



NEW MEXICO HIGH COURT TO CONSIDER WATER SACRIFICE ZONES

"As communities throughout the state are confronted by the critical impacts of long-term drought, it is irresponsible to allow mining companies to pollute groundwater that is needed by everyone," says Allyson Siwik, GRIP Executive Director.

SANTA FE, N.M.— In a case that will set precedent for how the State of New Mexico protects water at industrial sites, the state Supreme Court has scheduled oral arguments in the “Copper Rule” case for September 28, 2016.

The Copper Rule is a regulation adopted by the New Mexico Water Quality Control Commission (WQCC) to regulate groundwater contamination by the copper mining industry. **It is the first regulation since the state’s adoption of its Water Quality Act in 1967 that allows an entire industry to intentionally pollute groundwater.** The Copper Rule was largely written by mining giant Freeport McMoRan, and adopted in October 2013.

The state’s high court has been asked to set aside the Rule and require the WQCC to adopt a regulation that protects groundwater quality from copper mine contamination.

With the Copper Rule in place, copper mines are written off by regulators as “sacrifice zones,” with mining companies like Freeport-McMoRan, Inc. no longer required to prevent metals and acids from leaking into and contaminating groundwater. (This pollution is similar to the waste spilled into the Animas River by the Gold King mine in 2015.) Once copper mine pollution is released into aquifers, mining companies will be relied upon to contain and “pump and treat” the contaminated water for centuries. *(Please [see chart](#) of how the Copper Rule changed regulatory oversight and corporate compliance for water quality at copper mines.)*

After a contentious 2 year process, public interest groups, along with the New Mexico Attorney General and others, appealed the WQCC ruling in late 2013. The Rule is being defended by private attorneys hired by the WQCC, as well as the New Mexico Environment Department (NMED) and Freeport-McMoRan, Inc.

If not overturned, the Copper Rule could set dangerous policy precedent for hundreds of other facilities that may pollute groundwater in New Mexico, including wastewater

treatment plants, national laboratories and manufacturing facilities. In fact, in a recently discovered document labeled [“Hit list for Regulation Changes”](#) produced by Ground Water Quality Bureau staffers at NMED, the Copper Rule was cited as a model for how to ease the permitting of polluting facilities and reduce opportunities for public participation.

The Copper Rule has been challenged by several entities since it was proposed in 2013. The appellants in this case are:

- **Amigos Bravos**, a statewide water protection organization that works to protect ground and surface water quality in New Mexico.
- The **Gila Resources Information Project (GRIP)**, based in Silver City near the heart of the state’s copper industry, promotes community health by protecting our environment and natural resources in southwest New Mexico.
- **Turner Ranch Properties**, whose Ladder Ranch is located adjacent to a proposed copper mine in Sierra County.
- **William Olson**, former Groundwater Bureau Chief of the New Mexico Environment Department.
- **Hector Balderas**, New Mexico Attorney General.

The appellants are concerned about the unprecedented decision by the State to give an entire industry license to pollute groundwater – a water source on which more than 8 in 10 New Mexicans rely as a source of drinking water. The public-interest **New Mexico Environmental Law Center** is representing Amigos Bravos, GRIP and Turner Ranch Properties in the case before the Supreme Court.

Defendants:

- **The New Mexico Water Quality Control Commission** makes decisions about water quality permits and pollution prevention rules in New Mexico. Its 13 members are political appointees of Governor Susana Martinez, who has focused on environmental deregulation since her inauguration in 2011.
- **The New Mexico Environment Department** is charged with regulating most natural resources under state jurisdiction in New Mexico. Coincidentally, NMED has filed a \$130 million lawsuit against the Environmental Protection Agency and the State of Colorado for pollution from the Gold King spill which is similar to pollution generated by copper mines.
- **Freeport-McMoRan, Inc.** is the world’s largest publicly-owned copper mining company. It operates 3 copper mines in southwestern New Mexico, including the nation’s 4th and 5th largest open pit mines.

"As communities throughout the state are confronted by the critical impacts of long-term drought, it is irresponsible to allow copper mining companies to pollute groundwater that is needed by everyone," says Allyson Siwik, GRIP Executive Director. "This is a precedent setting case and we look forward to presenting oral arguments before the New Mexico

Supreme Court. It's critical that the integrity of our Water Quality Act is restored in order to protect groundwater for all of us, now and in the future."

"What the administration has done sets a very dangerous precedent. By gutting the historic (and correct) interpretation of the New Mexico Water Quality Act, it opens up the gates for other industries to seek similar 'license to pollute,'" says Joe Zupan, Executive Director of Amigos Bravos.

"Water is constitutionally protected in New Mexico and belongs to the public," says Douglas Meiklejohn, Executive Director of the New Mexico Environmental Law Center. "We are asking the Supreme Court Justices to tell state decision-makers in no uncertain terms that they do not have discretion to allow the wholesale sacrifice of the public's water supply for any industry."

BACKGROUND

- In 1967, the New Mexico state legislature adopted the Water Quality Act, which created the WQCC and tasked it with preventing water pollution and protecting New Mexico's limited groundwater supplies.
- In 2009, the New Mexico Legislature mandated the WQCC to specify water discharge regulations for the dairy and copper mining industries that would prevent water pollution and protect water quality.
- In 2012, NMED put together an advisory committee that included members from the copper mining company Freeport-McMoRan, environmental groups and technical experts to advise NMED on new copper mine rules to present to the WQCC. The advisory committee met for eight months and in mid-August a draft rule was sent to NMED management.
- At Freeport's request, NMED's upper management overruled the draft rule recommended by its own technical staff, and incorporated language prepared by Freeport that would allow Freeport (and other copper mine operators) to routinely pollute groundwater with acid rock drainage, metals and other contaminants in the course of its mining operations.
- In April 2013, the NMED presented its draft water quality rule for copper mines before the WQCC. The NMELC and its clients, as well as the New Mexico Attorney General and the former NMED Groundwater Bureau Chief, opposed the rules on grounds that they are illegal under the Water Quality Act. NMED's own technical staff involved in the copper rules development process did not attend the hearing to support the draft rule.
- The WQCC in September 2013 approved the Freeport-prepared draft copper rule with little deliberation. In making its decision, the commission adopted, with one small non-substantive change, the Proposed Statement of Reasons submitted by NMED. It was later learned through

an Inspection of Public Records Act request that the NMED Statement of Reasons was drafted by Freeport-McMoRan's attorneys.

- October 8, 2013 the NMELC filed a Notice of Appeal in New Mexico Court of Appeals for its clients.
- On April 8, 2015 the Court of Appeals upheld the WQCC's adoption of the Copper Rule.
- On October 20, 2015 the Appellants requested that the state Supreme Court review the Court of Appeals' decision to uphold the Copper Rule. The Supreme Court agreed to hear the appeal. Briefing has been completed: read NMELC's Brief-in-Chief and Reply Brief.
- Oral arguments scheduled for September 28, 2016 in Santa Fe.

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INTERVIEWS ARE AVAILABLE UPON REQUEST

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