

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:)
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Florence Copper, Inc.) UIC Appeal No. 17-03
)
)
UIC Permit No. R9UIC-AZ3-FY11-1)
)
)

**PERMITTEE FLORENCE COPPER, INC.'s RESPONSE TO PETITION FOR REVIEW
FILED BY SWVP-GTIS MR, LLC AND THE TOWN OF FLORENCE**

ATTACHMENT 7

**Letter from William Honker, U.S. EPA Region 6,
to New Mexico Environmental Law Center**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202 - 2733



JUN 27 2012

Mr. Stuart Bluestone
Mr. Douglas Meiklejohn
Eric Jantz, Esquire
New Mexico Environmental Law Center
1405 Luisa Street, Suite 5
Santa Fe, New Mexico 87505

Gentlemen:

Senator Jeff Bingaman has requested that we reply directly to your letter dated April 30, 2012. That letter was written on behalf of the Eastern Navajo Dine' Against Uranium Mining regarding the Church Rock uranium mining project proposed by Hydro Resources, Inc. In that letter, the New Mexico Environmental Law Center states:

The EPA Region 6 granted HRI an aquifer exemption for the Crownpoint Uranium Project under the Safe Drinking Water Act in 1989. The permit was issued before the public was aware of the project, and without any meaningful technical scrutiny. By continuing the aquifer exemption, Region 6 of the EPA has effectively taken the position – in the face of contrary data - that the groundwater beneath the 160 acres of land within the Church Rock Chapter at Section 8, Township 16 North, Range 16 West (Section 8) is so polluted that it will never be used as a drinking water source. On that basis, Region 6 has reasoned that Hydro Resources, Inc. should be allowed to further pollute the groundwater in order to mine uranium using the *in situ* leach method.

The statement above is inaccurate. The EPA requires the state of New Mexico to provide notice of the exemption (temporary aquifer designation) and the permit prior to approval. Moreover, the EPA has never taken the position "that the groundwater [subject to this exemption]...is so polluted that it will never be used as a drinking water source." The New Mexico Environmental Law Center goes on to provide three reasons for revoking the exemption.

The New Mexico Environmental Law Center's first two reasons for revoking the exemption are (1) the Westwater Canyon aquifer is an important future water source due to its water quality, and (2) EPA relied upon statistically indefensible groundwater quality data that are wrong and not relevant to the criteria under which the exemption was granted. In accordance with the criteria for exemption at 40 C.F.R. §146.4, Region 6 approved the exemption submitted by the State because the exempted portion of the aquifer was (1) not then used as a current source of drinking water and (2) contained minerals in producible quantities. Ground water quality is not a consideration in those criteria for exemption and was not a determining factor in granting the exemption.

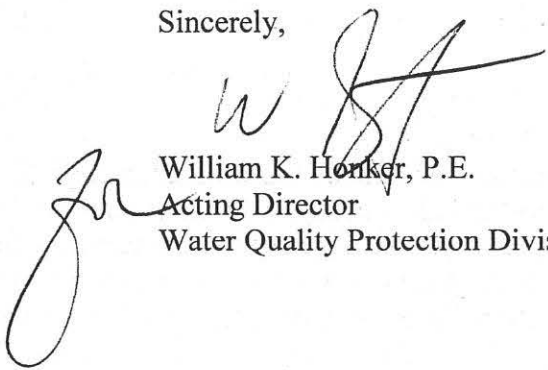
The New Mexico Environmental Law Center's third reason to revoke the exemption points to the historical record of ground water restoration at commercial uranium *in situ* leaching mining operations. A Class III operator's ability to restore an aquifer following *in situ* mining is not one of the EPA's

regulatory criteria for exempting an aquifer. The primary criterion at 40 CFR §146.4 (a) requires all exemptions must demonstrate that the aquifer does not currently serve as a source of drinking water. Generally, an aquifer serves as a current source of drinking water if that water is within the capture zone of an existing water well used for human consumption. The EPA has requested information on such drinking water sources from the Navajo Nation in the ongoing consultation. The EPA is currently unaware of any human water sources in proximity to the exempted area. Should water sources be discovered within close proximity to the exemption, Region 6 will assess the capture capacity of those identified.

Please note that the New Mexico Environment Department is responsible for issuance and renewal of Class III Underground Injection Control Permits for *in situ* mining operations under Section 8, Township 16 North, Range 16 West. The NMED is currently considering an application for renewal of the permit in this matter and Eastern Navajo Dine' Against Uranium Mining's allegations may be of relevance to that permit action.

If you have any further questions, please contact me at (214) 665-7101, or your staff may contact Ms. Cynthia Fanning, Congressional Liaison, at (214) 665-2142.

Sincerely,



William K. Honker, P.E.
Acting Director
Water Quality Protection Division

cc: Senator Jeff Bingaman
United States Senate