

IN THE COURT OF APPEALS
OF THE STATE OF NEW MEXICO

GILA RESOURCES INFORMATION PROJECT,
AMIGOS BRAVOS, TURNER RANCH
PROPERTIES, L.P., STATE OF NEW MEXICO
ex rel. GARY KING, ATTORNEY GENERAL,
and WILLIAM C. OLSON

COURT OF APPEALS OF NEW MEXICO
FILED

FEB 19 2014

Wendy F. Jones

Appellants,

vs.

Nos. 33,237; 33,238; and
33,245 (Consolidated)
WQCC 12-01(R)

STATE OF NEW MEXICO WATER QUALITY
CONTROL COMMISSION,

Appellee,

and,

FREEPORT-MCMORAN CHINO MINES
COMPANY, FREEPORT-MCMORAN TYRONE
INC., FREEPORT-MCMORAN COBRE
MINING COMPANY, and the NEW MEXICO
ENVIRONMENT DEPARTMENT,

Intervenor-Appellees.

MOTION TO STAY THE COPPER MINE RULE PENDING APPEAL,
SUBMITTED BY APPELLANTS GILA RESOURCE INFORMATION
PROJECT, AMIGOS BRAVOS, AND TURNER RANCH PROPERTIES, L.P.

Pursuant to Rule 12-207 NMRA and NMSA 1978, Section 74-6-7(C)
(1993), Appellants Gila Resources Information Project ("GRIP"), Amigos Bravos,
and Turner Ranch Properties, L.P. ("TRP") request the Court to stay the Copper

Mine Rule, 20.6.7 NMAC, during the pendency of this appeal. Pursuant to Rule 13-309 NMRA, the grounds for this Motion are fully set forth in a separately filed Brief in Support and summarized as follows:

1. On September 25, 2013, the New Mexico Water Quality Control (“WQCC”) entered an Order and Statement of Reasons (“Statement of Reasons”) by which it adopted a regulation referred to herein as the “Copper Mine Rule” or “the Rule.” Part 20.6.7 NMAC. The stated objective of the Rule is to “supplement the general permitting requirements of 20.6.2.3000 through 20.6.2.3114 NMAC to control discharges of water contaminants specific to copper mine facilities and their operations to prevent water pollution.” 20.6.7.7 NMAC.

2. The discharge of water contaminants from a copper mine facility requires a discharge permit issued by the New Mexico Environment Department (“NMED”) under the Copper Mine Rule. § 20.6.7.8 NMAC.

3. Appellants participated as formal parties in the rulemaking in which the WQCC adopted the Copper Mine Rule and timely appealed the WQCC’s adoption of the Rule to this Court pursuant to NMSA 1978, Section 74-6-7(A)(1967, amended 1993).

4. The WQCC derives its statutory authority to adopt regulations from the New Mexico Water Quality Act (“the Act”), NMSA 1978, §§ 74-6-1 through 74-6-17 (1967, amended 2009). 20.6.7.3 NMAC. The Act requires WQCC to adopt

regulations that prevent or abate water pollution and that require compliance with water quality standards.

5. The Copper Mine Rule should be set aside on appeal because, contrary to the Act, it does not prevent or abate water pollution or require compliance with water quality standards. The Rule instead mandates extensive and enduring water pollution in excess of standards at all open pit copper mines.

6. The Appellants have standing to appeal the Copper Mine Rule. The Appellants or their members use and depend on ground and surface water supplies that are proximate to existing and proposed new open pit copper mines. Therefore, the Rule adversely affects Appellants within the meaning of Section 74-6-7(A), because it mandates pollution and depletion of their water supplies and deprives them of their statutory right under the Act to oppose such pollution and depletion.

7. Eighteen applications for new, renewed or modified discharge permits at open pit copper mines are currently pending before the NMED. Unless the Rule is stayed pending appeal, these permit applications will be processed and approved under the Rule.

8. The Court should stay the Rule pending appeal based on four factors of analysis: (1) the likelihood that Appellants will prevail on the merits; (2) the threat of irreparable harm to the public and to the Appellants if the Rule is not stayed; (3) the absence of harm to the other parties; and (4) the public interest in

unpolluted water supplies. Tenneco Oil Co. v. N.M. Water Quality Control Comm'n, 1986-NMCA-033, ¶ 10, 105 N.M. 708, 736 P.2d 986. As set forth in Appellants' Brief in Support, the Rule should be stayed pending appeal in consideration of these factors.

9. Before filing the instant motion, the Appellants exhausted their administrative remedies by submitting a motion to the WQCC to stay the Rule pending appeal. The WQCC denied the Appellants' motion.

10. The appellants in the appeals consolidated with the instant appeal concur in this Motion. The position of the Appellees was not sought because they opposed the Appellants' motion to stay when it was brought before the WQCC.

WHEREFORE, the Appellants request the Court to stay the Copper Mine Rule during the pendency of this appeal.

Respectfully submitted,

NEW MEXICO ENVIRONMENTAL LAW
CENTER

By: 
R. Bruce Frederick
Douglas Meiklejohn
1405 Luisa Street, Ste. 5
Santa Fe, NM 87505
(505) 989-9022
bfrederick@nmelc.org

Attorneys for GRIP and TRP

HIGH DESERT ENERGY +
ENVIRONMENT LAW PARTNERS, LLC

By: **APPROVED BY EMAIL 2/18/14**

Tracy Hughes

P.O. Box 8201

Santa Fe, New Mexico 87504

505-819-1710

hughes@energyenvironmentlaw.com

Attorney for Amigos Bravos

CERTIFICATE OF SERVICE: I hereby certify that on February 19, 2014, I caused a copy of the foregoing paper to be mailed (first class) to the parties' attorneys at the addresses shown below:

Andrew Knight Kathryn Becker Assistant General Counsels New Mexico Environment Dept. 1190 St. Francis Drive Santa Fe, New Mexico 87502-6110 <i>Attorneys for the New Mexico Environment Department</i>	Tannis Fox Assistant Attorney General Water, Environment & Utilities Div. Office of the NM Attorney General P.O. Box 1508 Santa Fe, NM 87504 <i>Attorney for the New Mexico Attorney General</i>	Dalva Moellenberg T. J. Trujillo Gallagher and Kennedy, PA 1233 Paseo de Peralta Santa Fe, New Mexico 87501-2758 <i>Attorneys for Freeport MacMoRan, Inc.</i>
Chuck Noble 409 East Palace Avenue, Unit 2 Santa Fe, NM 87501 <i>Attorney for William C. Olson</i>	Pamela Castaneda Administrator Water Quality Control Commission P.O. Box 5469 Santa Fe, New Mexico 87502	


R. Bruce Frederick