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PUEBLO OF ACOMA
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June 4, 2007

Mr. Ron C. Linton, Project Manager
Decommissioning and Uranium Recovery Licensing Directorate
Division of Waste Management and Environmental Protection
Office of Federal and State Materials and Environmental Management Programs
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

RE: *Section 106 Consultation for the Homestake Mining Company of California Proposed Evaporation Pond #3.* Docket No.: 040-08903, License No.: SUA-1471

Dear Mr. Linton:

The Pueblo of Acoma is herein responding to your request for consultation pursuant to 36 CFR Part 300. Specifically, the NRC requested information regarding Acoma's affiliation with any traditional, cultural, or historic, or archaeological sites in the area of Homestake's proposed groundwater remediation activities.

As described in the Acoma Tribal Council Resolution of November 22, 2006 provided to you on April 25, 2007, the Pueblo of Acoma, a sovereign Indian Nation, is authorized to protect its traditional cultural properties and sacred sites affiliated with the Acoma Cultural Province, including our sacred vessel of life, the Rio San Jose watershed.

Acoma's water and cultural resources are interconnected, similar to the intimate connectivity between surface and groundwater in the arid desert southwest. Recent hydrologic studies have documented the fragile and dynamic connection between the shallow alluvial aquifer and stream flow in the Rio San Jose near Acoma. Since the late nineteenth century, surface flows have been reduced and the once perennial river typically dries out prior to entering Acoma lands. Groundwater mining from the alluvial and bedrock aquifers upstream for irrigation, municipal and the mining industry has lowered the water table, adversely impacting regional springs and river flow. Ojo del Gallo spring, located near the community of San Rafael, has dried up due to these new demands for water. The construction of Bluewater Dam in 1927 also diminished surface flows from Bluewater Creek into the Rio San Jose.

Historically, the Rio San Jose had several sources of water flow. Prior to1900, water from Bluewater Creek flowed unhindered down the Rio San Jose for Acoma 's use, providing water to the river and shallow alluvial aquifer that supplies Horace Springs, just west of the Acoma Grant. Another source of water emanated from the San Mateo subwatershed located on the western slope of Mt. Taylor. At San Rafael, the San Andres-Glorieta aquifer discharged water at Ojo del Gallo that provided a third major source of water to the Rio San Jose and shallow alluvial aquifer.

Horace Springs is a culturally significant site within the Acoma Cultural Province and has been since time immemorial. Flow from Horace Springs has declined over the last decade and a half, making it difficult to maintain traditional cultural practices. Further decline may destroy the ability of Acoma to continue those uses. Acoma has invested monetary resources to acquire the necessary easements to maintain its cultural practices even though the spring is not located within the Acoma Grant.

Designated uses for the Rio San Jose under the Pueblo of Acoma Water Quality Standards (1998, Revised 2005) include:

- Fish culture and consumption
- Agricultural irrigation
- Livestock watering
- Primary contact recreation (upstream of Acomita Lake)
- Partial body contact (below Acomita Lake)
- Aquatic and wildlife habitat
- Groundwater recharge
- Domestic water source

Each designated use at Acoma has been threatened by both declining stream flows, erosion and pollution. Rising TDS (total dissolved solids) and sulfate levels threaten aquatic and wildlife uses of the Rio San Jose.

The Pueblo of Acoma's Unified Watershed Assessment (2000) classified that the Rio San Jose watershed as a Category I watershed in need of restoration due to:

- Water quality exceedances
- Wetlands losses
- Erosion impacts to the watershed

It should be noted that the Acoma water quality standards were enacted to protect *all* the waters of Acoma, including groundwater. The bulk of domestic water supply for the Acoma population is obtained from wells drilled into the Dakota, Zuni and Entrada Formations.

The issuance of permits for uranium and coal mining, processing and other water-intensive use permits upstream of Acoma threatens further degradation and impairment to Acoma's water and

cultural resources within the Acoma Cultural Province, as well as other natural ecosystems within Acoma's exterior boundaries.

