\\_mines\\_will\\_annually\\_pollute\\_up\\_to\\_27\\_billion\\_gallons#.UYFLASrjE](http://www.earthworksaction.org/media/detail/government_data_shows_mines_will_annually_pollute_up_to_27_billion_gallons#.UYFLASrjE)). This is a bit more water than Silver City currently uses in a year (2,800 acre-feet/year). Do we want to allow Freeport to produce more pollution that will enter our groundwater aquifers if the company or some future operator can't continue to pump and treat "in perpetuity"?

My answer to this question is NO. We need to prevent pollution in the first place. Indeed, the 2009 amendments to the Water Quality Act directed the Water Quality Control Commission to "adopt new rules for the copper mine industry to specify the measures to be taken to prevent water pollution and to monitor water quality". NMSA 1978 Section 74-6-4(K) (2009). The August 17, 2012 NMED staff version of the proposed copper rule included industry best management practices for protecting groundwater quality at mine sites through pollution prevention. The staff draft reflected 8 months of work by technical consultants for industry and environmental organizations, NMED staff and other stakeholders.

For example, the requirement for liners at new tailings impoundments was based on state-of-art guidance for such facilities and would have been standard practice as they are throughout the mining industry. The rule before you now, the version of the rule modified by NMED upper management to benefit the mining industry, was largely written by Freeport-McMoRan and reflects its practices which are an artifact of pre-modern mining operations and do not recognize or represent current engineering design best practices. Freeport's practices include the use of impoundment facilities with a high rate of seepage into ground water which requires an extensive and elaborate and constantly operated network of groundwater wells and other devices for containment.

We see here locally what happens when you don't line tailings impoundments. Old tailings ponds at the Chino mine have contaminated regional groundwater for more than four miles down gradient. (See Office of the Natural Resources Trustee Final Groundwater Restoration Plan for Chino, Cobre, Tyrone Mine Facilities, p. 3-15, [http://www.onrt.state.nm.us/documents/Final.Groundwater.Restoration.Plan.Chino.Cobre.Tyrone\\_1.4.2012.pdf](http://www.onrt.state.nm.us/documents/Final.Groundwater.Restoration.Plan.Chino.Cobre.Tyrone_1.4.2012.pdf) ). Freeport-McMoRan paid \$13M in damages for groundwater injury from unlined tailings ponds and other facilities throughout its three Grant County mines. Yet the proposed copper rule would allow the same permanent groundwater injury for which the Office of the Natural Resources Trustee sued for damages. This doesn't make sense.

The proposed copper rule before the WQCC amounts to Freeport-McMoRan's desire to use the public's groundwater as a waste dump and transfer the cost of cleanup and water treatment to our communities, the taxpayer and local, state and federal governments, while endangering public health at the same time. As the largest publicly traded copper company in the world with billions of dollars in annual net income, Freeport-McMoRan should not be allowed to treat New Mexico like a third world country and saddle us with thousands of acre-feet of groundwater contamination and millions of dollars or more in cleanup costs.

And if the mining industry can do it, what's to prevent other polluters from coming to you – the WQCC – to argue for the same treatment? This rule could pave the way for other polluters to demand similar rollbacks in water quality safeguards and allow the federal labs, dairies, wastewater treatment plants, and other industries to pollute under their sites and further risk groundwater pollution of public water supplies.

We therefore urge you to make a responsible decision and require that mining companies in New Mexico take responsibility for their waste. Remand the copper rule back to the NMED for revision so that it prevents pollution at mine sites rather than allows it.

Thank you for considering my comments today.