

Questa Mine sues U.S. for cleanup

Operator says government should 'pay its fair share'

By Martin van Buren
The Taos News

TAOS — Chevron Mining Inc. is suing the U.S. government over the Questa Mine cleanup, claiming the government bears some responsibility for cleanup costs and even arguing that piles of waste rock along the Red River constitute an environmental benefit.

The molybdenum mine and tailings facility outside of Questa were added to the federal Environmental Protection Agency's National Priorities List of Superfund sites in 2011. The EPA and Chevron have since been in negotiations regarding required remedies, the cost for which Chevron would be responsible.

Preliminary estimates for work such as removing contaminated soils in the mill area, addressing contaminated waste rock piles and tailing ponds, dredging Eagle Rock Lake and treating water have come close to \$1 billion.

The mine, which was operated by Molycorp Inc. before it merged with Chevron about six years ago, has had a long, contentious environmental record in the Northern New Mexico community while providing high-paying jobs to the isolated area of Taos County.

The 3-square-mile underground mine and its tailing ponds are near Red River, and drainages run into the river. The mine started underground operations in 1919, added an open-pit mine in 1965 and went to underground block-cave mining in 1983.

Molycorp undertook cleanups and actions to prevent hazardous substances from leaching into the river from mining operations. But the EPA contended that hazardous substances, contaminants and pollutants from the mining operations were released into the soil, groundwater and sediment in the vicinity of the mine and tailing facility, and into the Red River.

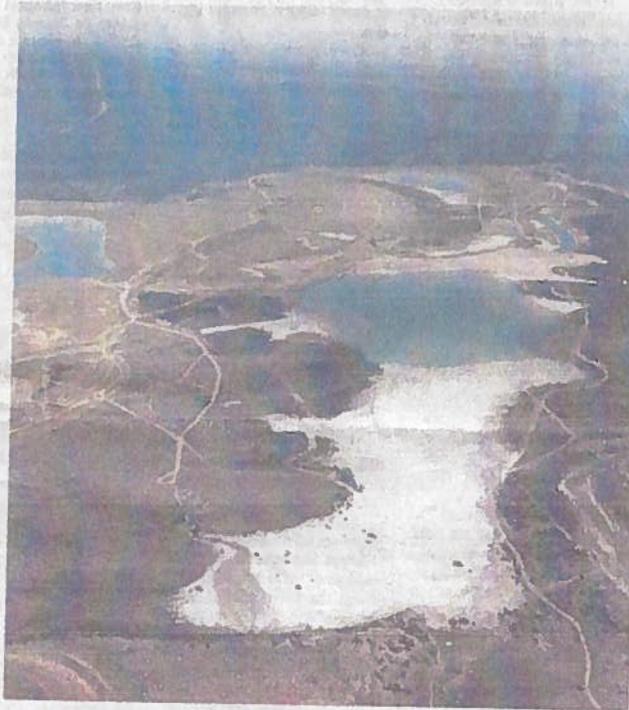
Chevron claims in a civil action filed in U.S. District Court this month that the federal government is liable under the Comprehensive Environmental Response, Compensation and Liability Act for "past, present and future environmental response costs at the Questa site." The U.S. government, the Department of the Interior and the Department of Agriculture are named as defendants.

"[Chevron Mining] is asking the federal government to pay its fair share of the environmental response costs associated with the Superfund cleanup at Questa as the government has had to do under similar circumstances at other mining sites," the company said in a statement emailed to the *Sangre de Cristo Chronicle*.

According to the suit, Chevron "has incurred, and continues to incur, costs of environmental response" related to the cleanup at the mine, including the waste rock disposal area, and tailings disposal area. However, it argues that the U.S. "played an integral role in facilitating mining and waste disposal operations and the consequent releases of hazardous substances."

Chevron argues that the U.S. government conveyed lands to Molycorp to facilitate the mining operation.

The suit also argues the government provided "extensive oversight" and



An aerial view shows the operations of the Questa Mine, formerly operated by Molycorp Inc. before it merged with Chevron Mining Inc. Chevron is suing the federal government for help with cleanup costs. NEW MEXICAN FILE PHOTO

financed further mineral exploration, in part to "ensure a ready domestic supply of molybdenum, a strategic mineral deemed critical to national security." The mineral is largely used as a steel-hardening agent, and the suit alludes to its importance during the Korean War effort.

"It was directly due to the United States' substantial funding and exploration assistance, as part of the Defense Minerals Exploration Program, that the Mine was reinvigorated, that new molybdenum ore bodies were discovered at the Questa Mine by 1960, and that open pit mine development activities were commenced there," the complaint states.

It argues that the hazardous substances now of concern to the U.S. "were an inherent part of the mineralized ore in the rock being mined."

The suit also discusses a 1972 Forest Service environmental analysis, claiming the disposal of "extensive Questa Mine waste rock" near Red River was environmentally beneficial.

"The Forest Service determined that Molycorp's waste rock disposal on the selected National Forest land actually provided a substantial environmental benefit by counteracting the harmful effects of naturally occurring and highly acidic erosion from ancient hydrothermal 'scars' into the Red River," the suit states, later adding, "In essence, placement of the waste rock into or on top of the scars stopped or reduced the downhill flow of acidic mud into the river basin."

By 1966, more than 62 million tons of waste rock had been generated at the site, according to the suit, and the "vast majority" of existing waste rock piles were generated prior to 1974. The suit argues that the disposal method helped to control erosion and states that the U.S. govern-

ment "knew and specifically intended that the development and operation of the Questa Mine would result in the generation of mine waste rock," and that material was dumped on National Forest Service lands.

"The Forest Service expressed its approval of this activity due to the beneficial effects it had on controlling natural mud flows from the unstable natural 'scar' areas," the lawsuit states. "In essence, the United States still receives ongoing environmental and monetary benefit from the very waste rock disposal practice that is now generating enormous remedial costs that [Chevron Mining] is incurring and will incur in the future."

The suit seeks "the United States' equitable share of response costs already incurred and to be incurred by [Chevron Mining] in connection with the Questa site," as well as a declaratory judgment on liability, attorneys' fees and other costs.

An EPA attorney did not immediately return a call requesting comment.

"[Chevron Mining] is committed to protecting human health and the environment," Chevron says in a statement regarding the suit. "[Chevron Mining] has been and remains open to discussing a way to resolve this matter without having to go through the time-consuming and expensive process of litigation. In addition, despite initiating this lawsuit, [Chevron Mining] continues to work cooperatively with [the EPA] and New Mexico state agencies on the implementation of the environmental remedy for Questa that was selected for the mine through the Record of Decision issued by [the EPA] in Dec. 2010."

The *New Mexican* contributed to this report.

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WCO Sur-rebuttal
Exhibit # 4