Homestake's long-term groundwater restoration effort attests to the difficulty of containing groundwater contamination in one of the most important groundwater supply sources in northwestern New Mexico. The protection of areas within and related to the Acoma Cultural Province, on the other hand, is essential to assure the health, safety and cultural welfare of the Acoma community now and into the future. Homestake's Corrective Action Plan proposes to expand the NRC-licensed site boundary and use of the region's valuable groundwater resources. The plan is likely to have a significant effect on the air, land and cultural significance of the area as well. Health impacts to area residents in the form of cancer, genetic and immune system disorders, represent an environmental justice issue that has yet to be adequately addressed. Other natural resource damages resulting from Homestake's mining activities are only now becoming apparent and will most likely require an Environmental Impact Statement with opportunities for public comment and the involvement of the affected communities.

Additionally, the water resources of the Bluewater Basin and associated Rio San Jose watershed are the subject of pending litigation to quantify the water rights of senior water users, in the Thirteenth Judicial District of New Mexico. *(State of New Mexico ex rel. v. Kerr-McGee et al., Nos. CB-83-190-CV and CB-83-220-CV)* Initial proceedings in the litigation will determine Acoma's federally protected senior water rights and rights to continue its cultural practices within the Rio San Jose watershed.

Tribal Consultation

Acoma was not notified of the survey conducted by Taschek Environmental Consulting last June, 2006. A total of 51 isolated occurrences were surveyed within the proposed project area. Eleven new sites were identified during the survey in addition one previously recorded site. Three archaeological sites have been recommended for inclusion in the National Register of Historic Places (NRHP). Another three have an undetermined eligibility status pending further testing. The remaining six have been determined ineligible due to their lack of integrity. These prolific cultural sites provide unmistakable evidence of Acoma's prehistoric presence in the region and aboriginal title area known as the Acoma Cultural Province, a presence which has been continuously maintained. Acoma culture is inextricably tied to the place where it is located, as demonstrated by the Acoma Cultural Province.

The protection and restoration of impaired ecology within the Acoma Cultural Province, including the Rio San Jose watershed and related groundwater is essential to the continued viability of the Acoma people within their tribal homeland.

Numerous studies have confirmed that the San Andres-Glorieta aquifer and alluvial basalt aquifer are the principal water-bearing units in the region. An early hydrogeology report compiled by E.D. Gordon in 1961 concluded that the water supply in the Grants-Bluewater area is greater than any area in northwestern New Mexico. This critical area lies within the upstream portion of the Acoma Cultural Province and migration corridor, which forms a lifeline connecting Acoma with its past, present, and future.

Acoma requires consultation with all regulatory agencies regarding Alternatives B, C, and D in order to determine probable impacts to regional groundwater, the San Mateo Creek drainage area, and Horace Springs within the Acoma Cultural Province resulting from each of Homestake's proposed alternatives.

Please contact my office or Laura Watchempino, Water Quality Specialist at (505) 552-6604, extension 256 to schedule a consultation meeting at your earliest convenience. If you should have any questions or require additional information, please feel free to contact us at the above number.

Sincerely,

PUEBLO OF ACOMA

Jason Johnson
Governor

References:

Frenzel, P.F. 1992. *Simulation of Groundwater Flow in the San Andres-Glorieta Aquifer in the Acoma Embayment and Eastern Zuni Uplift, West-Central New Mexico,* U. S. Geological Survey Water Resources Investigation Report 91-4099

Gordon, E.D., 1961, *Geology and Groundwater Resources of the Grants-Bluewater area, Valencia County, New Mexico*

cc: Randall Vicente, 2nd Lieutenant Governor
Acoma Historic Preservation Office
Haaku Water Office
NMED, Groundwater Quality Bureau, Mining & Minerals Division
EPA, Region 6
ATO Files