

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION

COPY



IN THE MATTER OF THE PETITION
FOR REVIEW ON DISCHARGE PERMIT 558

WQCC 15-08 (A)

EASTERN NAVAJO DINE AGAINST
URANIUM MINING,

Petitioner.

NOTICE OF DISCHARGE PERMIT- 558 TERMINATION

COMES NOW the New Mexico Environment Department, by and through its counsel Kathryn S. Becker, notices the Water Quality Control Commission of the Termination of DP- 558 issued by Secretary Flynn. The action by the Secretary is provided by law. NMSA 1978, § 74-6-5(M)(3) (2009). The permittee was notified of the action taken and the reasons therefore, correspondence attached. Notice of the Secretary's termination shall also be given by mail to persons who participated in the permitting action and petition for review of DP-558, certificate of service attached. NMSA 1978, § 74-6-5(N) (2009). The Secretary's termination renders ENDAUM's petition to review moot and subject to dismissal by the Water Quality Control Commission.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT

By: 

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing "Notice of Discharge Permit - 558 Termination" was served on the following parties via first-class, postage prepaid, US Mail on December 15, 2015:


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Kathryn S. Becker



SUSANA MARTINEZ
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State of New Mexico
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RYAN FLYNN
Cabinet Secretary

BUTCH TONGATE
Deputy Secretary

Via Certified Mail

December 15, 2015

Christopher M. Jones
President & Chief Executive Officer
Hydro Resources, Inc.
6950 S. Potomac Street
Suite 300
Centennial, Colorado 80112

Re: Termination of Groundwater Quality Bureau DP-558

Mr. Jones:

On October 7, 2015, the New Mexico Environment Department's Groundwater Quality Bureau ("Bureau") renewed groundwater discharge permit number 558 ("DP-558"). As you are aware, this permit renewal took nearly two decades to complete due to a variety of different issues, including a number of federal and state lawsuits. However, no amount of litigation justifies the Bureau taking this long to make a decision. This delay reflects poorly on the Bureau and ultimately the Environment Department. Unfortunately, the Bureau's renewal of DP-558 did not comply with the groundwater permitting regulations promulgated by the Water Quality Control Commission (WQCC). Therefore, I am hereby exercising my authority under NMSA 1978, §74-6-5(M)(3) to terminate DP-558 and instructing Hydro Resources Inc., (HRI) to apply for a new discharge permit.

Pursuant to the Water Quality Act, a permit may be terminated by the constituent agency that issued the permit prior to its date of expiration if the permit will violate any provisions of the Water Quality Act or any applicable regulations, standards of performance or water quality standards. N.M. Stat. Ann. § 74-6-5 (M)(3). Here, I have determined DP-558 does not comply with 20.6.2.7(Q) NMAC and, therefore, should not have been renewed. Pursuant to 20.6.2.7(Q) NMAC, a "discharge permit renewal" means "the re-issuance of a discharge permit for the same, previously permitted discharge." DP-558, as originally issued in 1989, authorized discharges to groundwater associated with *in-situ* uranium mining. However, no *in-situ* mining has ever occurred under DP-558 and the WQCC lowered the groundwater quality standard for uranium from 5 mg/l to 0.03mg/l in 2004. The most recent permit renewal application HRI submitted to

the Bureau for DP-558 sought to maintain the authorization for same, previously permitted discharge authorized in the 1989 permit. However, the permit issued by the Bureau on October 7, 2015, expressly prohibits any operational discharges, making the permit the Bureau actually approved to be completely different from the permit HRI requested in its renewal application. In this case, I believe the appropriate course of action would have been for the Department to terminate DP-558 at some point after the groundwater quality standard for uranium was lowered and require HRI to submit a new permit application to address the change in standard. Unfortunately, this did not occur and the Bureau attempted to modify the permit through the renewal process (which is appropriate), but in doing so issued a renewal that was completely different from the previously permitted discharge (which does not comply with WQCC regulations). Because the Bureau's decision did not comply with 20.6.2.7(Q) NMAC, I am hereby exercising my authority under NMSA 1978, §74-6-5(M)(3) to terminate DP-558.

While I have determined the Bureau should not have "renewed" HRI's discharge permit in October, I believe the activities authorized in the permit are necessary and important for HRI to complete. While HRI does not need a discharge permit to gather this data under WQCC regulations, the Department will promptly consider a new discharge permit application structured similar to what was issued in October as soon as HRI is ready to submit a completed permit application. In the alternative, HRI may choose to complete the necessary activities in order to obtain a discharge permit for operational discharges from its *in-situ* mining operation in accordance with the water quality standards and submit a discharge permit application when it is ready to do so.

If you have questions or concerns, please contact the Water Protection Division Director, Trais Kliphuis at (505) 827-1758.

Yours truly,



Ryan Flynn

CC: Trais Kliphuis, Water Protection Division Director
Kurt Vollbrecht, GWQB
Kathryn S. Becker, OGC